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The city as networked agent:

towards a new legal history

Inaugural address, spoken by

Prof. dr. D. De ruysscher

Tilburg University

Understanding Society

Dave De ruysscher (b. 1978) is Professor of Legal History at Tilburg University since 14 February 2022. He studied History at KU Leuven and Law at KU Leuven and the University of Antwerp. His doctoral dissertation on commercial law in sixteenth-century Antwerp (2009, KU Leuven) was awarded the Charles Duvivier Prize of the Académie royale de Belgique. Dave De ruysscher was a postdoctoral researcher of the Fund of Scientific Research Flanders and in 2016 obtained an ERC Starting Grant. His research concerns the history of commercial and urban law. He coordinates the new ERC Consolidator Grant project "Causal Pattern Analysis of Economic Sovereignty", which investigates the sovereignty and legal background of relations between trading cities in the late medieval and early modern period. Besides his work in Tilburg, Dave De ruysscher is, among other things, senior lecturer at the Vrije Universiteit Brussels, member of the editorial board of the Tijdschrift voor Rechtsgeschiedenis and member of the Young Academy (Flanders).

Dave De ruysscher (1978) is sinds 14 februari 2022 hoogleraar Rechtsgeschiedenis aan Tilburg University. Hij studeerde Geschiedenis aan de KU Leuven en Rechten aan de KU Leuven en Universiteit Antwerpen. Zijn proefschrift over handelsrecht in zestiende-eeuws Antwerpen (2009, KU Leuven) werd bekroond met de Charles Duvivier-prijs van de Académie royale de Belgique. Dave De ruysscher was postdoctoraal onderzoeker FWO Vlaanderen en verkreeg in 2016 een ERC Starting Grant. Zijn onderzoek heeft betrekking op de geschiedenis van handelsrecht en stedelijk recht. Hij geeft leiding aan het nieuwe ERC Consolidator Grant project "Causal Pattern Analysis of Economic Sovereignty", dat de soevereiniteit en juridische achtergrond van relaties tussen handelssteden in de late middeleeuwen en vroegmoderne periode onderzoekt. Naast zijn werk in Tilburg is Dave De ruysscher onder meer hoofddocent aan de Vrije Universiteit Brussel, lid van de redactie van het Tijdschrift voor Rechtsgeschiedenis en lid van de Jonge Academie (Vlaanderen).

The city as networked agent: towards a new legal history

De genetwerkte stad in actie: naar een nieuwe rechtsgeschiedenis

Dave De ruysscher

Inaugural address,
pronounced in abbreviated form at the public acceptance of the position of Professor of Legal History at Tilburg University, Januari 20th 2023

Rede,
in verkorte vorm uitgesproken bij de openbare aanvaarding van het ambt van hoogleraar Rechtsgeschiedenis aan Tilburg University op 20 januari 2023

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The city as networked agent: towards a new legal history

De genetwerkte stad in actie: naar een nieuwe rechtsgeschiedenis

Dave De ruysscher

Introduction

Introduction: the city in disregard[1]

[1] I wish to thank Maurits den Hollander and Marco In't Veld, for their comments on an earlier version of this text. Special thanks go to John Eyck, for checking my language.

Over the past decades, the legal features of European cities in the Middle Ages and early modern period have not received much attention from legal historians. Admittedly, for continental Western Europe in particular, legal-historical studies on urban private and mercantile law of these periods are still being written. Urban citizenship remains a matter for analysis as well.[2] However, with regard to the characteristics of cities as entities at law, referring to for example their contractual capacity, liability and representation, one has to rely on older works, which for the most part are based on charters and legislative sources only.

Indeed, in the later nineteenth and early twentieth century, many of the aspects mentioned were vigorously discussed, also among legal historians. They, together with economic and urban historians, explored the origins and institutions of medieval cities. They tracked down the position of cities within emerging states, from legal-institutional and political viewpoints.[3]

Even in the older literature, however, one important aspect of the legal status of cities is typically absent. Legal historians seldom investigated whether cities engaged in external relations and what were the legal rules and concepts that underpinned their actions when doing so. Even though city leagues and treaties between cities have been studied, this research was mostly undertaken for the thirteenth and fourteenth, not for the fifteenth and sixteenth centuries.[4] The norms that were linked to and which were built up in correspondence and economic agreements, between cities and in city-state relations, remain largely unknown. As a result thereof, it is mostly unclear whether and to what extent state formation processes influenced the radius of action of cities from a legal point of view.

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2 Cittadinanze medievali. Dinamiche di appartenenza a un corpo comunitario, S. Menzinger (ed.), Rome, 2017; Of Strangers and Foreigners (Late Antiquity – Middle Ages), L. Mayali and M.M. Mart (eds.), Berkeley, 1993; Privileges and Rights of Citizenship: Law and the Juridical Construction of Civil Society, J. Kirshner and L. Mayali (eds.), Berkeley, 2002.

3 Further, for the analysis of the views of legal scholars, see: von Beseler, von Gierke, Hegel, von Below and Sohm; in addition, for the ideas of economic and urban historians, see: Arnold, von Maurer, Nitzsch, Rietschel and Pirenne.

4 On city leagues in the thirteenth and fourteenth centuries, see: G. Dilcher, "Mittelalterliche Stadtkommune, Städtebünde und Staatsbildung. Ein Vergleich Oberitalien- Deutschland" in H. Lück and B. Schildt, Recht – Idee – Geschichte. Beiträge zur Rechts- und Ideengeschichte für Rolf Lieberwirth anläßlich seines 80. Geburtstages, Cologne, Weimar, Vienna, 2000, 453-467; E.-M. Distler, Städtebünde im deutschen Spätmittelalter. Eine rechtshistorische Untersuchung zu Begriff, Verfassung und Funktion, Frankfurt am Main, 2006. The Flemish *Hansas* of the 1200s have mostly been chronicled by economic historians, such as Henri Pirenne and Hans van Werveke.

One reason for this neglect has been a primary interest in states. The legal history of public law has for a large part been a genealogy of concepts that are connected to states. Moreover, the focus was mainly on state sovereignty, which by its definition obscures other levels of government. Therefore, layered concepts of, and rules relating to, local autonomy have been studied less, or they were considered as less relevant for the history of public law in Western Europe.

Furthermore, it has been commonly held that states did not have their roots in cities. The city – or by extension any local community (*commune*, *Gemeinde*) – is at best viewed as a distant cousin in the family tree of the state. Cities that are not city-states are typically regarded as non-autonomous communities, which are different from states.[5] It is common to consider their jurisdiction as conceded – and therefore limited – by a princely, central level of government. Legislation of the sovereign overruled urban law and customs, and the administrators of cities acted within the confines of the competences granted by the sovereign. Cities had a restricted substantive jurisdiction. Moreover, their legislative powers were limited: cities passed bylaws, not laws.

It is understandable, then, why cities, and especially those of Northwest Europe, are largely absent in legal-historical overviews of European public law. In the twelfth and thirteenth centuries, so the story goes, they could have a certain autonomy, which was foremost practical (for example, with regard to trade and economic regulation). This independence was 'factual', because sovereigns did not really care about cities or make use of their legislative powers for them. City leagues were created, filling up this vacuum. However, in the fifteenth and sixteenth centuries the state grew and the quality of the rules that its institutions produced overshadowed the immature bylaws and customs that applied in cities. Sovereigns now took control, also of the practical aspects that thus far had been left to urban administrators.

Nowadays, the question of the legal status of cities has become more important, especially as concerning to metropolises and so-called global cities. Major cities in the world are facing challenges that come together with processes of globalization, such as climate change, migration and international crime. However, these cities often lack the jurisdiction to address these issues, since they are part of states that monopolize many of the relevant

5 City-states and city leagues (the *Hansa*, in particular) are sometimes considered precursors of the modern nation state. See for example in: H. Spruyt, "The Origins, Development, and Possible Decline of the Modern State", Annual Review of Political Science (2002), 127-149, at 134. This perspective emphasizing, in particular, city-states is still prominent in recent generalizing monographs on historical cities, such as for example G. Parker, Sovereign City: The City-State Ancient and Modern, Chicago, 2004.

competences.[6] Therefore, the history of cities has attracted new interest. The old idea that medieval cities were imbued with a culture of liberty, which evolved into (some sort of) autonomy, has been revived, yet also challenged.[7] Historical studies now delve into combinations of urban republicanism and institutional legal history, demonstrating the layered and pluricentric aspects of citizenship and urban institutional constellations.[8] Nonetheless, legal historians have for a large part not contributed to these emerging scholarly developments.

It will be argued hereinafter that for the subject at hand looking beyond the older approaches and narratives, with an eye towards new perspectives, is not merely a matter of certain trends becoming outdated after time, and new themes becoming fashionable. Rather, the topic of networked cities invites legal historians to reflect more thoroughly on what they are studying. The state-centered perspective of legal history has already amply been criticized. The focus of legal history nowadays should be on normativity, not 'the' law or legal sources;[9] the attention has shifted away from orders and models towards practice and practices, and contextual analysis is common.[10] Moreover, legal historians are aware of the perils of idealistic methods, such as historical dogmatics and *Begriffsgeschichte*.[11] But, in spite of the theory, applying these insights to concrete cases is not easy. A legal history of cities, as a legal history of 'polities in action', is an important test case for the

6 On this problem, see: S. Sassen, *The Global City*, Princeton, 1991, and S. Sassen, "The Global City: Introducing a Concept", Brown Journal of World Affairs 11/2 (2005), 27-43. For a recent positioning of the theme within the context of international law, see: H.Ph. Aust and J.E. Nijman, "The Emerging Role of Cities in International Law" in H.Ph. Aust and J.E. Nijman (eds.), Research Handbook on International Law and Cities, Cheltenham, 2021, 1-15, and Ch. Swiney, "The Urbanization of International Law and International Relations: The Rising Soft Power of Cities in Global Governance", Michigan Journal of International Law 41/2 (2020), 227-278. For an assessment from the angle of constitutional law, see R. Hirschl, *City, State:* Constitutionalism and the Megacity, Oxford, 2020. New diplomatic history, too, includes other entities besides states. See, for example, J. Watkins, "Premodern Non-State Agency: The Theoretical, Historical, and Legal Challenge" in L. Sicking and M. Ebben (eds.), Beyond Ambassadors. Consuls, Missionaries, and Spies in Premodern Diplomacy, Leiden, 2020, 19-37.

7 A popular book that in its search for the characteristics of cities pays ample attention to the 'messy' and darker aspects of urban life is: B. Wilson, Metropolis. A History of the City: Humankind's Greatest Invention, London, 2020. A more idealized, liberal approach can be found in A. Lambert, Seapower States. Maritime Culture, Continental Empires, and the Conflict that Made the Modern World, Yale, 2018.

8 See, for example, M. Herrero Sánchez, "Urban Republicanism and Political Representation in the Spanish Monarchy" in J. Albareda and M. Herrero Sánchez (eds.), Political Representation in the Ancien Régime, New York, 2018, 319-332.

9 Th. Duve, "Rechtsgeschichte als Geschichte von Normativitätswissen?", Rechtsgeschichte 29 (2001), 41-68, at 41-44.

10 On these shifts, for which global and comparative legal history serve as accelerators, see for example J. C Tate, J. R. de Lima Lopes and A. Botero-Bernal, "Global Comparative Legal History. An Introduction" in C. Tate, J. R. de Lima Lopes and A. Botero-Bernal (eds.), Global Legal History: A Comparative Law Perspective, London, 2019, 1-17, at 7-8.

11 M. Stolleis, Rechtsgeschichte schreiben. Rekonstruktion, Erzählung, Fiktion?, Basel, 2008, 21-25.

new approaches. Detailed analysis of sources that reflect the external life of the city is necessary for gaining access to the norms that determined the legal status of cities.

In this lecture I will first analyze the legal capacities of cities (§ 1). This will bring me to explore theoretical ideas on the origins of cities in the Low Countries and German territories that are found in older literature. I will confront a positivist to an associational approach and highlight the position of trade and urban markets in the theories (§ 1.1). A case will be made for symbolic congruence between the urban and princely levels of government, as a bridge between the two approaches mentioned (§ 1.2). In a second part, all this will be the steppingstone for a new analysis of the external actions of cities, in the later Middle Ages and early modern period. First, it will be explained that the associational characteristics of cities also affected their outward connections (§ 2.1). Then, examples from practice highlight the largely autonomous behaviour of cities in the international economy, precisely because of the symbolic links to princely institutions (§ 2.2). The lecture ends with reflections on the normative practices that underpinned the 'state-hood' of cities, the networked characteristics of their economies, and how legal historians should address them (§ 3).

1. The city as capable entity

When talking about cities 'in action' and their autonomy, an initial question must be: were cities, in the abovementioned medieval and early modern periods, considered as legally self-determining, and could they act independently? And, in this regard, to what extent could they legally – that is according to legislation, applicable doctrine and/or legal culture – function outside the territory of their ('formal') urban jurisdiction?

Answering these questions requires making some choices. For the remainder of this lecture, I will zoom in on the Low Countries, for several reasons. First of all, historical documentation for cities of these regions is relatively extant; secondly, the origins and early development of cities in the Low Countries – both the Northern and the Southern Netherlands – have been studied extensively. However, as was mentioned above as well, even though the literature on cities in the Low Countries is rich, the problems discussed here have not received much attention. For that reason, arguments will also be drawn from German legal-historical and institutional-historical literature, which has addressed the problem of the city as legal entity in more depth. Eventually, to be sure, the German debates also partially found their way into Belgian and Dutch historiography.

Of course, one must be cautious when drawing comparisons across larger regions because there were differences. However, analyzing cities from both the Low Countries and German territories, for the periods mentioned, is possible since many cities in these areas had prominent commercial and mercantile characteristics. Not surprisingly, therefore, the importance of urban fairs and markets has stood central in theories of historians on the nature and emergence of cities in both regions.

Asking the question about the capacity to act, inevitably invites a researcher to consider the legal features of cities against the backdrop of their early history. In the twelfth and thirteenth centuries, cities typically received city charters, documents called 'privileges', *privatae leges*, which were granted by a prince or regional lord and in which many of the fundamental rules of their institutions and law were mentioned. The contents of these charters (also called 'charters of franchise') matter. These documents provide hints as to the nature of cities' jurisdictions and how they were perceived as legal agents. There is more, though, besides the charters. It will be argued that a dichotomy between a lower, subjugated urban jurisdiction and a higher, granting, princely level of government is for a large part anachronistic. Such a strict separation, in which the city charter is the focal point, did not exist, neither when cities were young, nor later, over the course of their lifetimes. And this misconstrued demarcation counts when assessing the legal categorizations of diplomatic activities of cities, as will be discussed in the second part of this lecture.

1.1. Lordly dependence or association?

The legal nature of early cities has been debated for well over one and a half centuries. The controversies were particularly intense during the period between approximately 1850 and the turn of the nineteenth century. In those years, institutional and urban historians for the first time analyzed documents on city communities, stemming from the period of roughly between the year 1000 and 1300. German historians were particularly prolific in producing theories on what they found in the archives.

Three distinct issues collided in the German debates. One was the relationship between *Herrschaft* or vertical authority, and *Genossenschaft*, or horizontal power. The centralization that came together with the formation of the German *Reich* (1871) comprised the context for discussions relating to that consolidation. In that regard, reflections on *Selbstverwaltung* were linked to preservation of the *Länder* and *Gemeinde*, and of democratic institutions as well. Another issue was the difference between city and countryside. In an era of increased urbanization the specific characteristics of urban as opposed to rural communities were explored, also in a legal sense. And a third topic was the question on the primacy of trade. Had the economy changed the legal institutions, or was it the other way round? Again, the nineteenth-century context of industrialization provided incentives to look for historical analogies in this respect.[12]

1.1.1. *Marktrecht* and *Genossenschaft*

With regard to the legal status of cities, one position took a legal-positivist view. Scholars of this opinion stated that city rights were derived from lordly (that is, often, royal) privileges, which supposed a separation of jurisdiction between a higher, seigniorial and a lower, municipal level of government. From this perspective a community could only be called a city from the moment when it received judicial competences from the lord. Thus, charters providing jurisdiction were at the same time conferring legal status.[13] Currently, this

[12] For the context of the German historical science in the second half of the nineteenth century, see, for example, G.G. Iggers, The German Conception of History. The National Tradition of Historical Thought From Herder to the Present, Middleton (Conn.), 1968.

[13] An example of this approach is K.D. Hüllmann, Städtewesen des Mittelalters, vol. 3, Bonn, 1828, 32, 41. Hüllmann considered municipal charters as 'Verfassungen' that were conceded ('begabt'). However, Hüllmann also recognized the societal reality of the city as commune, which preceded the seigniorial confirmation; in terms of jurisdiction, however, the Schöffen (aldermen) had to adhere to the competences that were listed in the city charter. In the early 1800s, other (legal) historians combined similar ideas with a continuity argument. For example, for the city of Cologne it was said that the earliest urban law was rooted in the libertas romana, which remained under the protection of the emperor of the Holy Roman Empire. In that vein, the seigniorial (including imperial) charters of the eleventh and twelfth centuries were specifications of law that had applied in the city before. See: K. Eichhorn, "Über den Ursprung der städtischen Verfassung in Deutschland", Zeitschrift für geschichtliche Rechtswissenschaft 2/2 (1816), 165-237.

perspective has been greatly nuanced but to some extent is still present among historians of German cities. Their common approach towards early city communities is that these first functioned as associations, with internal rules (*Satzungen*) which members pledged to follow. In contrast with nineteenth-century theories, legal historians of today consider the law produced by these associations not to be subordinate or of lower quality in any way. However, it is still held that *Gerichtsbarkeit*, granted by privilege, contributed greatly to the forging of the legal community that was the early city.[14]

The aforementioned *Satzungen* became part of the debates early on, from the middle of the nineteenth century, when several historians took a more communitarian viewpoint, thereby challenging the abovementioned positivist perspective. In 1843, Georg von Beseler (d. 1888) published his *Volksrecht und Juristenrecht*. This monograph emphasized that since the Middle Ages the Roman law, as it was studied and taught at universities, had been glued onto a law of the people, which was close to customary law and had developed organically. In this regard, von Beseler expanded the views of Friedrich Carl von Savigny (d. 1861), who had stressed the legitimacy of law as rooted in 'the people'. In contrast to von Savigny, von Beseler separated the academic from the people's law. Savigny had considered jurists as translators of the *Volksgeist*, and legislation and juristic opinions as indirect emanations of the *Volksgeist*.[15]

View on Den Bosch, c. 1550, painted by Anton van de Wijngaerde, Ashmoleon Museum Oxford

14 For example, in: W. Ebel, Geschichte der Gesetzgebung in Deutschland, Göttingen, 1958, and H. Planitz, Die deutsche Stadt im Mittelalter, Graz, 1954. A summary of these views can be found in: E. Isenmann, Die deutsche Stadt im Mittelalter (1150-1550). Stadtgestalt, Recht, Verfassung, Stadtregiment, Kirche, Gesellschaft, Wirtschaft, Cologne, 2012, 172-195.

15 Frederick C. Beiser, The German Historicist Tradition, Oxford, 2011, 249.

With regard to cities, von Beseler thought that the medieval status of citizen had emerged out of the urban *Gemeindewesen*, as it had been changed by guilds of artisans. Von Beseler stated that urban citizenship had originated after craft guilds had gained access to the urban governments. Their ideology of freedom was an essential part of the community that was a city.[16] Beseler considered *Volksrecht* in particular as *Ständerecht*: different groups within society created their own associations and societal rules came from them. It was, in his view, the bourgeoisie who breathed the culture of liberty that was urban.[17] Moreover, von Beseler held that the legal constellations of cities, which had grown spontaneously, had to remain in check with the societal conditions. He mentioned that cities could become deserted, and that smaller cities could turn into villages, where the "older valuable city law was a burden". According to von Beseler, in that case the farmer would continue to aspire for urban liberties, but the landowner would crush this ambition.[18]

In 1868, von Beseler's pupil, Otto von Gierke (d. 1921), published his first volume of *Das deutsche Genossenschaftsrecht,* which was entitled *Rechtsgeschichte der deutschen Genossenschaft*. In this first volume, von Gierke stressed the fact that humans are social beings; he argued that any legal institution must be understood for its social implications and is embedded within a community.[19] He proposed to consider the legal characteristics of associations as natural consequences of their purpose, not as the result of state recognition. Any association was a legal person (*Körperschaft*) if it was based on a *Gesamtwille* of its members, which was directed towards a common goal, and if it functioned as *Organismus*, that is as an entity.[20] Both von Beseler and von Gierke opposed ideas on incorporation by law. Legal status did not come from above but was built from the bottom up. As a result, charters granted by lords to urban communities did only confirm what had existed before.[21] Von Beseler and von Gierke argued that a genuine 'community' could never be imposed or created on paper but had to be a societal reality.[22]

The consequences of either theory on the legal capacities of medieval and pre-modern cities have been considerable. In the positivist, 'incorporation'-approach cities could act

16 G. von Beseler, Volksrecht und Juristenrecht, Leipzig, 1843, 219.
17 Ibid., 195-199.
18 Ibid., 221.
19 O. von Gierke, Das deutsche Genossenschaftsrecht, vol. 1, Berlin, 1868, 1.
20 For example, with regard to the corporation on shares, Ibid., vol. 1, 1009-1011, 1020.
21 Ibid., vol. 1, 252-253, 332.
22 On the use of these concepts, which were not only applied by von Beseler and von Gierke, see: W. Mager, "Genossenschaft, Republikanismus und konsenzgestütztes Ratsregiment. Zur Konzeptionalisierung der politischen Ordnung in der mittelalterlichen und frühneuzzitlicher deutschen Stadt" in L. Schom-Schütte (ed.), Aspekte der politischen Kommunikation im Europa des 16. und 17. Jahrhunderts, Munich, 2004, 13-121, at 20-27.

for as much as this was defined in a foundational charter. The jurisdiction of cities was delineated and situated below the jurisdiction of the lord; typically, it was held that the privileges listed internal competences only. The city was a geographically defined body, under seigniorial protection, though with immunity and institutional freedom that did not go far beyond its walls, nor the letter of the charter. By contrast, in the communitarian approach cities were communities and their outside contacts and relations could be an extension of their natural entity-like features and develop independently.[23]

The outward relations of cities came more to the forefront in literature that focused on the importance of urban markets. According to such scholars as Wilhelm Arnold (d. 1883) the medieval city was a new development but with connections to a spirit of association that was Germanic. It was because of a revival of trade that in the view of Arnold markets developed in certain places, which then received privileges from the Ottonian kings. The urban government was an autonomous institution; in those cities where trade thrived the institutional bodies were independent. According to Arnold the market was clearly the determining factor in the emergence of cities; charters of franchise came later. Throughout its constellation a culture of freedom was woven that was typical of cities. In this regard, Arnold made comparisons between German *Freistädte* and Italian city republics.[24]

It was mostly in response to Arnold's book on the city of Worms that the abovementioned positivist approach was connected more to urban economic history. Karl von Hegel (d. 1901), for example, reacted against Arnold in saying that there were traces of continuity with Roman times, and that the connection between urban development and the intervention and support of the German king (later, the Holy Roman emperor) was the reason for the rise of the medieval German cities along the Rhine. Von Hegel stressed the jurisdictional competences that had been granted by the Ottonians.[25] Moreover, in a combination of the positivist and communitarian theories, some scholars responded to Arnold by proposing that cities had evolved from villages, and that they had preserved some of the institutional traits of these villages. Georg von Maurer (d. 1872), for example, stated on the basis of that idea that cities of the twelfth and thirteenth centuries still had Germanic institutions.[26] These 'Germanists' differed somewhat in their opinion as to the origins of the Germanic characteristics of early cities. Von Maurer referred to the *Marke* (march) as original locus

23 von Gierke, Das deutsche Genossenschaftsrecht, vol. 1, 305-310, 382-383.
24 W. Arnold, Verfassungsgeschichte der deutschen Freistädte im Anschluss an die Verfassungsgeschichte der Stadt Worms, 2 vols., Gotha, 1854.
25 K. von Hegel, "Kritische Beiträge zur Geschichte der deutschen Städteverfassung", Allgemeine Monatschrift für Wissenschaft und Literatur (1854), 155-185, 696-711.
26 G.L. von Maurer, Geschichte der Städteverfassung in Deutschland, Stuttgart, 1869-1871, 4 vols.

of authority,[27] and another influential scholar, Karl Wilhelm Nitzsch (d. 1880), went on to theorize that cities originated out of feudal domains. Nitzsch explained that the status of *ministerialis*, of privileged servants of local lords, lay at the foundation of urban citizenship.[28] The 'communal' revolution of the Middle Ages had been nothing more than the extension of feudal privilege to newcomers, which then gave rise to the urban community.[29]

1.1.2. Henri Pirenne

Amongst Dutch and Belgian historians the theories mentioned above had a minimal impact at first. Starting in the 1890s, however, fierce debates erupted, in particular with regard to the history of Flemish cities, and in reference to the German theories as well. Léon Vanderkindere (d. 1906), professor at the *Université libre de Bruxelles*, adopted von Maurer's views and stated that Flemish cities had a rural constellation that had been tweaked to make it fit for trade.[30] He stated that the medieval administrators of Flemish cities, the *jurati*, were a continuation from Carolingian times. In the twelfth century, the count of Flanders replaced them with *scabini* but these aldermen quickly revived the older Germanic viewpoints by defending the city against intrusion from the count.[31] Moreover, in cities Frankish law persisted. The Frankish ideas on liberty and property according to Vanderkindere lived on in the urban law of the medieval Flemish cities.[32]

From 1891 forwards, Henri Pirenne (d. 1935) challenged these views. Pirenne combined French with German influences and interpreted the origins of medieval cities for a large part along the lines of the abovementioned communitarian theory. In nineteenth-century French historiography liberal authors such as Augustin Thierry (d. 1856) had connected medieval history with the rise of the class of the bourgeoisie. Thierry considered the cities of the Middle Ages to be the scene of a reconquest of civilization, by a vibrant and emergent group of artisans and merchants. They confronted a class of nobles and eventually drove

27 Ibid., vol. 1, Stuttgart, 1869, 177-184.
28 K.-W. Nitzsch, Ministerialität und Bürgerthum im XI. und XII. Jahrhundert, Leipzig, 1859, 21.
29 Ibid., 226-227.
30 L. Vanderkindere, "Notice sur l'origine des magistrats communaux et sur l'organisation de la marke dans nos contrées au Moyen Âge", Bulletin de l'Académie royale de Belgique, 2nd series, 38 (1874), 236-284, and L. Vanderkindere, "La notion juridique de la commune", Bulletin de la Classe des Lettres de l'Académie royale de Belgique (1906), 193-218.
31 L. Vanderkindere, "La politique communale de Philippe d'Alsace et ses conséquences", Bulletin de la Classe des Lettres de l'Académie royale de Belgique (1905), 749-788.
32 L. Vanderkindere, "Liberte et propriété en Flandre du IXe au XIIe siècle", *Bulletin de la Classe des Lettres de l'Académie royale de Belgique* (1906), 151-173.

out a feudal model that was based on inequality.[33] Here the idea was implicit that the urban revolution of the Middle Ages was a distant precursor of the French Revolution.[34]

Pirenne embraced these views to some extent, and combined them, mainly, with German *Markt*-views. Pirenne thought mercantile beliefs and practices stood at the core of urban culture and considered them to be fundamentally new. In the tenth and eleventh centuries, outcasts from feudal domains started to work for themselves and sensed newly arising commercial opportunities. According to Pirenne, these former *coloni* (that is, unfree detainers) included shippers, peddlers and maritime traders, along with artisans who sold their wares 'through their window'.[35] Pirenne took the associational spirit of these economic agents, in particular of those who engaged in long-distance trade, as the essence of urban liberty.[36] Their settlements, often at the outskirts of encastled domains and episcopal *cités*, were the cradle of the new entity that was the medieval city. With Arnold, Pirenne argued against institutional continuity. For Pirenne the rise of cities was a marker of a complete reversal of the economic landscape which before had been dominated by feudal domains. Pirenne considered the newly emerging urban culture as one of liberty and equality among citizens, which was controlled by newly elected representatives, the *scabini*.[37]

According to Pirenne merchants and artisans flocked to the suburbs of existing centres that were under the control of bishops or local lords.[38] Here, they established *portus*. Originally this term referred to an area of economic activity on the boards of the docks by a river; later the notion of '*poort*' came to dominate the discourse regarding urban citizenship (in the Low Countries, for instance, citizens came to be called '*poorters*'). The *cités* and *castra* that existed before that time in Pirenne's view served merely as military outposts and administrative centres, with infrequent visitors.[39] By contrast, the *portus* was

33 O. Parsis-Barubé, "Images romantiques d'un peuple en insurrection: le mouvement communal des villes du nord dans l'œuvre d'Augustin Thierry et de Jules Michelet" in Ph. Guignet (ed.), *Le peuple des villes dans l'Europe du Nord-Ouest*, Lille, 2002, 169-182.

34 On the connections between historiography and the French post-Napoleonic communal movement of the early nineteenth century, see G. Bigot, "La reference au droit municipal antique dans le débat sur la decentralization au XIXe siècle", unpublished paper, www.academia.edu.

35 H. Pirenne, Les anciennes démocraties des Pays-Bas, Paris, 1910, 20-21; H. Pirenne, "Villes, marchés et marchands au Moyen Âge", Revue Historique 67/1 (1898), 65-66.

36 Pirenne, Les anciennes démocraties, 54-55.

37 M. Howell, "Pirenne, Commerce and Capitalism: The Missing Parts", Journal of Belgian History 41 (2011), 297-322, at 298 (arguing that Pirenne was an institutional and political historian, rather than an economic historian), and E. Vanhaute and E. Thoen, "Pirenne and Economic and Social Theory", Journal of Belgian History 41 (2011), 323-353.

38 Pirenne, Les anciennes démocraties, 11-13.

39 Ibid., 11-13.

a new creation, a real city, with continuous flows of people and merchandise: "*le portus se soutient par une activité commerciale ininterrompue*".[40]

Pirenne solved the puzzle of franchise charters by locating the origins of their contents in merchant culture, and he categorized the charters in terms of 'inevitable concessions' from lords.

According to Pirenne the law that existed in the noble-dominated zone of the nascent city was not capable of addressing the new social realities of the *portus*.[41] *Mercatores* brought with them practices and customs, which were created along the way; in an initial stage the institutions of the *portus* were built up in a constant and dynamic interaction with trade; there was a 'plasticity of institutions'.[42] Residents soon were considered to be free from feudal burdens. Additionally, rules of criminal law that were considered harsh, such as trial by combat, were abolished.[43]

The attractiveness of the new rules and institutions caused the feudal law in the noble-dominated urban areas to collapse. According to Pirenne the lord eventually conceded that the *ius mercatorum* applied, not only in the *portus* but also in the feudal areas of the town. For the former the charter was a mere corroboration; the *portus* went from an "*état de fait*" to an "*état de droit*".[44] For the latter the change was fundamental. As a result, according to Pirenne, the charters of franchise were a sign of defeat. Because of the rules that were newly imposed on the *castrum*, the old feudal centre, nobles left and retreated to the countryside.[45] Pirenne stresses that this concession on behalf of lords was inevitable, because of the success of the new merchant model of governance and the rules applying to the citizens in the *portus*. There was pressure from the inhabitants of the feudal zone of the old city to gain the same rights as applied in the *portus*.

According to Pirenne, however, the lords conceded rights to the new community of *mercatores* also because of an opportunity to reap some of the profits they made. The lord did not have any interest in the rules of trade, only in the rewards that came from it. According to Pirenne, the lord 'hampered but did not suppress' the economic activities of the new merchant class. The lord imposed taxes but left the city autonomous in its

40 Ibid., 22.
41 Ibid., 27.
42 Ibid., 28.
43 Ibid., 88.
44 Ibid., 35.
45 Ibid., 52-53.

administration.[46] The *scabini* might be elected by the lord, from within the community of merchants, but the lord usually just confirmed the merchants' choice. Even when a seigniorial officer was part of the city government, he could not intervene in the deliberations of the *scabini*.[47] Part of the explanation for this reluctant attitude was the instrumental use which the count of Flanders made of the urban economic success. In the second half of the twelfth century, according to Pirenne, count Philip of Alsace gave rights to the urban populations also with a purpose of curtailing the ambitions of nobles.[48]

Pirenne's theory was very different from the abovementioned positivist model. He clearly downplayed seigniorial intervention. Nitzsch for example had said that cities had evolved out of domains; the rights of *ministeriales*, the elites of the urban *Hof*, were eventually granted to newcomers.[49] For Pirenne it was exactly the opposite. The new customs of merchant immigrants were so appealing, because of their underlying liberty and independence that the feudal nucleus of existing urban centres eventually adopted these new ideas. Pressure from and the attractiveness of the merchant culture, in combination with the latter's functionality as responding to commercial needs, all explained its success for Pirenne. For him the city was intrinsically a community that thrived on a certain culture; the inherent features of this culture, which easily absorbed what was needed for long-distance trade, were such that the city functioned as a natural entity.

In legal terms, for Pirenne the city was a moral person irrespective of the charter.[50] However, in his explanations, Pirenne struggled with the role of the lord. For example, Pirenne mentions that city governments also needed their charters of franchise, for example to impose their economic rules on the surrounding countryside.[51] When in the twelfth century comital bailiffs were installed in Flemish cities, a symbiosis of power came to exist between the *scabini* and the bailiff, according to Pirenne. The former were supervising the inside of the city, the latter the rural surroundings.[52] Yet it is rather difficult to see why the Flemish count would install special officers at a time when the *scabini* were not restricted in their authority. Moreover, if the city was an entity unto itself – a *universitas* of citizens with legal personhood, even without seigniorial approval – and if merchant cultures were widely supported, why then did the *scabini* need the assistance of the lord and his officer in order to impose their views on the countryside? One response: Pirenne

46 Ibid., 68.
47 Ibid., 90-91.
48 Ibid., 92-93.
49 See footnotes 28 and 29.
50 Ibid., 136-137.
51 Ibid., 196-197.
52 Ibid., 94.

exaggerated the differences between the interests of cities and of the prince, and also neglected institutional features that existed besides merchant culture.

1.2. Bridging the positivist and associational model

1.2.1. Symbolic authority

It is true that Pirenne did envisage some connections between the urban administrators and their lord. He referred to the symbolic characteristics of lordly authority, in particular with respect to the count of Flanders. Pirenne did not merely describe friction between urban administrators and the prince. He also thought of the position of the lord in terms of a coming together of merchant culture and lordly power, even though this aspect of Pirenne's thinking was rather minimal. In this regard, Pirenne was inspired by the theories of Rudolph Sohm (d. 1917).[53]

In 1890, Sohm published his *Die Entstehung des deutschen Städtewesens*. In this monograph he reflected on the theories of Arnold, von Hegel and Nitzsch. According to Sohm the emergence of markets was an important reason for why cities came to be created, but the city was not the market itself. The rules and practices that were in use there did not make the city; the city did not arise from them. Rather, in Sohm's views the medieval city was an institutional arrangement, dependent on royal law.[54]

Sohm reflected mostly on these issues in reference to medieval cities of the German territories. In this regard, there are some differences with the Flemish situation, with which Pirenne was most familiar. For example, there are tenth- and early-eleventh-century charters granted by Ottonian kings to embryonic cities in the German lands; for Flanders by contrast, the earliest documents of this type date from the later eleventh century. In this regard, theories on 'merchant colonies' were more common for German cities than for their Flemish counterparts. In 1899, for example, Siegfried Rietschel (d. 1912) emphasized incentivization from above. According to Rietschel cities in the western Ottonian Empire had been established as market colonies and they were a transplant from markets that had been known in the eastern parts.[55]

53 For Pirenne's explicit admiration of Sohm, see: H. Pirenne, "L'origine des constitutions urbaines au Moyen Âge", Revue historique 3 (1893), 52-83, at 75-79.

54 R. Sohm, Die Entstehung des deutschen Städtewesens. Eine Festschrift, Leipzig, 1890.

55 S. Rietschel, "Die Entstehung des deutschen Städtewesens", Historische Zeitschrift 83 (1899), 466-470; S. Rietschel, Markt und Stadt in ihrem rechtlichen Verhältnis. Ein Beitrag zur Geschichte des deutschen Stadtverfassung, Leipzig, 1997.

The role of the Flemish count as 'founder of cities' has only been acknowledged for a few towns, such as for example Nieuwpoort and Grevelingen.[56] For Brabant and Holland, the planning of new cities was more prominent in the historiography. With regard to the oldest municipal law of Den Bosch (1184/85), for example, some have argued that it was a reflection of ducal intervention, whereas others situated the origins and contents more in a merchant community.[57] There are several examples of newly founded cities in the duchy of Brabant, which were given a charter (for example, Herentals and Turnhout). And, for a long time, a similar situation was assumed for the county of Holland. However, since the analyses by Jaap Kruisheer (d. 2020), for the cities of Alkmaar, Haarlem and Delft, the bottom-up influence in the coming into being of these cities' charters and law has now become accepted.[58] Thus, it is now generally acknowledged that cities in Holland existed before they received charters of franchise and that the development of cities, also in a legal sense, was a process in which the count of Holland and the urban communities cooperated.[59]

Sohm combined a bottom-up with a top-down perspective. He mentions that in the tenth century next to the old Roman centres, which were in the hands of feudal lords and bishops, new areas became used by merchants,[60] which then received *Marktrecht* from the king. Sohm identifies this *Marktrecht* with *Stadtrecht*; urban citizenship was according to him a status that referred to *Marktrecht*.[61] There was no city without a privilege given by the king to organize a market; these cities with royal markets were considered *urbes regales*.[62] As a result thereof, in the centre of the market city, the *Weichbild* was erected. This was a cross or other symbol (for example, a stick with a glove or hat) that was raised in order to indicate that the royal peace of the market applied there. This image pointed to the symbolic presence of the king.[63]

56 A. Verhulst, "Un example de la politique économique de Philippe d'Alsace: la fondation de Gravelines (1163)", Cahiers de civilisation médiévale (1967), 15-28.
57 On the debate between Camps, Steurs and Kruisheer, see: H.L. Janssen, "'s-Hertogenbosch, een novum oppidum in de Meijerij ca. 1200-1350. De stadsarcheologie als bron voor de kennis van groei en stagnatie van middeleeuwse steden", Jaarboek voor middeleeuwse geschiedenis 10 (2007), 95-140, at 98-99.
58 J. Kruisheer, Het ontstaan van de stadsrechtoorkonden van Haarlem, Delft en Alkmaar, Amsterdam, 1985.
59 C.M. Cappon and H. van Engen, "Stad door stadsrecht? De betekenis van de stadsrechtverlening voor de stadjes Goedereede (1312), Brielle (1330 en 1343), Geervliet (1381) en Brouwershaven (1403)", Jaarboek voor Middeleeuwse Geschiedenis 4 (2001), 168-188; P. Henderickx, "Graaf en stad in Holland en Zeeland in de twaalfde en vroege dertiende eeuw" in R. Rutte en H. Engen (eds.), Stadswording in de Nederlanden: op zoek naar overzicht, Hilversum, 2008, 47-62.
60 Sohm, Die Entstehung des deutschen Städtewesens, 67-68.
61 Ibid., 69-70.
62 Ibid., 31.
63 Ibid., 28.

According to Sohm *Marktrecht* consisted largely of royal exemptions and protected free ownership foremost.[64] For Sohm, therefore, the content of the *Marktrecht* was determined from above to a large extent; it was imposed by the king. However, it was also partially created within the urban community itself. Sohm underscored that merchants came to reside in new areas because of the commercial opportunities. Sohm considered that usages of merchants themselves were important in that regard. He emphasized the institutional embeddedness of contractual freedom. Moreover, the *Marktgericht* was a plenary council where all urban merchants met and decided over the contents and enforcement of agreements.[65] It is true that Sohm's main focus was on the bringing of order.. Even so, the economic undercurrent of the law that was imposed by the *Marktgericht* was equally relevant.

Another one of Sohm's views that echoed later in Pirenne's writings was concerned with the pressure exerted on feudal law from within the merchant settlements. The zone in which the *Hofrecht* applied could according to Sohm exist for a while alongside the market area but was eventually incorporated under the government of the merchant administrators of the market zone.[66]

In essence, Sohm combined the agency of cities with royal confirmation. However, Sohm did not consider this in the abovementioned positivistic way. Merchant administrators of towns had the authority to act themselves, even when the king did not give specific authorization or when the royal charters of franchise remained silent. At the same time they acted under the *Gewalt* of the king. According to Sohm, this apparent contradiction can be explained by the *Weichbild*, a symbol of royal authority supporting the urban community in a legal sense. In the legislative and judicial decisions of the aldermen of cities, the king's power was reflected. Sohm did not go as far as some of his contemporaries, who considered kingship as a magic-sacral force, with roots in the Germanic traditions.[67] For Sohm, the symbol of the *Weichbild* was a practical sign of *Gewalt* of the king. At the same time, it functioned as a two-way mirror. The king recognized his authority in the actions of municipal administrators; the latter could be creative but nonetheless considered their legal acts as intrinsically royal.

64 Ibid., 64-67.
65 Ibid., 73-75.
66 Ibid., 67, 84.
67 A good overview of this theory can be found in: J. Liebrecht, Fritz Kern und das gute alte Recht. Geistesgeschichte als neuer Zugang für die Mediävistik, Frankfurt am Main, 2016, 12-17.

1.2.2. The *Begrifflichkeit* of the city

After Pirenne, the symbolic qualities of power and law in medieval cities receded into the background. These aspects are nowadays seldom discussed, and debates over whether cities had agency in a context of growing state formation are usually framed in terms of the presence or absence of princely influence, without much nuance. However, it is clear that the symbolic representation that was connected to the sovereign's legal authority went both ways. The city needed the legal protection of the prince; on the other hand, the municipal rights of city communities could not be neglected by the sovereign. And one can consider this acceptance by the *seigneur* of the legal existence and power of cities as a projection of his own authority. It was through the granting of rights that both the urban community and princely jurisdiction were bolstered. It will be argued further that these underlying perceptions and motivations are evident in other aspects of the relation between princes and cities in the Low Countries as well, such as with regard to taxation, the formation of armies and external relations. And this reciprocal mirroring strengthened either position. Urban representatives could point to a backing from, even 'situatedness' within, princely institutions; the princely officers could present urban interests abroad as being theirs.

The issue of layered power in cities was closely related to methodological discussions over the influence and impact of 'concepts', and since cultural approaches to urban history have for a long time not been prominent, also this perspective is no longer pursued. One of the issues that was discussed among urban and legal historians of the later 1800s and early 1900s regarded precisely the structural characteristics of terms serving to define communities, and thus also cities.

In the communitarian approach, the distinctive contents of notions such as *libertas*, *communitas*, *civitas*, *municipium*, and *oppidum* were mainly rejected. Maurer explicitly stated that in medieval documents Latin terms such as *civitas*, even though they were reminiscent of Roman law, did not have a specific meaning and could be given diverse content. Labels such as *urbs*, *civitas*, and *burgus* were largely used as synonyms.[68] What mattered was the category – that is, the community – underlying all these notions, which were therefore considered as largely interchangeable.[69] Moreover, even historians and legal historians adhering to more positivistic approaches often did not distinguish between

68 G.L. von Maurer, Geschichte der Städteverfassung in Deutschland, vol. 1, 104-112.

69 An exception related to universitas, which had become the hallmark of the corporation theory. Under universitas a legally-endowed entity with full legal capacity was understood. A universitas was a legal person. Even Otto von Gierke considered mentions of universitas as sufficiently indicative of legal personhood. See, for example, von Gierke, Das deutsche Genossenschaftsrecht, vol. 1, 1009.

the abovementioned concepts. One of the reasons for this was the *Methodenstreit* waged amongst historians in the German *Reich*. Karl Lamprecht (d. 1915) argued for interpretation and a search for underlying trends, mechanisms and causality. Others argued in the vein of Leopold von Ranke (d. 1886) and contested the validity of methods that were more than a description and chronological ordering of (what they considered) facts. Positivism with regard to the early history of cities was clearly connected to the Rankean views.

In fact, the *Methodenstreit* was one of the reasons for why legal historians drifted away from the historical discipline, which moved more in Lamprecht's methodological direction. The method of many legal historians of the second half of the nineteenth and early twentieth century took '*das Begriff*' as a cornerstone of legal-historical studies.[70] And it may well be that the loosening of interest from the behalf of legal historians for cities as entities followed from this growing divide as well.

Admittedly, several terms, referring to the legal status of cities, could be used in an interchangeable way and their meanings were largely similar. Others, though, had divergent sets of connotations, and these connotations have often been lost. Meaning could be derived from the body of writings of civil and canon law, which was increasingly studied at universities, and even from the literature of the classics. Also, in the administrative practice of cities certain connotations could be created and perpetuated. In addition, contemporality of developments explains for the synchronicity in the use of certain terms, and the legal historian can – carefully – infer meaning from them as well.

Prior to approximately 1070, ecclesiastical law dominated the Low Countries' application of legal notions in relation to community sovereignty. A legal word such as *libertas* made its way into municipal charters through the works of ecclesiastical and canon lawyers. Even into the early thirteenth century the duke of Brabant gave towns and cities "*libertas, quod est immunitas*".[71] This phrase implied that the receiving communities were protected against intrusions by other lords, which could take the form of violence or financial burdens. [72] Such formulas echoed the *libertas ecclesiae*-ideas that were about the shielding of the Church against state encroachment. Additionally, both '*libertas*' and '*libertates*' were used in the seigniorial charters that were given to cities. '*Libertates*' was a synonym for

70 For interesting reflections on the connections between legal history and Begriffsgeschichte, see: A.-B. Kaiser, "Ist die Begriffsgeschichte noch zu retten? Ein Wiederbelebungsversuch", Rechtsgeschichte 19 (2011), 142-151.

71 The earliest example is Diplomata belgica (www.diplomata-belgica.be) (hereinafter DiBe) no. 13661 (1204).

72 K. Pennington, "Libertas Ecclesiae on the Eve of the Reformation", Bulletin of Medieval Canon Law 33 (2016), 185-207.

consuetudines, or unwritten norms.[73] The gift of *libertas* then meant that legislative and judicial authority was provided to urban administrators together with a promise from the lord to respect local laws and customs.[74]

The term '*communitas*' could be found in texts of ecclesiastical law of the early Middle Ages, but it was given new content from about 1100. The new connotations originated in Southern Europe, where 'communes' had developed as 'people' governments presided over by *consuls* or aldermen. [75] Due to this, *communitas* began to be employed in the Low Countries, and expressions like "*magistratus et communitas*"[76] or "*scabini et communitas*,"[77] started to become part of the descriptions of cities in legal documents. These statements suggested that the people were the source of the authority of city administrators.

The first indications of communes in the Low Countries date back to the 1070s. In the county of Flanders, in today's northern France, several cities – including Arras, Aire-sur-Lys, and Cambrai – underwent a transition towards a *communia*.[78] At this point, as was already mentioned, the nomenclature employed to describe the city's new legal standing was heavily influenced by ecclesiastical law. The community's members 'swore together' (*coniurare*),[79] and the guidelines they agreed to follow were referred to as '*amicitia*' (friendship)[80] or *pax* (peace).[81] Historians have noted the connection between the Truce of God movement and the communal changes in local governments, at least in Northwest Europe. The Church, for instance, had supported violence prohibitions since the 980s in

73 For example, J.F. Willems and J.-H. Bormans (eds.), De Brabantsche Yeesten, vol. 2, Brussels, 1843, 673-674 (21 March 1291 ns).

74 For an in-depth analysis of mentions of *libertas* in communal charters in Northwest Europe in the twelfth and thirteenth centuries, see J.-M. Cauchies, "Libertés et liberté. Des franchises médiévales aux idéologies contemporaines" in La critique historique à l'épreuve. Liber discipulorum Jacques Pacquet, Brussels, 1989, 149-173.

75 For an overview, see T. Scott, "The Rise of the Communes, 1000-1150" in T. Scott (ed.), The City-State in Europe, 1000-1600: Hinterland, Territory, Region, Oxford, 2012, 17-32.

76 An early example is DiBe 4662 (11 November 1166).

77 For example, DiBe 35266 (26 May 1217); L.A. Warnkönig, Flandrische Staats- und Rechtsgeschichte bis zum Jahr 1305, vol. 2, Tübingen, 1836, 46 (June 1248).

78 A. Verhulst, The Rise of Cities in North-West Europe, Cambridge, 1999, 125-127.

79 For example, B.-M. Tock, "La diplomatie urbaine au XIIe siècle dans le Nord de la France" in Th. De Hemptinne and W. Prevenier (eds.), La diplomatique urbaine en Europe au Moyen Âge, Leuven, 2000, 501-522.

80 A. Derville, Villes de Flandre et d'Artois (900-1500), Lille, 2002, 52.

81 Derville, *Villes de Flandre*, 52. Valenciennes was a *pax*, in the meaning of a commune, since 1114. See Ph. Godding and J. Pycke, "La paix de Valenciennes de 1114. Commentaire et édition critique", Handelingen van de Koninklijke Commissie voor de Uitgave van oude wetten en verordeningen van België 29 (1979), 1-142, at 29-30. One example of a city charter presented as "*pax reformata*" is the one granted by Walter of Avesnes to the city of Tournai in 1236. See P. Rolland, "Une étape de la vie communale de Tournai. La fédération de seigneuries", Revue historique du droit français et étranger, 4th series, 4 (1925), 411-435, at 425-426.

order to protect farmers and travelers. Starting in the 1050s such regulations were also frequently imposed by lay lords.[82]

In the medieval worldview, 'peace' did not necessarily mean nonviolence or the absence of force. Violence was occasionally justified and could be applied to impose peace. 'Peace' was simply 'order', that is the unification of obedience and command.[83] The terms '*amicitia*' and '*pax*', which were used to describe a community's status, are thus best understood as alliances and concessions that were the linchpin of city constellations. Breaking the established rules meant disturbing the peace.[84] These coalitions all had one thing in common: they brought together local citizens and expressed laws that applied to them even if the subjects may have been of different social classes.[85]

Subsequently, the canon law tradition became combined with Roman law. Roman law was rediscovered near the end of the eleventh century and was taught at universities throughout Europe. By the end of the twelfth century, the scholarly production based on source texts of Roman law had reached a high level of sophistication. The fact that many graduates of law faculties ended up in the administrations of lords and cities brought about the increasing application in practice of Roman terminology and rules. Cities had been described as *civitates* before, but this term now gained more meaning from within Roman law. For the first time, urban citizenship became a legal issue, which was dealt with in the municipal law of cities.[86] More importantly, communes became considered as *universitates*, with all the legal consequences that were linked to them.

1.2.3. Legal personhood?

The legal concepts that were in circulation between the twelfth and fifteenth century, which were derived from Roman law (*civitas*, *libertas*) did not imply legal personhood in the way it

82 H.E.J. Cowdrey, "The Peace and the Truce of God in the Eleventh Century", Past & Present 46 (1970), 42-67.

83 O.G. Oexle, "Peace Through Conspiracy" in B. Jussen (ed.), Ordering Medieval Society. Perspectives on Intellectual and Practical Modes of Shaping Social Relations, Philadelphia, University of Pennsylvania Press, 2001, 285-304, at 285-290.

84 For example DiBe 2965 (June 1147, the count grants the *homines* of St Bertin's abbey (St Omer) in Popering-he the same rights as the citizens of Furnes ("*omnia gaudere qua Furnenses fruuntur quam coniuraverunt in qua et confirmati sunt*", to enjoy everything which the *Furnenses* have sworn and in which they have been confirmed). Then it is said: "*Quam pacem qui infregerit constituta lege multetur*" (the one who breaches this peace will be punished according to the fixed law).

85 W. Blockmans, "Inclusiveness and Exclusion. Trust Networks at the Origins of European Cities" in M. Hanagan and Ch. Tilly (eds.), *Contention and Trust in Cities and State,* New York, 2011, 199-212; O.G. Oexle, "Gilde und Kommune. Über die Entstehung von ‚Einung' und ‚Gemeinde' als Grundformen des Zusammenlebens in Europa" in P. Blickle (ed.), Theorien kommunaler Ordnung, Munich, 1996, 75-98, at 85.

86 Maastricht is a classic example. A "ius civile et forense" in the city is mentioned in 1109. The term '*civitas*' first appears in reference to the city in 1204, but it is very possible that the phrase was also used earlier. See J.C.M. Cox, Repertorium van de stadsrechten in Nederland, Oisterwijk, 2021, ad 'Maastricht'.

was developed in the writings of academic authors. Those terms did not mean that cities acted as independent entities according to the law. Over the course of the fifteenth century, however, more systematic views on the entity-like characteristics of municipalities became widespread. This was due to the influence of commentators, who since the fourteenth century had reflected on the legal features of cities.

The Roman law was notoriously confused on the issue of representation and ownership rights of cities. Cities were not considered as bodies of public law, having jurisdiction (D. 50,16,16). However, some entity-like features were acknowledged. In the classical period, for *municipia* it was held that certain claims could be brought against property of the *municipium*. According to some Roman jurists *municipia* could acquire goods in ownership (D. 41,2,1,22). *Municipia* could have obligations (D. 12,1,27) and bring *actiones* like a natural person (D. 41,2,2). And also, the reluctance to regard *municipia* as entities of public law, even as *corpora/universitates*, became less strong over time. Initially, a *municipium* could not be beneficiary of a will because it was considered a *corpus incertum*. It was only in the third quarter of the fifth century AD that reservations on this point disappeared, when in a *constitutio* Emperor Leo (d. 471) allowed *municipia* to be mentioned as *heres* in wills (C. 6,24,12).

In the doctrine of Italian commentators, in particular of Bartolus of Saxoferrato (d. 1357) and of Baldus de Ubaldis (d. 1400), cities were considered as *civitates*, which in themselves were regarded as both *publicae* and as *corpora/universitates*. They relied largely on elected bodies of government and had low jurisdiction, but not *merum et mixtum imperium*, that is high and middle jurisdiction.[87] This referred to the fact that many Italian cities, even though 'factually' independent, still resorted under the legal clout of the emperor of the Holy Roman Empire.[88] However, Bartolus upheld the fiction that 'free' cities acted as *princeps* for themselves, with certain exceptions. When cities had a body of elected representatives and enacted legislation in an autonomous fashion, they were sovereign as if they were *principes*.[89] Of course, such cities could not wage war against their overlord, and, in addition, fiscal competences remained with the emperor.

In 1183, the Peace of Constance had acknowledged *regalia* for several cities in Lombardy, and this was a notable difference with the Low Countries. Jurists in the Italian peninsula

87 On the contents of imperium, see: J. Vallejo, "Power Hierarchies in Medieval Juridical Thought. An Essay in Reinterpretation", Ius Commune. Zeitschrift dür europäische Rechtsgeschichte 19 (1992), 1-29.

88 D. Fedele, The Medieval Foundations of International Law, Leiden, 2021, 145-148.

89 M. Ryan, "Bartolus of Sassoferrato and Free Cities", Transactions of the Royal Historical Society 10 (2000), 65-89. This analysis was also made earlier, by Walter Ullmann and Joseph Canning.

had an example in mind when talking about high jurisdiction for cities; even the *merum imperium*, which entailed the *potestas gladii*, that is the right to execute with the sword,[90] was given to cities. In the Low Countries, this highest jurisdiction was reserved for the representative of the *seigneur*. In every city council in the Low Countries, the count or duke had an official (*écoutète*, bailiff) who represented the authority of the lord and who executed criminals that were convicted by city courts.

Over the course of the following centuries, new opportunities arose in the Low Countries to express the autonomy of cities in legal terms. During the 1500s, cities with a strong mercantile tradition came to describe themselves as *respublicae*. And this term clearly served to bolster the legal autonomous characteristics of those cities. Authors with legal backgrounds, when defining the jurisdiction and political regimes of such cities, combined Renaissance ideas on urban republicanism with contemporary doctrine and the municipal charters of prior centuries. In 1567, for example, Frans Goethals (d. *c.* 1580) wrote a treatise on the 'republic' of Bruges[91] in which he referred to Venice when arguing in favour of the autonomy of the city of Bruges. Bruges had received municipal rights from the count of Flanders; this entailed the competence to pass bylaws on matters relating to the security, health and economy of the city. Goethals referred to the wide scope of the privileges which Bruges had received from the count. The immunity and liberties, even though they were rooted in a princely charter, were a legal basis for autonomous municipal legal action.[92] Goethals' account was clearly inspired by contemporary humanist and republican thinking. However, it is also different because of its clear legal discourse. Goethals did not hesitate to express and underpin republican views with legal terms that stood in a tradition that was mostly reserved for states.[93]

Another example: in the report of his travels through the Low Countries, the Florentine merchant and Antwerp resident Lodovico Guicciardini (d. 1589), who was the nephew of the Florentine historian Francesco, stated that the city of Antwerp behaved like a *respublica*.[94] The town hall demonstrated independence, even though Guicciardini did refer to the duchy of Brabant as the controlling legal entity.[95] Guicciardini mentions the duke as lord of Antwerp but at the same time says that so many privileges had been granted to the

90 Vallejo, "Power Hierarchies", 8-9.
91 F. Goethals, De foelici et infoelici republica, ad senatum Brugensem, Leuven, 1566.
92 Ibid., fol. 3v.
93 On the republican ideas of Goethals, see: K. Tilmans, "Republican Citizenship and Civic Humanism in Burgundian-Habsburg Netherlands (1477-1566)" in M. van Gelderen and Q. Skinner (eds.), Republicanism. Vol. 1: Republicanism and Constitutionalism in Early Modern Europe, Cambridge, 2002, 107-124, at 119-125.
94 L. Giucciardini, Description de tout le Pais-Bas ..., Antwerp, 1568, 120.
95 Ibid., 111-112.

city that the latter "*comme de soy-même (reservé tousiours le droict & supériorité du Prince), quasi ainsi que une cité libre & comme une république se regit & gouverne*" ("governs itself, almost like a free city, and like a republic, except always for the right and superiority of the prince").[96]

While urban republicanism was one route that led to renewed conceptions concerning cities as legal entities, natural law-thinking was another one. Starting in the later sixteenth century, references to rules of natural law became connected with the abovementioned arguments of commentators regarding the competences of cities. In 1650 Balthasar Zahn, a doctor of laws from the county of the Marck in Westphalia, published a treatise on municipal jurisdiction.[97] In this book, he reasoned that *municipia* had, for example, the right of retaliation as a natural right of defense.[98] When discussing the right to forge treaties (*foedera*) Zahn emphasized that this was part of the *regalia*, and thus belonged to the sovereign's exclusive jurisdiction. This meant that cities could only be party to a treaty with the sovereign's permission.[99] At the same time, however, Zahn stated that a purpose of peace could provide a legal reason for a treaty's validity without backing from the prince. Additional requirements were that the *seigneur* did not live in the jurisdiction of the municipality and that the treaty did not conflict but rather conformed with his interests.[100]

In a doctoral dissertation, written in Worms in 1721, it was said that imperial cities (*Reichsstädte*) could sign treaties without authorization from the emperor, because of the legislative jurisdiction granted to those cities. However, the treaties could not infringe on imperial legislation, and – the author added – it was better to seek preliminary advice from the emperor in order to avoid suspicion.[101] Even so, the purpose of securing peace was considered as supportive of cities' actions as well.[102]

Samuel Pufendorf (d. 1694), in his *De iure naturae et gentium* (1672), argued that cities, involved in a league or under the same sovereign, should seek consent of all before engaging in treaties that would have permanent implications or were concerned with war. Still, this did not apply for urgent matters that did not harm the common interest. Treaties of cities with cities outside the scope of the sovereign's reign or league were allowed

96 Ibid., 120.
97 D. Zahnius, Ichnographia municipalis sive tractatus de iurisdictione et iure municipiorum juridico-politicus, Cologne, 1698 (3rd unaltered edition).
98 Ibid., 244-246 (ch. 87).
99 Ibid., 118-119 (ch. 35, nos 2-5).
100 Ibid., 119-120 (ch. 35, nos 7-10).
101 Ph. J. Lautz, De conventibus civitatum imperialium ..., Strasburg, 1721, 40-41 (ch. 5, no. 4).
102 Ibid., 41-42 (ch. 5, no. 5).

without approval of the others when, for example, they were concerned with the trade of goods needed by the city's citizens, provided that the other cities under the league or sovereign would not be perturbated by the agreement.[103]

[103] S. Pufendorf, De iure naturae et gentium ..., Amsterdam, 1715, 717-720 (lib. 7, ch. 5, nos 18-20).

2. The city as agent

The foregoing presentation already demonstrates that an antagonistic model of a central level, delegating strictly delineated competences to a lower level of cities, did not entirely correspond with contemporary doctrine. The legal status of cities and their autonomy to act at law could differ according to the period, but at any moment in the later Middle Ages and early modern period legal arguments were at hand which made it possible to underpin – at least some – external activities of cities, even without the formal and preliminary consent of the sovereign. This part of our exposition will show that this was not merely due to a delegation of practical affairs, but also referred to the abovementioned symbolic mirroring of seigniorial authority. The representation of the lord at the level of urban institutions, at least for the Low Countries, allowed for a cooperative and dynamic model of governance in city diplomacy. Ideas on the 'natural' administration of flows of trade further facilitated independent actions.

2.1. The inside and the outside: A cooperative model

The institutional ideas of Pirenne were largely rooted in the conviction that the Flemish count and the urban governments were in opposition to each other. However, when looking at the urban legal constellations of the thirteenth and fourteenth centuries, there are few arguments to consider their characteristics as remnants of such a division. The comital representative, the *écoutète* (*scultetus*) or bailiff, assisted the city councils of aldermen. This officer was responsible for maintaining the highest jurisdiction, which remained in the hands of the sovereign. The bailiff or *écoutète* enforced the verdicts that had been reached by the aldermen and was involved with the execution of penalties that involved corporal punishment. However, the *scultetus* or *baillivus* was no judge. In thirteenth-century Holland it was said that this officer 'advised' on proposals of bylaws but he did not partake in the legislative deliberations.[104] All this points to cooperation rather than control. Instances where lords required their preliminary approval for urban legislation are relatively scarce as well.[105]

Admittedly, the mixed model of a *scultetus* functioning alongside the urban *scabini* was not without its problems. In Flanders, it was fairly usual that a bailiff was recruited from outside the city, and the officeholder could then easily be categorized as an intruder,

[104] Henderikx, "Graaf en stad in Holland en Zeeland", 61.
[105] J.-M. Cauchies, "Es plantar un mundo nuevo". Légiférer aux anciens Pays-Bas (XIIe-XVIIIe siècle), Brussels, 2019, 71.

seeking personal gain, or as having no consideration for the urban traditions.[106] However, in an institutional sense, the cooperative model persisted in all cities of the Low Countries for the entire Old Regime, until the end of the eighteenth century.

Similar mixed arrangements existed with regard to tax farming and militias. Taxes were *de regalibus*, meaning that they were destined for the treasury of the sovereign. However, such taxes could be farmed by individuals, under conditions that were (at least in practice) for a large part determined by city councils.[107] Since the early fifteenth century, it had become common for aldermen to be sworn in by the sovereign, and at around this time also municipal treasurers were appointed. They, as well as the aldermen, were nominated by former aldermen, but appointed by the prince. The urban finances came under scrutiny from the seigniorial level of government. Extraction was possible, but only to a certain extent. In fact, the prince needed the cooperation of cities for financing his wars. If the count or duke needed troops, it was typical that these were delivered in large number by cities.

In the wake of several urban revolts, between approximately 1240 and 1320, in many cities of the Low Countries the *commune* became an independent body alongside the urban government, responsible for checking the rulers' respect for the common good. Therefore, measures were taken to protect the *commune's* interests. Urban discussions on finances served as a trigger. In the 1290s, due to financial corruption, the guilds of Dordrecht violently reacted and wanted supervision over the city's treasury. In response, in 1296 the Dordrecht city council nominated two '*burgermeyster*'. At first, the new officers were in charge of both the municipal treasury and the collection of taxes.[108] The selection of two burgomasters most likely mimicked the practice of the Roman magistrates, who were appointed in pairs and had a reciprocal veto right. By the beginning of the fourteenth century, it was planned for one of Dordrecht's burgomasters to represent the *commune* and the other to represent the count of Holland. Gradually, the example of Dordrecht was

[106] Uprisings were often targeting bailiffs. This was the case during the 1467 urban revolt in Mechelen, for example. See B. Caers, Vertekend verleden. Geschiedenis herschrijven in vroegmodern Mechelen (1500-1650), Hilversum, 2020, 255-266.

[107] In Holland, tax farming to individuals, by the comital administration, had been common since the early fifteenth century. See J.A.M.Y. Rops, Graven op zoek naar geld. De inkomsten van de graven van Holland en Zeeland, 1389-1433, Hilversum, 1993. In the Southern Low Countries this occasionally happened as well, but it was only after 1530 that Toll Chambers thoroughly centralized tax farming. In the course of the sixteenth century several tolls were also sold by the sovereign, in order to feed the central treasury. See for example Recueil des Ordonnances de Pays-Bas, 2nd series (1506-1700), vol. 4, Brussels, 1907, 306-309 (July 1541, Brussels).

[108] J.L. van Dalen, "De oude regeeringsvorm van Dordrecht", Bijdragen voor Vaderlandsche Geschiedenis en Oudheidkunde 4th series, 3 (1903), 225-289, at 276.

followed in other cities, such as Mechelen (1317),[109] Bruges (early fourteenth century),[110] Utrecht (1315) and Nijmegen (1317).[111]

It is another indication of a mixed institutional system – comprising of both seigniorial and urban authority – that over the course of the fourteenth and fifteenth centuries, the role of the *commune* was explained both in terms of its internal legitimacy and its outward reach. The tasks of the burgomasters were defined in reference to a perceived difference between the *commune* and the patrician segments of the population, also in that regard. In the Northern Low Countries, it became a tradition to have four burgomasters. It seems that all of them were considered as representing the *commune*. By contrast, in the South there was a clear distinction between a burgomaster of the *commune* and a burgomaster of the lord.

The burgomaster of the *commune* was given a higher status than the lord's burgomaster. In fifteenth-century Antwerp the burgomasters were considered as wards of the *burgus*, the old fortress of the margrave of Brabant on the banks of the river Scheldt. Soon a distinction was made between an inner- and an outer-burgomaster. The former was elected by and from within the aldermen, the latter was chosen from within the *commune*.[112] The corporation of the city was considered as more important than its city council of aldermen. And, typically, the most important of the two, the corporation of the *communitas*, was given the right to be represented outside the city and to administer the foreign relations of the city. The outer-burgomaster maintained contacts with the princely government.[113]

Along with this image of the outer-burgomaster emerged the notion that this officer was responsible for defending the *commune's* rights. The burgomaster guarded against incursion from the seigniorial level, while preserving the urban culture and rights. In Leuven, the new prince – before rendering his oath that he would uphold the 'rights, privileges, charters, customs and usages' of the city – was invited and prompted by a burgomaster

[109] City Archives Mechelen, A. Charters, series VII, no. 1 (1317, "*magistri communitas*").

[110] in Bruges a distinction was made between the burgomaster of the 'corps' (the corporation, meaning the *commune*) and the burgomaster 'of the aldermen'. See H. Van Houtte, De geschiedenis van Brugge, Tielt, 1982, 308.

[111] H. Burgmans and C.H. Peters, Oud-Nederlandsche steden in haar ontstaan, groei en ontwikkeling, Leiden, 1909, 163 and 197.

[112] FelixArchief Antwerp, Charters, C 184 (28 March 1411 ns); R. Boumans, Het Antwerps stadsbestuur voor en tijdens de Franse overheersing. Bijdrage tot de ontwikkelingsgeschiedenis van de stedelijke bestuursinstellingen in de Zuidelijke Nederlanden, Brugge, 1965, 17-18; Ch. Laenens and L. Leemans, Geschiedenis van het Antwerps gerecht, Antwerp, 1953, 30-31; F. Prims, Rechterlijk Antwerpen in de middeleeuwen. De rechterlijke instellingen, Antwerpen, 1936, 52-53.

[113] Boumans, Het Antwerps stadsbestuur, 19-20; Prims, Rechterlijk Antwerpen, 53.

to do so.[114] The outer-burgomaster was a presidential figure. For instance, in Mechelen, the outer-burgomaster had direct and sole control over the guards of the city gates.[115] The control of the city gates was essential during insurrections. This can therefore be seen as a precautionary measure against attempts to overthrow the city administration. The outer-burgomaster was often, formally, not a member of the city council of aldermen, which may be another factor in this. In Bergen op Zoom, for example, the outer-burgomaster was referred to as the burgomaster 'outside the bench'.[116]

Lordly and princely charters detailed the rules of electing the outer-burgomaster. This implied that this officer's qualifications were recognized by the sovereign. The prince could address this person in times of need. In state assemblies (*statenvergaderingen*), where petitions for additional princely taxes (*beden*) were submitted, only one or two representatives from each city within a county or duchy were invited. At these meetings, cities were represented by their outer-burgomaster.[117] Additionally, the outer-burgomaster oversaw the archery guilds and urban militias,[118] which could be enlisted for wars waged by the prince.

2.2. The networked city

The abovementioned cooperative institutional model, in which both the sovereign and the city community were represented, as well as the symbolic reciprocal identification of interests and authority between the two levels of government had a huge impact on the actions of cities in relation to other polities.

2.2.1. Mirroring the sovereign

In the period before the fifteenth century, treaties between cities were rather common. In the thirteenth century, it was usual that cities in the county of Flanders and the duchy

114 V. Vrancken, De Blijde Inkomsten van de Brabantse hertogen. Macht, opstand en privileges in de vijftiende eeuw, Brussels, 2018, 97.
115 H. Installé, "Bestuursinstellingen van de heerlijkheid Mechelen (11de eeuw-1795)" in R. Van Uytven, et al. (eds.), De gewestelijke en lokale overheidsinstellingen in Brabant en Mechelen tot 1795, vol. 2, Brussels, 1995, 849.
116 W.A. van Ham, Macht en gezag in het Markiezaat. Een politiek-institutionele studie over stad en land van Bergen op Zoom (1477-1583), Hilversum, 2000, 212.
117 Ibid., 204.
118 Boumans, Het Antwerps stadsbestuur, 19-20; Installé, "Bestuursinstellingen", 849; F.H. Mertens and K.L. Torfs, Geschiedenis van Antwerpen sedert de stichting der stad tot onze tyden, vol. 3, Antwerp, 1847, 479; Prims, Rechterlijk Antwerpen, 53.

of Brabant made inter-urban deals without approval or assistance from their lords, for example on how to handle fugitive or banished criminals.[119]

Trade, too, was an important reason for cities to negotiate with other cities. Since the 1280s, throughout Western Europe, cities had joined coalitions regularly, so as to protect their merchants in a collective way. Such actions gave rise to the Hanseatic League, but there were many other of such *confoederationes*. Inter-city arrangements that were purportedly durable not only aimed to protect traders, they also established trade routes and could impose exclusivity on cities that were not members, with so-called staple rights. Staple rights stipulated the unloading or measuring of certain products in one city, thus streamlining flows of trade and imposing urban monopoly rights on entire counties and duchies.[120] Agreements between cities could contain rules on staple rights and routes and detail reciprocity, for example in tax exemptions. And such agreements could be made even without mentions of seigniorial approval.[121] Leagues could of course be forged with an aim of revolt or secession, but it seems that this was exceptional. Rather, in the thirteenth and fourteenth centuries agreement-based conglomerates of cities were mostly for goals of trade. Urban autonomy in this regard, even if was not always absolute, was made possible by the abovementioned mirroring of authority between the level of the prince and the city.

Cities negotiated, not only with other cities, but also with their lords. And the scope of their acknowledged competences could grow in tandem with their economic importance. As a result, even in countries with strong trends towards centralization such as for example France and England, several hubs of trade had more liberties, granted in royal charters, than cities that had less prominent markets.[122] And such liberties could be taken as arguments to engage in actions without seeking formal approval of the lord.

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119 For example, in 1274 the aldermen of Mechelen (without any preliminary authorization from the lord) promised the city government of Ghent to not accept weavers that had been banished from that city. See H. Joosen, "Recueil de documents relatifs à l'histoire de l'industrie drapière à Malines (des origines à 1384)", Bulletin de la Commission royale d'Histoire 99 (1935), 365-572, at 400-401.

120 The '*droit d'étape*' requires new research. For an older analysis, see O. Gönnenwein, *Das Stapel- und Niederlagsrecht*, Weimar, 1939.

121 One example is a letter written by the city council of Dinant to the government of Cologne in the second half of the fourteenth century. The administrators of Dinant made no reference to their lord, the prince-bishop of Liège. See Hansisches Urkundenbuch, vol. 3, Halle, 1886, 304-305 (no. 547).

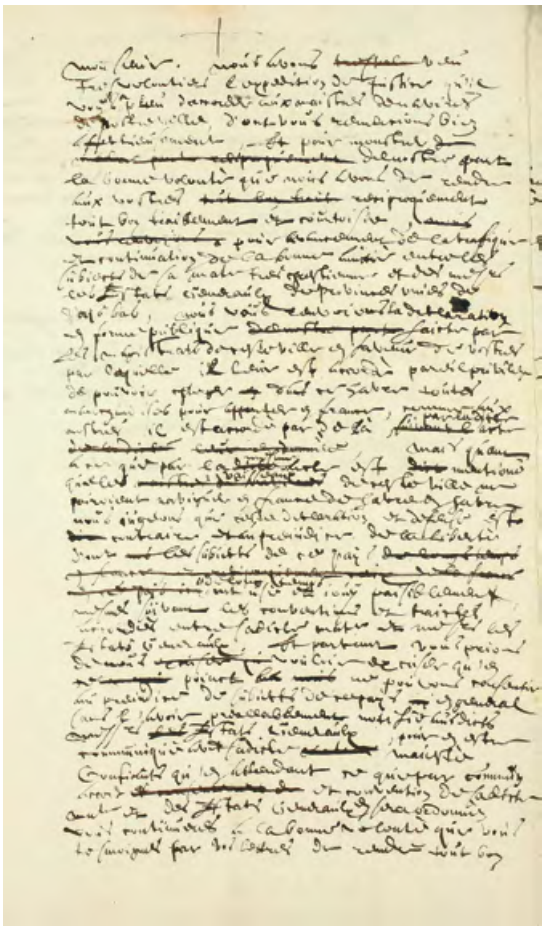
122 For example, La Rochelle: M. Tranchant, "The Maritime Trade and Society of La Rochelle in the Late Middle Ages" in W. Blockmans, et al. (eds.), The Routledge Handbook of Maritime Trade Around Europe, London, 2017, 352-365, at 353. In England, in the twelfth century the citizens of the cities of Southampton (1199), Norwich (1194) and Northampton (1189) received freedom from tolls throughout England. See Borough Market Privileges: The Hinterland of Medieval London, c. *1400*, H. Kleineke (ed.), London, 2006, available online at http://www.british-history.ac.uk/no-series/borough-market-privileges/1400.

There are several examples in which cooperation between the urban and princely level was silent. However, the dynamics of mirrored authority resulted not only in implicit cooperation (inter-city deals were not opposed by the prince after they had been made) but – luckily, for the historian – also in references to such dynamics. The lordly authorities were not consulted, but cities nonetheless, on the basis of a certain tradition, could refer to their support, because it was assumed. In February 1461, for example, the city government of Antwerp wrote a long letter to the city councils of Hull and Newcastle. The Antwerp citizen Cornelis le Roy had chartered a ship in Zeeland (probably at Vlissingen) and thereupon had sailed to King's Lynn. There he had sold his goods and bought new cargo, including grain and textiles, after which he had set sail for Bergen op Zoom. However, shortly thereafter his ship was pursued by citizens of Hull and Newcastle. They had forced le Roy to leave the ship and sold the cargo in Grimsby. The reason for their actions was that some Newcastle merchants had outstanding debts against merchants from Zeeland and considered le Roy's ship as compensation, in reprisal, for their claims. The Antwerp city council emphasized that this seizing of the ship was illegal because le Roy had sailed under a letter of protection that had been granted by the chancellor and council of Brabant, that is in the name of the duke of Brabant. Clearly, the Antwerp letter aimed to make it evident to the authorities of Hull and Newcastle that the reprisal was a direct blow to the princely authority and that, as a result, retaliation was likely, which then would hamper trade for their citizens with Brabant. In a rhetorical twist, however, the Antwerp aldermen added that this could still be avoided. There was no reason to "cause the destruction of our citizens [that is, of *both* our citizens, my addition] and reduce them to beggary".[123] This was a covert threat, of course. The Antwerp letter communicated that the interests of the Brabantine duke were directly at stake, and that the persistence of Hull and Newcastle would stop all maritime trade between England and the duchy, thus foreshadowing a decision from the duke.

In August and September 1619, the city administrators of Rotterdam wrote letters to the French admiral in Dieppe, because of hostile actions against Rotterdam shipmasters in Rouen. Since the trade relations between the Republic and Spain had been halted in 1598, French ports served as transit hubs for Dutch and Spanish traders. However, local shipping guilds attempted to profit as much as possible from the new influx of merchandise. In 1615 shippers of ports in Normandy had petitioned the French king for a ban on Dutch ships but this had been averted by the Dutch ambassador in Paris.[124] In August 1619 the French admiral, again on the instigation of the local mercantile communities, imposed a

[123] FelixArchief Antwerp, Privilegiekamer, 299, letter of 22 Febr. 1461 ns.
[124] Resolutiën der Staten-Generaal 1576-1630, vol. 2, The Hague, 1917, 475 (28 July 1615), available online at http://www. inghist.nl/retroboeken/statengeneraal/

blockade on Dutch ships, requiring that they transferred their cargo onto French boats, and prohibited them from sailing between French ports. The Rotterdam aldermen wrote directly to the admiral, presenting themselves as the defenders of the Estates General. They referred to the tradition and treaties between their nations, and at the same time said that they could restrict the entrance of French ships to the port of Rotterdam in return.[125] Therefore, the administrators of Rotterdam boasted about both their own jurisdiction and that of the Estates General; the latter's authority was mirrored in the actions of the Rotterdam rulers.



City Archives Rotterdam, Oud Archief Stad Rotterdam, 2512, letter of 19 Sept. 1619

[125] City Archives Rotterdam, Oud Archief Stad Rotterdam, 2512, letters of 13 Aug. 1619 and 19 Sept. 1619.

Over the course of the fourteenth and fifteenth centuries, princely privileges were given to foreign merchant cities, on conditions of reciprocity, but this involvement of the seigniorial level of government did not exclude a persistence of inter-city diplomacy. In 1351, for example, the cities of Bayonne and Biaritz granted a *saufconduite* and protection to the merchants of several Flemish cities. The formal letter of privilege that was issued by the urban governments of these two places had many characteristics of a princely charter, even though their lord (the duke of Gascony, at that time the English king) was not involved. The document stated that it was addressed to the cities of Flanders, and that it was expected that the letter, also containing a proposal of truce, would be confirmed by them. It was anticipated that in response to the letter the Flemish cities would send back a formal document, bearing their city seals. It was added, briefly, '*cum confirmatione*' (with approval) of the count of Flanders.[126] However, this letter of the governments of Bayonne and Biaritz clearly was an initiative from urban government to urban government. It invited the Flemish cities to put pressure on the Flemish count. In 1337, King Edward III of England (d. 1377), who controlled Aquitaine and Gascony, had started hostilities against France and the Flemish count had taken sides with the French king, who was nominally his feudal *suzerain*. This start of the Hundred Years' War seriously affected commerce between these lands. Many cities of Flanders were willing to continue to trade with Aquitaine, which was where they imported wine from, but they encountered opposition from their count who supported fierce anti-English privateering, also along the coast of Guyenne and Aquitaine.[127] In 1354, the city council of Bayonne issued a new letter, addressing Flemish cities, since the 1351 proposal had not met with acceptance.[128] In contrast to what happened three years before, the newly proposed truce went into effect (it is unclear to what extent the Flemish cities could indeed pressure the count), but it lasted for only one year.[129]

Of course, the economic importance of certain cities could increase their economic clout and reinforce their autonomy. For sixteenth-century Antwerp, the economic policies of the sovereign were largely determined by the city's economic success. Charles V was dependent on loans that were granted by South-German bankers, who capitalized on the flow of trade going to this city on the banks of the river Scheldt. Even though Charles V tightened his control over the Antwerp administration as well,[130] it is clear that the power

126 J. Finot, Étude historique sur les relations commerciales entre la France et la Flandre au Moyen Âge, Paris, 1894, 368-373 (full edition of the charter, dating from 7 Dec. 1351).
127 Finot, Étude historique, 128.
128 L. Gilliodts-Van Severen (ed.), Inventaire des archives de la ville de Bruges, vol. 2, Bruges, 1873, 17 (no. 509, 27 Oct. 1354).
129 Finot, Étude historique, 129-130.
130 D. De ruysscher, "Lobbyen, vleien en herinneren: vergeefs onderhandelen om privileges bij de Blijde Inkomst van Filips in Antwerpen (1549)", Noord-Brabants Historisch Jaarboek 29 (2012), 64-79, at 69-70.

of the Antwerp aldermen to oppose interventions from the sovereign in this period was high.[131] This was nonetheless exceptional, since the interests of both the city and the sovereign were usually the same.

Cities occasionally pressed further in their diplomatic activities, sometimes in deliberate confrontation with princely policies. In terms of the sphere of action of cities in diplomatic relations, the sixteenth century was not much different from the preceding centuries. Even when no seigniorial letters of privileges or protection were involved, or when the support from the prince was presumed, cities established diplomatic contacts with cities abroad. And in doing so they could intentionally test princely economic policies. In 1506, for example, the city of Gouda secured a deal with 'The Staple' at Calais, for imports of wool. The city council promised exclusive import of Calais wool, which was confirmed with a city ordinance imposing the use of this raw material on its textile industry. In 1517, the agreement with Calais was renewed.[132] These actions were performed within a context of decline: the textile industry in the Low Countries was struggling. Also, from the perspective of the English authorities in charge of 'The Staple', this agreement was much wanted for. The Anglo-Dutch trade had suffered since the 1480s, and in addition, there was growing competition in the wool supply, with cheaper Spanish *merino* wool that was increasing in quality.[133] However, the Gouda deals did not involve a mirroring of authority of the prince, but rather attempted to circumvent it. The mentioned diplomatic activities of the Gouda city administrators targeted the preferential rights of other cities. In 1516 the English Merchant Adventurers had returned to Antwerp, after a treaty between England and the Low Countries had granted tax exemptions to their company, thus prioritizing English wool imports to Antwerp.[134] Since 1493 Bruges had the monopoly of importing Spanish wool into the Low Countries,[135] and the Gouda deal may have had to do with the increasing success of that import product as well.

131 One example was when in August 1544 the City Council of Antwerp refused to publish a princely ordinance, which granted a monopoly in alum to Gaspar Ducci, because this interfered with the interests of other merchants. See H. Soly, Capital at Work in Antwerp's Golden Age, Turnhout, 2022, 130-138. Another example is a formal petition (1549) of the Antwerp rulers to Charles V, on the occasion of the introduction of his son Philip to the city, which argued against several princely laws and actions. See De ruysscher, "Lobbyen, vleien en herinneren", 70-76.

132 Duizend jaar Gouda: een stadsgeschiedenis, P.H.A.M. Abels, et al. (eds.), Hilversum, 2002, 120.

133 J. Munro, "Spanish Merino Wools and the Nouvelles Draperies: An Industrial Transformation in the Late Medieval Low Countries", The Economic History Review 58/3 (2005), 431-484, at 467-475. On the problems in the textile industry, in the early sixteenth century, see J.D. Tracy, Holland under Habsburg Rule, 1506-1566. The Formation of a Body Politic, Berkeley, 1990, 21-27.

134 Th. Rymer, Foedera, Conventiones, Literae, ..., vol. 13, London, 1712, 539, 544 (9 March 1516 ns).

135 Munro, "Spanish Merino Wools", 472.

Since the thirteenth century, many cities had established a *hinterland*, also in terms of jurisdiction. The duchy of Brabant, for instance, imposed that ducal officers in city governments could execute judgments in the countryside surrounding a city. Moreover, in lawsuits waged in villages and sometimes also cities a legally binding opinion could be sought from the neighboring 'capital' city (this was called *hoofdvaart*).[136] There are several examples of cities trying to extend their territorial jurisdiction, in attempts to issue judgments against citizens of other cities for example, and where this was rolled back by the prince. In Brabant, in the period of approximately 1420-1460, this was an important reason for increased supervision from the ducal administration over the jurisdiction of cities, and eventually the establishing of the Council of Brabant.[137]

Also, since the 1430s, the Burgundian rulers of the Low Countries had created new fiscal circumscriptions, so-called *quartiers* (*kwartieren*), and the largest cities were made centres of these circumscriptions. However, this required that officers from one city levied taxes in other cities, within the circumscription. Tensions were a natural consequence, but also, the capitals of the *quartiers* could use their new positions to strengthen their influence as well. In 1458, for example, the city of Antwerp asked the city of Roosendaal to organize the public sale of an inheritance estate, of which an Antwerp citizen was beneficiary. Antwerp was the centre of administration for a fiscal *quartier*, in which Roosendaal was located. After the aldermen of Roosendaal refused to send over a bill of exchange for the proceeds of the auction, the Antwerp administrators sent a letter inviting the aldermen of Roosendaal to come to Antwerp to explain themselves within a week, or else that they would issue a verdict against them "serving as example for other cities".[138] The fierce response of the Antwerp aldermen most definitely had to do with the debates that surrounded fiscal impositions around this time.[139]

Since actions of reprisal could be directed against specific cities it was self-evident that such cities were actively involved in trying to redress such restrictive measures. Diplomatic contacts could then run between cities and the institutions of states. In 1583, a former alderman of the city of Rouen came to Zeeland to inform the city council of Vlissingen

136 On *hoofdvaart* in the Low Countries: B.H.D. Hermesdorf, "Te hoofde gaan", Verslagen en Mededeelingen OVR 11 (1954), 17-50; Ph. Godding, "Appel et recours à chef de sens en Brabant aux XIVe et XVe siècles: Wie hoet heeft die heeft beroep", Tijdschrift voor Rechtsgeschiedenis 65 (1997), 281-297; R. van Caenegem, *Geschiedenis van het strafprocesrecht in Vlaanderen van de XIe tot de XIVe eeuw*, Brussels, 1956, 283-314.

137 Ph. Godding, "Les conflits à propos des lettres échevinales des villes brabançonnes (XVe-XVIIIe siècles)", Tijdschrift voor Rechtsgeschiedenis 22 (1954), 308-353.

138 FelixArchief Antwerp, Privilegiekamer, 299, letter of 8 July 1458.

139 Ph. Godding, La législation ducale en Brabant sous le règne de Philippe le Bon (1430-1467), Brussels, 2006, 82-92.

that the French *Conseil du roi* had revoked the letter of *marque* that had earlier been issued against shippers of the town.[140] Treaties could be signed as well. In 1519 a treaty was signed between the Estates of Brittany and the city of Middelburg, allowing for free passage of Bretons.[141] Brittany had been absorbed into the French kingdom since 1492, and was thus since 1494 at war with Maximilian of Habsburg, the count of Zeeland (among his other titles).[142]

Unilateral diplomacy, without formal backing from princely authorities, was possible but city administrators had to be sure that their ideas were supported by the latter as well. In the 1530s, Charles V started to strengthen control over city administrations that were too audacious in his view. Actions at the expense of other cities became less accepted. The abovementioned example of Gouda, which was a circumvention of the princely treaty of 1516, did not trigger a reaction. In the later 1530s, though, Bergen op Zoom sought to secure preferential deals with La Rochelle in the wine trade. This directly affected Middelburg which since 1524 had the right to control the imports of foreign wine, through a particular measures system, and therefore Charles V intervened.[143] Middelburg (in the county of Zeeland) in practice enforced this right onto the duchy of Brabant as well, since it controlled ships sailing from the *Honte* to the Westerscheldt.[144] Commercial contacts thus could result in cities opposing the policies of their princes. And sometimes they could be invited by foreign powers to join forces against their prince. In 1417, for example, Henry V of England (d. 1422) asked towns in Holland and Zeeland to confront the Burgundian duke, their lord, to maintain the Dutch-English trade relations.[145]

2.2.2. Geography and its natural governance

In the course of the 1500s, references to the environmental conditions of trade, as well as to cities as 'natural' administrators of these conditions, became more prominent. In December 1546 the aldermen of Antwerp wrote a letter to the lord chancelor of England, Thomas Wriothesley (d. 1550), following a complaint from English merchants. The latter had protested against the compulsory transfers of cargo onto Antwerp barges, and the associated costs. The Antwerp rulers pointed to the traditions in the trade between Brabant

[140] Bronnen tot de geschiedenis van den handel met Frankrijk, Z.W. Sneller and W.S. Unger (eds.), vol. 1, The Hague, 1930, 595.
[141] Bronnen tot de geschiedenis van den handel met Frankrijk, vol. 1, 301.
[142] In 1497 *lettres de marque* were granted against ships from Brittany. See Bronnen tot de geschiedenis van den handel met Frankrijk, vol. 1, 234.
[143] Bronnen tot de geschiedenis van den handel met Frankrijk, vol. 1, 364-365 (14 June 1539).
[144] S.T. Bindoff, The Scheldt Question to 1839, London, 1945, 74-76; A. Wijffels, "Ius Commune and International Wine Trade. A Revision (Middelburg c. Antwerp, 1548-1559)", Tijdschrift voor Rechtsgeschiedenis 71 (2003), 289-317.
[145] N.J.M. Kerling, Commercial Relations of Holland and Zeeland with England, Leiden, 1954, 48.

and England and hinted at the fact that the city had managed and supervised the course of the river Scheldt for centuries. The waterway happened to flow there, and thus was under the authority of the Antwerp city council.[146]

The growing importance of geography-linked thinking is also evident in increased references to the term *emporium*. This notion was derived from Greek and was found in the writings of classical authors such as Strabo and Ptolemy. *Emporion* could have the meaning of harbour or of city of trade.[147] In late fifteenth- and sixteenth-century Flanders *emporium* became connected to staple rights. The first use of the term *emporium* with reference to Bruges was situated in the Hanseatic sphere and was closely linked to the monopoly rights of the Hanseatics in that city. After 1470, the Hanseatic authorities obtained a staple of cloth in Bruges. In 1487, this staple was confirmed by Maximilian of Habsburg.[148] In the early sixteenth century, in correspondence between the city of Bruges and the Hanseatic institutions, the term of *stapula* (staple) became mixed with *emporium*. The rules, agreed on in treaties with the Hanseatics, were defined as "*iura emporii*", which seems to have been a straightforward translation of the Dutch *stapelrechten*.[149]

The fact that in the sixteenth century *emporium* and *respublica* became more prominent as concepts for defining the legal-institutional entities of cities is no coincidence. The aforementioned trend of considering trade as naturally embedded within an environment, out of which rules more or less spontaneously rose up, was closely linked to the influence of humanist and Renaissance views. In his history of Italy, written in the 1530s, Francesco Giucciardini (d. 1540) mentions that the republic of Florence had profited from its geography.[150] The economic success of a polity was due to its location which stimulated or caused certain types of government and impacted the virtues which the city upheld. In the later fourteenth century, with regard to Florence, Coluccio Salutati (d. 1406) had already emphasized the importance of merchants being members of the urban government and even stressed the relevance of mercantile values as contributing to peace.[151]

146 FelixArchief Antwerp, Privilegiekamer, 271, no. 59 (24 Dec. 1546).
147 On this difference, see M.H. Hansen, "Emporion. A Study of the Use and Meaning of the Term in the Archaic and Classic Periods", in T.H. Nielsen (ed.), Yet More Studies in the Ancient Greek Polis, Stuttgart, 1997, 83-106, at 85-86.
148 L. Gilliodts-Van Severen, Inventaire des archives de la ville de Bruges, vol. 6, Bruges, 1876, 273 (12 June 1487).
149 L. Gilliodts-Van Severen, "Les relations de la Hanse teutonique avec la ville de Bruges au commencement du XVIe siècle", Bulletin de la Commission royale d'Histoire 7 (1880) 175-282, at 197.
150 F. Giucciardini, The History of Italy, S. Alexander (ed.), Princeton, 1984, 4.
151 D. Wood, Medieval Economic Thought, Cambridge, 2002, 218.

2.2.3. Maintaining contacts

Relations between cities did not only involve specific diplomatic contacts, with an aim of negotiating mutual trading rights. There was also regular correspondence between international commercial centres, on practical issues that required assistance. Notifications on fugitive or banished criminals, especially when they had a record of fraud in trade, could be a reason to contact cities within the commercial network. If court cases required information on activities in other cities, this was regularly sought with letters as well.[152]

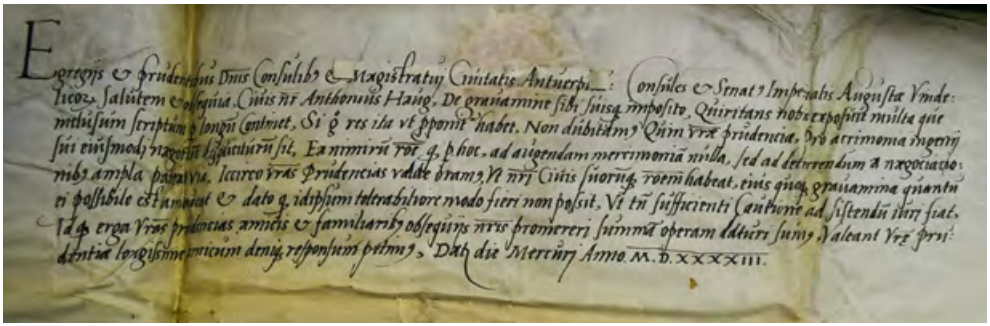
Contacts could become intense. For example, in the first decades of the sixteenth century the city of Antwerp received letters from Augsburg and Lübeck on a regular basis. This correspondence sustained republican thinking. In the 1530s, letters between Antwerp and Augsburg, for instance, were steeped in a humanistic spirit. They were written in Latin, and one gains the impression that the language was rather informal, as between friends.[153] Moreover, these letters were "*de senatu ad senatum*"; they defined the conversing cities as city republics. It may be that the writers of the mentioned letters were befriended humanists.[154] In the 1530s Konrad Peutinger (d. 1547) was city secretary in Augsburg; in Antwerp, his colleague at that time was Peter van Wesenbeke (d. 1547). Other, more famous, humanists that were secretaries of Antwerp were Peter Gillis (*Aegidius*) (d. 1533) and Cornelis De Schrijver (*Grapheus*) (d. 1548).[155]

[152] For example, FelixArchief Antwerp, Privilegiekamer, 299, letters of 13 June and 27 June 1507 from the city council of Cologne.

[153] FelixArchief Antwerp, Privilegiekamer, 271 and 299.

[154] On the role of urban secretaries in diplomatic contacts, see: Ch. Manger, "Behind the Scenes: Urban Secretaries as Managers of Legal and Diplomatic Conflicts in the Baltic Region, c. 1470-1540", Journal of Medieval History 48 (2022), 571-586.

[155] On Peter van Wesenbeke, see: H. de Ridder-Symoens, "De universitaire vorming van de Brabantse stadsmagistraat en stadsfunktionarissen in Leuven en Antwerpen, 1430-1580", in De Brabantse stad, 's-Hertogenbosch, 1978, 21-126, at 97. For a short biography of Cornelis Grapheus, see: J. Roulez, "Cornelis de Schryver", in Biographie nationale de Belgique, vol. 5, Brussels, 1876, 721-726. Judging from the contents of his texts, it is not unlikely that Grapheus had had a legal training at university.



FelixArchief Antwerp, Privilegiekamer, 299, letter of the city council of Augsburg to the city council of Antwerp (1543)

Such close contacts could facilitate negotiations, even contribute to treaties. In 1546, Jacob Maes (d. 1569), the pensionary of Antwerp, visited Lübeck, with which letters were commonly exchanged, and met with the city's aldermen and the Hansa Diet to arrange a treaty.[156] This treaty was between Antwerp and the Hanseatic League. Besides articles that were exclusively decided by the authorities of the city and the Hansa, a list of articles was prepared for which it was thought to require consent from the duke of Brabant. In February 1546 the agreement between Hansa delegates and Antwerp aldermen was published as a municipal ordinance in Antwerp, to which 22 articles were added for which later approval from the princely authorities would be requested. In the sections of the agreement with Antwerp alone the jurisdiction of the Antwerp alderman was underscored; the parts of the deal given over to the duke had to do with tolls and *saufconduite*. Even so, the terms of the agreement with the city of Antwerp alone also covered criminal jurisdiction, although the *écoutète*, the ducal bailiff, was officially in charge of it.[157]

156 FelixArchief Antwerp, Privilegiekamer, 1062.
157 FelixArchief Antwerp, Privilegiekamer, 1063/12 (9 February 1546 ns).

3. Conclusion: a new legal history?

The example of diplomatic relations of cities, along with how they related to states, demonstrates that legal history must not restrict itself to the analysis of legal concepts and of (formal) legal sources. There are clear indications that the dichotomous view of a central versus a local level of jurisdiction, in the Low Countries of the Middle Ages and the early modern period, is too superficial. The limitations of this view are directly connected to earlier methodological assumptions. When the relations between cities, but also between cities and the prince, are understood in terms of the nineteenth-century positivist model, with a focus on charters of franchise, this is a Procrustean bed that pushes much outside of the researcher's field of vision.

One aspect in this regard is change. City-state relations were fluid and changed in their interactions. Cities were not marketplaces in the sense of being geographically demarcated zones of trade that enjoyed protection from lords; rather they were nodes in living transnational commercial networks. The jurisdiction of a city was part of a web of dynamic connections to other cities. The legal rules and practice with regard to a city's autonomy, inter-city contacts and city-state relations were influenced by these characteristics. As a result, the legal language and rules expressing the competences and practices relating to these aspects were dynamic as well. Legal-historical analysis of the legal characteristics of cities must take this into account. There was a constant process of 'law in the making'.

Another factor is the community. The charter was a seigniorial document, but it was given in a context in which it was clear that there was already a legal community. Irrespective of what the black letter of the charter said, there were rules before and rules that were made after its issuance. The legal life of the city community was not contained in or restricted by the charter. The contents of such charters were often negotiated,[158] and this process of negotiation continued well after the charter was granted. This is well reflected in the position of the outer-burgomaster. In this figure, the associational characteristics of the city, as being present in the *commune*, were directly connected to outward representation. It is as if the core of the moral person that was the city, was closely linked to its shell. Changes in the constellation of cities were thus involving both their inside and outside. And the city was not confined to a certain location, also from this perspective.

Bringing governance closer to public law is important in this respect. As was shown, the princes of emerging states were silently cooperating with the tactics which cities deployed in economic affairs. Their *imperium* was mirrored in the actions of cities that established

[158] Cauchies, "Es plantar un mundo nuevo", 42-57.

trade contacts or secured commercial routes. Cities could present themselves as having the sovereign at their side.

These phenomena are situated beyond what was the scope of interest of legal historians until not too long ago. Therefore, a new approach to the history of the legal capacities of cities can be to zoom in on normative practices in their external relations. These normative practices can explain why cities acted autonomously, in many instances, from the twelfth until the eighteenth century.

One can consider these practices as connected to, but not reduced to charters of franchise and legislative texts. The normative practices of cities in their external contacts were influenced by actions of other cities, by circumstances of international politics and changing ties to the sovereign. However, they were also durable, they were not per se changing from one day to the next. For example, they pertained to an administrative tradition of the city; and probably this tradition was also known and received in other cities and at the level of the princely institutions. Assessing cities' administrative practice, in a longitudinal way, will make it possible to distinguish between ad-hoc responses and practices based on normative views, as pertaining to a tradition or – possibly – other underpinning discourses. One method to trace these normative practices is to take correspondence of cities more seriously, especially those letters and their drafts for which urban administrators took the effort of preserving them. Such '*mémoires*' (*memoriën*) were often based on normative convictions, and they could be invoked at later instances, as containing precedents.

Legal concepts, which could resonate with scholarly texts or a body of doctrine, are important for that reason. They could serve as carriers of connotations that were replicated over time. Whilst avoiding the pitfalls of structuralist approaches, legal terms can be assessed for their lasting, normative meanings, also in a context of dynamic, networked relations.[159] The mentioned normative practices, and concepts relating thereto, interacted with doctrine, because legal practitioners tried to underpin the actions of cities. In that regard, both the definition of cities as *universitates*, by commentators of the fourteenth century, and the references to natural rights of cities in the later seventeenth and eighteenth centuries, may have reflected these practices. But however, it remains to be found out what the normative practices entailed exactly, what their scope was, and to what extent they changed over time.

[159] This analysis will be carried out in the new ERC Consolidator project "Causal Pattern Analysis of Economic Sovereignty" (2023-2027), for six cities of commerce during the period from c. 1450 to c. 1650.

In this regard, looking at old cities from these perspectives will bring legal history closer to historical reality. At the same time, it will allow for formulating accounts that may interact with scholarship on the legal status of cities today. Lawyers struggle with centralism and delegation; to what extent can cities, without formal sovereignty, act independently? When do they need to? Or should we stretch the legal language and rules to make them encompass interactions and economic clout? Looking for normative practices besides documents of delegation may be a way forward, and historical narratives can surely support that research.

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