

The Power and Pains of Polysemy: Maritime Trade, Averages, and Institutional Development in the Low Countries (15th–16th Centuries)

# Brill's Studies in Maritime History

*Series Editor*

Gelina Harlaftis, *Institute for Mediterranean Studies/Foundation of Research and Technology – Hellas (FORTH) and University of Crete*

*Editorial Board*

Maria Fusaro, *University of Exeter, U.K.*

Michael Miller, *University of Miami, U.S.A.*

Sarah Palmer, *University of Greenwich, U.K.*

Amélia Polónia, *University of Porto, Portugal*

David Starkey, *University of Hull, U.K.*

Malcolm Tull, *Murdoch University, Australia*

Richard W. Unger, *University of British Columbia, Canada*

VOLUME 15

The titles published in this series are listed at [brill.com/bsmh](http://brill.com/bsmh)

# The Power and Pains of Polysemy: Maritime Trade, Averages, and Institutional Development in the Low Countries (15th–16th Centuries)

*By*

Gijs Dreijer



BRILL

LEIDEN | BOSTON

This publication originates from a European Research Council (ERC) project, Grant Agreement 724544 (AveTransRisk), 2017–2022.



Cover illustration: *Schepen in de storm*, Andries van Eertvelt (attributed to), 1600–1652.

#### Library of Congress Cataloging-in-Publication Data

Names: Dreijer, Gijs, 1992- author.

Title: The power and pains of polysemy : maritime trade, averages, and institutional development in the low countries (15th–16th centuries) / by Gijs Dreijer.

Description: Leiden ; Boston : Brill, [2023] | Series: Brill's studies in maritime history, 2405-4917 ; volume 15.

Identifiers: LCCN 2022058755 (print) | LCCN 2022058756 (ebook) | ISBN 9789004540347 (hardback) | ISBN 9789004540354 (ebook)

Subjects: LCSH: Average (Maritime law)—History. | Average (Maritime law)—Benelux countries—History—16th century.

Classification: LCC K1172 .D74 2023 (print) | LCC K1172 (ebook) | DDC 341.4/5—dc23/eng/20230103

LC record available at <https://lcn.loc.gov/2022058755>

LC ebook record available at <https://lcn.loc.gov/2022058756>

Typeface for the Latin, Greek, and Cyrillic scripts: “Brill”. See and download: [brill.com/brill-typeface](http://brill.com/brill-typeface).

ISSN 2405-4917

ISBN 978-90-04-54034-7 (hardback)

ISBN 978-90-04-54035-4 (e-book)

Copyright 2023 by Gijs Dreijer. Published by Koninklijke Brill nv, Leiden, The Netherlands.

Koninklijke Brill nv incorporates the imprints Brill, Brill Nijhoff, Brill Hotei, Brill Schöningh, Brill Fink, Brill mentis, Vandenhoeck & Ruprecht, Böhlau, V&R unipress and Wageningen Academic.

Koninklijke Brill nv reserves the right to protect this publication against unauthorized use. Requests for re-use and/or translations must be addressed to Koninklijke Brill nv via [brill.com](http://brill.com) or [copyright.com](http://copyright.com).

This book is printed on acid-free paper and produced in a sustainable manner.

# Contents

Acknowledgements	IX
List of Images, Tables, and Maps	x
Abbreviations	XI

<b>1 Introduction</b>	<b>1</b>
1.1 General Average: A Long History from Rhodes to the <i>Ever Given</i>	1
1.2 Transaction Costs, Protection Costs, and Institutional Development	11
1.3 Maritime Trade and Risk Management	22
1.4 General Average and the <i>lex maritima</i>	28
1.5 Introducing the Low Countries' Maritime Economy	33
1.6 State Formation, Jurisdictional Complexity, and Legal Sources	45
1.7 Sources, Approach and Structure of the Book	59

## PART I

### *The Development of General Average and Risk Management*

<b>2 The Power and Pains of Polysemy</b>	<b>65</b>
2.1 Introduction: The Polysemic Meanings of Averages	65
2.2 Etymological Origins of GA	66
2.3 The Principle of GA Explained	68
2.4 Contemporary GA and Historical Reality	71
2.5 Averages in the Sixteenth-Century Low Countries	74
2.6 Risk Management	79
2.6.1 <i>General Average</i>	79
2.6.2 <i>Particular Average</i>	79
2.7 Cost Management	80
2.7.1 <i>Contractual Cost Management Varieties: SA, CA, and flete y averías</i>	80
2.7.2 <i>Consulados, naciones and the Non-Contractual 'Spanish' Consular Averages</i>	82
2.7.3 <i>False Friends and Polysemy: The droit d'avarie and the naciones</i>	84
2.7.4 <i>The avería(s)</i>	86
2.8 Conclusion	86

<b>3</b>	<b>General Average in Formal Sources of Law</b>	<b>89</b>
3.1	Introduction	89
3.2	GA in Sources of Formal Law	92
3.2.1	<i>GA in Roman Law and the Basilica (Sixth–Tenth Centuries)</i>	92
3.2.2	<i>Compilations of Medieval Maritime Law in Europe (Thirteenth–Sixteenth Centuries)</i>	95
3.2.3	<i>Princely Legislation (Sixteenth Century)</i>	102
3.2.4	<i>The Hordenanzas and the Insurability of GA (1569)</i>	113
3.2.5	<i>The Antwerp Costuymen, Specifically the 1608 Compilatae</i>	118
3.3	GA, Salvage, Shipwreck, and Ship Collisions: Shifting Legal Boundaries	123
3.3.1	<i>GA, Salvage and Shipwreck</i>	123
3.3.2	<i>Ship Collisions, Contributory Negligence and GA</i>	124
3.4	Weytsen's <i>Tractaet van Avarien</i>	127
3.5	Conclusion	132
<b>4</b>	<b>GA in Legal Practice</b>	<b>134</b>
4.1	Introduction	134
4.2	The Governance of GA Procedure in Bruges and Antwerp	136
4.2.1	<i>GA Procedure in Bruges (1400s–1490s)</i>	138
4.2.2	<i>GA Procedure in Antwerp (1500s–1540s)</i>	139
4.2.3	<i>Power Struggles and Reform of Antwerp GA Procedure (1550s–1590s)</i>	143
4.2.4	<i>Insurance and GA: The Example of Juan Henriquez</i>	150
4.2.5	<i>GA Procedure in the Castilian Consular Court</i>	155
4.2.6	<i>Arbitration and Appeals</i>	158
4.3	The Position of the Shipmaster and Legal Strategies	160
4.3.1	<i>The Position of the Shipmaster in the Bruges Municipal Court</i>	164
4.3.2	<i>The Position of the Shipmaster in the Antwerp Municipal Court</i>	165
4.3.3	<i>The Position of the Shipmaster before the Great Council</i>	166
4.3.4	<i>The Liability of the Shipmaster and the Development of Particular Average (PA)</i>	168
4.4	The Insurability of GA, Moral Hazard and Changes in Risk Distribution	170
4.4.1	<i>Insurance and GA before the Antwerp Municipal Court</i>	171
4.4.2	<i>Insurance and GA before the Castilian Consular Court</i>	174

- 4.5 'Atypical' GA Cases 174
  - 4.5.1 *Bottomry and GA* 175
  - 4.5.2 *Ship Collisions* 178
  - 4.5.3 *Jurisdictional Disputes* 182
- 4.6 Conclusion 188

## PART 2

### *Varieties of Averages and Cost Management*

- 5 **Contractual Varieties of Averages and Cost Management** 195
  - 5.1 Introduction 195
  - 5.2 Contractual Varieties of Averages 197
    - 5.2.1 *Prelude: Freight, Averages and Cost Management* 197
    - 5.2.2 *'Freight and Average' in the France-Low Countries Wine and Wood Trade* 199
    - 5.2.3 *The Development of Contractual Average* 202
    - 5.2.4 *Disputes at the Municipal Courts* 206
  - 5.3 *The flete y averías as a Cost Management Structure* 207
    - 5.3.1 *The flete y averías* 207
    - 5.3.2 *The Castilian natio and Pilotage between Zeeland and Bruges* 210
  - 5.4 Conclusion: Averages and Cost Management 213
- 6 **Consular Averages, Compulsory Contributions and Protection Costs** 215
  - 6.1 Introduction 215
  - 6.2 The Seville *avería* as an Example of Protection Costs 217
  - 6.3 Privileges and the *droit d'avarie*: False Friends? 220
    - 6.3.1 *Consulados and naciones* 220
    - 6.3.2 *The 'Spanish' naciones in the Low Countries* 223
    - 6.3.3 *The Portuguese* 227
    - 6.3.4 *The Genoese* 231
    - 6.3.5 *Other naciones in Bruges & Antwerp* 234
  - 6.4 Disputes on the *avería de nación* 236
    - 6.4.1 *Disputes on the avería de nación in Bruges and Antwerp* 236
    - 6.4.2 *The 1515 Biscayer-Genoese Case: Introduction* 241
    - 6.4.3 *Prelude: First Instance Proceedings at the Bruges and Antwerp Municipal Courts (1511)* 243

6.4.4	<i>The Arguments before the Great Council (1515)</i>	244
6.4.5	<i>Coda: Enforcement Problems (1518–1549)</i>	248
6.5	The <i>avería(s)</i>	251
6.6	Conclusion	252
	<b>Conclusion</b>	255
	<b>Appendix</b>	261
	<b>Bibliography</b>	266
	<b>Index</b>	307



# Acknowledgements

This book is an adapted version of a dissertation defended at two universities (University of Exeter, UK and Vrije Universiteit Brussels, BE) in spring 2021. Compared to the original dissertation, the book has summarised the original first chapter in the introduction, as this was largely a literature review on the political-legal environment of the Low Countries. Moreover, the introduction and conclusion have been substantially revised for this publication, whilst the chapters themselves have largely remained as they were. For readability, I have substantially shortened footnotes in Chapters 3–6, omitting transcriptions of all the primary sourcework in the footnotes, except where the transcription was strictly necessary.

Since submitting the PhD, my insights have (inevitably) progressed further. For this, I would particularly like to thank my dissertation committee, consisting of Frederik Dhondt, Hester Schadee, Louis Sicking and Oscar Gelderblom, for the constructive discussion and feedback on the dissertation during the two defences. This has, without a doubt, further improved the original manuscript. The insights of the two anonymous peer reviewers offered useful feedback in terms of focus, sharpening up the overall argument. Presentations about (parts of) the manuscript, for example at the *Institute of Historical Research* in London, the *International Maritime History Association* conference in Porto and the *World Economic History Congress* in Paris, have also allowed me to incorporate new insights into this book.

In the acknowledgements of the dissertation, I already thanked at length those important in the development of the dissertation: my supervisors Maria Fusaro and Dave De ruysscher, all AveTransRisk members, and in particular Sabine Go, Marta García Garralón, Lewis Wade, Jake Dyble and Antonio Iodice, for making the PhD journey both more fun and more bearable. At the VUB, Marco in 't Veld and Pieter de Reu also deserve a special mention. Of course, I cannot go without thanking my old-and-new mentor Cátia Antunes, who has consistently supported me in the past twelve years. At Brill, I thank Gerlina Harlaftis, as the series editor of the *Studies in Maritime History*, and Alessandra Gilberto, as the editor in charge of handling my proposal, for the smooth and efficient process of turning the dissertation into a book.

I dedicate this book to Suzanne, for her unwavering support and love.

*Gijs Dreijer*

The Hague, The Netherlands

August 2022

# Images, Tables, and Maps

## Images

- 1 Salvage operation of the *Ever Given* 2
- 2 Pauwels van Overbeke, map of Antwerp (1568) 34
- 3 The Great Council of Mechlin under Charles the Bold 55
- 4 Titian, portrait of Emperor Charles V seated (1548) 103
- 5 Titian, portrait of Philip II in armour (1550s) 110
- 6 Anonymous, Antwerp's bourse (1612–1648) 149

## Tables

- 1 Jurisdictional complexity in the Southern Low Countries (fifteenth–sixteenth centuries) 54
- 2 *Nationes* in the Southern Low Countries (thirteenth–sixteenth centuries) 54
- 3 *Ordonnances* on maritime law in the Low Countries (fifteenth–sixteenth centuries) 58
- 4 Definitions of varieties of Averages (fifteenth–sixteenth centuries) 74
- 5 GA contributions and losses paid by Juan Henriquez (1562–1563) 151
- 6 GA contributions paid by Juan Henriquez (1562–1563) 151
- 7 Number of GA payments by insurers in the ledgers of Juan Henriquez, by the percentage of the insured sum (1562–1563) 152
- 8 Routes on which GA occurred, based on the ledgers of Juan Henriquez (1562–1563) (N = 165) 152
- 9 Payments of the *flete y averías* as a percentage of profits (1511–1514) 209
- 10 The Biscayer vs. Genoese case (1511–1540s) 242
- 11 GA in Juan Henriquez's ledgers (1562–1563) 261

## Maps

- 1 Map of the Low Countries around 1350 46
- 2 The Habsburg Low Countries in 1555, with years of conquest/acquisition 48
- 3 Spatial distribution of the insured routes of Juan Henriquez (1562–1563) 154
- 4 Spatial distribution of the insured routes of Juan Henriquez (1562–1563), Western Europe only 155

# Abbreviations

## Archives

BE-SAA	Felixarchief Antwerp (Municipal Archives of Antwerp)
BE-SAB	Stadsarchief Brugge (Municipal Archives of Bruges)
BE-RAA	Rijksarchief Antwerp (Antwerp State Archives)
BE-ARB	Rijksarchief België (Belgian State Archives)
BE-MPM	Museum Plantin-Moretus
NL-ZA	Zeeuws Archief Middelburg (Zeeland Archives)
NL-NEHA	Nederlands Economisch-Historisch Archief (Dutch Economic-Historical Archives)
IT-DAT	Fondazione Istituto Internazionale di Storia Economica “F. Datini”

## Source Editions

- Sneller & Unger, *Bronnen Frankrijk* (Vol. x) Sneller, Z.W. & Unger, W.S. (eds.), *Bronnen tot de geschiedenis van de handel met Frankrijk* (2 Vols.) (The Hague 1930–1942)
- Smit, *Bronnen Engeland* Smit, H.J. (ed.), *Bronnen tot de geschiedenis van de handel met Engeland, Schotland en Ierland* (Vol. 2) (The Hague 1942–1950)
- Unger, *Bronnen Middelburg* Unger, W.S. (ed.), *Bronnen tot de geschiedenis van Middelburg in den landsheerlijken tijd* (Vol. 3) (The Hague 1931)
- Gilliodts-Van Severen, *Coutumes* (Vol. x) Gilliodts-Van Severen, L., *Coutumes des Pays en Comté de Flandre. Quartier de Bruges, Coutume de la Ville de Bruges* (2. Vols.) (Brussels 1874).
- Gilliodts-Van Severen, *Espagne* Gilliodts-Van Severen, L., *Cartulaire de l'ancien consulat d'Espagne à Bruges: recueil de documents concernant le commerce maritime et intérieur, le droit des gens public et privé, et l'histoire économique de la Flandre* (Bruges 1901–1902)
- Gilliodts-Van Severen, *Cartulaire* (Vol. x) Gilliodts-Van Severen, L., *Cartulaire de l'ancien Estaple de Bruges* (6 Vols.) (Bruges 1904–1909)
- Gilliodts-Van Severen & Gaillard, *Inventaire* (Vol. x) Gilliodts-Van Severen, L. & Gaillard, E., *Inventaire des Chartes des archives de la ville de Bruges* (9 vols.) (Bruges 1871–1876).
- Pardessus, *Collection* (Vol. x) Pardessus, J.-M., *Collection de lois, maritimes antérieures au XVIII<sup>e</sup> siècle* (Vols. II, IV & VI) (Paris 1828)

- Spruit, *Corpus* Spruit, J.E. et al (eds.), *Corpus Iuris Civilis: tekst en vertaling* (vol. III) (The Hague 1996)
- De Smidt, *Sententiën* De Smidt, J.T. et al (eds.), *Chronologische lijsten van de geëxten-deerde sententiën en procesbundels (dossiers) berustende in het archief van de Grote Raad van Mechelen* (6 Vols.) (Brussels 1988)
- Desimoni & Belgrano, *Documenti* Desimoni, C. & Belgrano, L.T. (eds.), *Documenti riguardanti le relazioni di Genova col Brabante, La Fiandra e la Borgogna: raccolti ed ordinati* (Genoa 1871)
- De Longé, *Coutumes* (Vol. x) De Longé, G. (ed.), *Coutumes du Pays et Duché de Brabant. Quartier d'Anvers, Coutumes de la ville d'Anvers* (4 Vols.) (Brussels 1870–1874)
- Strieder, *Notariatsarchiven* Strieder, J., *Aus Antwerpener Notariatsarchiven: Quellen zur deutschen Wirtschaftsgeschichte des 16. Jahrhunderts* (Berlin 1930)
- Braamcamp Freire, *Noticias* Braamcamp Freire, A., *Noticias da feitoria de Flandres precedidas dos brandies poetas do cancioneiro* (Lisbon 1920)
- Drost, *Documents* (Vol. x) Drost, M.A. (ed.), *Documents pour servir à l'histoire du commerce des Pays-Bas avec la France jusqu'à 1585* (2 Vols.) (The Hague 1983–1989)