ARTICLE

The Rule of Law in Cities of the Medieval Low Countries: Community-Building in Context

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Abstract

Urban communities were established in the twelfth and thirteenth century with the aid of legal concepts that comprised early notions of the rule of law. Cities were envisaged as "communes", which referred to popular sovereignty. In a first period, urban citizenship was flexible and closely related to place of residence. From around 1220 this model came under increasing pressure. In order to safeguard the interests of the most affluent citizens, large guilds were established. Status determined rights, and there were significant inequalities even among citizens. Ideas of democratic democracy and the civic virtues of citizenship were fostering reforms after 1250. Existing urban governments were expanded to include councils and burgomasters. A framework of checks and balances developed because the commune, now considered as the body of citizens and residents, was seen as a force coexisting with metropolitan institutions. The medieval examples show that, in response to economic and even global conditions, community-building and rule-of-law thinking were solutions offering a "unity-in-diversity".

1 Introduction

Since the 1980s authors have detected embryonic conceptions of the rule of law in the institutional constellations of medieval cities. They pointed, for example, to elementary ideas on checks and balances and equality before the law.[1] Also, a connection with constitutional thinking, even constitutionalism, was made.[2] However,

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[1] Berman (1983), pp. 388–389 (checks and balances), pp. 396–397 (general applicability of law, checks and balances, representation, participation); Downing (1989), pp. 223–225 (general applicability of law, representation).

[2] Carstens (1992); Oakley (2017).

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over the past decades cities have been identified less frequently as cradles of early constitutional rules. Instead, the emphasis is mainly on the ecclesiastical origins of several aspects of public law, even democracy and human rights.[3]

Research on these topics is often conducted by social scientists and the connection with historical literature is not always strong. And with regard to the theme that is analyzed here this is highly relevant. Indeed, historical research on the communal movements of the High and Later Middle Ages has witnessed new analysis. And the results thereof allow to recalibrate existing perspectives on early local governmental regimes and the incipient rule of law in cities. Traditionally, urban historians considered concepts that were found in the historical sources and which referred to governance and the public institutions of cities as functional and instrumental. As a result, their embeddedness in intellectual traditions was not often explored. And historians of political ideas have for a long time not studied the links between (legal or institutional) practice and doctrine. It is therefore fortunate that the discourse and concepts that were applied, for example during medieval urban revolts, but also in the earliest urban documentations, have recently been re-examined from a combined cultural and social angle.[4]

This article goes into the "commune" (*commune*, *communia*) as related to (an early understanding of) the rule of law. *Commune* refers to a governance model for small-scale polities (cities, villages) that is closely related to popular sovereignty. The focus is on the Low Countries, in the period between c. 1070 and approximately 1300. This article proposes to consider the emergence of this model in the later eleventh century as a reaction to new circumstances. It will be argued that old cities can be analyzed for their institutional responses to societal processes, and that in particular in the period of c. 1070-c. 1300 urban communities may have been established—at least partly—in answer to profound socio-economic changes. These latter developments are often close to what we today would consider phenomena of "globalization". Furthermore, it will be explained hereafter that the medieval urban rule of law was to a large extent a symbolic one, which does not easily fit with categorizations of the contemporary concept of the rule of law. In a first stage, between approximately 1070 and 1250, the "communal" government was tied to the city as corporation, which marked a symbolic unity between rulers and ruled. In a second period, from around the middle of the thirteenth century, the urban administrators were regarded as separated from the *commune*, which became considered as a "state in the state". Thoughts on checks and balances became connected with the interests of the *commune*.

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[3] Expanding on the views of Berman, Brian Tierney and Francis Oakley in this regard, are for example Grzymala-Busse (2023), and Møller (2017). An exception, combining analysis of ecclesiastical and municipal settings, is Møller and Doucette (2022).

[4] For the older views, see Blockmans (2010). For an overview of new findings, see Larson (2021), pp. 37–56 and pp. 57–74 respectively.

2 Medieval Intellectual Traditions Regarding "Good Governance"

Before roughly 1070, ecclesiastical law was most determining in the use of legal concepts with regard to popular sovereignty. The concept of "*communitas*" had been known in church law, but it acquired new meanings after approximately 1100. These meanings were derived from Southern Europe, where "communes" had been established as "popular" regimes, led by *consules* or aldermen.[5] As a result thereof, since the twelfth century *communitas* was used in the Low Countries as well, and phrases such as "*magistratus et communitas*"[6] or "*scabini et communitas*",[7] referring to urban governments, became common. These expressions hinted at the legitimation of the power of the administrators of cities as rooted in the people.

The canon law tradition became combined with Roman law.[8] Roman law was rediscovered near the end of the eleventh century and became taught at universities throughout Europe. By the end of the 1100 s, the scholarly production on the basis of 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 ensured an increasing application in practice of Roman terminology and rules. Cities became described as *civitates*, for example. For the first time, urban citizenship was detailed in the municipal law of cities.[9]

In the second half of the thirteenth century, Roman law was reinterpreted, now from an Aristotelian perspective. Starting from the 1250 s Aristotle's main writings, in particular the *Politica* and *Ethica*, were translated into Latin, from Arab versions.[10] In Roman times, the legal concepts of *imperium* and *potestas* had served the purposes of expressing powers of authority that were extensive. However, in the later 1200 s and early 1300 s, jurists focused on those passages in the Roman sources that put limits to the power of government, no doubt because they were inspired by the *Politica*. For example, it became emphasized that even though the prince was *legibus solutus* (that is, not held to obey the laws), he was nonetheless required to live according to the law (*lex digna vox*).[11] Moreover, the *lex regia* became a topic of interest. The *lex regia* was read in a fragment in Justinian's Digest that mentioned that *imperium* had been granted to the Emperor by the people (*populus*).[12] Bartolo

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[5] For an overview, see Scott (2012).

[6] An early example is *Diplomata Belgica* (https://www.diplomata-belgica.be/colophon_fr.html, hereafter DiBe) 4662 (11 November 1166).

[7] For example, DiBe 35,266 (26 May 1217); Warnkönig (1836), 46 (June 1248).

[8] Anthony Black considers Roman law, and in particular its notion *universitas*, as pre-eminent in the early stages of the commune-movement. See Black (1996), pp. 99–112, at 102. This conclusion is not valid for the Low Countries.

[9] An early example is Maastricht. In 1109 there is a reference to a "*ius civile et forense*" in the city. A first mention of the city as *civitas* dates from 1204, but it is highly likely that the term was used earlier as well. See Cox (2021), lemma "Maastricht".

[10] The influence of Aristotle in communal theories and concepts of the later Middle Ages is a theme of debate. Walter Ullmann considered Aristotle as very influential, whereas Anthony Black thinks this influence as minimal. See Black (1996)

[11] C. 1,14,4. This law states that the *auctoritas* of law is higher than the *auctoritas* of the Emperor (*imperium*).

[12] D. 1,4,1,1.

da Sassoferrato (d. 1357) interpreted this rule in such a way that the people kept its foundational power and could revoke it.[13]

In the later Middle Ages, scholastic reasoning was ubiquitous at universities and Aristotelian thought became spread through the writings of influential authors, in particular Thomas Aquinas (d. 1278). Aristotle's views engendered a new mental framework in which governments could be corrupt and which contributed to considering some rules as being so fundamental that even rulers had to stick to them. Furthermore, Aristotle provided ideas on popular *government*, which came to be proffered alongside views regarding popular *sovereignty*. It became acknowledged that the people's consent had to be heard in deliberation processes, which is why representatives from the population were chosen. The Roman maxim "*Quod omnes tanget, ab omnibus aprobari debet*" (what binds all, must be approved by all) gained new attention.[14] Therefore, from the end of the thirteenth century onwards, it became common, also in cities of the Low Countries, that the city government not only consisted of *consules* (*scabini* or aldermen) but in addition of a communal council, of representatives.[15]

In the Middle Ages people were not equal, and human rights did not exist. It has often been mentioned that the ideas of sovereignty or governance by the *populus* should therefore be taken with a grain of salt, or at least be considered against a context that is very different from the one existing in Western liberal democracies.[16] However, when digging a little deeper into the mindset of the Middle Ages, it becomes clear that these differences did not entirely preclude conceptions of a rule of law.

The community constituted a corporation, including both members and its leaders.[17] From our present-day perspective, it is very difficult to understand how both the governing and governed classes were considered as belonging to the same entity. Yet, it is true that legal ideas on protection *against* rulers did not, as such, exist. One clear indication thereof is that law, at least at the level of cities, was foremost conceived of as custom. According to the scholarship of Roman law of the fourteenth

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[13] Ryan (2000).

[14] This phrase was important as it provided a basis for the conciliar movement in the Church. See on this Congar (1958).

[15] Aristotle's influence can be seen in the establishment of *concilia* in cities, existing besides the council of aldermen (*scabini*), and in the increased use of phrases such as "*scabini, concilium et burgenses*". Before approximately 1280, and starting from the 1150s, it was usual that cities had *iurati* next to the *scabini*. These *iurati* were selected and sworn advisors, often from craft guilds. For an early example of *iurati*, see DiBe 12,470 (1156). In contrast to this earlier period, after approximately 1280 the concepts used to refer to the government of cities were more inclusive. *Concilium* referred then to a group of *representatives*, not merely to sworn assessors. See for example, Willems (1839), (20 December 1328, Brussels, mentioning "*scabini, concilium, aut universitas oppidi nostri Bruxellensis*").

[16] However, there is ample literature that still stresses the "fraternal" and even egalitarian nature of city communities, and which even considers the constitution of cities as a *coniuratio*, an *Eidgenossenschaft*. See, with regard to the city as a *Schwörgemeinschaft*, for example Isenmann (2014)*; Oexle* (2001), pp. 290–293; Planitz (1954), pp. 102–125. Recent research that closely examined the different stages in the emergence of cities yields many arguments against these views. For example: Saint-Denis (2008) and Wickham (2015).

[17] Nootens (2013).

and fifteenth centuries, custom required "*tacitus consensus populi*", the "tacit" consent from the people. This was directly connected to the abovementioned ideas on popular sovereignty.[18] However, the *maiores*, the most prominent members of the society, had the right to "express" what the custom was.[19] In the medieval perspective on things, there was no contradiction in this. It was acknowledged that custom could be "new", and that when such a new custom became established, by way of its formulation by those in charge, the rulers nonetheless stuck to the tradition of the polity.[20] "Popular sovereignty", as among others was mentioned by Bartolo da Sassoferrato, has to be interpreted along these lines. "Consent" was a presumed requirement, not a necessary one. It was assumed to be there; it was not to be evidenced.

3 The *Commune*: Community-Building in New Circumstances

Between approximately 1000 and 1300, Western Europe witnessed strong demographic growth and a rise in the number of cities.[21] After around 1070, many of the expanding urban communities were given the status of a legal entity. This was not a smooth development; it went together with strife and revolt against local and regional lords.

The "communal movement" has been a topic of historical study since the nineteenth century. As one can expect, it became a theme of ideological debate as well, especially after the middle of the 1800s. For many politically sensitive issues, such as workers' rights, suffrage and government intervention in the economy, the "rise of the communes" provided arguments and material for reflection.[22]

Over recent years, the long period between the year 1000 and 1300 has become studied in detail, with an eye for differences between stages. Around the middle of the tenth century the Mediterranean re-opened, which caused new growth for cities such as Venice, Genoa and Pisa. In the 990 s also North-West Europe became re-integrated economically; merchants from Cologne travelled to England, for example.[23] This came from a recent rise in population, which was due to better climatic conditions and some innovations in agriculture. However, the changes in economic circumstances did not immediately trigger renewal in the status of communities. Local and regional lords continued to administer cities without much upheaval until the second half of the eleventh century. Slowly, changes in the social stratigraphy in new and old centers of habitation resulted in pressures on existing political structures. In the Italian Peninsula, around 1080 the class of nobles collapsed, possibly because of the dwindling importance of agriculture and rural yields. This left a void

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[18] Garré (2005), pp. 128–140.

[19] van Caenegem (1996), at 103, footnote 26 (referring to Petrus de Ravannis' (d. *c.* 1528) statement that governments can create customs).

[20] For this argument, see De ruysscher (2022).

[21] For detailed estimates, see Bairoch (1988).

[22] For liberal historians such as François Guizot the communal movement was a bourgeois revolution, directed against feudal nobles, whereas socialist historians tended to consider them as anti-bourgeois.

[23] Sawyer (2013).

and this came to be filled by coalitions of rural elites and artisans. They installed urban governments that were self-reliant.[24] This model of explanation is more refined than earlier class-orientated views which took a class of workers as growing and ultimately challenging the powers of the ruling bourgeoisie. Politics has become much more prominent as a variable in analyses of the communal era.[25]

For the Low Countries, the earliest traces of communes date from the 1070 s. In the County of Flanders, in the present-day North of France several cities, including Arras, Aire-sur-Lys and Cambrai, experienced a transition towards a *communia*.[26] The members of the community "swore together" (*coniurare*)[27] and the rules to which they pledged to abide were considered an "*amicitia*" (friendship)[28] or "*pax*" (peace).[29] These notions referred to coalitions, compromises, that stood at the basis of the constellations of cities. Breaching the rules that were agreed on was equivalent to breaching the peace.[30] What coalitions of the type mentioned had in common was that they united residents of a certain area, and phrased rules communal to them, even though the subjects could have a different status.[31]

The later eleventh century and the entire twelfth century were periods of economic expansion. Especially after around 1150, the maritime areas of the County of Flanders attracted many merchants, coming from areas surrounding the North Sea and from German lands. In this period guilds were set up. Within cities inhabitants with the same profession could join ranks; they created brotherhoods to ensure mutual protection. However, the main trade routes and the export of the most expensive products were controlled by wealthy merchants. As a result, over the course of the mentioned period the differences in revenue between different groups of urban residents increased. In his account of the murder of count Charles the Good in 1127, written around 1130, Galbert of Bruges refers to a difference, existing in Bruges, between "*cives majores*" (important citizens) and "*cives minores*" (minor citizens). The latter had some of the same rights as the former, but only the elites—which Galbert also called "*sapientiores*" (the wiser)—controlled the institutions.[32]

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[24] Wickham (2015), 87.

[25] For example, the commune of 1102 in Cambrai was supported by wealthy citizens, who opposed the clergy. See Ruffini-Ronzani (2018).

[26] Verhulst (1999).

[27] The term is rather rare for cities in the Low Countries. One exceptional example is a charter for Valenciennes, dating from 1174, which seems to refer to *coniurati* in the meaning of citizens. See Tock (2000).

[28] Derville (2002).

[29] Ibid., 52. Valenciennes was a *pax*, in the meaning of a commune, since 1114. See Godding and Pycke (1979), at pp. 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 Rolland (1925), at pp. 425–426.

[30] For example DiBe 2965 (June 1147, the count grants the *homines* of St Bertin's abbey (St Omer) in Poperinghe 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).

[31] Blockmans (2011); Oexle (1996), at 85.

[32] Groten (2004). For a new analysis, see Bervoets (2020).

It is remarkable how this stratification, within the *communiae*, lasted for several decades with minimal consequences. Eventually, it was a deterioration of economic circumstances that brought about change. Starting in the 1220 s, the economy declined. Real wages went down and profits from trade decreased.[33] This resulted in a closing of ranks; the merchant elites in cities of trade created corporations that were highly exclusive, and which served to maintain their factual monopolies. They established *gildas*, large municipal corporations. These were city guilds, which identified the entity of the city with its merchant administrators. Examples are the *Comansgilde* in Dordrecht and the *Wollewerk* corporation in Mechelen.[34] The idea was promoted that *mercatores* (merchants) were *burgenses* (citizens), and vice versa; citizenship was thus, thenceforth, reserved for the highest strata in the urban community.[35] The only true citizens were those that were part of the municipal corporation.

However, deteriorating conditions challenged this new approach. In the 1240 s and 1250 s cities of the Low Countries were hit by strikes. Now it was craftsmen and -women who urged for reforms of the urban government, in order to protect their rights. Patricians had cut the wages of textile workers, because of the drops in international trade. The strikes and revolts reacted against these actions. Now, in turn, the idea emerged that the *commune* was not only the legal entity of the city, but also a "state-within-the-state". The medieval understanding of the city as a corporation, which encompassed both its rulers and inhabitants, came under pressure. The *commune* became a power in itself, which served to check the urban government. After approximately 1250, the Aristotelian ideas added fuel to these views. It was envisaged that governance had to be directed towards the common good, and the *commune* prevented that the rulers of cities turned an aristocracy into an oligarchy. Revolts were described as instances of *meentucht* (literally, disciplining by the *commune*).[36]

4 The Burgomaster: Protector of the *Commune*

Near the end of the thirteenth century, *communiae* had greatly changed. The territorial jurisdiction of cities now included larger areas. Also, the aldermen were assisted by a *concilium*, a council of citizens. Since the *commune* had become considered as a body in itself, which existed alongside the urban government, it was deemed to check on the rulers with regard to their respect for the common good. And further

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[33] This economic conjuncture in the thirteenth century is a topic of contention. While it is generally accepted that in this period the aggregate growth was rising, over the course of the 1200 s revenues were unevenly spread. Large farmers and merchants profited, whereas craftsmen and nobles struggled. See, for example, Nicholas (1992).

[34] See on these large guilds, Alberts and Jansen (1964).

[35] Bervoets (2022), 330, footnote 88. In 1276, in Mechelen it was ordered that those who "pretended" to be a *mercator* would be fined. See Joosen (1935), at pp. 402–403.

[36] For example in Bruges in 1280, where the group of protesters called itself "*meentucht*" and sought to incorporate areas at the outskirts of the first *commune*. See Dumolyn (2012).

measures were taken in order to preserve the interests of the commune. One cata-lyst were discussions on the urban finances. Guilds fiercely reacted against corrup-tion and asked for control on the municipal treasury. In 1296 the town council of Dordrecht appointed two "*burgermeyster*" (masters of the citizens) following com-plaints on the city's financial administration. The newly nominated burgomasters seemed to have been responsible for the collection of urban taxes and for the munici-pal treasury.[37] The choice for *two* burgomasters most probably followed the example of Roman magistrates, who were appointed as a duo and who had a reciprocal veto-right. Slowly, the example of Dordrecht was followed in other cities. In Mechelen, for example, burgomasters are mentioned from 1317.[38] For Utrecht and Nijmegen the first references to burgomasters date from 1315 and 1317 respectively.[39]

In the course of the fourteenth and fifteenth centuries, the tasks of the burgo-masters were filled in in reference to a felt difference between the *commune* and the patrician segments of the population. In Bruges a distinction was made between the burgomaster of the "*corps*" (the corporation, meaning the *commune*) and the burgomaster "of the aldermen".[40] In Leuven, there was a burgomaster "of the (patri-cian) lineages" ("*van de geslachten*") and a burgomaster "of the guilds" ("*van de ambachten*").[41]

The burgomaster of the commune (also: outer-burgomaster) was given a higher status than the burgomaster of the patricians (or inner-burgomaster).[42] And in com-bination with this figure of the outer-burgomaster came the idea that this official had to protect the rights of the commune, even against the other urban institutions. In den Briel the burgomaster swore an oath "*der steden recht te houdene*" (to maintain the law of the city, and also, to keep the city "straight").[43] Views on checks and bal-ances were combined with nascent conceptions of the rule of law. The burgomaster of the *commune* protected the urban tradition and liberties against intrusion from other administrators and also the central level. In Leuven, the burgomaster was the one who prompted the words of the oath sworn by a new prince, and which men-tioned respect for the "rights, privileges, charters, customs and usages" of the city.[44] The outer-burgomaster was the one representing the city in the state assemblies (*statenvergaderingen*) as well.[45]

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[37] van Dalen (1903), at 276.

[38] Municipal Archives Mechelen, A. Charters, series VII, nr 1 (1317, "*magistri communitas*").

[39] Burgmans and Peters (1909), 163 and 197.

[40] van Houtte (1982), 308.

[41] van Uytven (1995), pp. 375–376. In 1234 *magistri communitatis* and *rectores communionis* were mentioned in Leuven, but these are—in my opinion—to be considered as chairs of the bench of aldermen and not yet as the presidential figures of burgomasters of the later thirteenth and fourteenth centuries.

[42] Leuven is an exception here. The burgomaster of the patricians was the one responsible for diplomatic relations. See Uytven (1995), 375.

[43] Matthijssen (1880), 59. By contrast, the aldermen swore to protect the city and to act in the interest of the city and its citizens. There was no reference to the "law of the city" in their oath. See Ibid., 64.

[44] Vrancken (2018), 97.

[45] Ham (2000), 204.

Protection of the *commune* was the outer-burgomaster's primordial task. In Mechelen, for example, the guards of the city gates stood under the direct and exclusive authority of the outer-burgomaster.[46] During uprisings, control over the city gates was crucial. Therefore, this rule can be considered as a measure taken to prevent that the city government was easily overtaken by rebels. Also referring to public safety was the outer-burgomaster's right to summon any citizen for a hearing, even without a judgment or backing from the aldermen.[47] In Dordrecht, the burgomaster of the commune registered new citizens.[48]

Nascent views on the rule of law were symbolic. They served to depict a city community in legal terms. In doing so, they aimed to portray the city as a unity. As such, they glossed over the many differences in rights that existed between the individuals and groups that lived in the city. In the earliest *communitates*, from around 1070 to c. 1200, rules were imposed on residents. The community was referring to an institutionalized peace within a certain area, to be respected by both landed inhabitants and those who lived there but were less wealthy. Both *manentes* and citizens were subjected to the criminal law of the *commune* and both groups could invoke assistance from the urban government when confronted with crime.[49] However, starting from the early thirteenth century, citizenship became considered as an exclusive status, and this increased the differences between citizens and non-citizens. City governments came to impose requirements on those seeking to become *cives* of the urban communities. The mentioned *gildas* were installed. Conditions of membership could be the payment of a high fee, and later on, marriage or birth. As a result thereof, some citizens were considered as "better" than others; only the highest strata of citizens were eligible for public office. In turn, the concept of *manentes*, referring to "mere residents", was used more often. Rights were differentiated. For example, citizens were protected against the interventions of governments of other cities, residents were not. Only citizens could be part of the urban militias. Moreover, citizens had the right to appeal for the assistance of compatriots. In Mechelen it was stipulated that a citizen who shouted "*comoignie*" had to be helped by any co-citizen in the proximity.[50]

It seems that the concepts of rule of law changed in the thirteenth century, and that these changes were responding to the new social stratifications. The privileges and laws of the town were now protected on behalf of the *commune*. The *commune* was now consisting of the *manentes* and the lower *cives*; the patricians were regarded as belonging to another group. The new inequalities had resulted in new images of the urban institutional constellation.

The symbolic nature of the rule of law that applied in medieval cities renders it difficult for comparison with present-day categories that are present within the rule

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[46] Installé (1995), 849.

[47] For example, in Dordrecht the outer-burgomaster had to give authorization for summoning a citizen to the court. See Oudenhoven (1654), 84.

[48] Wall (1790), pp. 574–575 (30 May and 4 June 1445).

[49] On the rights of citizens, see Godding (1987), pp. 52–59.

[50] Foncke and Buskens (1947), 135.

of law. A city community regarded itself as unified, under a communal institutional framework and because of a shared tradition and law. However, this did not make the rule of law in those cities "thick".[51] The thirteenth-century concept of the "*commune*" relied on values and traditions that had to be respected by the city's administrators. However, there was no understanding of citizens' rights against the government. The shared institutional beliefs marked the glue between a factually oligarchic urban government and a sense of community that was underpinning the urban institutions. Even after the instalment of a *concilium*, of a council of citizens, there was no regime of representation or democracy. Also, rights of individuals were greatly divergent. Citizens had more rights than non-citizens, but there were additionally many differences according to sex, profession and social group. Therefore, even a "thin" conception of the rule of law cannot easily be projected onto the medieval situation. Urban governments were not "bound" by the existing rules and traditions. The symbolic unity between rulers and ruled meant that rules could change, for it was held that the *maiores*, the "better part" of the urban population, knew what the law was. Even if new, rules could be considered as customs.

5 Towards Contextual Analysis of the Communal Movement

Over the past years the mentioned processes of community-building have more and more been described as political. Several groups were involved, but the dynamics that resulted in institutional change were not exclusively social. Coalitions did not necessarily overlap with classes or professions.[52] However, the changes of urban governmental set-ups in the twelfth and thirteenth centuries can also be analyzed from a more contextual perspective, referring to, for example, international trends and economic conditions. The developments in medieval cities nonetheless provide data of the process of imposing a (symbolic) rule of law onto heterogeneous communities.

In this regard, looking at the abovementioned phenomena from the angle of (the effects of) globalization[53] and, in close relation thereto, "glocality"[54] can potentially be enriching.

Starting from around 1050, developments in the West became increasingly "global". Certain events had an effect that transgressed the boundaries of polities.[55] When such effects were disruptive, it was difficult for rulers to address them in an adequate fashion. For example, the abovementioned trend of installing large

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[51] Tamanaha (2014), pp. 91–113; Møller and Kaaning (2012) pp. 136–153.

[52] See, for Italy, besides Wickham (2015), also Jones (1997).

[53] The impact of globalization processes on institutional change is not a classic theme of analysis in legal studies but is more prominent in political sciences. See, for example, Campbell (2004). Also, the theme has been analyzed mostly with regard to globalizing markets. See, for example, Jupille (2013).

[54] For example, with regard to "the commons", Haller et al. (2020).

[55] Since globalization processes are typically located in modern, sometimes early modern times, the literature on such processes for medieval times, considering them from that angle, is rare. If mentioned for the Middle Ages globalization is typically connected to economic integration and trade routes.

merchant guilds, which can be dated to the second quarter of the thirteenth century, was most probably an answer to contractions in the international economy. When revenues dropped, competition intensified. Setting up an urban guild then served to secure cooperation and limit rivalry among the urban merchants. This institutional response was "glocal"; it seems that several cities took similar measures in answer to the new challenges.

Economic crisis had other consequences as well. Margins were adjusted, down the chain of producers and suppliers. This then resulted in the lowering of wages of textile workers, which explains for the context in which the changes of after approximately 1250 took place. Also, the first abovementioned stage of community building, between c. 1070 and c. 1250, was potentially reflecting a highly mobile workforce, which could easily move to other cities. Indeed, there are traces, since the beginning of the eleventh century, of groups of textile workers, travelling large distances, and settling in locations of their choice.[56] In several cities these professions, in particular those of dyers and fullers, were considered as inferior,[57] and their members were not eligible for citizenship, when citizenship became an exclusive status.[58] Groups of travelling craftsmen could supply the necessary workers for a booming textile industry. Was the *commune* established to tie them to the city? The groups mentioned could function as pressuring groups demanding rights. The phenomenon of the rise of the *commune*, as an entity in itself, may have had to do with requests from these groups. It was mentioned that institutional responses could be "glocal", but maybe, as well, institutional models were spread by migrants.

Another factor that has seldom been analyzed, refers to rivalries between cities. Maybe the depiction of the city as a *communitas* (also) served the purpose of tightening the bonds within the community in order to address external enemies. The link between citizenship and membership of the communal army may be an indication thereof. The *communitas* ideal may have served to bolster patriotic feelings or to facilitate the recruitment of fighters.[59] The building of city walls can be indicative of such ideas on external protection and patriotism. Already in the tenth century, most cities of the Low Countries had some sort of inner-city wall, as part of a fortress, or built as place of shelter, but it was only from the later eleventh century onwards that walls were erected for the purpose of enclosing the most important areas of habitation of the urban community.[60]

In urban-historical literature, the imaginative aspect of institutional ordering has not often been taken into account. The abovementioned examples of concepts referring to urban communities could have gone hand in hand with "inequalities" of all sorts and may have purported to symbolically reduce such differences. For example,

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[56] Deploige and Stabel (2016), pp. 240–281.

[57] Joosen, "Documents", op. cit., 403 (1276, "… *si vero fuerit de officio fullonum aut textorum aut ceteri fallacis officiis …*" (… if however they belong to the profession of fuller or dyer or another vile profession …).

[58] Ibid. This passage suggests that fullers and dyers could not be member of the *gilda* of the city of Mechelen, i.e. the *Wollewerk*.

[59] On communal armies in the twelfth century, see Verbruggen (1997), pp. 149–152.

[60] Verhulst (1999), pp. 119–147.

even though (Aristotelian) views of popular government were known since the middle of the thirteenth century, urban governments became more oligarchic and hereditary in the fourteenth and fifteenth centuries.[61]

Further research is needed, before a beginning of an answer to the questions listed can be given. And thereafter, other, more fundamental, problems may see solutions. For example, were the abovementioned institutional changes—also considering the increased oligarchical trends over the long run—"cynical"? Were they merely superficial changes, aimed at pleasing the crowds, but with a hidden agenda of rulers to stay in power? Or were they conceived of as genuine innovations? The latter is definitely possible, considering the mentalities of people in the Middle Ages. Adding a council of advisors to the council of aldermen, for example, could have been rooted in a thorough rethinking of governance issues. The question of the success of the new models should not be confused with the question on the genuineness of the intent of those who initiated them.

6 Conclusion

In this article, the argument was made that in the twelfth and thirteenth centuries concepts defining the status of urban communities were changing, and that these changes were connected to cultural, social and—potentially—international and economic variables. In a first period, between c. 1070-c. 1250, cities were devised as "communes", referring to popular sovereignty. Citizenship was inclusive and largely linked to residence. In practice however international merchants managed to monopolize the institutions of the municipal polity. It was after approximately 1220 that this model increasingly came under pressure. Large overarching guilds were created, with the purpose of protecting the interests of the *maiores*. After c. 1250, ideas of popular government and the political qualities of citizenship were nurturing reforms. Councils and burgomasters were added to existing urban governments.

In terms of the rule of law, the abovementioned developments are important. Besides doctrine and political thought, also the institutional practice of cities informs on governance models, and how their institutional change responded to different variables. The rule of law in twelfth- and thirteenth-century cities was a symbolic one. It did not have the effect of bringing equality; rights were status-bound and even among citizens large differences existed. The rule of law had minimal substance. At first, it referred to rights linked to residence within an area that was under a negotiated "peace". Later, when the *commune* was considered as a force existing alongside the urban institutions, a conception of checks and balances emerged. The *commune* demanded protection of the urban liberties and customs, and the outer-burgomaster served as the keeper of these rights.

A potentially fruitful path forward lies in the contextual approach towards changing conceptualizations of urban political and institutional regimes. One tool thereto may be a vantage point of globalization and glocal responses thereto. Economic and

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[61] Buylaert (2020); Buylaert, Baguet, Everaert (2020).

international developments most probably had an impact on the abovementioned changes. Also, the medieval examples demonstrate that community-building and rule-of-law thinking were answers providing a "unity-in-diversity". Also for that reason, studying the history of medieval cities and their governments can help us understand our present day.

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