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# Recording Customs in Early Modern Antwerp, a Commercial Metropolis

Abstract

This article questions whether early modern compilations of customary law retained their customary nature after being recorded in the Low Countries by learned jurists and within the framework of a procedure designed and controlled by a central authority. By means of a quantitative analysis of the seventeenth-century recorded customs of the commercial metropolis of Antwerp, as well as their legal origins, it will become apparent that such collections of recorded customs can no longer be typified as unadulterated customary law. Despite a considerable proportion of authentic customary elements, these »customary« compilations contained numerous articles that sprouted from non-customary legal sources like Roman law, local as well as foreign legislation, foreign compilations of customary law and the achievements of European jurisprudence.

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# Recording Customs in Early Modern Antwerp, a Commercial Metropolis

## Introduction

Writing down the customs of a people is a valuable enterprise, especially if one aspires to establish and guarantee a certain degree of legal certainty. Still, the question remains to what extent these unwritten customs survived the recording process intact, for the process itself was primarily organized, executed and directed by individuals who had been trained in Roman law. So, based on the learned background of these persons and because the recorded customs required the central authorities' approval, the penetration of various non-customary elements, like Roman law and legislation, into the eventual collections of recorded customs would seem to have been inevitable.

This article will demonstrate the role of such non-customary sources in a recording process that was executed by learned jurists in the framework of a procedure designed and controlled by a central authority. By analyzing the recorded customs of the commercial metropolis of Antwerp, as they were written down at the outset of the seventeenth century, it will become apparent that such collections of recorded customs can no longer be considered unadulterated customary law.[1]

On 7 October 1531, the Holy Roman Emperor, Charles V, issued an ordinance in which he prescribed, among other things, the recording of all customs observed in the Burgundian-Habsburg Netherlands or »Seventeen Provinces«.[2] In so doing, he followed in the footsteps of the French king, Charles VII, who, as early as 1454, issued the Montils-les-Tours ordinance prescribing a similar recording of local customary law in France.[3] These sovereigns not only aimed to provide legal certainty to their subjects, but they also aspired to at least partially harmonize the countless customs observed within their territories. In the Seventeen Provinces, this recording process consisted of a four-step procedure. In the first phase, local authorities were to produce a first draft of the customs generally observed within the legal boundaries of their village, city or region. Subsequently, this draft was to be sent to the respective provincial council, such as the Council of Brabant, the Council of Flanders, the High Council of Holland and Zeeland and so on, for an initial examination by their constituent members. Afterwards, local authorities were reconsulted and presented with the council's suggestions for modification and improvement of the text. In the third phase, the revised text was to be scrutinized by the emperor's Privy Council, which could return the text to the provincial council for a re-examination. Finally, the emperor himself could homologate or ratify the particular compilation of local customs.

The considerable part played by the higher authorities in the homologation procedure induced significant reluctance among local authorities with regard to the emperor's ordinance of 1531. As a result, the recording process lasted for at least two centuries in the Seventeen Provinces. In the end, 691 different customary laws had been recorded, of which 88 received full homologation by the sovereign.[4] In the city of Antwerp too, the compilation process dragged on for almost eighty years, producing four attempts of customary compilations: the *Consuetudines antiquissimae* (1547), the *Consuetudines antiquae* (1571), the *Consuetudines impressae* (1582), and the *Consuetudines compilatae* (1608).[5] In particular, the 1582 and 1608 compilations, with 1446 and 3643 separate articles,

1 On the myth of the unadulterated custom, see: Krynen (1998).

2 On the recording and homologation process in the Burgundian-Habsburg Netherlands, see: Gilissen (1949, 1950, 1962).

3 On the recording and homologation process in early modern France, see: Filhol (1937, 1962), Yver (1988), Grinberg / Geoffroy-Poisson / Laclau (2012).

4 These numbers are based on: Gilissen (1950).

5 On the recording process and history of the Antwerp customary compilations, see: De ruysscher (2009), Van Hofstraeten (2008), Gotzen (1949).

respectively, can truly be regarded as exceptional, both from a regional as well as a broader European perspective. Not only their size, but also their thoroughness, led Marcel Gotzen to describe them as »true masterpieces«.[6]

As soon as the early modern ink of the *Consuetudines compilatae* (1608) was dry, criticasters came forward and bloviated. An undated and anonymous pamphlet compared the *compilatores* of the 1608 compilation with young cooks who aspired to show their proficiency by mixing as many different ingredients as possible, ultimately resulting in a foul soup.[7] Likewise, an Antwerp resident, Jacques van Uffel, argued strongly against the publication of the fourth collection in his *Redenen tot handhoudinge van de costumen deser stadt, tegen alle nieuwigheden.*[8] He accused the *compilatores* of having introduced numerous clauses, at their own discretion, fantasy and the writings of jurisprudential *doctores*, which were not old customs at all. Further, van Uffel held against the *compilatores* that they had made insufficient use of the available earlier collections of Antwerp customary law, nor of the books in which the city's numerous inquisitions *per turbam* had been gathered.

Determining the justice of such objections is possible by virtue of an article-based commentary, the so-called »*Memorien op de Costuymen*«, which the *compilatores* had written themselves in order to show the higher authorities the origins of the constituent articles.[9] Since they summarized the legal sources and motivations that had inspired them to integrate these rules for each article, it becomes possible to quantify the influence of non-customary elements on the eventual content of such »customary« compilations. Drawing on this, the present article will assess the true customary nature of collections of recorded customs and demonstrate what can happen when one decides to record local customs. Since the *Memorien op de Costuymen* only specify the legal sources of those articles newly introduced in the 1608 compilation, while merely referring to the 1582 compilation regarding those regulations that had been simply copied from the *Consuetudines impressae*, the present quantitative analysis will be limited to the legal origins of the former.[10]

In comparison to the *Consuetudines impressae*, the *Consuetudines compilatae* contained 1801.5 newly introduced articles. Table 1 (see p. 295) provides an overview of the distribution of these innovations over the seven constitutive parts of the 1608 compilation. Whereas the fields of criminal law and the law of obligations experienced a huge increase, the other parts of the *Consuetudines compilatae* display expansions of one quarter to one half.

Due to the diversity and specificity of the legal sources mentioned in the *Memorien op de Costuymen*, I divided them over fourteen more abstract, generalized categories to facilitate their quantitative processing. These categories include: local custom (*Usus*); local and foreign legislation (L); Roman law (*CICiv*); Canon law (*CICan*); earlier private and official recordings of Antwerp customary law (ERACL); local and foreign jurisdiction (JurD); jurisprudence (JurP); foreign compilations of customary law (FCCL); the *Consuetudines compilatae*, when an article's novelty was implied by another article in the *Consuetudines compilatae* (*CC*); material sources of law like *ratio* and *aequitas* (*RA*); case-specific reasons, like, for example, »to tackle many abuses currently prevailing in our city« (CSR); the opinions and advice of non-jurisprudential experts based on practical experience, like, for example, merchants (Exp); and finally, collections of maritime and insurance law (FMIL).[11] All those observations that defied this typology are contained in the category »Miscellaneous« (Misc).

Naturally, the prominence of a specific category largely depends on the field of law addressed in a specific part of the *Consuetudines compilatae*. Therefore, I will assess the customary nature of the

6 Gotzen (1949). Moreover, the 1608 compilation is structured according to the humanistic principles devised by the sixteenth-century French jurist, Hugo Doneau (Donellus). First, there is a distinction between public and private law. Second, the customs are gathered along the lines of the original scheme of the Institutes, supplemented by a fourth category (*obligationes*), which was added to the system by the aforementioned Doneau in the sixteenth century: *personae*, *res*, *actiones*, and *obligationes*. (Stein [1996] 80–82.)

7 ACA (V64a).

8 ACA (V64b).

9 ACA (V28bis/48–53).

10 On the definition of a »newly introduced article« and the calculation of their number, see: Van Hofstraeten (2008) 64–73.

11 Obviously, a newly introduced article may have been inspired by multiple categories.

recorded customs and the attendant effects of non-customary legal sources for each constitutive part of the 1608 compilation separately. A more detailed table of contents of the *Consuetudines compilatae* can be found in Annex 1.

Part I: Administrative law

Like in most early modern customary compilations, the first part of the *Consuetudines compilatae* elaborates on public law affairs, more specifically the organisation and competences of the city's administrative and legal institutions. Since most of its constituent titles were already present and well developed in earlier collections of Antwerp customary law, the share of innovative content in the 1608 compilation is limited to about thirty percent (Cf. Table 1). The innovations are primarily in those titles dealing with municipal civil servants like clerks, secretaries, notaries, so-called »*peysmeesters*«, who mediated peaceful settlements between quarrelling parties, and various particular tribunals active within the city's boundaries, such as ecclesiastical courts, the court of the Hanseatic merchants, feudal courts, etc. Table 2 (see p. 295) provides an overview of the legal origins of these newly introduced articles.

Whereas local custom, which was referred to as »*Usus*« in the *Memorien op de Costuymen*, played a substantial and uniform role in innovation across the constituent titles of part I, almost fifty percent of the innovations were the result of legislative efforts. This is no surprise, since part I deals with local administrative and governmental affairs, which were generally regulated by the municipal bench of aldermen and the ordinances they promulgated. For example, most of the innovations in the titles on municipal clerks and secretaries originated in the city's ordinance on procedure law of 1582 (*Ordonnantie op de Styl ende Maniere van Procederen*) and to a lesser extent its 1564 and 1576 predecessors, too.

In addition to urban ordinances, imperial legislation also played an important role in innovating part I. More specifically, title 1.13 on the city's notaries introduced various elements from the emperor's ordinances of 7 October 1531 and 4 October 1540, in which, among numerous other things, the activities of notaries in the Seventeen Provinces were regulated for the first time.[12] These bills are generally considered as the foundation of the notaryship in the early modern Low Countries.[13] For that reason, it is striking that French legislation accounted for at least seven out of ten newly introduced articles regarding the title on notaries. Specific references include Barnabé Brisson's *Codex Henricianus* or *Code du Roi Henry III, Roi de France et de Pologne* (1587), a collection of laws issued by the French king Henry III and commented upon by the French jurist, Louis le Caron, in 1601.[14] Already in 1831, Joseph Grandgagnage demonstrated that the chancery of the Habsburg Netherlands frequently sought inspiration in French legislation.[15]

Part II: Law of persons

As with other customary compilations, the emphasis is on matrimonial property rights (title 2.1), as well as regulations regarding persons placed under guardianship (title 2.5). Together, both titles account for 85 percent of all innovations in the second part of the *Consuetudines compilatae*. Table 3 (see p. 295) provides an overview of the legal origins of the newly introduced articles in part II.

As far as the title on matrimonial property rights is concerned, many of the innovations resulted from the presence of specific articles in other titles of the *Consuetudines compilatae*. This is because matrimonial property rights have much in common with various other fields of law treated in the 1608 compilation, as is demonstrated by the titles of the component subparagraphs of the title on matrimonial property rights: »contracts of married persons«, »debts of married persons«, »testaments of married persons«, etc.

Another predominant category of legal sources in part II is what I have designated as »case-specific

12 Lameere/Simont (1907) 232–238; Lameere (1902) 265–273.
13 Nève (1995).
14 Le Caron (1601a).
15 Grandgagnage (1831). See also: Martyn (2000) 97.

reasons«. Such reasons include bridling one's recklessness (… *ad reprimandam audaciam* …),[16] reconciling the opinions of the *doctores* (… *sed nos addidimus verba bij maniere e[n]de titel van giste, ut tolleremus disputationem dd ad L cum maritus § mulier ff de pactis dotal[ibus]* …),[17] correcting errors (… *ut videlicet error corrigatur qui irrepserat quod non putarent necessarium* …),[18] satisfying the needs of many (… *ut satisfaceremus multorum desiderio* …),[19] reconciling old and new customs (… *ut veteres et novas consuetudines aliquo modo reduceremus in concordiam quamquam ista nova consuetudo* …),[20] and combating fraud (… *ad excludendas omnes fraudes* …).[21]

Since matrimonial property rights have been a typically customary field of law for ages, the influence of Roman law and jurisprudence is minimal, and central authorities hardly interfered in these matters. This is not true as regards regulations on persons placed under guardianship. Already in the Middle Ages, the bench of aldermen established itself as a regulating actor and claimed for itself the organization of guardianship, which it delegated to the so-called »*weeskamer*«.[22] I observed, on the basis of the *Memorien op de Costuymen*, the growing influence of Roman law as regards the guardianship of orphans, as did Philippe Godding.[23] At least 50 of the 79 newly introduced articles originated in the *Corpus Iuris Civilis*.

In general, such predominance of Roman law as a legal source coincides with a substantial influence of jurisprudence, and this case is no exception. Unfortunately, the abstract designation of *doctores* is the most common description in the *Memorien op de Costuymen* among those jurists cited with regard to the organisation of guardianship. Regarding the other titles of part II, various authors are referred to, albeit it only sporadically: Pieter Peck, Antonio Ayerve de Ayora, Charles Dumoulin, Louis le Caron, Jean Papon, and Fernando Vazquez de Menchaca.[24] A more prominently quoted author is the French jurist, Jean Bacquet, and his *Les œuvres de Jean Bacquet des droicts du domaine de la couronne de France* (1601).

Part III: Property law – Law of Succession

Part III combines twelve titles on property law with two titles on the law of succession. Out of a total of 779 articles, this part contains 266 newly introduced articles, which represents fifteen percent of the total innovations in the *Consuetudines compilatae*. Table 4 (see p. 295) provides an overview of the legal origins of the innovations in part III. From an absolute point of view, most of the innovations relate to the law of succession. Together, the titles on testamentary and intestate succession account for 116 new articles. Since different categories of legal sources yield the innovations in the titles on property law and on the law of succession, I analyze these topics separately.

As far as the law of succession is concerned, five categories are decisive: Roman law, jurisprudence, local custom, foreign compilations of customary law, and other articles within the *Consuetudines compilatae*. Not surprisingly, Roman law appears first in the title on testaments, more specifically with regard to the reception of the legitimate portion (*legitime portie* or *wettich deel*). Though still absent in late medieval *coutumiers*, the *Consuetudines compilatae* elaborates on the mechanism for the first time by means of thirteen newly introduced articles, of which ten originated in the *Corpus Iuris Civilis*. As becomes apparent in the *Memorien op de Costuymen*, this topic was popular among sixteenth-century jurists.[25] In addition to Antonio Padilla y Meneses, Giulio Claro and Michael Grass, the most cited authors on the topic were Diego Covarubias y Leyva and Louis le Caron.[26]

As soon as the executors of a testament are mentioned, these jurisprudential authors are replaced as a source of inspiration by foreign compilations of customary law, specifically collections of French *coutumes* as gathered by the French jurist, Pierre Guenoys, in his *Conférence des coutumes* (1596).[27] This is because the executors of a testament were a typically medieval and customarily

16 Article 2.1.18.
17 Article 2.1.12.
18 Articles 2.1.50/51/52/53.
19 Articles 2.1.68/69/70/71/72.
20 Articles 2.1.143/144.
21 Articles 2.1.188/189/190.
22 Godding (1987) 124–138.
23 Godding (1987) 125.
24 Dumoulin (1539, 1553, 1558), Papon (1550, 1556, 1575, 1578), Vasquez de Menchaca (1559), Le Caron (s. d., 1582), Peck (1585), Ayerve de Ayora (1586).
25 Cf. Godding (1987) 382.
26 Grass (s. d.), De Covarubias y Leyva (1556), Claro (1565), Le Caron (s. d., 1601b).
27 Guenoys (1596).

developed aspect of the testament. Again, the considerable significance of other articles of the *Consuetudines compilatae* is due to their relevance for the law of succession.

In addition to testaments, the title on the *successio ab intestate*, or intestate succession, presents a diverse and evenly-balanced set of legal sources. Most notable is the impact of royal legislation and foreign customary law. More specifically with regard to the reception of the *beneficium inventarii*, or benefit of inventory, there are references to two ordinances of the Holy Roman Emperor (8 November 1541 and 14 May 1544) and to the French compilations of customary law by means of Pierre Guenoys' *Conférence des coutumes*.[28] This confirms John Gilissen's belief that the reception of Roman law often occurred through the penetration of royal legislation into local customary law as well as Philippe Godding's statement that the practice of the benefit of inventory spread from France to the Netherlands in the sixteenth century.[29]

With regard to the titles on property law, the most significant observations are to be made regarding the titles on prescription (title 3.11) and on donations (title 3.12). Whereas the other titles were primarily innovated on the basis of local custom and case-specific reasons, these two topics were influenced by Roman law. As far as prescription is concerned, Roman law was responsible for the reception of a long-term prescription instead of a short-term prescription, which was common in secular environments until the fifteenth century.[30] As far as donations are concerned, the *Memorien op de Costuymen* confirm that, from the sixteenth century onwards, the *donatio* was increasingly influenced by Roman law.[31]

Part IV: Law of obligations

The exceptionality of the *Consuetudines compilatae* is evident in the elaboration of part IV in general and the titles on commercial law in particular.[32] This part encompasses no less than 1124 articles on traditional contract law as well as the less traditional field of commercial law, although the latter also comprises two huge titles on maritime law (title 4.8) and insurance law (title 4.11). Together, these two titles provided an abundant 533 articles. In comparison to the *Consuetudines impressae*, the part on obligations was expanded by as many as 823 new articles. Due to the enormous size and specific content of some of the constituent titles of part IV, I describe their legal origins according to three subdivisions: maritime and insurance law, commercial law, and traditional contract law. Table 5 (see p. 296) provides an overview of the legal origins of the newly introduced articles in part III.

With more than five hundred newly introduced articles in total, the titles on insurance and maritime law are the most innovative of the *Consuetudines compilatae*. At least half are justified in reference to commercial practice (*Usus*). Given the prominent presence of the advice and opinions of experts by experience (*sententiae peritorum*), like merchants, shipmasters, and insurers, among the primary sources of inspiration, there is room for doubt about the expertise of the *compilatores* about trade-specific matters. In addition to these categories, royal legislation was also decisive, especially as regards maritime law, where the 1563 maritime ordinance of Philip II accounted for 113 newly introduced articles.[33] The ordinance on insurance of 1571 predominates the respective title.[34] Finally, one fifth of the innovations seem to be inspired by foreign or earlier compilations of maritime law. Here, three collections were most influential: the

28 Guenoys (1596).
29 Gilissen (1937) 130; Godding (1987) 405–406.
30 Godding (1987) 250–253.
31 Godding (1987) 377–379.
32 On the exceptional role of the law of obligations in customary law, see: Godding (1987) 7.
33 *Ordonnantie statuyt ende eeuwich edict s'Coninghs ons gheduchts Heeren, op t'faict vander Zee-vaert: ende hoe dat alle Cooplieden, ende Schippers schuldich syn voort aen haere Schepen toe te rusten, Equiperen ende voorsiene. Oock, hoe zy hemlieden reguleren zullen, sowel int laden ende afvoeren van hueren goeden en[de] Coopmanschepen, als ooc in haerlieder reyse, wedercomste, ende lossen oft ontladen van dien. Metsgaders van de Zeerechten alsoo wel onder de Schippers als den Cooplieden. Ende de ordonnantie op t'faict vander verzekerynghe oft Asseurantie, met meer andere zaken der Zeevaert aengaende. Gheghe-ven te Bruessele, den lesten Octobri, XVC.LXIII* (Placcaert-boecken van Vlaenderen [1630, II] 307–334).
34 *Ordonnantie, statuyt ende policie ghemaec[k]t byden Coninck onsen aldergh-henaedichsten Heere, op t'feyt vande contrac[k]ten vande asseurantien ende verzekerynghen in dese Nederlanden* (Placcaert-boecken van Vlaenderen [1630, II] 335–344).

*Laws of Wisbuy* (thirteenth century), the *Ordinance of Amsterdam* (1598) and the *Guidon de la Mer* (sixteenth century), the last of which is referred to as the »ordinance of Rouen« in the *Memorien op de Costuymen*. To a lesser extent, the commentary also mentioned the *Hordenanzas* of the Spanish Nation in Bruges, here referred to as »ordinance of Bruges«.

As far as the titles on commercial law and the more traditional contract law are concerned, the *Memorien op de Costuymen* present us with a similar set of legal sources in both cases. Local custom appears to be most influential, closely followed by case-specific reasons (CSR) and other articles already present in the *Consuetudines compilatae* (*CC*). The major difference between the two fields of law is that, with regard to commercial law, experts like merchants played an important role in devising the articles.[35] Also noteworthy is the fact that for the first time reference is made to the *Statutorum civilium reipublicae Genuensis nuper reformatorum libri 6* (1589). By contrast a more prominent influence of legislation issued by the central authorities distinguishes the titles on contract law. This legislation includes the so-called »*Albertine Ordonnantie* or *Ordinancie, Styl ende Maniere van procederen vanden souverainen raede van Brabandt ende landen van Overmaeze*« of 1604 on the legal procedure of the Council of Brabant.[36]

The significant elaboration of the Antwerp part on obligations has an important consequence with regard to the reception of Roman law in this legal field. Whereas other customary compilations hardly contained titles on the law of obligations, there was broad reception of Roman law in these cases, in particular since it generally served as a subsidiary source of law in case local customs remained silent upon a specific topic.[37] In Antwerp, however, the care devoted to the law of obligations in customary compilations in the sixteenth- and seventeenth-century hindered such reception.

Part V: Law of civil procedure

Part V of the *Consuetudines compilatae* comprises a collection of the Antwerp law of civil procedure. Previously, the Antwerp rules on civil procedure had been collected in a separate ordinance on civil procedure (*Ordonnantie op de Styl ende Maniere van Procederen*, 1582), which was added to the *Consuetudines impressae* as a sort of annex. In 1608, these procedural regulations became an actual part of the new customary compilation. Due to the integration of the ordinance in the compilation, part V on civil procedure contains 310 new articles. Table 6 (see p. 296) provides an overview of the legal origins of the newly introduced articles in part V.

Indeed, the *Memorien op de Costuymen* confirm that most of the sixty percent of new articles originated in the aforementioned municipal ordinance. Only in the fifteenth and sixteenth title of the fifth part did the new articles originate in a different ordinance, namely the aforementioned *Albertine Ordonnantie* (1604). This ordinance, like the titles in question, deals with the procedure of appeal to be respected while taking one's case to the provincial Council of Brabant.

Part VI: Criminal law

In part VI, Antwerp criminal law is divided over three titles. In comparison to the *Consuetudines impressae*, no less than seventy percent of the content is new. However, its innovative character is mitigated by the fact it counts only 81 new articles. Table 7 (see p. 296) provides an overview of the legal origins of the newly introduced articles in part VI.

Almost sixty percent of the newly introduced articles originated in earlier recordings of Antwerp customary law, which had been finalized time prior to the *Consuetudines impressae*. More specif-

35 Most striking is the sheer absence of jurisprudence on commercial matters. Despite the young tradition of legal authors describing and commenting upon commercial legal practices, the *Memorien op de Costuymen* only contain three references to the *Tractatus de mercatura seu mercatore* (1553) of the Italian jurist, Benvenuto Stracca.

36 Broers/Jacobs (2003).

37 Godding (1987) 415–416.

ically, it was the so-called »*Consuetudines antiquissimae*« (1547) that provided the large majority of the new material. In addition to this first official compilation, another document, called »*Oude specificatie geïntituleerd keuren ende breucken van Antwerpen*«, played an important role in creating part VI of the *Consuetudines compilatae* as well. Unfortunately, it is unclear which document the *compilatores* actually intended to refer to with this title. All the other categories of legal sources played minor roles. Only with regard to the category of legislation is it worth mentioning the incorporation of a few clauses of the imperial *Constitutio Criminalis Carolina* (1532) as well as the *Keyserlicke statuten Ordonantien, Costumen, ende Ghewoonten, ende bysonder elcker Stadt techten, principalijck den keyserlijcken landen aengaende*, collected by Thomas Murner in 1519.[38]

### Part VII: Law of criminal procedure

In general, criminal procedure is one of the least elaborated parts of early modern customary compilations in the Low Countries. In Antwerp too, part VII, gathering 182 articles, constitutes one of the smallest parts of the *Consuetudines compilatae*. Only 46 of them are designated as »newly introduced« in the *Memorien op de Costuymen*, and thus, part VII constitutes the least innovated part of the 1608 compilation. Table 8 (see p. 296) provides an overview of the legal origins of the newly introduced articles in part VII.

Again, a prominent role is being played by traditional categories like jurisprudence, Roman law, and legislation. Most striking is that about sixty percent of the newly introduced content originated in local customs. Theretofore, this category had never been able to play such a predominant role, which is most likely to be explained by means of the existing local particularism in the Seventeen Provinces as regards the field of criminal procedure.[39] Each court had developed its own criminal procedure over time. In addition to local customs, the influence of jurisprudence is worth mentioning. For the first time, its impact reaches up to almost forty percent. Most influential appears to be Filips Wielant's *Practycke criminele* (ca. 1510), closely followed by Prospero Farinacci (*Praxis et theorica criminalis*, 1581–1614) and Egidio Bossi (*Tractatus varii qui omnem fere criminalem materiam excellenti doctrina complectuntur et …*, 16th c.). In addition, Giulio Claro (*Sententiarum receptarum liber quintus, in quo diversorum criminum materia XX §§. diligenter explicatur*, 1568), Jacopo Menochio (*De arbitriis iudicum quaestionibus et causis*, 1569; *De praesumptionibus, coniecturis, signis, et indiciis Commentaria*, 1587) and Pierre Grégoire (*Syntagma iuris universi*, 1582) are referred to as primary sources more than once.

### Conclusion

Based on the previous observations, as well as the general overview provided for by table 9 (see p. 296), one can only conclude that the objections against the *Consuetudines compilatae*, as uttered by Jacques van Uffel, were just. It has become clear that at least 31 percent of the innovations originated in local custom (*Usus*), but in addition to this legal source, the *Memorien op de Costuymen* demonstrated that various other, non-customary, elements played a substantial part in creating the 1608 compilation too. As one could expect on the basis of the trained background of the *compilatores* as well as the prominent role of higher authorities in the homologation procedure, both Roman law (*CICic*) as well as (imperial) legislation (L) accounted for the introduction of 14 and 28 percent of the newly introduced articles, respectively. As regards the latter, two observations are to be emphasized. The impact of legislative efforts is primarily to be identified within those fields of law that one would expect: administrative law, law of procedure and criminal law, instead of private law. Its substantial presence in part IV on obligations is to be explained by the government's concern with commercial affairs in the first place, more specifically on maritime and insurance law. Secondly, the analysis of the *Memorien op de Costuymen* has shown that not only internal legislation found its way to the Antwerp compilation, but also French legislative efforts. France clearly serves as a model country, which is also manifest in the substantial importance of the French among the cate-

38 Erler (1956), Landau / Schröder (1984).

39 Cf. Monballyu (2006) 349–350.

gories of jurisprudence (JurP) and foreign compilations of customary law (FCCL).

So, when Jacques van Uffel deplored the underrepresentation of earlier compilations of Antwerp customary law (ERACL), local jurisdiction (JurD), as well as the registers that contained the city's inquisitions *per turbam*, as a source of inspiration for the *compilatores* of the 1608 compilation, the present analysis seems to confirm such critique. Nonetheless, there is a ray of hope as far as the customary nature of the innovations in the *Consuetudines compilatae* is concerned, and that is the prominent involvement of experts by experience (Exp) in the recording process. More specifically with regard to commercial law, it has become clear that on numerous occasions merchants, insurers, shipmasters, etc. had been consulted in order to assist the *compilatores* in determining the prevailing commercial practices in Antwerp. Despite the impact of such customary elements, one has to conclude that, as soon as local customs have been written down by trained lawyers and within the framework of a procedure designed and directed by a central authority, it becomes very difficult to speak about such collections as »customary« compilations.

■

Table 1: Newly introduced articles per part of the *Consuetudines compilatae* (1608).

| Part | | Number of articles | Number of new articles | Number of new articles (%) |
|---|---|---|---|---|
| I | Administrative law | 244 | 77.5 | 30.4 |
| II | Law of persons | 505 | 197 | 36.0 |
| III | Property law | 779 | 266 | 32.7 |
| IV | Law of obligations | 1124 | 823 | 73.0 |
| V | Law of civil procedure | 691 | 310 | 44.4 |
| VI | Criminal law | 118 | 82 | 68.6 |
| VII | Law of criminal procedure | 182 | 46 | 25.3 |
| **Total** | | **3643** | **1801.5** | **49.5** |

Table 2: Percentage of newly introduced articles by category of legal source (part I).

| L | *Usus* | *CC* | CSR | ERACL | JurP | *CICiv* | JurD | Exp |
|---|---|---|---|---|---|---|---|---|
| 49.0 | 27.1 | 15.5 | 11.6 | 9.0 | 5.2 | 3.9 | 2.6 | 0.1 |

Table 3: Percentage of newly introduced articles by category of legal source (part II).

| *CICiv* | CSR | *Usus* | *CC* | JurP | JurD | *RA* | ERACL | FCCL | L | Exp |
|---|---|---|---|---|---|---|---|---|---|---|
| 32.5 | 28.2 | 22.6 | 19.8 | 12.7 | 6.9 | 6.4 | 6.1 | 5.6 | 5.6 | 4.6 |

Table 4: Percentage of newly introduced articles by category of legal source (part III).

| **Property law (titles 3.1–3.12)** | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| CSR | *Usus* | *CICiv* | *CC* | L | *RA* | ERACL | JurP | Exp | FCCL | JurD |
| 26.9 | 24.2 | 21.1 | 15.0 | 13.6 | 12.6 | 11.6 | 10.9 | 10.2 | 4.8 | 2.7 |
| **Law of Succession (titles 3.13–3.14)** | | | | | | | | | | |
| *CICiv* | JurP | *CC* | *Usus* | FCCL | CSR | L | JurD | Exp | ERACL | *RA* |
| 25.2 | 22.7 | 21.9 | 21.0 | 18.5 | 10.1 | 8.4 | 7.6 | 6.7 | 6.7 | 1.7 |

Table 5: Percentage of newly introduced articles by category of legal source (part IV).

| **Maritime and Insurance Law** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| *Usus* | Exp | L | *CC* | FMIL | CSR | *RA* | *CICiv* | FCCL |
| 52.5 | 34.8 | 32.2 | 21.0 | 16.0 | 14.4 | 4.0 | 1.8 | 0.4 |

| **Commercial Law** | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| *Usus* | Exp | CSR | *CC* | *CICiv* | L | *RA* | JurP | JurD | ERACL | FCCL |
| 34.7 | 24.8 | 22.0 | 19.2 | 16.2 | 14.5 | 12.2 | 7.5 | 5.2 | 4.2 | 0.5 |

| **Contract Law** | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| *Usus* | L | *CC* | CSR | *CICiv* | *RA* | JurP | Exp | ERACL | JurD | FCCL |
| 33.0 | 31.0 | 24.3 | 24.3 | 18.5 | 13.6 | 8.7 | 3.9 | 3.9 | 2.9 | 0.0 |

Table 6: Percentage of newly introduced articles by category of legal source (part V).

| L | CSR | *CC* | JurP | *Usus* | *CICiv* | Exp | *RA* | JurD | ERACL | FCCL |
|---|---|---|---|---|---|---|---|---|---|---|
| 57.7 | 18.7 | 15.8 | 12.3 | 10.7 | 6.1 | 4.8 | 4.8 | 1.6 | 1.3 | 0.7 |

Table 7: Percentage of newly introduced articles by category of legal source (part VI).

| ERACL | L | *CICiv* | *CC* | JurP | FCCL | Exp | *Usus* | CSR | *RA* | JurD |
|---|---|---|---|---|---|---|---|---|---|---|
| 56.1 | 22.0 | 14.6 | 12.2 | 11.0 | 9.8 | 9.3 | 8.5 | 6.1 | 2.4 | 0.0 |

Table 8: Percentage of newly introduced articles by category of legal source (part VII).

| *Usus* | JurP | *CICiv* | L | FCCL | *CC* | ERACL | *RA* | Exp | CSR | JurD |
|---|---|---|---|---|---|---|---|---|---|---|
| 60.9 | 39.1 | 30.4 | 17.4 | 8.7 | 6.5 | 6.5 | 6.5 | 2.2 | 2.2 | 0.0 |

Table 9: Share of each category of legal source per part of the *Consuetudines compilatae*.

| | **I** | **II** | **III** | **IV** | **V** | **VI** | **VII** | **Tot** | **Number of new articles** |
|---|---|---|---|---|---|---|---|---|---|
| ***Usus*** | 27% | 23% | 23% | 34% | 11% | 6% | 61% | **31%** | 568 |
| **L** | 49% | 6% | 11% | 20% | 58% | 20% | 17% | **28%** | 510 |
| ***CC*** | 16% | 20% | 18% | 21% | 16% | 13% | 7% | **19%** | 333.5 |
| **CSR** | 12% | 28% | 19% | 23% | 19% | 6% | 2% | **18%** | 325 |
| **Exp** | 1% | 5% | 9% | 18% | 5% | 7% | 2% | **15%** | 280.5 |
| ***CICiv*** | 4% | 33% | 23% | 17% | 6% | 15% | 30% | **14%** | 240.5 |
| **JurP** | 5% | 13% | 16% | 8% | 12% | 11% | 39% | **9%** | 162 |
| **ERACL** | 9% | 6% | 9% | 4% | 1% | 56% | 7% | **6%** | 110 |
| ***RA*** | – | 6% | 8% | 13% | 5% | – | 7% | **6%** | 111 |
| **FMIL** | – | – | – | 5% | – | – | – | **5%** | 81 |
| **FCCL** | – | 6% | 11% | – | 1% | 10% | 9% | **3%** | 57 |
| **JurD** | 3% | 7% | 5% | 4% | 2% | – | – | **3%** | 47.5 |
| ***CICan*** | – | – | – | – | 1% | – | 11% | **0%** | 7 |
| **Misc** | – | – | – | – | 1% | – | – | **0%** | 4 |

## Annex: Table of contents of the *Consuetudines compilatae* (1608) [ACA (V43)]

Part I: Administrative law

| | Title | Number of articles | Number of new articles | % |
|---|---|---|---|---|
| 1.1 | *Van de stadt, haere paelen ende rechten* | 15 | 5 | 33.3 |
| 1.2 | *Van der stadts overheijt, ende eerst van den schoutet, onderschoutet ende hunne colffdraegers* | 16 | 3 | 18.8 |
| 1.3 | *Van den Amptman, sijne clercken ende dienaeren* | 16 | 0 | 0.0 |
| 1.4 | *Van borgemeesteren ende schepenen, ende hunne dienaeren* | 24 | 3 | 4.2 |
| 1.5 | *Van de lakenhalle* | 15 | 0.5 | 3.3 |
| 1.6 | *Van de peijsmaeckers* | 8 | 5 | 62.5 |
| 1.7 | *Van de weesmeesters* | 14 | 3 | 21.4 |
| 1.8 | *Van de rechters van de Watermeulen-brugge* | 3 | 0 | 0.0 |
| 1.9 | *Van de heerlijckheijt van den Kiele ende de rechters aldaer* | 5 | 0 | 0.0 |
| 1.10 | *Van verscheijde andere rechteren binnen dese stadt* | 8 | 5 | 62.5 |
| 1.11 | *Van de greffiers ende henne clercken* | 10 | 9 | 90.0 |
| 1.12 | *Vande secretarissen ende hunne stoel-clercken* | 31 | 27 | 87.1 |
| 1.13 | *Van notarissen* | 14 | 10 | 71.4 |
| 1.14 | *Van de binnen-poorters* | 43 | 6 | 14.0 |
| 1.15 | *Van buijten-poorters, t'sij geboorne oft geëede* | 7 | 0 | 0.0 |
| 1.16 | *Van ingesetenen ende inwoonders* | 15 | 1 | 6.7 |

Part II: Law of persons

| | Title | Number of articles | Number of new articles | % |
|---|---|---|---|---|
| 2.1 | [*Van gehoude persoonen*] | 228 | 76.5 | 33.6 |
| 2.2 | *Van de rechten tusschen de ouders ende kinderen* | 29 | 7.5 | 25.9 |
| 2.3 | *Van ongehoude vrouwen* | 17 | 6 | 35.3 |
| 2.4 | *Van onwettige kinderen oft bastaerden* | 24 | 15 | 62.5 |
| 2.5 | *Van minderjaerige ende andere vermomboirde persoonen, ende van henne momboirs* | 207 | 92 | 44.5 |

Part III: Property law

| | Title | Number of articles | Number of new articles | % |
|---|---|---|---|---|
| 3.1 | *Van verscheijdentheijt van goeden* | 19 | 14 | 73.7 |
| 3.2 | *Van opdracht ende overgevingen van goeden* | 43 | 16 | 37.2 |
| 3.3 | *Van vervolgh van sijn eijgen goet* | 30 | 12 | 40.0 |
| 3.4 | *Van vernaerderinge* | 106 | 19.5 | 18.4 |
| 3.5 | *Van gebuerelijcke rechten ende servitueten* | 106 | 16.5 | 15.6 |
| 3.6 | *Van erffscheijdinge, oft maniere van vervolch tot onderhout van gebuerelijcke rechten* | 21 | 7 | 33.3 |
| 3.7 | *Van tocht ende tochtenaers* | 28 | 2 | 7.1 |

| | | | | |
|---|---|---|---|---|
| 3.8 | *Van chijnsen ende renten* | 73 | 23 | 31.5 |
| 3.9 | *Van leveringe ende ander rechtelijck vervolch tot betaelinge van chijnsen ende renten* | 57 | 10 | 17.5 |
| 3.10 | *Van affdaeginge ende suijveringe van onruerende goeden* | 36 | 5 | 13.9 |
| 3.11 | *Van verloop van tijde oft prescriptie* | 20 | 11 | 55.0 |
| 3.12 | *Van giften* | 17 | 11 | 64.7 |
| 3.13 | *Van testamenten ende andere uuijtterste willen, ende van de executeurs der selven* | 92 | 66 | 71.7 |
| 3.14 | *Van wettige versterffenissen, scheijdinge ende deijlinge, en des daertoe behoort* | 131 | 53 | 40.5 |

Part IV: Law of obligations

| | Title | Number of articles | Number of new articles | % |
|---|---|---|---|---|
| 4.1 | *Van geoorloffde ende ongeoorloffde contracten* | 16 | 11 | 68.8 |
| 4.2 | *Van schepene brieven ende hantschriften* | 17 | 5 | 29.4 |
| 4.3 | *Van wisselbrieven* | 77 | 58 | 75.3 |
| 4.4 | *Van de vrije jaermerckten* | 17 | 0 | 0.0 |
| 4.5 | *Van de peerdemerckten* | 9 | 2 | 22.2 |
| 4.6 | *Van coop ende coopmanschappen* | 26 | 12 | 46.2 |
| 4.7 | *Van huere* | 45 | 16 | 35.6 |
| 4.8 | *Van schipvracht* | 210 | 205 | 97.6 |
| 4.9 | *Van geselschap ende gemeijnschap van goeden* | 39 | 28 | 71.8 |
| 4.10 | *Van bevel ende factorije* | 22 | 21 | 95.5 |
| 4.11 | *Van versekeringe oft asseurantie* | 323 | 301.5 | 93.3 |
| 4.12 | *Van pantschappe* | 36 | 14 | 38.9 |
| 4.13 | *Van borchtochten* | 40 | 13 | 32.5 |
| 4.14 | *Van hantvullinge oft namptisatie* | 25 | 6 | 24.0 |
| 4.15 | *Van betaelinge, bewijsinge, compensatie,* etc. | 28 | 17 | 60.7 |
| 4.16 | *Van gebroken schuldenaers* | 91 | 54 | 59.3 |
| 4.17 | *Van brieven van respijt oft uuijtstel van betaelinge, ende van cessie* | 25 | 21 | 84.0 |
| 4.18 | *Van voordeel oft preferentie onder de crediteuren* | 78 | 38.5 | 49.4 |

Part V: Law of civil procedure

| | Title | Number of articles | Number of new articles | % |
|---|---|---|---|---|
| 5.1 | *Van de rechtvoorderinge* | 77 | 50 | 64.9 |
| 5.2 | *Van aenleggeren ende verweerderen* | 4 | 3 | 75.0 |
| 5.3 | *Van de advocaten ende procureurs* | 30 | 23 | 76.7 |
| 5.4 | *Van dagementen* | 32 | 12 | 37.5 |
| 5.5 | *Van beschrijffbrieven* | 8 | 0 | 0.0 |
| 5.6 | *Van uuijtscrijffbrieven* | 30 | 2 | 6.7 |
| 5.7 | *Van ammans brieven* | 33 | 0 | 0.0 |
| 5.8 | *Van arresteringe ende aentastinge van persoonen om civile saecken* | 57 | 6 | 10.5 |

| | | | | |
|---|---|---|---|---|
| 5.9 | *Van arresten van goeden ende vervolch der selver* | 95 | 18 | 19.0 |
| 5.10 | *Van de maniere ende forme van procederen* | 79 | 72 | 91.1 |
| 5.11 | *Van den thoon* | 60 | 60 | 100.0 |
| 5.12 | *Vant veriaeren ende affgaen oft desisteren van den processe* | 6 | 1 | 16.7 |
| 5.13 | *Van vonnissen, ende taxatie oft begroottinge van de costen* | 19 | 10 | 52.6 |
| 5.14 | *Van provocatien oft beroepen* | 20 | 5 | 25.0 |
| 5.15 | *Van appellation ende leeringe van vonnissen* | 22 | 8 | 36.4 |
| 5.16 | *Van reformation* | 17 | 3 | 17.6 |
| 5.17 | *Van executie oft pandinge* | 102 | 37 | 36.3 |

Part VI: Criminal law

| | Title | Number of articles | Number of new articles | % |
|---|---|---|---|---|
| 6.1 | *Van keuren ende breucken, ende van misbruijcken daertoe de keuren ende breucken staen* | 55 | 48 | 87.3 |
| 6.2 | *Van bannissementen ende saecken daertoe den ban oft arbitraele straffe staet* | 35 | 25 | 71.4 |
| 6.3 | *Van lijffstraffen ende tot wat misdaeden lijffstraffe staet* | 28 | 9 | 32.1 |

Part VII: Law of criminal procedure

| | Title | Number of articles | Number of new articles | % |
|---|---|---|---|---|
| 7.1 | *Van ondersoeck ende vervolch van gevluchte misdaedige* | 17 | 11 | 64.7 |
| 7.2 | *Van tvangen ende bewaeren der misdadige, ende beschrijvinge van hunne goeden* | 25 | 6 | 24.0 |
| 7.3 | *Van gevangenen t'ondervraegen ende ter scherper examinatien te brengen oft pijningen* | 30 | 22 | 73.3 |
| 7.4 | *Van betichtinge ende vervolch der gevangene ter hooger vierschaeren* | 43 | 4 | 9.3 |
| 7.5 | *Van purge oft suijveringe van misdaeden* | 8 | 0 | 0.0 |
| 7.6 | *Van vrede* | 27 | 0 | 0.0 |
| 7.7 | *Van oorvrede* | 12 | 0 | 0.0 |
| 7.8 | *Van den soene* | 20 | 3 | 15.0 |

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