Marine Insurance

Origins and Institutions, 1300–1850

Edited by

A.B. Leonard

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Marine Insurance

Origins and Institutions, 1300–1850

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Peter Spufford was Professor of European History in the University of Cambridge until he retired in 2001. He is now Emeritus. His reputation depended on a small number of books which dealt with Europe

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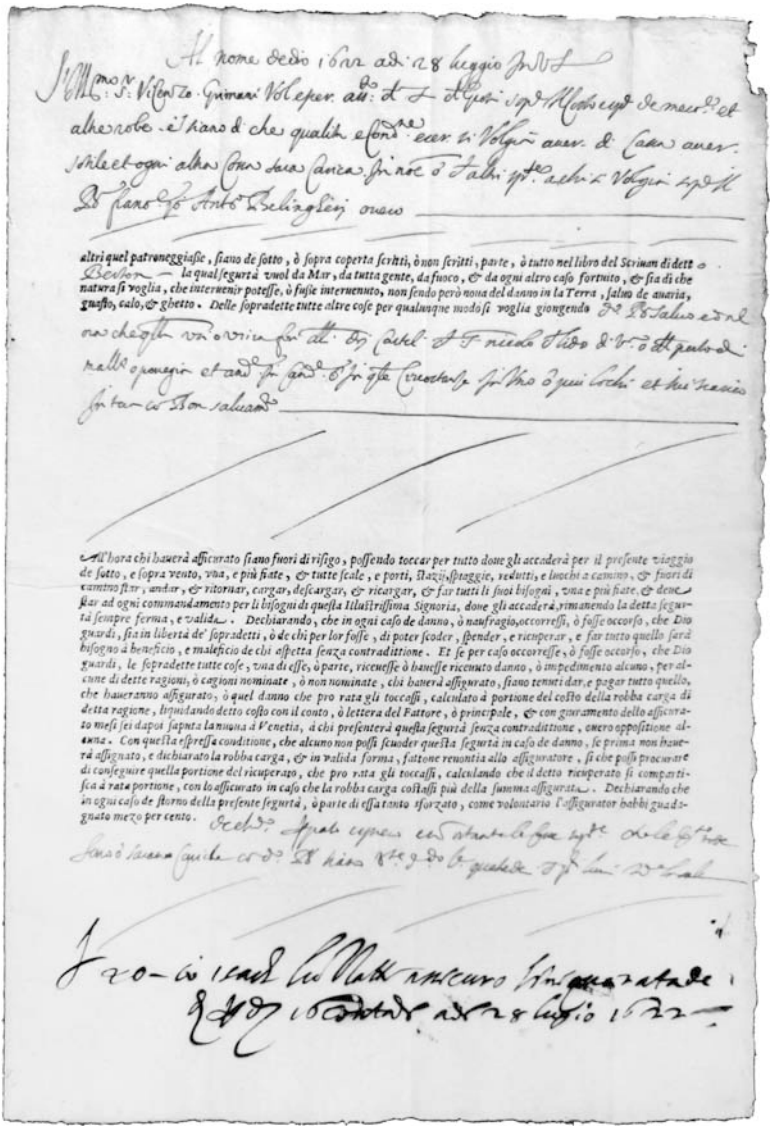
Abbreviations

ACA	City Archives of Antwerp (FelixArchief)
	CERT: *Certificatieboeken*
	IB: *Insolvente Boedelskamer*
	N: *Notariaat*
	PK: *Privilegiekamer*
	V: *Vierschaar*
ACF	Archivio Corsini di Firenze
AGI	Archivo General de las Indias, Seville
ALC	Private collection of Adrian B. Leonard
APC	Acts of the Privy Council of England
ARB	General Archives of the Realm, Brussels
	PEA: *Papiers d'État et de l'Audience*
ASP	Archivio Salviati di Pisa
ASF	Archivio di Stato di Firenze
	MaP: *Mediceo avanti il Principato*
BA	Boston Athanaeum
BL	British Library
BOD	Bodleian Library, Oxford
CLRO	Corporation of London Record Office
CPMR	Calendar of Plea and Memoranda Rolls of the City of London (1323–1482)
CSPD	British Calendar of State Papers, Domestic Series
CUL	Cambridge University Library
GAR	Gemeentearchief Rotterdam
	ONA: *Old Notarial Archives*
GHL	Guildhall Library, London
HALSC	Hertfordshire Archives and Local Studies Centre, Hertford
HSP	Historical Society of Pennsylvania, Philadelphia
LMA	London Metropolitan Archive
PM	Museum Plantin Moretus, Antwerp
NEHA	Nederlandsch Economisch-Historisch Archief, Amsterdam
	BC: *Bijzondere collecties*
	AUA: *Archief (Unidentified) Assuradeur*
	ACA: *Archief Commissarissen Assurantie*

NYHS	New York Historical Society
NYSL	New York State Library Archives
NHS	Newport Historical Society, Rhode Island
PEM	Peabody Essex Museum, Salem
SA	Stadsarchief Amsterdam
	ADV: *Archief de Vos*
	NA: *Notarial Archives*
	ASA: *Archief Schout van Assurantiemeesters*
SAA	State Archives, Antwerp
	N: *Notariaat*
TNA	The National Archives, London
	HCA: *High Court of the Admiralty*
	SP: *State Papers*
	SPD: *State Papers Domestic*
	C: *Chancery*
X	Decretales Gregorii noni



Policy dated 28 July 1622, underwritten in Venice by the Jewish insurer Isach Luzzatto for 40 ducats, in favour of the Venetian patrician Vincenzo Grimani on 'merchandise and other stuff' laden on the *Bertone*, Master Antonio Belingheri, from Venice to Candia (Crete). Image courtesy of the Mansutti Foundation of Milan

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Introduction: the Nature and Study of Marine Insurance

A.B. Leonard

In the words of a twenty-first-century Lloyd's underwriter, 'insurance is the mortar between the bricks of commerce'. It provides contingent capital which is transformed into cash in times of crisis, allowing entrepreneurs and companies to trade with smaller quantities of conventional capital than are prudently necessary in their particular, perilous trading environments. In so doing, insurance transforms many of the uncertainties of capitalism into fixed costs.[1] Further, it does so remarkably efficiently, a fact confirmed by its surprising resilience, and by the steadiness of its structure. As this volume shows, the basic instrument of premium-based marine insurance remained almost identical over the entire four-century period covered by the contributors, beginning about four hundred years before Lloyd's emerged as a distinct, branded insurance market in 1769.[2] Today underwriters there, elsewhere in London, and in the other marine insurance centres of the world trade in a financial product which continues basically unchanged from that which was used centuries before, right down to the wording of the contract, called a policy.

Although the basic marine insurance structure has been in use 'time out of mind', as Francis Bacon acknowledged in 1601, the institutions which surround it have evolved significantly. Steady and progressive change characterises the communities of merchants that bought and sold insurance, the rules adopted to govern the way the business operated, the mechanisms established to enforce those rules (whether informal or statutory), the nature and depth of the organisations erected to provide and catalyse marine insurance, and the relationships between insurers and states. This volume outlines some of those institutional changes, which themselves illustrate the significant parallels which have

cut across and through the temporal and geophysical stages of the development of marine insurance.

The underlying marine insurance instrument is elegantly simple. The buyer, or insured, selects the amount of contingent capital he or she wishes to receive after an unforeseen insured loss has occurred. This 'sum insured' under an individual policy will reflect all or some of the value of a vessel or cargo during a specified voyage (but not more). In exchange for their promise to pay their share of the 'indemnity' if a valid claim is presented, the insurers receive, in advance, a 'premium' expressed as a percentage of the sum insured. Thus, the type of risk transfer discussed in this book is often referred to as 'premium insurance'. Each insurer commits to pay only his own share of the total sum insured, since typically during the period explored in this book multiple men (they were always men) each assumed only a portion of the risk transferred under a single policy. They showed this willingness by signing their names at the bottom of the document, under the main policy wording, making them 'underwriters' or 'subscribers'.

The simplicity of this age-old financial instrument was and is bedevilled by details, however. Many points of potential contention may arise between insurers and their insureds which are not directly clarified by the policy language. Coverage is the main one. While the broad list of perils insured under the standard policy appears to cover any and all losses arising from the threats of nature (*maris*, the seas) and the acts of men (*gentium*), insurers in practice were renowned for attempting to wriggle out of claims, by arguing that losses were caused by the manifestation of an uninsured peril. Of course, denying claims entirely was not the norm. If it had been, the market would have withered centuries ago. Instead, it flourished.

Policy language has remained unchanged for so long precisely because of its ambiguity. As will be shown in this volume, disputes were typically settled by disinterested merchants from within the trading community. Sometimes, inevitably, courts and other outside tribunals with diverse levels of competence were called in to pass judgement. Each decision made by the arbiters of the merchant community added a new layer to the accepted interpretation of the contract wording within that community. Litigation outcomes also put paid to questions of coverage (although future adherence to third-party interpretations of the contracting parties' intents as to the limits of coverage was sometimes rejected). Changing the words of the contract reopened the potential for dispute, and was avoided by retaining tested contractual language. Over the centuries this approach reduced the possible points

of contention. So too did the harmonisation of the rules of disparate insuring communities.

Differences of understanding or custom between communities were another common source of dispute. A clear example lies in the parallel development of European and Indian insurance custom. Premium insurance appears to have been invented independently by both the merchants of Italy and those of India, and was in active use in the latter region by, at latest, the mid-seventeenth century. In both traditions, contingent capital was promised to cover actual losses, in exchange for a fee paid in advance, calculated against the value of the goods insured and the route of transport. The European practice of sharing individual risks between multiple underwriters seems to have been absent in India, however, leading to 'considerable capital and cash flow problems' for the insurance of very big consignments (a common complaint levelled against private underwriters in European markets). Further, customary practices had been worked out differently in Europe and India, as the articles of co-partnership of the Ganges Insurance Company, launched in India by Europeans in 1791, illustrate. The company's founders stated that the insurance business was 'almost entirely in the Hands of the NATIVE BANKERS, who are guided solely by Caprice and Custom, without any knowledge of the true principles of assuring as practised in European Governments'.[3] European underwriters were equally governed by custom, if not always caprice, and, needless to say, their practices, and specifically those of London, soon displaced those of India. Nonetheless, the parallels of the underlying risk transfer instrument, and the adoption of customary rules to govern its use, are clear.

European insurers in India had recourse to local courts when they felt prevailing custom did not match their expectations, and, as in Europe, those authorities sometimes referred such actions to panels of business leaders. In Europe, arbitration was the preferred course of action. However, what Bacon's insurance act of 1601 referred to as 'the arbitrary course' did not in all cases prove sufficient to satisfy disputing parties. States and their judiciaries were often called upon to intervene, although they were typically ill-equipped to do so since, with practice governed by customs rather than legal codes, state adjudication was unpredictable and typically time-consuming. Still, state authorities were generally supportive of the practice of marine insurance because it was recognised as an important catalyst of trade, which was respected by states as a lucrative source of revenue. As such, state tinkering with the operation of markets or enforcement mechanisms tended to be carried out with the intention, at least, of improving the insurance market (protectionist

measures notwithstanding). However, as this volume shows, such efforts sometimes fell short of their mark. While they could be effective at easing the resolution of disputes and reducing transaction costs and fraud (while facilitating the taxation of premiums), they could, unless carefully crafted, interfere with the operation and peculiar flexibility of the insurance markets they sought to assist.

Insurance in its earliest incarnations in all the markets discussed in this volume began as a mutually beneficial system of finance, and was traded between members of a merchant community as a 'club-good' (or perhaps a club-service) which they used to improve the commercial experience of all participants. Buchanan defines club-goods as those which fill the 'gap between the purely private and the purely public good . . . the consumption of which involves some "publicness", where the optimal sharing group is more than one person or family, but smaller than an infinitely large number.'[4] Merchant-insurers, as underwriters were known in England since at least the seventeenth century, used their club-good to make more secure the trade both of individuals and of the community, despite commercial rivalries. In a theoretical perfect underwriting environment, all merchants would share in the losses of the community proportionally to the risks which they brought to its risk pool. In practice, when underwriting was profitable, some of the cost was defrayed, but loss-costs ultimately had to be covered. Insurance made paying more manageable.

This club-good nature of marine insurance provided the strengths of the underwriting system when it remained within close communities of merchants. However, when the optimal size and nature of the group sharing the club-good were exceeded, problems could and did emerge, as in the example of the differing customs of European and Indian insurers. As insurance markets grew, the entry of new participants, who may be cast as outsiders, often upset customary balances that had been achieved within markets of insurers trading the instrument as a club-good, since understandings of the status quo and expectations of outcomes may not be shared by newcomers. As Rossi argues, 'While a relatively low number of new players may be easily absorbed, the swift entry of a large number creates serious difficulties to the preservation of the system. The best way to maintain it is to adopt dispute resolution mechanisms which preserve the cohesion of the weakened system.'[5]

A theoretical conception of the division between established merchant-insurers and another group of outsiders can be drawn from Braudel, who describes a two-tiered system of commerce. The lower tier, he proposes, comprises the 'market economy'. It is characterised

by routine transactions of transparent but competitive exchange governed by a set of rules, and which involve only the buyer, the seller, and sometimes an intermediary. Such were the original insurance markets of merchant-insurers. Braudel's higher tier is the 'capitalist sphere', in which transparency, control, and the rules which limit profitability are avoided, or are not enforced. Different mechanisms and agents govern the capitalist sphere and the market economy.[6] It is apparent in all of the marine insurance centres studied in this volume that, as they grew and matured, higher-level insurance markets of the Braudellian capitalist sphere collided with those of the merchant-insurers. Established institutions were shown to be inadequate to meet challenges posed by outsiders. Disputes could not always be managed within the framework of custom. External mechanisms, principally those of the state, were often found wanting.

Another useful categorisation can be drawn from Janeway's characterisation of participants in what he dubs the 'three-player game' of enterprise. In it, the sovereign *state* strives constantly over resources with the *market economy* (defined as the institutions enabling production), while *financial capitalism* exploits discontinuities that may arise.[7] The distinction is useful since it neatly bisects the mechanisms of the market from speculations. Merchant-insurers, underwriting primarily to share risk, are part of the nuts and bolts of the market economy. Those underwriting purely for profit, or investing passively in insurance companies, are credit-providing financial capitalists. Thus they constitute another type of market outsider, distinguished by their financial motivation, rather than their desire for mutual risk-sharing. Others, who may be categorised as outsiders due to financial motivations, are those who sought to defraud the merchant-insurers. They were simply criminals.

The tensions arising from the participation of groups of outsiders, as both buyers and sellers, in expanded markets required institutional interventions into the otherwise obscure operation of the merchant-insurers' systems. Institutional changes arising from these interventions were implemented either by the merchant-insurers themselves, or by states at their behest. When they were effective, interventions served to reinforce the established practices of the merchant-insurers. It is characteristic of the origins and development of marine insurance markets that custom was reintroduced or reinvigorated by interventions, including state interventions. Such reaffirmations of merchant practice furnished certainty, the quest for which characterises institution-building in insurance markets. As they expanded from their founding circle of merchant-insurers who traded based on trust and mutual interest to

encompass broader groups of seaborne adventurers and those primarily seeking profits, the delivery of certainty became increasingly important.

Old systems worked when they were perceived to deliver certainty of outcomes. Because such systems were based on custom, uncodified law, and, in cases of dispute, judgements which could be enforced only through honour on the part of the participants and ostracism on the part of the community, they were unable to deliver certainty when markets began to grow beyond small communities. It was uncertain which courts would hear cases, or what judgements they would make. It was uncertain if the security of institutions was sufficient to withstand large-scale losses, or if an alternative structure would be more robust. It was uncertain if measures to prevent abuses of the system were adequate, or if strengthened defensive systems would limit markets' flexibility sufficiently to render them uneconomic. All that appears to have been certain to contemporaries was that marine insurance was essential to trade, and that trade was critical to the common good.

Law and lawmaking are central to the discussion. Merchant-insurers embraced the Law Merchant, but some of the handful of historians who have explored marine insurance in detail, and also some contemporary commentators, have argued that the business lacked necessary regulatory structures. Bindoff, for example, claims that 'its unsystematic character is something to wonder at . . . it developed . . . with a minimum of control and was riddled with abuse and fraud.'[8] Outsiders sometimes challenged the merchant-insurers' system in this way, but the Law Merchant was typically up to the job of governing routine market transactions, and even most exceptional cases. Despite this, incorporating customary merchant practice into the formal law which governed state courts, and thus conferring appropriate exogenous enforcement authority onto insurance markets, proved a long and difficult challenge. The deterrent and punishment of fraudsters, for example, should have been addressed with relative simplicity through statute. However, dealing with this subset of the outsiders was complicated by the arcane nature of marine insurance contracts. It was sometimes very difficult for non-specialists to know if a criminal act had actually occurred. Questions related to the limits of coverage were even more difficult for third-party judges to resolve. This has made the challenges surrounding the provision of judicial teeth to the customs which governed practice, while retaining the flexibility which contributed significantly to the usefulness of insurance, a constant theme within the history of marine insurance. One way in which these challenges were overcome was the involvement by state institution-builders of merchants in the design and execution

of new institutions, another theme which often appears in the chapters which follow.

A theoretical model

The framework of 'New Institutional Economics' (NIE) provides a useful set of tools for the analysis of the development of insurance markets. NIE places the interplay between market forces and institutional (as opposed to organisational) evolution at its centre, and focuses especially on factors such as transaction costs, contracts and rules, the social influences which impact upon the evolution of institutions, and property rights. The costs of enforcement and information-sharing are usually pivotal. Game theory is sometimes applied to identify optimal outcomes.[9]

NIE proposes a theoretical set of institutional developments which, when present, lead to increasingly profitable commerce, and thus to the growth of trade. North and others have argued that institutions were required for path-dependent economic development; North stated it was 'sequentially more complex organization that eventually led to the rise of the western world'.[10] His view of the development of institutions (such as insurance markets and their practices) is based on the premise that the perfect markets which neoclassical theory predicts are rarely achieved, so parties to transactions develop institutions to provide formal and informal constraints and enforcement mechanisms to compensate for participants' imperfect knowledge. He argues that institutional change occurs because 'real world' conditions create transaction costs which do not permit the operation of perfect markets.[11] One of the outcomes arising from the expansion of trade is specialisation. As production and trade become ever more specialised, supported by a network of institutional structures (themselves embodied in the institutional structures of polities and judicial systems), the share of societies' resources dedicated to transacting increases, including, North specifies, specialisation in insurance.[12]

Some proponents of NIE take their arguments much further. Greif states that increases in long-distance trade in the eleventh to fourteenth centuries were a response to 'institutional changes caused by political and social events [which] provided the impetus required to initiate trade and a complimentary process of institutional evolution and trade expansion'. In a circular argument of causality, he argues that 'before the emergence of appropriate institutions, the presence of gains from trade was insufficient either to initiate trade or to generate the required institutions'.[13] This circularity has resonance in the study of the relationship

between trade and marine insurance, in which the causality relationship is similarly obscure. Trade is unlikely to grow, perhaps even to proceed apace, in the absence of insurance, but insurance volume is extremely unlikely to increase in an environment of stagnant or shrinking trade. Exogenous factors – 'political and social events' no doubt – provide the impetus for both trade and marine insurance to grow in tandem.

Transaction-cost reduction through institutional development lies at the heart of Northian NIE. He identifies three areas of innovation (in organisation, instrumentation, and 'specific techniques and enforcement characteristics') which have affected three groups of 'cost margins' to lower transaction costs in long-distance trade: those innovations which increased the mobility of capital, those which reduced information costs, and those which spread risk. In the first group he includes methods to avoid usury laws, the evolution of bills of exchange, the increasing volume and centralisation of commerce, and developments in the control of agents in international trade. The second comprises the printing of trade information, such as publication of price lists, and of manuals describing systems, including, for example, handbooks about weights and measures, postal services, and exchange rates. Following Knight, North characterises the third area, risk-spreading, as the transformation of uncertainty – 'a condition where one cannot ascertain the probability of an event and therefore cannot arrive at a way of insuring against such an occurrence' – into risk, which 'implied the ability to make an actuarial determination of the likelihood of an event and hence insure against such an outcome'.[14]

While North's use of the term 'actuarial' is woefully anachronistic, it is clear that the institutional development of marine insurance, including the increased accuracy of pricing which it encompassed, is an effective tool for risk-sharing and -transfer. North explicitly places marine insurance into risk-sharing innovation, alongside business organisations that spread risk through portfolio diversification, and institutions that permit a large number of investors to engage in risky activity.[15] However, his tripartite analysis is ungenerous to marine insurance, which has clear transaction-cost reduction implications in all three identified areas of innovation. Its predecessor forms were key to the avoidance of usury laws, and plainly were contributors to the free flow of capital from financiers to merchant adventurers. Premium insurance is a tool of capital management, in its role as a source of contingent capital for merchants suffering actual loss. The centralisation of the insurance trade was fundamental to its institutional development, as evidenced in the

seventeenth-century grouping of underwriters in Antwerp's bourse, the eighteenth-century development of Lloyd's Coffee-house as an underwriting venue for insurers and sea captains, and indeed in the early concentration of insurance activities in various port cities.

These concentrations supported developments in North's second cost-margin innovation, the circulation of printed information. The publication, as early as 1692, of Edward Lloyd's shipping newssheet *Ships arrived . . .*, and its successor *Lloyd's List*, provided significant advantage to marine insurers by creating a market standard for shipping information. This information was shared with the wider merchant community, to their mutual benefit. For those outside the underwriting community, numerous manuals intended to instruct merchants in the methodologies of trade were published from the seventeenth century. Many contain primers on the system for insuring. Finally for the third category, as North acknowledged, 'The conversion of uncertainty into risk obviously is reflected in the growth of marine insurance'.[16]

North argues that the necessity of using institutions to constrain interaction is best understood through game theory. This analytical framework assumes that commercial actors usually see benefits in cooperating with others when transactions are repeated, when mutual information is good, and when the community of traders is small. When these factors are absent, cooperation is difficult to sustain. Institutions can improve the environment, and may impose enforcement of the rules of the game which they comprise, thereby lowering transaction costs.[17] Insurance markets conform roughly with the game-theorists' ideal. In immature insurance markets which included few outsiders, the number of individuals involved was small, and contained a large overlap between buyers and sellers of insurances, many of whom were involved in both sides of the market for the long term.

North claims the advent of long-distance trade introduced new challenges into the game, such as those related to agency, remote negotiation, and enforcement, including 'protection of goods and services en route from pirates [and] brigands'.[18] Problems of enforcement are of special interest to NIE theorists, particularly as they relate to commerce. Solutions, North argues, include the employment of armed forces or the payment to local 'coercive groups' of protection money in the form of tolls. Enforcement was improved through standardisation of weights, measures, units of account, and media of exchange, and through the establishment of notaries, consuls, merchant law courts, and protected enclaves of foreign merchants. Continuing the circular argument of causality, North states that voluntary and semi-coercive bodies, perhaps

using ostracism as a tool of enforcement, 'enabled long-distance trade to occur'.[19]

Resort to authoritarian third-party adjudication was not always, and probably not often, the preference of merchants, nor was it necessarily the norm. Milgrom, North, and Weingast show that extrajudicial systems of dispute resolution operating under the Law Merchant can be effective mechanisms for ensuring the honest behaviour of trading partners, even in the absence of a centralised authority with wide jurisdiction to enforce contracts. Such systems may garner their success by enhancing the reputation-system of enforcement. Further, they do so in a cost-efficient way.[20] 'The commercial sector is completely capable of establishing and enforcing its own laws', Benson argues, stating that commercial law was made largely by the merchant community, despite governments' efforts to assume the role of commercial lawmaking. Merchant institutions became ever more effective in a Smithian 'spontaneous order' of evolution, such that commerce and commercial law have developed 'coterminously without the aid of, and often despite the interference of, the coercive power of nation states', because the evolving mechanism of merchant law developed before and alongside it.[21]

Early marine insurance markets neither enjoyed net benefits from institutional advantages established through state-sponsored enforcement mechanisms, nor, more importantly, suffered the limitations of their structure. Arbitration within the community of merchant-insurers was the preferred method of dispute resolution. Basic game theory assumes that all players are the same, but this is rarely the case. When the players have different interpretations of the rules, and particularly when their idea of winning the game is different from that of the majority of players – perhaps through cheating – extrajudicial enforcement systems may prove insufficient. Enforcement thus became a greater challenge when individuals from outside the regular merchant-insurer circle entered the market.

NIE proffers both simple and advanced explanations for the rise in formally adjudicated disputes, and for the subsequent development of new, state-backed enforcement institutions to resolve them. North argues that 'institutional evolution entailed not only voluntary organizations that expanded trade and made exchange more productive, but also the development of the state to take over protection and enforcement of property rights as impersonal exchange made contract enforcement increasingly costly for voluntary organizations which lacked effective coercive power'. Greif employs a comparison between eleventh-century Maghribi traders and Genoese merchants of the twelfth and thirteenth

centuries to illustrate the institutional impact of a division between societies which can be classified as either 'collectivist' or 'individualist'. In brief summary, in socially segregated collectivist communities, individuals' economic interaction takes place mainly with other members of his religious, ethnic, or familial group. The enforcement of commercial agreements occurs through informal institutions. In contrast, in individualist societies with an integrated social structure, trade is carried out by and among people from different groups. Enforcement is achieved through institutions such as courts, usually with the backing and authority of the monarch or the state.[22]

Greif focuses his exploration of the collectivist/individualist division on principal–agent relationships in international trade. However, the distinction is telling in the context of expanding insurance markets. Informal arbitration provided a satisfactory dispute resolution system while the insuring merchant community was 'collectivist', comprising a community of merchants that often acted as both underwriters and insureds, did so repeatedly (thus making reputation a critical asset to protect, as NIE dictates), and which used the marine insurance system to obtain the contingent capital necessary to operate with a margin of comfort sufficient to ensure that an unforeseen loss of a vessel or cargo would not mean ruin. However, the merchants' extrajudicial systems of enforcement, designed to ensure players adhered to the rules, proved inadequate when outsiders began regularly to participate in insurance markets.

The model holds when extended to further planks supporting Greif's argument. Collectivists are likely to be horizontally integrated; the mere description 'merchant-insurer' indicates this to have been the case, and evidence supports it. Collectivists can be forced to forego 'improper behaviour' through collective economic punishment; the London insurance community would exclude those who did not follow the rules, such as on 12 January 1779, when the subscribers to 'New Lloyd's Coffee House' agreed upon a new form of policy contract, and further agreed, 'That We will not Underwrite to any Person or Persons who may hereafter tender any Policy otherwise Printed'. Grief ascribes information-sharing as key to enforcement in collectivist societies, which has been shown above to be characteristic of the London merchant-insurer community. He further argues that 'the Genoese [in their transit to an individualist society] ceased to use the ancient custom of entering contracts by a handshake, and instead developed an extensive legal system for the registration and enforcement of contracts'. While Italian insurance policies were typically notarised, in order to give

them legal force, in London no such notary seal was applied, and thus 'there could be no remedy at law', at least according to legal theory. Finally, and perhaps most important for the relevant arguments of this volume, Greif states that in individualist societies contract enforcement is achieved mainly through specialised organisations such as the court, whereas collectivists prefer informal means of enforcement. As a result, the customary law that had governed the behaviour of Genoese merchants and insurers – the Law Merchant – ultimately was codified, and permanent courts were established.[23]

In practice, of course, the model does not always fit with historical experience. People usually defy sweeping categorisation, as was the case in insurance markets. Consider, for example, the case of the Quaker merchant James Claypoole, who traded in a variety of commodities in Europe and the West Indies in the time of Charles II, before leaving England with William Penn as a founder of Philadelphia. His letterbook, which survives for the years 1681 to 1684, reveals him to be astute and successful, but also willing to cheat customs officers and correspondents, and, when it suited him, to smuggle. He was quick to go to law, even with family members, but also employed reputational remedies and, when called, would go to arbitration. As a member of the Society of Friends (and not a passing one, he was treasurer of the Society at a time when many were imprisoned for their faith, and many died in prison) and of the close-knit London merchant community, he was plainly a collectivist. However, as a cheater in business and a frequent litigant, he was an individualist. In practice, though, he remained a market insider. This tension is apparent in his insurance dealings.[24]

Claypoole regularly purchased cover in London for, among others, his Lisbon correspondent, Richard Gay. He dealt through brokers, and thus was a member of the merchant-insurers' international distribution force. He had purchased £400 of cover for goods belonging to Gay en route from Hull to Lisbon on the *Swallow*, which sailed in late December 1681. However, events coincided to complicate the routine. By early March the *Swallow* was overdue. Gay, already in financial difficulty, was to return to England, then at Claypoole's suggestion to head to Ireland to hide from his creditors. In order to pay off some of these associates, Claypoole endeavoured to collect quickly the insurance indemnity due for the loss of the *Swallow*. He wrote to the creditors that 'tomorrow I am to dine with the insurers in order to agree with them, and I shall, if I can possibly, secure this money for your account [with Gay]'. He was planning an aggressive stance, and was willing to litigate. 'If no other way will do it, I intend to lay an attachment privately in your

names.' The dinner was a partial success. Some of the insurers attended, and agreed to pay £78 per £100 insured, within two months. Claypoole agreed to return the money if the ship arrived in Lisbon before the end of the following February, but, apparently unsatisfied with the wait (probably fearing others of Gay's creditors would get their hands on the insurance money first), Claypoole offered to accept a further 2 per cent reduction in exchange for immediate payment. The insurers, no doubt suspicious, refused this offer. Claypoole immediately sued. Soon after, the Lord Mayor placed an attachment of £1,000 on Gay's assets, potentially including the indemnity. By October Claypoole was satisfied that at least three of the insurers would pay him – one had already done so – but four more had 'joined with the attacher . . . so I lately arrested them, all four, and we are now on a trial'. In January 1682, he wrote to Gay to explain 'I have at length made a full conclusion . . . we see that the lawyers at last would get all if we went on, and we should have nothing to divide.'[25]

Despite these events, which cannot have endeared Claypoole to the insurers in question, he continued successfully to arrange insurances for his clients and correspondents around the world, and was not excluded from the market. The incident shows the difficulty in categorising merchants active in the insurance market as either collectivist, a group playing by the rules, or individualist, playing every-man-for-himself. Claypoole had all the characteristics of the former, but often behaved like the latter. Further, the market did not react according to Greif's framework. Claypoole was not roundly excluded from the community; he was neither ostracised nor blacklisted, and he continued to buy insurance. The story of Claypoole illustrates the limitations of applying NIE frameworks too broadly. Rigid, binary, theoretical divisions can result in misleading interpretations. Nonetheless, the broad model of New Institutional Economics is of some utility in the analysis of marine insurance markets.

Parallels in institutional development

As merchant-insurers in various markets grappled with the challenges presented by newcomers to their insuring communities, many parallel developments in institution-building occurred, and are highlighted in the chapters that follow. One such development was the codification of the customary practices of marine insurers. Various authorities, following those of Barcelona in 1484, sought to fix the rules of marine insurance, primarily to assist in dispute resolution, with varying degrees

of success. Dedicated insurance courts were sometimes created to enforce the rules, such as Amsterdam's *Kamer van Assurantie* (Chamber of Insurance) in 1598, and London's Court of Assurances in 1601.

Another common institutional development was the creation of state-sanctioned central bodies which were to act as registrars of all policies underwritten in the relevant market. The primary intention of such bodies was to prevent the relatively common fraud of obtaining multiple insurances which together vastly exceed the insured value of the vessel or cargo. Parties to unregistered policies would lose their rights to recourse to the relevant state's judicial system. In 1555 in Antwerp, the merchant Giovan Battista Ferrufini proposed the creation of such a registration office, which he was to control under his direction as registrar. About twenty years later in England, Thomas Gresham's factor Richard Candeler made a similar proposal to establish a policy drawing and registration office in London. Both individuals sought also to control the intermediation of marine insurance in their city as monopoly brokers. Again, such institutions met with limited success. Monopolies over broking appear to have been refused or unenforceable, and public registries revealed merchants' trade secrets to all who viewed them. Still, London's registry was relatively long-lived, and served to standardise policy language under a form in use until almost the present day.

The slow shift from individual underwriting to insurance by joint-stock corporate bodies is another key feature of the evolution of the institutions of insurance markets, one which began in the seventeenth century and gathered pace in the eighteenth, amidst arguments that they could provide better security and service than private underwriting. Companies were introduced successfully in England in 1720, but the market was limited to two, and private insurers were allowed to carry on their business. The same year, the first Dutch corporate insurer was launched in Rotterdam. In Italy, the birthplace of insurance, companies gained dominance in the second half of the eighteenth century, following state approval of their establishment. In the United States, corporate underwriting quickly displaced most private underwriting after independence, and thus national release from the restrictive British 'Bubble Act', which had prevented the formation of new corporate insurers. Private underwriting dwindled, but it lingered in many markets for many centuries, including at Lloyd's, where it continues, although that market too has, since 1996, been largely the preserve of corporate insurers.

In the chapters that follow, these and other institutional developments in the history of marine insurance are examined in detail. Scholarly English-language research into marine insurance markets has

enjoyed a resurgence during the past decade, following a fallow period lasting more than a generation. Legal historians have dissected insurance contracts, recognising their value as a reflection of the development of commercial law and the roles of the courts. Economic historians have considered the markets' institutional developments, focussing particularly on progress towards more efficient transactions conducted in more effective markets. Social historians have seen in marine insurance various windows to a greater understanding of state authority. This volume presents some of the best of this new research by scholars from various countries with long insurance traditions, who have together spent thousands of hours in the archives of Europe and America with documents relating to the rich history of marine insurance. Some of these records had never been consulted hitherto. Others have been revisited and reassessed by the contributors, leading to their new insights.

To set the stage, Luisa Piccinno provides a summary of the Italian origins of marine insurance, based primarily on Italian-language research. She places the appearance of premium insurance in Genoa, at the latest in the early fourteenth century during the commercial revolution. She shows how the new financial instrument displaced merchants' earlier tools of risk transfer, which were tied to the provision of trade capital. In the next contribution Andrea Abbattia continues this volume's exploration of the evolving institutions of marine insurance. He introduces a number of key themes which run through the study of marine insurance markets, and the debates which have engulfed the practice of the business almost since its invention. He traces the movement of the rules governing marine insurance in Italy from custom to law, and from private to corporate structures. He tracks and assesses state interventions into the various Italian city-states' insurance markets, and shows how new corporate structures ultimately overcame the limitations of traditional underwriting to become dominant. His chapter sets markets' efforts to meet the changing requirements of buyers against the desire for fixed rules supported by efficient enforcement systems. He notes how small, mutually dependent markets had obviated the need for stringent institutional controls. The need for such measures arose with the arrival of new market participants, which demanded greater public involvement in markets. Abbattia introduces a theme which arises from this challenge, and which runs through the essays which follow: the clash of mutuality and speculation. 'The market arose as an ideally closed framework, operating on a mutual basis, but which immediately suffered serious operational problems due to its rigidity

in the face of economic trends, and the imperfection of its intended reciprocity', he argues.

Dave De ruysscher carries forward analysis of this key debate in time and location, into the market of Antwerp in the late fifteenth and early sixteenth centuries. At its height, the city's insurance market possessed neither a deep tradition of marine insurance practice nor a practical regulatory framework. He shows how a lack of information-gathering infrastructure led underwriters in the city to take smaller risks under insurance policies, and to lower variability in premium rates than was common in other centres of underwriting such as Florence and Burgos, such that underwriting 'had as much to do with speculation as with risk assessment'. This he attributes in part to a 'structural divide between Antwerp's maritime trade and its insurance practice'. He shows that, as legal standards were developed and adopted by authorities, merchants projected a strong voice in their shaping.

Amsterdam followed Antwerp as the key centre of underwriting in Europe. It developed structures of enforcement and a unique Chamber of Insurance. There, as elsewhere, insurance regulation followed customary practice. Sabine Go explores the market's rise and decline, attributing the latter to its fragmentation. Divisions within the market led to the slow diminishing of its international importance, since it was not one community, but several with differing objectives. Even brokers were divided between regulation and practice, leading to a decreasing ability to innovate, Go argues. The constant theme of security also played a role in the decline of Amsterdam, as the market was 'unable to recognise the importance of the larger capital bases necessary to cover the growing average sums insured'.

Three chapters deal with the emergence and early maturity of marine insurance in Britain, and especially London. Rossi maps the arrival of insurance in England at Southampton, then identifies and follows the important shifts in the imported traditions which governed its practice during its 'short but extremely dense formative period'. He shows that the customs of Genoa gave way to those of Florence, and that as Italian influence diminished from trade in general, the London practice of insurance took its leads from Antwerp and Amsterdam. Ultimately a distinctive London insurance practice evolved, and was carried out in an open insurance market. This evolution was accompanied by confusion of jurisdictional primacy in insurance disputes. With the involvement of sympathetic state actors, organisational institutions for market governance were established, as the English government

'sought to encourage the establishment of local institutions to foster its main insurance market.'

Leonard explores the evolution of the rules governing practice in the London insurance market, finding a set of distinctive Law Merchant traditions which were reflected in policies and proceedings, and which changed with merchant experience and demand. He uses the language of insurance cases and policies to argue for the importance of a strong – if complex and multifaceted – Law Merchant which governed underwriting practice, and which ultimately was incorporated into the common law. Meanwhile the nature of the rules as an uncodified body of governing principles left them flexible and able to change with merchant demands, a fact recognised by the state, and one which contributed to the international success of London's insurance market. When rules and institutions were established under state authority, merchants took the lead in their design, since, in the words of Francis Bacon, English courts and judges 'have not the knowledge of [insurers'] terms, neither can they tell what to say upon their causes, which be secret in their science'.

Bogatyreva carries the London story forward in time to analyse, through the promotion and launch of corporate insurers in England in 1717–20, two questions which cut through this volume, and indeed through the history of marine insurance: is underwriting best conducted by individuals, or by companies? Is the correct motivation for underwriting the betterment of trade, and thus the nation, or the enrichment of individuals? She shows when and where these common questions first arose in the seventeenth century, and explores the arguments which surround them, especially through a detailed analysis of the 1720 parliamentary 'special report' into London's marine insurance market and its practices. In that incident, which ended with the grant of royal charters to two corporate insurers, Bogatyreva found that 'personal and royal enrichment, rather than the betterment of trade and the benefit of the nation' weighed most heavily in the debate over a corporate versus private underwriting. Despite many sporadic public airings, debates around these questions continued in the nineteenth century (and indeed until the late twentieth).

A large-scale experiment in corporate underwriting was made in Cadiz, coinciding with the wars of the late eighteenth and early nineteenth centuries. Baskes shows how an eruption of corporate structures erected for profit was driven to ground by the costs of wartime losses and scant controls on underwriting and shareholder participation, as 'catastrophic war years destroyed Cadiz's fledgling insurance industry'.

Heavy losses falling upon insufficiently robust balance sheets led to the downfall of this short-lived corporate insurance market, as too much risk was concentrated in the hands of too few underwriters. One result was state intervention to ensure the future strength of insurance companies. Kingston, in contrast, shows how armed conflict spurred the development of corporate insurers in America, as 'war created the impetus for institutional development and innovation, as American merchants sought to contain mercantile risks in order to exploit lucrative wartime trading opportunities'. The large-scale establishment of insurance companies from 1792 brought new institutions and improved financial stability, all of which helped the newly independent United States to break away from its reliance on English insurance underwriting.

The volume next offers an example of applied marine insurance history. Chet uses the metrics of underwriting to show how Atlantic waters did not become significantly safer in the eighteenth and even the early nineteenth centuries. Maritime predation continued, and was widely accepted as a normal activity. He shows that commerce raiding continued through the period, abetted by insurers' contingent capital backstop, because 'insurance insulated merchants from the financial toll of commerce raiding and eliminated incentives to avoid dangerous waters, sail in convoy, or invest in other defensive measures', such that insurance 'actually increased the prevalence of seizures at sea'. His research into marine insurance is further used to illustrate the limited reach of state authority into colonial peripheries. Many other such applications of marine insurance history remain to be constructed and conducted. It is the editor's sincere hope that this volume fosters and assists such explorations.

Notes

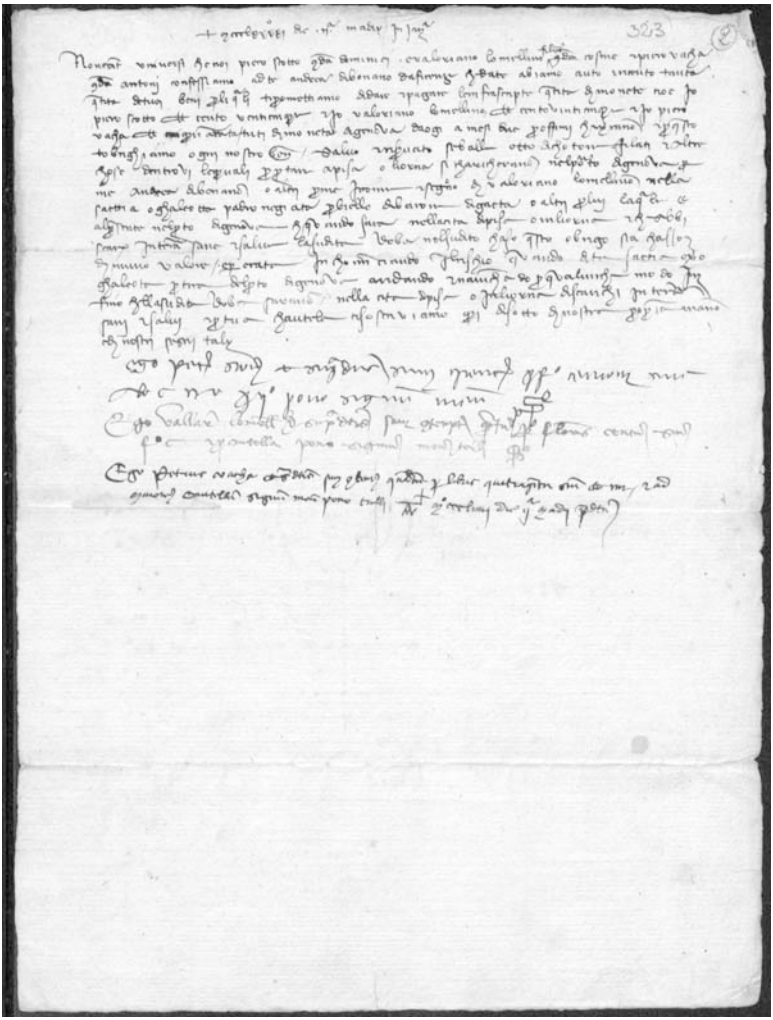
1. Technically speaking, uncertainty cannot be insured; only risks can be transferred through insurance. See Knight, Frank: *Risk, uncertainty and profit*, Boston: Houghton Mifflin, 1921.
2. Lloyd's rightly extends its birth to 1688/9, when the first known reference to Edward Lloyd's coffee-shop appears, but until a group of underwriters established institutional structures more than eighty years later, Lloyd's remained simply one place among many in London where marine insurance was transacted.
3. Emphasis in original. Leonard, A.B.: 'Underwriting British trade to India and China, 1780–1835', *Historical Journal*, vol. 55, no. 4 (2012), pp. 983–1006; Bayly, C.A.: *Rulers, townsmen and bazaars: north Indian society in the age of*

British expansion, 1770–1870, Cambridge: Cambridge University Press, 1983, p. 416; Bogatyreva, this volume; 'Additional Supplement to the Calcutta Gazette', *Calcutta Gazette; or, Oriental Advertiser*, 3 Mar. 1791.

4. For the seminal explanation of the idea of club goods, see Buchanan, James M.: 'An economic theory of clubs', *Economica*, New Series, vol. 32, no. 125 (1965), pp. 1–14.
5. Rossi, this volume, p. 139.
6. In translation. Braudel, Fernand: *Afterthoughts on material civilization and capitalism* (Ranum, P., trans.), Baltimore: Johns Hopkins University Press, 1977, pp. 49–56, 62–4.
7. Janeway, William: *Doing capitalism in the innovation economy*, Cambridge: Cambridge University Press, 2013, pp. 3–5.
8. Bindoff, F.T.: 'The greatness of Antwerp', in Elton, G.R. (ed.): *New Cambridge Modern History, Vol. II: The Reformation*, Cambridge: Cambridge University Press, 1965, p. 65.
9. For the analysis of insurance markets in an NIE framework, see, for example, Kingston, Christopher: 'Marine insurance in Britain and America, 1720–1844: a comparative institutional analysis', *Journal of Economic History*, vol. 67, no. 2 (2007), pp. 379–409; Ebert, Christopher 2011: 'Early Modern Atlantic trade and the development of maritime insurance to 1630', *Past & Present*, no. 213, pp. 87–213; Westall, Oliver: 'Invisible, visible, and "direct" hands: an institutional interpretation of organisational structure and change in British general insurance', *Business History*, vol. 39, no. 4 (1977), pp. 44–66.
10. North, Douglass: *Institutions, institutional change and economic performance*. Cambridge: Cambridge University Press, 1990, p. 105.
11. From 1990, when he abandoned his theory that price change prompted institutional change. North, *Institutions, institutional change*, pp. 7, 12, 57.
12. North, Douglass: 'Institutions', *Journal of Economic Perspectives*, vol. 5, no 1 (1991), p. 101.
13. Greif, Avner: 'Institutions and international trade: lessons from the commercial revolution', *American Economic Review*, vol. 82, no. 2 (1992), p. 128.
14. See note 1. North, Douglass: 'Institutions, transaction costs, and the rise of empires', in Tracy, James (ed.): *The political economy of merchant empires*, Cambridge: Cambridge University Press, 1991, pp. 26–9.
15. Ibid., pp. 28–9.
16. McCusker, John J.: *European bills of entry and marine lists: early commercial publications and the origins of the business press*, Cambridge, MA: Harvard University Press, 1995, p. 53; North, *Institutions, transaction costs,* p. 40.
17. North, *Institutions*, pp. 97–98.
18. Ibid., p. 100.
19. Ibid.
20. Milgrom, P.R.; North, D.C. and Weingast, B.R.: 'The role of institutions in the revival of trade: the Law Merchant, private judges, and the Champagne fairs', *Economics and Politics*, vol. 2, no. 1 (1990), pp. 1–23.
21. Benson, Bruce L.: 'The spontaneous evolution of commercial law', *Southern Economic Journal*, vol. 55, no. 3 (1989), pp. 644–61.
22. North, *Institutions*, p. 109; Grief borrowed the distinction from psychologists, citing Bellah, R.N. et al.: *Habits of the heart*, Berkley: University of California Press, 1985, and Triandis, H.C.: 'Cross-cultural studies of individualism and

collectivism', in *Nebraska symposium on Motivation*, Berman, J. (ed.), Lincoln: University of Nebraska Press, 1990. The collectivist and individualist division is succinctly expressed in Greif, Avner: 'On the interrelations and economic implications of economic, social, political, and normative factors: reflections from two late medieval societies', in Drobak, John and Nye, John (eds), *The frontiers of the New Institutional Economics*, London: Academic Press, 1997, pp. 57–94. For a criticism of Greif's approach, see Ogilvie, S. and Edwards, J: 'Contract enforcement, institutions, and social capital: the Maghribi traders reappraised', *Economic History Review*, vol. 65, no. 2, (2012), pp. 421–44, and Greif's reply.

23. Greif, *Interrelations and economic implications*, pp. 71, 74–6; GHL CLC/B/148/A/001, *Minutes of the Committee of Lloyd's*, December 1771–August 1804 (emphasis in original); Jones, W.J.: 'Elizabethan marine insurance: the judicial undergrowth', *Business History*, vol. 2, no. 2 (1970), p. 55.
24. A heavily edited selection of Claypoole's letters has been published. Balderston, Marion (ed.): *James Claypoole's letter book, London and Philadelphia, 1681–1684*, San Marino, CA: Huntington Library, 1967; Harris, Tim: *Politics under the later Stuarts: party conflict in a divided society, 1660–1715*, London: Longman, 1993, p. 179.
25. Balderston, *Claypoole's letter book*, p. 136 ff.



Policy dated 2 May 1391, underwritten in Genoa, valid for two months. The insured is the firm Datini, on import of cotton yarn and other goods, valued at 300 florins, shipped from Genoa to Pisa-Livorno on the *Saetta* or *Galeotta*. The three individual insurers have signed their commitments directly below the policy wording, making them 'under-writers' or 'sub-scribers'. State Archives of Prato, Datini 1160 cod. 323

2

Genoa, 1340–1620: Early Development of Marine Insurance

Luisa Piccinno

Marine insurance is probably the oldest financial instrument intended solely to protect against the impact of fortuitous commercial losses. Its origins and early development have been debated by scholars for more than a century. Some have argued that the ancient Phoenicians and Greeks protected their maritime enterprises through systems of loans with a risk-transfer element. More ambiguous contracts which transferred the risk of oceangoing trade have also been identified. From very early on in the development of these instruments, states paid attention to such arrangements. Among the earliest evidence of state interest in such contracts is a Roman edict of the year 533, during the reign of Justinian.[1] Conversely, other authoritative scholars argue that insurance in its modern form was unknown in the ancient world.[2]

Inarguably, however, it was during the commercial revolution of the late middle ages that conventional premium insurance – characterised by the advanced payment of a fee to a third party who, in exchange, assumes a portion of a foreseeable risk, under a contract unconnected to any advance of capital – was finally developed as a tool to transfer risk. This set of commercial developments was led by Italian cities, where new economic, political, and social processes were just beginning.[3] A large number of works published between the end of the nineteenth century and the first decades of the twentieth, most by legal historians, explore insurance in this context. They are to be credited for having brought to light the early documents which can be considered, more or less directly, as marine insurance contracts.[4]

One of these historians, Giuseppe Valeri, included in his work a comprehensive bibliography of such studies of the origins of marine insurance, together with a summary of differing opinions about its development. Among them the work of Enrico Bensa, a Genoese legal

expert and law professor, is a milestone. Published in 1884, it has paved the way into insurance history studies. Notably, Bensa did not just analyse the documents he found in the State Archives of Genoa, which allowed him to trace the origins of the modern marine insurance contract back to the early decades of the fourteenth century. He extended his investigations to the economic milieu characterising a time when 'the Latin maritime cities had stronger and wider commercial power'.[5] It was this mercantile development which sparked the commercial revolution, which saw the invention of bills of exchange and other credit instruments, double-entry bookkeeping, and the development of commercial credit and banking. Italian merchants' rising importance in overseas and transalpine trade also led to their development of modern marine insurance.[6]

Marine risk and the commercial revolution

The commercial revolution occurred between the final decades of the thirteenth century and the beginning of the fourteenth, while the older Champagne fairs and the long-standing caravan trade gradually lost importance. These critical institutions of European trade were replaced by a new form of business organisation, in which sedentary merchants were the key players. They began to manage their businesses from head offices, entrusting correspondents, partners, and carriers to accompany their goods and maintain contact with foreign customers. Meanwhile inland trade between the Mediterranean and northern Europe lost importance, in favour of marine routes. This change was supported by several innovations in maritime transport, such as the introduction of single, stern-mounted rudders in place of paired side-rudders; the popularisation of the compass; the spread of nautical charts and portolans; and the introduction of single-masted, square built cogs (or *cocca*) into the Mediterranean, following the use of the *kogge* in northern seas. Further, from the fourteenth century the transport by sea of less valuable products was supported by the introduction of variable freight rates calculated on the value of cargo, and by the employment of larger vessels, leading to an overall growth in maritime traffic.

Alongside this, the entrepreneurial skills of the new, sedentary merchants, who needed new forms of contracts to guarantee their investments and govern mutual relations, were fully apparent in maritime trade. While perhaps less evident than innovations in transportation, new business practices were certainly no less important. These include all the institutions and techniques involved in the exchange of goods

and money, and in facilitating the movement of capital. The late medieval economy was characterised by a constant shortage of money, which was only partially offset through devaluations brought about by reductions in the precious-metal content of circulating coins. For example, between the mid-thirteenth century and the end of the fifteenth, Milan's *lira* was depreciated by 90 per cent, Genoa's currency by 80 per cent, and that of Venice by 70 per cent. A more or less similar rate of devaluation occurred in most other European currencies.[7] An alternative way to meet the growing demand for money driven by expanding trade, particularly long-distance trade, was to increase the velocity of the circulation of money through the introduction of new credit instruments. Innovations in this area were initially developed in northern Italy, especially in Tuscany and Genoa.[8]

Alongside new mechanisms for the advance of capital, the ability to share and transfer risk became a key backstop of merchant activity, capital exploitation, and the promotion of economic growth and wealth. Maritime trade was a dangerous proposition during the middle ages. Risks arising from natural events and human actions – from storms and rough weather to warfare and piracy – had to be considered and contained by merchants, who daily faced the serious financial threats of shipwreck, cargo loss, and damage to goods in transit. These risks could be mitigated, managed, or transferred. Mitigation involved avoidance, for example by staying out of pirate-infested waters. Management took many forms; one common practice was to divide cargoes between multiple vessels. Sometimes the ownership of vessels themselves was usually divided into shares (*carati*), to distribute the burden of risk among several individuals.[9] Modern marine insurance, also known as premium insurance, falls into the third category: transfer. The mechanism was and remains a contractual agreement (a policy) struck with a third party or parties (underwriters) who agree to assume a portion of specified risks to vessels or cargoes in exchange for a fee (the premium) calculated as a percentage of the total amount of the indemnity (the sum insured) to be paid in case of an insured loss.

Pre-insurance pacts

Before this type of insurance contract existed, merchants tended to board the ships on which their cargoes were carried. If an incident occurred, they would often lose their lives as well as their goods. Moreover, such merchants usually did not expend their own capital on cargoes, but instead were totally or partially financed by a

non-travelling, or sedentary partner who retained the risk of losing the investment. In effect, the sedentary partner became an equity investor in the adventure, but with limited liability, under a partnership called *commenda*. The sedentary investor, known as the *commendator*, advanced capital to a travelling merchant, known as the *tractator*. The main feature of this relationship was the *commendator*'s limitation of his risk to only the capital advanced, since he was not liable for any additional losses. The contract ended upon the merchant's return, when profits were distributed. When the merchant contributed only his commercial acumen, the partnership was known as a *unilateral commenda*, and the *commendator* typically received three-quarters of any profit, and the *tractator* the rest. A later form, the *bilateral commenda*, saw the merchant himself invest personal capital into the venture, and receive a higher percentage of the profits.[10]

The *commenda* was generally used in overseas trade, and flourished across Europe after its introduction by Italian merchants. Its success is attributable to its useful matching of capital and merchant entrepreneurship. Under such partnership contracts the financial risk was shared, but they did not provide a solution to the need to transfer the risks of maritime voyages. To address this, merchants adopted new financial instruments such as bottomry loans and maritime exchange contracts, which afforded some protection against these risks (as modern marine insurance was later to do more efficiently). However, merchants had to deal with the Church's condemnation of usury. In this initial phase of the evolution of marine insurance, contracts typically did not specify a payment of premium for transferring risk, which could be seen as an interest payment. One key difference between these 'pre-insurance pacts' of the era and later insurance policies is that under the latter, the amount of the risk premium was clearly stated.[11]

Interest-bearing loans were widely used during the early middle ages, but met with growing opposition from the Church, which branded the practice illegal. Its total ban of lending at interest, in place until the twelfth century, was justified by a theological argument based on fraternity and natural moral law. As economic life began to evolve more rapidly, especially in the Italian city states, the commercial revolution advanced an increasing demand for money that could not be fully met by circulating bullion-based currency. Thus, recourse to loans with interest grew in spite of the canon-law ban, and was accompanied by an increased pressure to abolish or skirt usury restrictions. A long process of legitimisation began, which continued well into the seventeenth century.[12]

Under a pre-insurance pact known as *foenus nauticum*, an investor would lend a sum of money to a travelling merchant with the provision that the loan, described as a sea loan, would be repaid only upon the safe arrival of the ship in port. If the ship failed to put in, the borrower had no further contractual obligation to the lender, who thus carried the sea risk. The lender's profit was the difference between the amount of the loan granted and the amount repayable upon the safe arrival of the vessel.[13] This difference was justified as compensation for the risk transferred, but looked also like interest on the advance. The contractual structure thus attracted suspicion of usury, and was condemned by Pope Gregory IX in 1236.

Use of the *foenus nauticum* declined in the thirteenth century in favour of the maritime exchange contract, *cambium nauticum*, which was not affected by Church restrictions, probably because it was not classified as a *mutuum*, or loan for consumption.[14] The *cambium nauticum* was a variant on the bill of exchange, or *cambium per litteris*, which was by this time widely used. The instrument allowed merchants to settle transactions over long distances without the physical transfer of money, and camouflaged interest-bearing loans with exchange-rate gains. The *cambium nauticum* differed in that repayment depended upon the safe arrival of the ship or cargo. The sum advanced by the lender in local currency was repayable abroad in a different currency. The rate charged included both a risk premium and interest, but the former masked the latter.

Both the *foenus nauticum* and the *cambium nauticum* had the significant disadvantage of requiring the merchant to borrow the money to obtain risk transfer, whether he needed it or not, and to pay interest (disguised or not) for its use. Moreover, as underlined by Florence De Roover, while the *foenus nauticum* was repayable at the end of a return voyage, the *cambium nauticum* required the lender to appoint a representative abroad to collect the amount fixed in the contract, and thus demanded a more complex, international business organisation.[15] *Bottomry* loans constituted a similar arrangement, but had a different purpose. Such loans were obtained by shipmasters (but repayable by vessel owners) for fitting before sailing, to pay crew salaries, or for repairs in a foreign port, with the vessel itself (the *bottom*) staked as security, in a transaction akin to a mortgage. As with the sea loan structures described above, loans at *bottomry* were repayable only when the vessel safely reached its final destination, when the lender received repayment and the agreed interest.[16]

Merchants later experimented with a new type of contract, the so-called 'insurance loan', which offered a partial coverage against risks,

and contained several elements of modern insurance. The lender, always a shipowner, advanced funds to the sedentary shipper. The loan was repayable upon the safe arrival of the unaccompanied goods at their final destination, rather than upon the safe arrival of the ship. If the goods did not arrive, the ship owner would lose both the principal loaned, and the freight, which provided improved protection to the borrower, because goods could be lost (if, for example, taken by commerce raiders) even when the vessel arrived safely. Further, if the borrower's goods were sacrificed by the captain for the common safety of the ship and the rest of the cargo, the loss would be shared between all the parties involved in the voyage, in compliance with *general average* rules.[17] According to Riniero Zeno's research into notarial records of Palermo, the earliest extant example of an insurance loan contract dates to 1287. Zeno published a series of documents issued between that year and 1337 which clearly demonstrates that the purpose of these agreements was to shift partially or totally the marine risk from the shipper to the shipowner, or from the borrower to the lender, but not yet from the owner of the goods to third parties, who later would be called underwriters.[18]

Thus, as Bensa pointed out, the risk-transfer element of pre-insurance pacts was not a discreet instrument, nor did it incorporate the distinctive features of modern insurance, both of which may have raised doubts about its legitimacy. Questionable elements were concealed within contracts so as to safeguard the involved parties' interests. No discrepancy existed between practice and jurisprudence, since both pursued the same objectives, but instead these instruments involved a process (advanced by contemporary professors of law) of the adjustment of legal theory to a rapidly evolving commercial environment. As stated by the legal historian Francesco Schupfer, it was 'customary in those times to resort to ancient law to legitimise new things. And it was necessary to do so, to let these new things come true'.[19]

The emergence of modern insurance

The growing use of bills of exchange, especially in foreign trade, created the need for a new type of contract, one under which risk transfer, rather than the advance of capital, became the main object of the agreement. Both merchant bankers (who primarily employed borrowed funds) and debtors were sometimes unwilling to retain marine risk. Modern marine premium insurance, a risk-transfer instrument disconnected from borrowing, emerged in response. It is difficult to pinpoint exactly where

and when this first happened, but no doubt remains that it was at latest early in the fourteenth century, at the hands of the Italian merchants of the peninsula's independent city states. Marine insurance appears to have developed independently in several of them at about the same time, as knowledge of new practice moved relatively swiftly from port to port, but they operated initially without standardised legal forms or procedures.

According to some scholars, Genoa deserves credit as the place where the first premium insurance agreements were struck. From the late thirteenth century Genoa was the most dynamic trade centre in the Mediterranean, thanks to its port and to several important families of merchants and bankers residing there. Its position of commercial importance, despite some ups and downs, continued for several centuries. Banco di San Giorgio, one of the first public banks in Europe, was established in the city in 1408 to meet the need for financial instruments to support Genoa's burgeoning volume of oceangoing trade. The oldest marine insurance policy so far unearthed in the world's archives was issued in Genoa on 20 February 1343, in support of the same trade.[20]

True to the city's spirit of initiative and entrepreneurship, a good proportion of the population was ready to share in the financial risks and potential gains of insuring, and even the most prominent families sometimes invested their capital in underwriting. Notarial sources from the late fourteenth century to the turn of the fifteenth provide evidence of a gradually internationalising insurance market. Extant insurance agreements drawn up by notaries, and later by brokers, specify not only Genoa, Savona, and other Ligurian harbours as the ports of departure and arrival of insured vessels and cargoes, but also marine risks originating in ports as far away as the eastern Mediterranean and the western Atlantic. Genoese underwriters are prominent among those who assumed the risks.

The thorough research of Federigo Melis, who examined approximately 260,000 deeds executed between 1340 and 1460, has identified four main phases in the development of Genoa's insurance market. The first is represented by early documents, including the 1343 deed first noted by Melis himself, to the one identified by Bensa, dated 2 September 1347. These documents are insurance agreements in disguise, issued as components of non-interest-bearing loans (*in mutuo gratis et amore*). Giulio Giacchero, in his reconstruction of the history of insurance, described these agreements as 'reversed mirror images'. Under each, an interest-free loan was recorded as having been advanced to the third-party risk-bearer, who would return the cash should a

loss occur. Thus, the party undertaking the risk appeared to be the beneficiary of a loan.[21]

For example, a notarial deed dated 9 March 1350, concerning a shipment of alum from Genoa to Bruges, shows the underwriter to have been the merchant Nicolò Cattaneo, a member of an aristocratic family. The agreement states that Cattaneo had received 250 Genoese *lire* from the insured, Matteo Ardimento, and that this amount was to be repaid if the shipment failed to reach its final destination safely. However, if the voyage proceeded safely, the obligation was to be annulled. A further clause stated that if the goods were forwarded to Lisbon, Cattaneo would bear all risks.[22] The important difference between the language of this Genoese contract and its execution is that the initial advance was never made. No mention of a premium is made in the contract, but Cattaneo must have received some consideration for the risk he took on. Clearly enough, this arrangement is a nascent insurance contract, although disguised as a loan.[23]

During the second phase, risk-transfer contracts were drawn up by notaries to reflect more closely the underlying risk-transfer transactions, although they still involved a feint. Rather than recording a sham loan, second-phase agreements were drafted in the form of a contract of sale (*emptio venditio*). The insurer appeared as the buyer of the cargo, and the insured as the seller, but the purchase was conditional upon the successful completion of shipment: the underwriter promised to buy the subject goods only if they failed to reach their destination port. These contracts introduced an important characteristic of modern insurance: that of salvage rights. In cases of loss, after payment of the indemnity the insurer became the legal owner of the goods insured, and could salvage them if possible. According to Melis, the earliest known deed of this nature was drawn up in 1362 by the notary Teramo Maggiolo. This form of risk transfer quickly became popular, perhaps because it offered broader guarantees to the underwriter, limited the risk of fraud, and was less likely to fall under suspicion of usury. It was employed until the beginning of the sixteenth century.[24]

A particularly interesting example of the application of this new form of contract is a deed drawn up by Maggiolo on 15 September 1393. It confirms several new features of the quickly evolving Genoese insurance market. The subject of the insurance was a cargo of goods valued at one thousand gold florins, which was to be shipped from Aigues Mortes to Ephesus (Rhodes). Owing to the large sum of money involved, ten individuals – eight from Genoa and two from Florence – shared in the risk. Each made the pretence of buying an equal share of the goods,

together with their actual owner, Federico Vivaldi. The purchase was to be completed only in the case of an incident leading to the loss of the cargo. However, no consideration was to be paid if the vessel of carriage arrived safely in either of two specified ports. As was customary in this second phase, no mention was made of any premium paid, nor was any precise information provided about the cargo or the identity of the vessel.[25] The contract is among the first to illustrate a provisional association of underwriters to share in a large risk, and is further noteworthy for the concurrent participation of underwriters from more than one commercial centre. Such associations paved the way to future forms of underwriting designed to meet challenges arising from evermore intense trade involving risks too large to be borne prudently by a single merchant. Further, the presence of the insured as a risk-sharer marks the advent of retained co-insurance, a common feature of future contracts (as, for example, *abatement* or *deductible*).

During this phase the deeds drawn up by Genoese notaries were exclusively in Latin, while the use of Italian was already popular in Tuscany. Most contract wordings are concise, and include few details about the agreement. Instead, additional details were sometimes specified in private side agreements, for reasons unknown. In other places insurance was transacted more openly. For example, Melis recorded a deed drawn up in Palermo on 15 April 1350 to cover the shipment of a cargo of wheat from Sciacca to Tunis. The clearly stated purpose of the deed is the insurance of the cargo, worth 300 gold florins and owned by Benedetto Protonaro of Messina. The underwriter, a Genoese merchant named Leonardo Cattaneo, received a premium of 54 florins, 18 per cent of the insured value.[26]

It is not plausible to assume that Genoese notaries and merchants were slow to underwrite openly due directly to the Church's ban on usury. Instead, their cautious approach is likely to have been driven by commercial necessity. This assumption is supported by the evidence of an ordinance issued by the fourth doge of the Republic of Genoa, Gabriele Adorno, on 22 October 1369. The pronouncement, *Contra allegantes quod cambia et assecuramenta facta quoviscumque cum scriptura, vel sine, sint illicita vel usuraria*, clearly targeted all those who attempted to evade their commitments by refusing to recognise the legality of exchange and loan agreements, and consequently of insurance contracts. Adorno's ordinance set out fines for all those who maliciously or dishonestly attempted to exploit the ambiguous nature of contracts which were intended in part to circumvent usury regulations. In the opinion of the *doge*, strict application of canon law prohibiting

usury was bound to paralyse trade in a city renowned for its merchant activities, and thus to damage not only merchants, but the entire population.[27] Conceivably, in other cities in the absence of such an ordinance, the solution to malfeasance was to abandon ambiguity and embrace more clear-cut contracts.

By the end of the fourteenth century insurance had developed, more or less concurrently, in several different Italian cities, but practice and contract forms were not yet standardised. As Andrea Addobbati points out, a plain distinction may be drawn between the ways that contracts were drafted in Italy's various underwriting centres. On one hand was the stricter and more conservative Genoese approach, followed in Naples and the Sicilian ports, where only notarial deeds were deemed to be valid, and the practice of concealing insurance beneath a contingent sale agreement persisted longer than elsewhere. On the other is the approach of Pisa, Florence, and Venice (which later spread further afield), where insurance contracts, drawn up in the vernacular by brokers, were openly finalised.[28]

Melis's third phase of the evolution of insurance occurred in the final decades of the fourteenth century. Basic practice was by this time fully developed, and usage increasing constantly. Genoa, however, remained different, with its particularly rigid approach. As well as retaining the contingent sale form and employing notaries to prepare contracts in Latin, Genoa at some point in the 1370s prohibited the insurance of foreign vessels and their cargoes. Infringement was punished by heavy fines and invalidation of the agreement.[29] The prohibition, which was also introduced under statute to Florence in 1393, was driven by strict protectionist policies and concerns over capital flight. The business of merchants in both cities stretched well beyond their respective dominions, allowing them access to underwrite through agents residing abroad. The proscriptions thus meant the elimination of fat profits, but the governing bodies of Genoa, and later Florence, declined to mitigate or abolish the restriction until after the turn of the century. Genoa formally abolished its prohibition under an ordinance of 23 January 1408, although a formal ban on insuring vessels and cargoes sailing beyond Gibraltar remained. It was intended to protect Genoese merchants from the challenges of adjusting claims arising at such a distance, but this ban too was soon lifted, in about 1420. Initial liberalisation did not occur in Florence until 1439, and took decades to completed.[30]

In spite of the restrictions, insurance was broadly popular by the end of the century, and was beginning to be employed outside maritime trade, wherever there was a risk to be transferred and a merchant willing to take a chance. This popularity led to Melis's fourth stage, lasting

a hundred years from the beginning of the fifteenth century. During this phase, the institutional structure of marine insurance began to be formalised. Regulation was codified, and market structures more fully developed.[31] In the first decades of the century in Genoa, the importance of notaries began to wane, and standardised contract wordings were introduced. Under a new law promulgated in August 1434, in the wake of increasing use of private agreements, rather than notarial deeds, brokerage was for the first time recognised as a profession, and brokers were formally authorised to draw up marine insurance contracts.[32] Pre-drafted contract forms were gradually introduced. These documents left blank fields for details specific to the policy, including the name of the insured, the vessel's features, the value and volume of the goods aboard, the ports of lading and arrival, the premium paid, and the risk-sharing percentage of each underwriter.[33]

Despite these developments, the professional expertise of notaries remained important, and prevailed for some time. Some merchants appear to have favoured the services of specific notaries, even though they cannot be considered to have been insurance specialists. Melis identified four Genoese notaries (out of 75 known to have been active between 1390 and 1431) whom, he believed, had cornered the insurance side of their business: Andrea Caito, Teramo Maggiolo, Giuliano Canella, and Branca Bagnara. The first three executed the notarial deeds of the Genoese branch of Francesco Datini's trading operations from 1392 to 1400. Branca Bagnara's work was even more significant. According to Renée Doehaerd, Bagnara played a leading role in the insurance of shipments into the Atlantic.[34] However, Doehaerd's opinion, which is based on documents issued during 1427 and 1428, has been challenged as farfetched by other scholars. Among them is Jacques Heers, who not only considers this alleged specialisation to be an unacceptable assumption, but also questions the use of notarial deeds to investigate Genoa's insurance market. In his opinion, the available documents account for only a minimal portion of a much bigger insurance market.[35] Their representativeness may indeed be limited, but the value of this comprehensive, detailed, and extant source – although clearly not exhaustive – is critical to understanding how the Genoese insurance market was organised in the fifteenth century, especially in the absence of other primary sources.

Genoa's insurance market at the beginning of the fifteenth century

Despite the differences described above, marine insurance practice in Genoa was in other ways the same as anywhere else. Deals would

normally be closed at the Piazza or the Bourse, as with other financial transactions. A broker would first collect orders from those wishing to be insured, then identify and contact prospective underwriters. If the risk to be covered was particularly valuable, this operation might take several weeks, since the number of underwriters on a policy depended on the amount to be insured. The economic calculation underwriters seem usually to have considered was another constant. In order to contain the consequences of possible claims, they practised diversification. The total amount each individual was ready to insure across all policies underwritten was distributed over multiple vessels and routes.

Many enduring customary practices were also established by this time. Contracts typically specified that underwriters assumed all of the various risks arising from all types of perils, until the safe arrival of the insured goods (sometimes specified, but often described simply as *carico*, cargo). Underwriters were then released from all obligations under the policy. If no news of a cargo had reached underwriters for at least six months, the insured property was considered lost, and indemnities were normally paid within two months. If such a delayed cargo eventually did reach its destination, the insured was required to return the money paid to cover the claim. It was more common for vessels to be lost through acts of piracy than through accidents or bad weather, but policies covered equally the risks of *gentium* and *maris* (of man and the seas). Further, under some policies – but not in all cases – underwriters would explicitly cover the agency risk of bad faith on the part of the vessel's captain, or *barratry*. Other risks were excluded, such as damage arising from negligent packaging, or seizure by authorities due to false statements made or unpaid customs duties.[36]

An understanding of supply and demand in Genoa's early fifteenth-century insurance market can be gleaned from surviving deeds drawn up by Bagnara. Giulio Giacchero examined these documents for the period 1427 to 1431, and found that notarisation of policies in Genoa's market was concentrated in Bagnara's hands.[37] The record includes 2,471 deeds, which confirm Bagnara's absolute leadership during these five years, when 26 further notaries active in Genoa played only a marginal role in marine insurance: together, they drew up only about three dozen relevant deeds. At this time the use of *apodisie* – private agreements drawn up by brokers – was already relatively common, but probably remained limited relative to the huge amount of work carried out by Bagnara.

Bagnara's deeds provide significant evidence of the large and dynamic volumes of business transacted in the Genoese market during this five-year period. Underpinning this activity were the huge amounts of

capital which the city was able to mobilise. According to Bensa, thanks to the great development of trade at the port of Genoa, the city had become the world's busiest insurance centre, probably because of the high degree of freedom – more de facto than de jure – enjoyed by traders in this speculative branch of business, where both merchant and financial interests met. Bagnara's massive share of the notarial component of the market during the period suggests he had been selected, informally or officially, by the Genoese to take on the role, as occurred in later times in other insurance centres. Such an appointment could have strengthened his clients' confidence in their insurance arrangements and avoided fraud perpetrated through the acquisition of multiple insurances on the same vessel, and certainly would have led to a level of specialisation rarely found in other professional contexts at this time. Bagnara continued his work until 1446, but the number of deeds he drew up annually in the final fifteen years of his activity decreased significantly: only 140 dating from the later period have been found. By this time merchants had begun to deal more often through brokers, who gradually replaced notaries in the drafting of insurance agreements.[38]

Bagnara's deeds reveal the large number of buyers and sellers of insurance active in Genoa: 432 underwriters and 748 insureds, excluding 82 underwriters and 387 insureds whose names are illegible due to the poor condition of the documents in question. Of these, 206 individuals acted as both underwriters and insureds, for a total of 973 individuals active in marine insurance, nearly 2 per cent of Genoa's population of approximately 50,000. The total sum insured under the policies was 987,000 Genoese gold florins, or about 197,000 florins per year. Each florin contained 3.527 grams of gold, for a total insured value over the five years of 3,481 kilograms of gold. At the time wheat sold at an average price of about three *lire* ten *soldi* per *mina* (90.985 kg),[39] so the overall value of the completed insurance contracts drawn up by Bagnara, when measured in this staple commodity, was about 32,000 tons of wheat. The value of each contract ranged from 8 to 5,000 florins, with an average of 399 florins. The most common insurance policies provided cover of 100 florins (331 contracts), while those contributing the most to the total were for 1,000 florins (115). The sum insured was less than or equal to 600 florins for over half of the contracts, and less than 1,000 florins in three-quarters of them. While contracts above this value were relatively few (124), they accounted for 20.77 per cent of the total insured sum.[40]

The 432 underwriters identified in Bagnara's deeds were a diverse group (Table 2.1). Some individuals underwrote risks casually; others were members of wealthy aristocratic families operating on the

Table 2.1 Classification of known Genoese underwriters based on sums insured, 1427–1431

Total risk assumed per individual	Number of underwriters	Total sum insured (florins)	%
Up to 999 florins	244	65,022	6.64
from 1,000 to 4,999 florins	132	322,461	32.92
from 5,000 to 10,000 florins	40	291,025	29.71
above 10,000 florins	16	301,057	30.73
Total	*432*	*979,565**	*100.00*

Note: *7,420 florins was underwritten by 82 unknown individuals, bringing the total value of all contracts to 986,985 florins.
Source: Giacchero, G.: *Storia delle assicurazioni marittime: L'esperienza genovese dal Medioevo all'età contemporanea*, Genoa: Sagep, 1984, p. 70.

Table 2.2 Prominent Genoese underwriters, 1427–1431

Name	Total sum insured (florins)
Antoniotto Italiano	42,986
Tobia son of Ilario Usodimare	26,306
Quirico son of Raffaele Spinola	25,310
Raffaele son of Melchiorre de Marini	25,090
Giovanni son of Odoardo Grimaldi	21,343
Pietro son of Antonio de Mari	20,848
Marcellino Grillo	18,794
Antonio Carbonara	17,254
Ambrogio Grillo	16,358
Gaspare Goffredo Lercaro	15,446
Giovanni son of Alberto Grillo	13,865
Antonio son of Oberto Spinola	13,313
Ciriaco Oliva	11,355
Filippo Clavaricia	11,062
Jacopo Negrone	10,966
Francesco son of Cristiano Cattaneo	10,761
Total	*301,057*

Source: Giacchero, G.: *Storia delle assicurazioni marittime: L'esperienza genovese dal Medioevo all'età contemporanea*, Genoa: Sagep, 1984, p. 70.

international financial markets, and underwriting insurance on a regular basis. The latter group comprised 16 individuals who together offered total cover of approximately 300,000 florins over the half-decade, 30.73 per cent of the total value of Bagnara's deeds (Table 2.2). Each assumed aggregate risk ranging from 10,000 to 43,000 florins.

Among the occasional underwriters, 120 participated on only one risk during the five-year period; the remaining 312 did so on average seven times per year. A middle group included individuals who often underwrote risks jointly with others, implying a passive investment which diversified their financial activity.

The contracts make clear the market's strong tendency to split insured risks into a high number of small shares, even when underwriters possessed hefty financial resources. Contracts backed by only a single underwriter numbered 577 out of the sample of 2,471. On average 4.53 underwriters backed each policy, but some were supported by up to 50 insurers. The typical value of each line on policies was 50 or 100 florins, or multiples thereof, to ease calculations.[41]

The practice of dividing risks into multiple small lines is confirmed by contracts underwritten by Antoniotto Italiano, undoubtedly the leading Genoese underwriter of the day. During the five years in question he underwrote 367 shares with values ranging from 20 to 500 florins, and an average value of approximately 117 florins per contract. He was the sole underwriter of 45 contracts, of which the maximum sum insured was 200 florins. Most often, however, others participated with him, usually taking shares below 100 florins, but in two cases up to 500 florins. His signings peaked in winter months (189 contracts out of 367), when a slight increase in insurance demand can be observed, due to worse seasonal weather and sea conditions. Routes insured were diverse, typically departing from Genoa to reach other Tyrrhenian ports, as well as destinations in France, Spain, the Atlantic, the eastern Mediterranean, and North Africa. Voyages which did not touch at Genoa were sometimes covered, for example between Bruges and Naples, Bruges and Chios, or Southampton and Malaga. In these cases, however, the insured, and often the vessel, were Genoa-based.[42]

The 748 identifiable insureds named in Bagnara's deeds together entered 2,083 insurance contracts, or 2.20 on average over the five years of the notary's peak activity. Of them, 421 individuals insured only once, usually for small amounts. Only 34 were insured for more than 1,000 florins. When those who purchased from two to five contracts are included, the group of buyers accounts for about 88 per cent of all insureds, but for 46.56 per cent of policies by value. Over the period 54 insureds purchased six to ten policies (19.02 per cent of the total value), while 34 purchased cover on more than 10 occasions (34.42 per cent). These frequencies reveal a market comprising a multitude of small merchants resorting to insurance only occasionally, with a few regular users.[43]

Demand came from several sources. Many shipowners possessed only a fractional share of one or more vessels, ownership of which was usually divided into 24 *carati*. Each insured their shares independently. Many merchants from elsewhere in Liguria or further afield purchased goods in Genoa, and insured them there before shipping. Some requests for insurance came from brokers acting on behalf of merchants based in other cities. The majority of enterprises in Genoa and other port cities were small- or medium-sized, in contrast to Florence and other inland commercial centres, where much bigger enterprises operated, and required a different insurance market structure.

The largest insurance buyers (Table 2.3) include many members of Genoa's aristocracy, illustrating their leading role in trade and their marked tendency to diversify their business activities. The quantum of cover purchased by these insureds comprises a significant share of the local insurance market. However, many merchants in Tuscany purchased even more cover on an annual basis, reflecting the larger enterprises based around Florence.[44]

Bagnara's records do not reveal the premiums paid to insure risks. The earliest-known Genoese notarial deed to do so is dated 4 November 1459, and relates to the insurance of a shipment of alum from Genoa to Barcelona at the rate of 4 per cent of the sum insured.

Table 2.3 Leading insurance buyers in Genoa, 1427–1431

Name	Number of policies	Total sum insured (florins)	Annual average Insured (florins)
Battista son of Giorgio Spinola	37	28,125	5,625
Raffaele son of Raffaele Spinola, and Bartolomeo Giambone	20	20,550	4,110
Guirardo Fornari	21	16,350	3,270
Gaspare Gentile	22	15,750	3,150
Niccola son of Anfrione Spinola	31	15,450	3,090
Francesco son of Ottobono Spinola	16	11,790	2,358
Bernardo and Matteo de' Ricci	17	11,500	2,300
Agostino Squarciafico	15	11,100	2,220

Source: Melis, *Origini e sviluppi delle assicurazioni*, pp. 256–70.

Generally speaking, rates charged in the various centres of underwriting in the western Mediterranean were uniform,[45] and on average relatively high, although they gradually decreased with the growth of the market. Premiums were calculated in part based on the length of the voyage, although this factor had only a minor impact on the price. More important was the season, the political environment (cover was more expensive during wartime), the likely presence of pirates along the route, the physical features and access conditions of the port of call, the type of cargo, and type of vessel carrying it.

For example, cargoes aboard galleys were less expensive to insure than those on mixed propulsion vessels. Underwriters favoured galleys in part because such vessels tended to be better armed, bigger, faster, and more manoeuvrable, making them less vulnerable to pirate attacks. This is confirmed in the extant policies of Francesco Datini, a merchant based in Prato, Tuscany. On the Pisa–Genoa route at the end of the fourteenth century, premiums were 1.25 per cent for cargoes transported by galley, but 3 per cent when masted-and-oared vessels were employed for carriage. Generally speaking, premiums were lower by half when armed vessels were used.[46] The lower rates of premium were offset by higher transport costs, since these better-defended vessels had less cargo space.

The presence of pirates along the chosen route would escalate rates. Following a surge in piracy in the years 1405 to 1410, rates to insure a shipment of wool carried on a Savonese vessel from Southampton to Pisa shot up from 7 to 33 per cent, the latter price observed in May 1409, probably for a borderline case, and related to perishable goods. Fifteenth-century Genoa was further characterised by political instability, but rates remained, more or less, at the levels of the previous century. The ledger of the *cabella securitatum*, a levy on insurance contracts probably introduced in 1378, shows rates of 6 per cent for voyages from Genoa to Palermo or Piombino in 1485, 4 per cent to Chios, and 3 per cent to Bonifacio. Slightly higher premiums were charged on shipments loaded at smaller ports in Liguria.[47]

New players, new rules

As soon as insurance became commonplace, the insidious problem of insurance fraud arrived to hinder its development. Given their knowledge advantage, insurance buyers could easily defraud their underwriters, for example by intentionally scuttling heavily insured ships (sometimes after buying cover in multiple markets), by overstating

the value of cargoes, or by taking out policies on vessels known to be lost. Such acts were rendered considerably more pernicious in a market governed by trust, custom, and principle, rather than codified law. Intervention by municipal authorities was sometimes sought by underwriters to address the problem. Genoa's lawmakers were perhaps more active than those in other centres. They paid special attention to trade, granting it different and greater protective measures than those paid to other civil matters. Insurance regulations were unique: the *Ufficio di Mercanzia* (replaced in 1529 by the *Rota Civile* as part of several reforms introduced by Andrea Doria) was given jurisdiction over all insurance-related issues. This special court of merchants was quick to pass judgements, and was more concerned with good faith and merchant practice than with the technical or legal aspects of the cases before it. In this forum, governed by customary practice, tolerance typically prevailed over strict enforcement.

Formal regulation remained focussed on protectionism, rather than enforcement, until, in the first half of the fifteenth century, the object of new Genoese rules was market liberalisation. Previously imposed constraints were lifted, such as the 1408 ban on insuring foreign vessels and those sailing *a Cadexe ultra versus mare oceanum*. From 1434, brokers and the contracts they effected were fully recognised. With these actions, Genoese leaders underlined their pioneering role in Europe, and their newly enforced regulations paved the way to reforms which were later introduced by other countries, through more complex processes.[48]

The institution-building achievements in the area of insurance regulation made by the Genoese and other Italian merchant communities in the middle ages were incomplete. It fell to Catalans (specifically, magistrates of Barcelona) to create a systematic corpus of legal provisions governing insurance contracts.[49] Their Ordinances on marine insurance, issued between 1435 and 1448, constituted legislation informed by customary practice, unwritten rules, and experience acquired over roughly 150 years since insurance was first underwritten. By selecting from and combining the customs of Italy and Northern Europe, the Ordinances provided the basis for many bodies of regulations that would be introduced in the following centuries.[50]

Meanwhile political events affecting all of Mediterranean Europe at the turn of the fifteenth century tipped the economic balances away from the favour of Genoese merchants, leading to a decline described by one author as an 'unfortunate wreck against the Islamic barrier'.[51] Both the birth of piratical Barbary States and the concurrent discord and warfare among European realms significantly magnified trading risks.

These conflicts began seriously to impact the Genoese insurance market from the second half of the fifteenth century. Further, from the beginning of the sixteenth, an ever-increasing number of large merchant vessels from Hanseatic, Dutch, and English ports began to operate in the Mediterranean, a phenomenon Richard Rapp described as an 'invasion'.[52] Genoese merchants began to lose interest in shipping, turning instead to banking and finance, particularly for Spanish royalty. Genoa henceforth shared its leading position in marine insurance with other Italian cities, with Barcelona and Burgos, and increasingly with the new Dutch trade centres, Bruges and Antwerp. The 'great season' of Genoese insurance ended around the second decade of the seventeenth century, when the city had become no more than a peripheral player in world trade.[53] However, the innovations of the city's merchants in the field of marine insurance, and the fundamental institutional frameworks they developed – from the principles of coverage to organised enforcement under customary practice – constitute a bequest which continues to form the basis of modern marine insurance to the present day.

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Policy dated 6 August 1602, underwritten in Florence, covering a cargo of silk to be sent from Messina to Livorno on the galleys of the Military Order of St Stephen. The insured, Giovanni Pelli, is the great-grandfather of the famous Florentine writer Giuseppe Pelli Bencivenni (1729–1808). Image courtesy of the Mansutti Foundation of Milan

3
Italy 1500–1800: Cooperation and Competition

Andrea Addobbati

A new stage in the international development of marine insurance was spurred by the opening of intercontinental trade routes and the gradual shift of the hub of international trade from the Mediterranean to the Atlantic. Having appeared as an autonomous legal instrument in the maritime cities of the Tyrrhenian area (Pisa, Genoa, Palermo), insurance by the late middle ages had spread to most of the Mediterranean, both in the direction of Catalonia (Barcelona, Maiorca, Valencia) and of the Christian Levant (Ragusa), as colonies of Italian merchants transmitted the technical and juridical knowledge developed in their cities to local markets.[1]

While the dissemination of insurance knowledge favoured the emergence of new centres along merchant sea routes, the devices of commission and reinsurance fostered a process of supraregional, hierarchical integration, directing the demand for coverage from peripheral areas to those most technically equipped, such as Genoa, Florence, Venice, and Barcelona. These cities were destined, therefore, to occupy a pre-eminent position. With the development of Atlantic navigation during the 1400s and the early decades of the 1500s, insurance spread to an even greater geographical area. Through the economic centre of Burgos, insurance practice reached northern Europe – first Bruges, then Antwerp – and a series of minor centres, some of which, in the following centuries, would become the undisputed protagonists of the international insurance market: insurance policies appeared in Bilbao, Rouen, Bordeaux, Nantes, Amsterdam, and London.[2]

Meanwhile, discussions about the lawfulness of the contract were definitively superseded by a utilitarian appreciation of the benefits which insurance brought to the world of commerce, and, indirectly, to society. The principle of reciprocity – the basis of the functioning of

the market, in which participants assume someone else's risk, expecting that others would do the same for them – permitted many theologians and moralists to exclude insurance from the category of contracts condemned by the decretal *Naviganti* of 1236, and on the contrary, to find in it a fulfilment of the Christian duties of charity and mutual help.[3]

The moral innocence of insurance in the eyes of God was thus recognised, but the problems of its misuse by men remained: failing to keep one's word (both on the part of insurers and insureds), possible speculative deviations introduced into the market by the indeterminacy of risks, and fraudulent behaviour, which becomes all the more frequent and probable the greater the information disparity separating those who transfer a risk and those who take it up. At the beginning of the insurance business, in the Italian markets of the fourteenth and fifteenth centuries, violations of good faith were checked by making use both of precautionary rules which restricted market access to operators who provided sufficient guarantees of solvency, and of mechanisms of negotiated justice, mainly in the form of arbitration. The municipal dimension of markets and the relatively restricted size of communities of merchants permitted trust to be placed in the efficacy of an informal set of rules, in many ways pre-juridical, considering the importance of social sanctions in guaranteeing the observance of regulations.[4] Ties of blood and kinship roughly delimited the extent of trust, while the need to broaden the base of apportioning the risk, and therefore the number of underwriters, triggered an opposite reaction. In any case, it was hoped to restrict to the level of the *civitas*, namely only to those having a comparable status and analogous economic means.[5]

Institution-building: regulation and legislation

Despite the accelerating creation of new markets, the insurance business still lacked a satisfactory corpus of law. It was on the whole regulated on the basis of informal local custom. The few relevant laws promulgated during the middle ages were not concerned with the private aspects of a contract, but were limited to protectionist provisions which prevented the insurance of foreign assets, or restricted negotiations to the context of the city.[6] Slightly more vigorous legislative activity occurred in Genoa, where as early as 1369 a Ducal decree established litigation procedures, and declared null policies underwritten on foreign vessels and those drawn up after an accident.[7] The need to reinforce mercantile custom by law began to be felt in the older Italian markets at

the same time, as restrictions on foreign operators were gradually overcome. The Ligurian market was the first to remove, as early as 1408, its ban on insuring foreign ships and goods. Florence followed, as its market opened gradually between 1439 and 1464, while Venice, where the practice of insurance was introduced later, maintained its reserve for a longer period. Its ban on insuring foreign ships, sanctioned in 1421, was slightly attenuated and reformed in 1586 by the Senate, which limited insurance to commercial traffic entering and leaving Venice.[8]

Nevertheless, it was the Catalans who showed the way forward. A significant step in the institutionalisation of the market was the adoption of the *Ordinances of Barcelona*, the first important consistent collection of regulations regarding insurance contracts, issued between 1435 and 1484.[9] They were added as an appendix to the *Book of the Consulate of the Sea*, which guaranteed their dissemination well beyond the strict confines of the law. In Italy they were introduced in Naples by the Aragonese, but because of their organic unity they became an authoritative jurisprudential reference point throughout the peninsula. The first printed Italian edition appeared in Rome in 1519, with a dedication to Leo X.[10] It is significant that it was commissioned by the Florentine consuls of the *Mercanzia*, the tribunal appointed to resolve commercial disputes. The *Mercanzia*'s statute of 1394, with regard to insurance contracts, established that '*possint et debeant observari et executioni mandari simpliciter et secundum bonam fidem et consuetudinem mercatorum*'.[11] Nevertheless, as Federigo Melis found, it was precisely in concurrence with the Roman edition that the *Ordinances*, which supplemented the law, began to be juxtaposed with customary practice in Florentine legal disputes.[12]

As well as addressing public law and protectionist issues, the laws of Barcelona went, for the first time, to the heart of the matter of insurance contracts by establishing precise rules regarding their form and consequences, indicating the court and the procedure for the resolution of disputes, ordering a public register entrusted to notaries, and imposing exact limits on insurance cover, so as to prevent fraud. It was Barcelona's *Ordinances* which introduced the doctrine of the obligatory uninsured share (one-eighth of the value for Catalans, one-quarter for foreigners), which was, in practice, to enjoy greater success in the French juridical tradition, where under the French *Ordonnances* of 1681 the uninsured portion was to be one-tenth.[13]

In any case, the impetus to institutionalise rules governing the functioning of the markets which began to emerge, in varying degrees,

throughout the European economic centres were founded on three fundamental requirements:

1. specifying the procedure for the implementation of contracts and identifying the relevant public authorities for resolving disputes;
2. more precisely delimiting negotiable risks, and the obligation to observe some contractual formalities, in order to distinguish between contracts aiming at indemnity and purely speculative aleatory contracts, like betting on future uncertainties;[14] and finally
3. a more stringent discipline regarding brokerage and the public registration of policies, which were to specify the obligations and responsibilities of the brokers and/or notaries involved.

With regard to point 3, Italy experienced a clear divergence from contractual procedure. Before it was felt necessary to consolidate the rules of a contract on a legislative basis, two distinct ways of certifying the obligations of the parties involved had developed. The first, more rigid and conservative method recognised the validity only of notarial registrations, and was practised both in the economic centre, Genoa (where, not by chance, the custom of falsely presenting insurance as a sale lasted longer, well into the 1500s), and in Naples, where the centrality of notaries was in effect the result of the reception of Barcelona's legislation. The second method was the use of a private agreement drawn up by a broker. This approach was first adopted in the economic centres of Pisa, Florence, and Venice, then, from the mid-fifteenth century, also in Genoa.[15] Private agreements provided a more flexible context within which negotiations could develop the salient characteristics of the contract, and the indispensable guarantees for risk transfer.

The earliest Tuscan policies, those of the fourteenth century, include all the constituent elements of the contract which was to spread throughout Europe over the course of the modern age. On the other hand, such agreements' greater capacity to support the changing requirements of buyers necessitated a counterbalance provided by a framework of precise rules and an efficient sanctioning system. The limited scale of merchants' operations, and the strong ties of mutual dependence which bound all those involved, had obviated, for more than a century, the lack of stringent institutional guarantees. It was the emergence of new operators of dubious trustworthiness which necessitated a greater involvement on the part of the public authorities, because they did not belong to a group which kept an informal check on negotiations.

The institutional turning point happened in Florence in 1524 with the *Statuti di Sicurtà* (Insurance Statutes), and with the establishment of a special court of justice subordinate to the tribunal of the *Mercanzia*, comprising five officials drawn from the city's major players. One of the many officials who alternated in this post was the merchant and insurer Giuliano de Ricci, who in 1583 recorded in his diary an account of the origin of this magistracy, and of the important functions it carried out. The five officials of *Sicurtà* had become indispensable to 'obviate the frauds committed by foreigners and particularly by the Genoese'. These five were entrusted with the task of judging 'all the lawsuits concerning the insurance of ships', establishing 'the premiums of any insurance to be arranged', certifying them with their signatures, and intervening 'as authorities for all questions depending on insurance'.[16] Ceccarelli's recent studies have reconstructed in detail the functioning of the Florentine economic centre in the 1520s and 1530s, and identified problems connected with the entry of new operators. With respect to protectionist laws, the *Statuti* took it upon themselves to encourage negotiations. They did not insist on excluding foreigners, but, recognising their economic importance, preferred to define the terms and conditions of their integration. A clear indication of the policy direction of regulation can also be gathered from the practice of keeping a place in the college of officials for a merchant, often a Castilian, who represented foreign interests.[17]

The *Statuti* have been recognised for their undoubted historical impact.[18] From the point of view of content, they were not particularly innovative, and limited primarily to consolidating rules which had already been introduced through usage,[19] but because of their clarity and organic unity they became a model for all the other insurance centres, which soon followed the same path. After the *Statuti*, the legislative *vague* influenced, one after another, Burgos (1500 and 1538), Seville (1556), Bilbao (1560), Ragusa (1568), Antwerp (1563 and 1570), Amsterdam (1598), London (1601), and Genoa (1610). Most of these have been reproduced by J.M. Pardessus.[20]

Imitated above all was the binding of contracting parties to a fixed form of policy, a legal standard, which had blank spaces for variable elements of the contract, and which was subsequently produced in a printed form to facilitate the work of brokers. The generic form was divided into three sections. The first was for the description and evaluation of the risk. The broker entered the name of the insured party and his statements about the assets at risk: an approximate estimate of value, the voyage to be undertaken, and details of the vessel and captain. Next

were the limits of coverage and a list of the perils insured. Their range was extensive, encompassing the dangers 'of everything connected with the sea, fire, jettison, reprisals, robbery by friends and enemies, any circumstance, danger, misfortune, disaster, impediment or accident, even if as yet unimagined, which were to intervene or had intervened, even barratry by the captain'. Losses due to bad stowage, or which occurred at the customs, were excluded, while, by innovating with respect to established custom, compensation for barratry – losses caused by fraudulent actions of the captain or crew – was included. Coverage extended 'until the said goods will be safely unloaded on land'.[21]

The terms of risk transfer thus defined, the third section of the form specified the procedure for paying claims. The insured retained the right to ask for cancellation, which permitted the annulment of the policy due to the non-loading of cargo or the cessation of the risk, but remitting 0.5 per cent of the specified premium to the underwriters. This happened under about a quarter of all the policies negotiated in Florence in the early 1500s.[22] Salvage rights were explicitly granted to the insurer, laying down the basis for the complex procedure of abandonment. Moreover, the insurer committed to paying claims within two months of a loss notification, or after six months had elapsed without news of the outcome of the shipment (nevertheless maintaining the right of restitution, should the safe arrival of the cargo subsequently be ascertained). The form ended with both a specification of the qualified court of litigation (preferably the five officials of the *Sicurtà*) and the provision of a procedural caution intended both to prevent insurers from delaying payment through constant appeals to justice in the many available courts, and to discourage insureds from making rash claims. This was the fundamental mechanism of *solve et repete*, which was destined to replace, virtually throughout Europe, the alternative solution of deposit, which had the drawback of immobilising the cash, and thus subtracting it from productive commerce.

Pay now, sue later: insurers, in practice, could not challenge an insured's claim unless they had first seen to the prompt fulfilment of the contract. By producing eligible guarantors, the insured immediately received indemnity, potentially avoiding insolvency, but in return had to agree to repay it, plus a 20 per cent surcharge, if their demand for payment was later judged unwarranted. However, it is difficult to judge the effectiveness of the rule. Complaints about insurers' reluctance to pay never ceased. It is certain, however, that the mechanism of *solve et repete*, and the implicit principle of prompt enforcement of the contract, were crucial in structuring the procedure of insurance lawsuits on

two instances of judgment. The first aimed at guaranteeing the fulfilment of contractual obligations after consideration of only the formal requirements (the policy and proof of the loss); the second, on its merits, allowed insurers to contest and challenge violations by the insured.[23]

Finally, the bottom of the policy had a blank space for the insurers to endorse the contract (thus, under-writing or sub-scribing), stating the share of the risk which he undertook to indemnify, and declaring that he had received, in cash, the premium agreed through the intermediation of the broker. The *Statuti* explicitly ordered 'that all insurance which will be conducted must be paid in cash in ducats once it has been underwritten', but subsequently, while the declaration of payment was maintained as a *fictio*, the custom of granting an overdraft to the insured prevailed, and had fundamental repercussions on the development of the insurance business.[24]

The introduction of a prescribed policy form made negotiations more rigid, because exceptions were not permitted without the approval of *Sicurtà* officials. Merchants, on the other hand, and particularly those trading over long distances, had to cope with a structural information deficit. This could cause serious embarrassment to shipping agents, since it was not possible to finalise insurances without prompt declaration of all the elements required by the form to identify the risk. Often it was not possible to know in advance in which ship goods were to be carried, or in what trade goods a distant agent would choose to reinvest the proceeds of exports for a return voyage. Without conceding the power of derogation to the free negotiation of the contracting parties (as would happen later), the *Statuti* confronted the problem, on the one hand, by reserving, for *Sicurtà* officials, the approval of indeterminate risks, and on the other, by permitting the most essential and commonly invoked exceptions. Hence the provision of a second policy form which granted the insured the right to omit the name of the ship, but only on Adriatic routes, and more particularly for imports from Ragusa. The exception was introduced to meet the demands of Florentine merchants who operated in the market of Ancona, and it is significant that the coverage of this second prescribed policy was explicitly extended to the danger 'of contraband by the Venetians'.[25]

The 'Adriatic' rule was employed in Florence until at least the end of the 1500s. As early as the first half of the 1600s the free port of Livorno attracted both Florence's trade with the Levant, and the city's insurance business itself, thus weakening the institutional grip of Florentine officials. However, in Tuscany the 'general and universal' policy form remained the legal standard until the Napoleonic era. The insurability of

indeterminate risks was guaranteed by the faculty of derogation granted to the parties, who could omit the name of the ship by using the *in quovis* clause developed at the beginning of the 1500s (which permitted goods to be sent on an unspecified vessel), and could ensure coverage of unknown cargoes purchased in distant markets by using the word *mercanzie* (merchandise), which appeared as early as the fourteenth century in some Pisan policies.[26] This exception clause was admitted by the *Statuti*, but within clearly defined limits, because the failure to report particularly dangerous goods, either for their unit value or their perishable nature, was sufficient reason to invalidate a contract. Some goods absolutely had to be declared: 'slaves, fruit, horses, grains, wines, salted fish, vitriols, woad, alums, jewels, oils, vein of iron, dishes, gold, silver, firm or processed, or coined in any currency'.[27]

State institutions and controls

Institutional control employed other fundamental devices. Brokerage was governed, providing both a public register of policies to monitor compliance, but also burdening parties with some form of levy. The *Statuti* solved the problem by restricting the drafting of policies to two brokers subordinate to the *Sicurtà* officials, and by imposing on each contract a registration fee equal to one-third of the brokerage commission. The brokers, while covering public functions, continued to act as mediators linking supply and demand, and intervening in the setting of rates.[28] The proper functioning of the market was finally guaranteed by the censorial powers granted to officials.

Control mechanisms continued to operate up to about the 1620s or 1630s, after which the centre of insurance negotiations moved from Florence to the port of Livorno. There the broking business was carried out by a large number of operators authorised by the Court of the *Consuls of the Sea of Pisa*, each of whom was also theoretically empowered also to deal in insurance. Market mechanisms led always to the concentration of negotiations into the hands of a very restricted number of specialised intermediaries, some of whom were the owners of broking agencies, but with the reform of 1758 such specialisation received legal sanction. Several dozen intermediaries obtained the qualification, but only about twenty were active in the market throughout the second half of the century, and just four or five shared most of the business.[29] The transfer of the focal point to Livorno also gave rise to a general resurgence of customary rules, expanded moreover by the contributions of the many foreign merchant communities that had settled in the free

port. The *Statuti* remained the law of reference, but the instruments of control, starting with the public register, became largely inoperative. In 1650 a Genoese entrepreneur petitioned to take up the appointment under contract,[30] but only in 1686 was it possible to establish an *Office of Sicurtà*, which was entrusted to the Clerk of the Court. The official imposed a levy on all insurances to finance charitable institutions, was the only individual authorised to distribute to brokers policies printed according to the legal form, and provided for the registration of contracts.[31]

The Genoese public register of policies was probably established as early as the end of the fourteenth century, together with a duty, or *gabel*, of 0.5 per cent of insured values. In 1409, to remedy evasion problems, the city's rulers specified that the levy on the *cabella securitatum* had to be paid by the insured. Later, in 1432, the duties collected were assigned to cover a loan for the rigging of a dozen galleys. From the beginning of the sixteenth century until 1742, as part of the financial assets assigned to the *Casa di San Giorgio* for the management of the public debt, the *gabel* was regularly subcontracted under long-term farming contracts.[32] It was a modest tax. In 1573 it was graduated in proportion to the premium, and problems with its collection were few. The situation was different in Naples, where registration and taxation were introduced (and farmed out) in 1622.[33]

Requiring merchants to submit to mandatory registration required the authorities to establish themselves as the sole custodians of jurisdiction over insurance, and to deny any legal standing or protection to unregistered contracts. In Genoa, Florence, and Livorno tax evasion was, in effect, a marginal phenomenon, limited to relationships based on rock-solid, trustworthy ties, since the parties to untaxed contracts could not bring their disputes to court. In Venice, on the contrary, the public register encountered fierce opposition. Although the restrictive measures of 1586 counselled the use of effective monitoring instruments, the only legal certifications of policies were the original documents and brokers' records. The law had granted the *Consoli dei mercanti* (Consuls of the Merchants) the power to review and audit brokers' records, but they consistently refused to produce them, and efforts to shed light on what happened in *Calle della Sigurtà*, the alley near the Rialto where the brokers had their counters, proved ineffective. Appeals to informers and promises of amnesty were made in vain.[34]

At the end of the 1600s, while the market was emerging from a long period of depression, the clash over disclosure of registers came to a head, and ended with the demolition of what remained of the

old Venetian protectionist legislation. In 1682 the *Consoli* once again claimed their right of inspection, and encountered the usual opposition from brokers and insurers who gained satisfaction following an appeal to the *Cinque Savi alla Mercanzia*, the Five Elders of Merchandise.[35] Commercial confidentiality, in the opinion of this mercantile court, was an interest worthy of protection, even against the provisions of the law. Soon, however, the Senate resolved the problem at its root, by authorising insurers 'to underwrite risks from and to any part of the world'. This marked the threshold of a new phase in the process of market integration, and it was feared that without the abolition of the old law, domestic demand would eventually spill over abroad, 'carrying away from this capital . . . even what little remaining traffic there still is'.[36]

Venetian brokers and underwriters could now legally receive foreign orders, but the sector was facing the challenges of a new century without having undertaken the institutional consolidation which had taken place elsewhere. Custom – *usus patriae* – maintained a dominant role, and opposition to any proposed reform, in an era which was on the whole expansive, generated a chaotic situation open to all kinds of abuse. The most obvious sign of institutional backwardness was the lack of a definition of a legal standard. There was a customary form, its most characteristic feature being the exclusion of insurers from liability for losses under average. Brokers had policies printed with the image of the Lion of St Mark, but such policies were not subject to any regulatory controls, and aroused recurring complaints about the changes to coverage which they caused. It was only in 1753 that legal force was granted to the old form, but it was shortly realised that this policy wording was unintelligible to most people, and needed a rewrite. The new form was prepared in 1771 within the framework of the first systematic promulgations by the *Serenissima* covering the field of insurance. Until then, the main and almost only reference text for the industry was a decree which the *Cinque Savi* and the *Consoli dei mercanti* had to promulgate in 1706 to curb 'the many abuses introduced in the thorny matter of insurance, and in the formality of policies and their expressions'. Just seven articles of law regulated the methods of describing the different kinds of risk (ships, cargo, bottomry, reinsurance, life), limiting their vagueness.[37]

Venetian operators were opposed to the register of policies because it brought a tax burden, but also, and perhaps above all, because they feared that their commercial secrets would become public knowledge. For the same reason, all attempts to regulate brokerage failed until 1771, but specialist brokers played a crucial role in coordinating the market and containing the costs of transactions. The ethics of the profession,

at the intersection of public and private interests, were based on the axiom of impartiality, from which stemmed the prohibition of brokers' participation or interest in the negotiations concluded with their intervention. Brokers – private operators on one hand, due to the commissions they earned in exchange for their services, and public officials on the other, given their role as guarantors and guardians of the contractors' obligations – had always, since the age of the communes, been subject to control, either by craft guilds (through which they conducted their business) or by commercial courts (which had the power to issue licenses, subject to an examination of the brokers' personal and professional qualities), a subject of recent interest to Italian historians of the neo-institutionalist school.[38] Nevertheless, under this overall framework, Venice occupied an eccentric position. From 1497 the majority of Venetian brokers had been united within a corporation, one with its own internal organisation and self-governing bodies,[39] but external institutions also existed, including corporate jurisdictions, specialised mediators like the brokers of the *Fondego dei Tedeschi* (the Warehouse of the Germans), and the insurance brokers who, in spite of the public tasks assigned to them, were neither under any form of control, nor burdened by taxes, as in Genoa or Livorno.[40]

Interference resisted

In the decades straddling the 1600s and the 1700s, while the market was legally opened up to foreign risks, private individuals developed various proposals which aimed at radically reordering the profession, and obtaining a new source of income for the exchequer. In 1693, for example, an underwriter, after denouncing serious disarray in the sector and complaining about a recent increase in brokerage fees (which had risen suddenly and arbitrarily from four to eight *grossi* for every 100 ducats insured), offered a hefty sum for a monopoly over the booths of *Calle della Sigortà*, which were then managed in free competition by only four brokers. Similar proposals were made later, but always unsuccessfully. The number of brokers' booths rose to nine in 1703, and to 12 in 1708. The estimated turnover of about 50 active underwriters was about a million ducats a year, and the sector could very well have borne a burden, to be imposed in proportion to the shares of risks subscribed.[41]

Any public intervention interfering with the structure of the market was ultimately to be rejected. Even the pressure of the state's urgent financial needs was insufficient to ease passage of the lightest form of taxation. In 1763 Venice depleted the public coffers to conclude a treaty

with the Dey of Algiers. To put the accounts in order, new revenues were needed, and since the agreement with the Algerians concerned the safety of navigation, it seemed right that the insurance sector, considering the benefits it would derive, should contribute to the public endeavours with a tax of 'a ducat for every hundred liras of insurance over a thousand ducats'. A tax of one per cent was even less than the low taxes of Genoa and Livorno, but for Venetian operators, and above all its brokers, any burden on the cost of the policies was feared to ruin the market. The complaints of market participants, however, were flatly contradicted by the figures. Active brokers numbered 25, handling cover estimated at more than six million a year. The Senate tried, timidly, to force the issue, authorising in 1768 a tax even milder than that proposed, just three *grossi* for every hundred ducats, but the entire industry, as one man, rose up in protest. Insurers and brokers unleashed a furious controversy, and two years later the tax of three *grossi* was definitively shelved.[42]

Apart from successfully opposing the state's tax aims, the Venetian brokers always managed to avoid any form of control over their work. In 1708 an attempt was made to restrict the exercise of the profession to those approved by the *Consoli dei mercanti*, subject to an examination of their 'qualities, abilities, conditions and loyalty'. The uproar was so great that just one month later the provision was withdrawn. On the other hand, policies completed without the intervention of a broker were made illegal in 1720. Controversy about brokers' lack of discipline flared up several times in the course of the century until, in the 1760s when the Senate began consultations aimed at creating, once and for all, an organic law on insurance, the broker problem seemed close to resolution. The first draft law prepared by the *Cinque Savi* and the *Consoli dei mercanti* contained detailed legislation which, among other things, re-established the inspection of the brokers by the *Consoli*, forbade practice of the profession on behalf of third parties, and proscribed the fusion of the functions of the broker and the insurer, which appeared manifestly at odds with the ethical rule of impartiality.[43]

Introducing the principle of the separation of functions, unquestioningly accepted in every other insurance market, though not always religiously observed, meant, in effect, tampering with the structural knot on which the architecture of the Venetian market rested.[44] The Venetian brokers of *sicurtà* had been able to evade the regulations to which all the other commercial brokers were subject by pointing out the profound differences between their profession and that of their colleagues. Such rules had been introduced in all international insurance markets to match and facilitate the practice of granting extensions of

premium payment, despite the rule under the Florentine *Statuti* that required prepayment.[45] Premium was entrusted to the broker who, being responsible for the payments, kept accounts of the income and expenditure of all market participants who made use of his services, whether insurers or insureds. Within agreed time limits, usually annual, the same broker saw to the clearing of debts and claims, and to the liquidation of outstanding balances. In other words, the broker did not just link supply and demand and draw up policies; he also carried out basic banking functions on behalf of the underwriters. The intertwining of the accounting which bound the intermediary to the subscribers was not, however, a peculiar trait of the Venetian market. In Genoa, these specific duties of the broker had obtained open recognition as early as 1434, when the authorities, distinguishing between insurance brokers and all the other intermediaries, treated them 'almost like bankers', and it was no different in Livorno.[46] The difference between the Venetian market and the others in Italy was that in the latter the principle of impartiality was considered binding also for insurance brokers, despite their supplementary functions, while in Venice, which exploited the legal vacuum, the confusion of roles became the rule.

Venetian brokers, therefore, intervened directly, or through an intermediary, in underwriting risks, and often their signatures were among the most reliable. The ethical violation was noted several times in the course of the 1700s. However, it was always pointed out in response to these critics that the commitments of the brokers, far from being a cause of market disruption, served actually to strengthen the offer, because without the signature of an experienced investor such as a broker, many insurers would not have had the courage to affix their own. Moreover, the economic importance of these broker-insurers to the Venetian market is highlighted by the political weight which their protests had in negotiations with the committee in charge of drafting the text of the reform of 1771. In the end, 'to remove this jealous matter from the danger of misunderstandings, and sinister interpretations, and to appease, and to calm souls', the article of law which forbade the accumulation of functions was deleted.[47] Arguments used to sabotage the reform, which were anything but specious, highlighted two structural problems in the insurance market of the *ancien régime* in Venice and beyond: insurers' lack of professionalism, and the fragility of the offer.

Mutuality versus speculation

Preconceived ideas could cloud understanding of the guiding mechanisms of the functioning of the insurance markets of the day. Within

the insurance markets, until well into the 1700s at least, the business, in its current sense, did not exist. As Domingo de Soto wrote incisively, the insurance contract is not, strictly speaking, a negotiation, not an activity which has its own economic autonomy. Rather, it is a '*necessariae negotiationis adminiculum*':[48] a support, a subsidiary activity which helps the merchant reduce the worry over loss, with the promise that no matter what happens, he will have sufficient resources to honour his commitments and continue trading. In *The Merchant of Venice*, Solanio, who cannot understand Antonio's melancholy, immediately thinks of the 'argosies with portly sail' which ply the perilous waves. 'Believe me, sir', – he says – 'had I such venture forth, the better part of my affections would be with my hopes abroad.'[49] He does not seem convinced by the reassurances of his friend, who informs him that he has distributed his goods in various ships. Is this simple precaution sufficient to retain calm? On the other hand, information about the variable conditions of navigation were then largely lacking – Solanio would have picked a blade of grass 'to know where sits the wind', and no one had the statistical and probabilistic instruments to work out the numbers sufficiently to ensure the insurance business was profitable. All that one could do, realistically, was establish a system which *a posteriori* would redistribute the damage. The system in question was, precisely, the market in insurance policies, which was developed and accessed less to earn money than to erect and participate in a network of reciprocal guarantees.

In 1433 Andrea Contarini, one of a family of the Venetian nobility with important commercial and insurance interests, underwrote a risk in favour of Andrea Zorzi without requiring any information on the nature of the goods or the route of the ship. Nor was he concerned about the size of the premium. His blind trust in Zorzi's good faith depended upon the merchant's promise to return the favour at the earliest opportunity.[50] Studies of the social composition of underwriters have highlighted the existence, in Genoa and Venice in the fifteenth century, and in Florence in the early 1500s, of correspondence between the inner circle of the most regular insurers – those who normally had access to the market from both the demand and the supply sides – and the cities' elites: the Genoese and Venetian aristocracy, and the most prominent Florentine families.[51] The market, therefore, arose as an ideally closed framework, operating on a mutual basis, but which immediately suffered serious operational problems due to its rigidity in the face of economic trends, and the imperfection of its intended reciprocity. The need for insurance was not equally distributed among all those who took part in the game, which is why premiums, which made up for the inequalities of imperfect

reciprocity, were introduced as a speculative element. The restricted circle of the most assiduous operators was complemented by the creation of a trade-off which monetised the deficit of reciprocity, involved a variable quantity of occasional underwriters, and thus gave supply a relative elasticity. The course of insurance rates in fact worked as a safety valve: depending upon the risks, it broadened or narrowed the basis on which they were distributed.

The speculative element remained, for a long time, a marginal component, although it was destined to increase in importance. Eventually it came into conflict with the old institutional structure of the market, which continued to be based on mutuality. Finally, in the 1700s, it became the governing principle of the whole system. A qualitative leap occurred only with specialised limited companies. In Florence in the early 1500s, insurers' profits 'appear to have been modest since, at best, a particularly assiduous underwriter could not earn more than 80 florins in twelve months. If we compare them', continued Giovanni Ceccarelli, 'with what was earned in the same period by some Florentine [general trading] companies, which fluctuated annually between *f*1,500 and *f*4,500, one can understand why the core business of those who worked in the market was elsewhere, and therefore the reasons for the non-emancipation of the insurance sector compared to the much more lucrative business, banking, and manufacturing activities of the city'.[52]

Two and a half centuries later, in those European markets with greater barriers to entry for new companies, the situation was similar. In Amsterdam, Frank Spooner wrote, 'the margins of profits in the eighteenth century were often astonishingly narrow',[53] which is unsurprising. For many operators, insurance remained an 'adminiculum'. In particular situations, especially during wartime, very high rates opened the way to reckless speculation, but in general no dealer would have considered getting rich through the methodical underwriting of others' risks. Usually it was enough to participate in the reciprocity game, which promised to make personal losses imperceptible, when attenuated by the collective loss. It was an advantage of no little importance, because it was only through such a form of cooperation that the commerce was able to free itself from the conditions of extreme uncertainty, which originally made seaborne trade akin to adventure and piracy, to become a field of activity in which it was finally possible to apply calculation and economic rationality. Personal relationships were of paramount importance in structuring the dynamics of the market, and they maintained it even when markets later opened to foreign demand, because the agent and the buyer, as far as the law was

concerned, were one person, and underwriters were not interested in knowing who the real owner of the risk was, when a local operator vouched for him.[54]

Therefore no market participants dealt only in insurance. Underwriters were usually merchants engaged primarily either in commercial and banking activities on the basis of their proprietary capital, or, in general, companies with unlimited liability. Limited partnerships were also frequent, and characterised by a clear distinction between the role of partners whose liability was limited to their capital contributions, and the active partner who was entrusted with the management of the venture. In any case, whatever the type of company, underwriting risk did not come into the field of interest of commercial actors except as a subsidiary activity. Examples do exist, from as early as the later middle ages and throughout the modern age, of companies formed specifically to act as insurers, such as that formed in Genoa in 1424 by the Scipioni brothers and Giulio Dondo,[55] but they were occasional consortia, limited to a duration of one or two years, between merchants whose main interests lay elsewhere, and who participated in the market in the same spirit as individual underwriters.

The absence of specialisms had a decisive influence on the structure of the market. Being largely devoid of necessary technical knowledge, and participating in negotiations in the dual role of policyholders and insurers, merchants were forced to delegate the management of the business to brokers, the only real specialists. The resulting market was not financially concentrated, but was fragmented among a multiplicity of actors tending to coincide with a city's entire mercantile community, with its technical and organisational synthesis subsumed to the intermediaries.[56] Until the picture was changed by the intervention of the joint-stock company, this configuration (with several variations) was the model common to all European markets. The central role of the broker was reinforced by the banking and administrative functions often delegated to him. The custom of granting credit for premium payment encouraged foreign commissions, but it arose to compensate for a severe shortage of cash with money held on account, thus bringing to light the credit inherent in underwriting. Although the direct gains were modest, the merchant, who was used to transferring personal risk to assume the equivalent of collective risk, eventually saw a further indirect profit which encouraged a change in the ratio between active and passive activities: premiums held were used for short-term investments. In Livorno in the mid-1700s it was common practice for insurers to issue

payment orders against funds managed by brokers. The same happened in Amsterdam, and in all markets with surpluses.[57]

The advent of an international order

Extant documents are insufficient to outline the evolution of the Italian insurance market for the entire period under consideration. It is clear, however, that until the final decades of the 1500s Florence, Genoa, and Venice maintained a prominent position. With the overall decline of Italian commerce, insurance markets also fell into a depressed cycle, characterised by a general rise in rates, which lasted until the second half of the 1600s. Income from the Genoese *cabella securitatum* offers indications. With its shipping industry still flourishing, Genoa showed undoubted vitality in the insurance field until 1626–7, when the republic faced military aggression from the House of Savoy. The policy tax average 0.5 per cent of insured values allows inference of the total value of cover, which must have been around 18 to 20 million *lira* per year.[58] Giulio Giacchero believed this represented a third to a quarter of the Genoese shipping industry, since for local coastal shippers the cost of premiums was an expense they preferred to avoid.

The years in which Genoa suffered its setback correspond with the commercial rise of Livorno. The Medicean free port owed its development to the presence of foreign merchant communities: Jews, who brought their contacts with the Levant and were at the forefront of the port's insurance market (but were barred from insurance intermediation in Venice)[59] and Northern Europeans – English and Dutch – who chose Livorno as the main operational base of their Mediterranean merchant fleets.[60] The Florentine tradition was thus able to mobilise to meet demand which would leave a lasting impression, not only on contractual practice – Livorno was in many technical aspects the Italian insurance market most similar to Amsterdam and London – but also on the capital market, characterised by an absolute preponderance of foreign over local demand.[61]

The exception of Livorno notwithstanding, the Italian picture overall was marked by a general slowdown in commercial activities, which impacted on insurance markets. The Genoese market revived only episodically in the second half of the 1600s, during wars. In 1667, during the Second Anglo-Dutch War, the revenue of the *gabel* doubled thanks to a commercial agreement between the Republic and the United Provinces. It increased again during the War of the League of Augsburg[62]

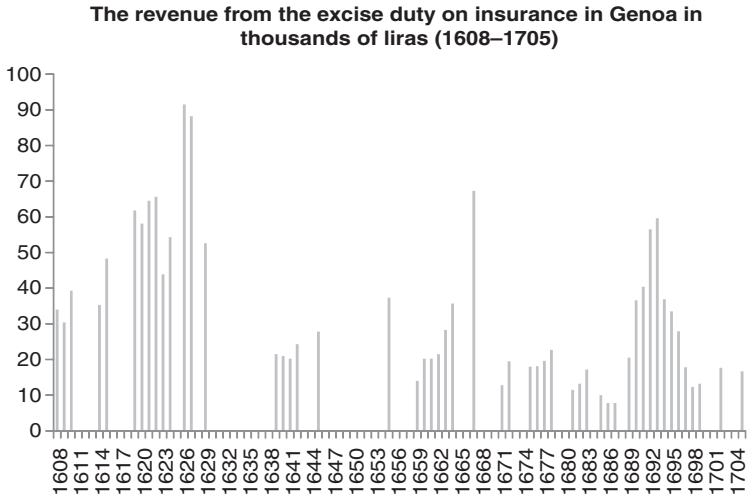

Figure 3.1 Revenue of Genoa's insurance duty, 1608–1705 (lira 000s)
Source: Giacchero, *Storia delle assicurazioni*, pp. 123–4.

(Figure 3.1). These were the first signs of a new phase, one during which Venice was characterised by increasingly heated outbreaks of intolerance towards the work of the brokers. The course of insurance rates, except during war, showed declining trends in all markets, a sign of their incipient integration at a European level.[63] At the same time, conditions allowed access to insurance protection for all those smaller players in the maritime industry who had previously kept away from it.[64] The combination of advances in nautical skills, increased flows of information, and the retreat of piracy (which became increasingly evident over the 1700s), helped to push down rates, but it was, above all, the new international order which, by imposing the restriction and regulation of wars, demanded both better risk assessment and the extension of the basis on which to distribute it. More and more underwriters appeared from outside the original commercial circle, attracted by the speculative potential offered by this new scenario.[65]

The maritime environment passed from a state of general and continuous warfare and plunder, which did not facilitate the separation of the structural risks of navigation from short-term ones, to a new situation increasingly marked by interstate wars, which presupposed a clear demarcation of time for the exercise of violence.[66] Regulation of this environment impacted immediately on both the course

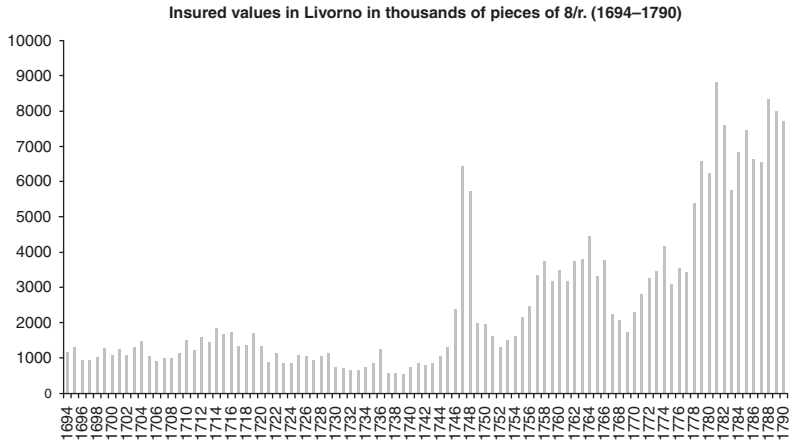

Figure 3.2 Insured values in Livorno, 1694–1790 (Spanish $000)
Source: Addobbati, *Commercio, rischio, guerra*, pp. 151–4.

of insurance rates and the clarification of phases of high and low risk, which alternated abruptly, encouraging speculative manoeuvres. Dependency between various maritime wars and the expansionary phases of the market may be seen, for example, in the records of the office of the Livorno *Sicurtà*, a source which documents local insurance business from 1694 to 1859 (Figure 3.2). Over the long term, the rise of insured values is attributable to the cumulative action of all of these factors, and was accentuated by the inflation which affected the entire European economy in the second half of the 1700s. However, the rise was neither continuous nor uniform. The market experienced violent upheavals during armed conflicts, which acted as powerful multipliers.

Bearing in mind the usual dangers of navigation, the depredations of pirates, stops in ports, and embargoes, it is not surprising that insurance demand increased in wartime, premium rates rose rapidly (to 40 per cent for certain routes), and that insurance markets attracted hordes of new investors. However, when hostilities ceased, wartime peaks were never completely reversed. Comparisons of annual averages for different periods illustrate a dynamic expansion in geometric progression in peacetime, interspersed with outbreaks of conflict. Between the two wars of succession, on average every year sums insured reached 860,000 Spanish dollars. King George's War of 1744–48 gave the market a strong boost, and during the subsequent peace the market settled at an average of S$1.7 million per year, twice the total for the period 1721–43.

After the 1756–63 conflict, insurance doubled once again, to an annual average of S$3.1 million. Finally, in the decade between the American War of Independence and the French revolutionary wars, the market recorded another surge of more than one hundred per cent, to an average of S$7.4 million.

War, therefore, produced violent economic reactions, but at the same time it triggered the mechanisms that would be crucial in the long term for the structural development of the market, and not only that of Livorno. Variations in growth, highlighted by a series of data from the Tuscan Office of the *Sicurtà*, are in line with what happened in the major European insurance markets: a cycle of moderate growth until the War of the Austrian Succession, followed in the second half of the century by robust expansion supported by the speculative peaks during recurring outbreaks of war.[67] After all, the degree of market integration became always greater, driven both by competition and cooperation. In the 1700s major international dealers made use, ever more methodically, of their commission and reinsurance to spread risks over different European markets, which exhibited more or less the same performance. The need for the security provided by insurance increased very rapidly with the outbreak of conflicts, pushing up insurance rates and expanding the volume of sales, but with the restoration of peace, everything did not go back to what it was before: falling demand was held back by the market, which, to prevent an abrupt halt to cash flows and to ensure that all risks previously assumed could be supported, did its utmost to increase the number of subscriptions. This had two effects: the market consolidated part of its wartime growth, and the long-term trend in insurance rates tended towards decline.

The emancipation of the insurance business

From an organisational perspective, the insurance market of the *ancien régime* was an institution governed by brokers for the redistribution of losses. The number of private insurers was relatively high, but most saw underwriting as merely a supporting activity related to their main trade ventures. Its most serious deficiency lay in the inflexible structure of the offer: the inability to adapt, beyond a certain limit, to fluctuations in demand. To meet the massive calls for insurance which arrived with the outbreak of war, brokers strived to broaden the base of risk distribution, encouraging speculative signings by old and new underwriters alike. The frantic race for subscriptions was motivated by the organisational weaknesses of the business, which did not yet embrace the provision of guarantee funds.

The traditional insurance business was an unstable credit structure which remained solvent through the clever exercise of balancing the acquisition of premiums and risk-taking, under a ratio which could never be reconciled, because sophisticated actuarial techniques were not yet available.[68] A ratio of one to ten was often mooted, but it was evident that a sudden change in exogenous conditions, such as a war, jeopardised the operation of the market, requiring a quick change of pace to both insurance rates and the scale and frequency of subscriptions. This brought a consequent risk of halting cash flows and bankruptcies. Of the two levers which could be pulled, the first, rates, provided limited room for manoeuvre. The rate became part of the price of the goods. If it was too high it would erode profit margins, which discouraged navigation and halted trade. Moreover, in the context of international integration, it was necessary that the course of insurance rates should be kept under control, or underwriters would lose out to the competition. Once the rate-change mechanism was exhausted, they were forced to employ the second lever, the enlargement of their policyholder portfolio, assuming frequent subscriptions at relatively moderate rates. It was not possible to expand premium income at will; it required a parallel increase in the number of risks on offer. Risks were greater in times of war, but maritime trade contracted, together with the hypothetical risk portfolio. At that point, all that remained was the fuel of pure speculation. If all available legitimate risks were insufficient, it was necessary to invent them. Some contractual clauses, which were regulated in London and which in Italy were legal only in Livorno and Naples, exempted the insured from reporting his own interest in the risk. It was in this way that the indemnity agreement lost its purpose, and turned into a wager.[69]

Developments in international trade and new political scenarios put the old Italian markets to the test, and revealed serious weaknesses on the supply side. Speculative potential could have attracted new subscribers, and established ones could have been tempted to put aside their characteristic caution. In any case, old networks of mutuality could hardly have extended far beyond the circle of those responsible for trade. Demand, therefore, brought to a head the conflict between speculative wagers, which had been kept under control, and the principle of reciprocity which nurtured the institutional structure of the market. The new age brought a need for modernisation of organisational structures and removal of obstacles which prevented the insurance business from developing in a fully capitalist sense. It did not take practitioners long to realise that the major impediment to development was the continuing separation between the cumulative demand of the enterprise (the

extended reproduction of capital) and the technical functions of the market, which, in the old model, was still centred on the impartial figure of the broker. The solution depended upon the emancipation of the insurance business from its ancillary condition in relation to the traditional firm, and from the subordination of technical knowledge, through the involvement of the 'public broker'.

These conditions were present in modern joint-stock companies, no longer a fellowship of people interested in damage control, but limited liability companies strategically oriented to making a profit. As early as the 1600s in Amsterdam, London, Paris, and Venice, several proposals had been advanced to create large monopoly companies with state support.[70] The projects, however, were opposed by the majority of merchants, who feared an increase in the cost of insurance. It was not until the speculative euphoria of London's Change Alley that the first large financial-insurance concentrations came into being. The *Royal Exchange Assurance* and the *London Assurance* having obtained, in 1720, a royal charter, alongside their agreement to pay £300,000 each to the Crown, were able to raise their notional capital to over a million and a half through open subscriptions.[71] There followed, in chronological order, the *Assekuranz-Compagnie* of Hamburg (1720), the *Maatschappij van Assurantie* of Rotterdam (1721), and the *Kongelig Oktroierede Sø-Assurance Kompagni* of Copenhagen (1726). After these pioneering achievements, and following the war of 1744–48, a wave of incorporations swept across Europe (although the British marine insurance market was limited, under the new stock companies' charters, to the two foundations and the private underwriters, who eventually formed Lloyd's). Insurance companies also appeared in the smaller towns of the maritime economy: '*Rouen en a sept, Nantes trois; Bordeaux, Dunkerque, La Rochelle, en ont aussi; mais ce n'est que depuis la derniere paix*', wrote Forbonnais in 1754, '*quell'elles se sont formées*'.[72]

The first Italian company was created in Genoa in 1742. Because of the Republic's financial difficulties and the need to revive its fortunes after a worrying decline in the market, the government accepted the proposal of a group of merchants and bankers, who obtained sole right to underwrite in exchange for a loan of 100,000 *scudos*. The *Compagnia generale delle assicurazioni marittime* began operations with capital of 100,000 *scudos*, divided into 300 shares.[73] It was followed, in 1751, by the Neapolitan *Real Compagnia*. Charles III, a great promoter of the initiative, hoped to reduce Naples' dependence on foreign insurance centres. The capital stock was fixed at 100,000 ducats, but since most of its 500 shares were bought with illiquid public debt bonds, the *Real*

Compagnia found its room for manoeuvre limited. It was forced to set a policy limit of 8,000 ducats per ship, making it impossible to deny insurers with greater needs recourse to private insurers.[74]

Initiatives in the Adriatic ports were of a very different nature. Initially, in Ancona, the Union of Insurers (1754) was established. It was an institution for the coordination of private underwriters, and in many respects similar to Colbert's *Chambres* at the end of the 1600s. In 1761, with the support of the Apostolic Chamber, and at the suggestion of Giacomo Giamagli and Francesco Brunet, respectively a dealer and a broker, the *Compagnia delle Assicurazioni Marittime*, with 100,000 *scudos* of capital divided into 500 shares, began to operate in under free competition, but was not successful. As early as 1763 it found itself 'in some disrepute' due to difficulties encountered by policyholders in collecting claims.[75] Events in Trieste were more important. As early as 1760, Maria Theresa had instructed the city's Commercial Superintendency to frame a project to increase trade at the new free port. The proposal to establish an insurance company was greeted with initial scepticism by the business community, but with the strong support of the Empress and Superintendant Pasquale de Ricci, a subscription was launched in 1764. Thus came into being the *Compagnia di Assicurazione*, later called *la Vecchia* (the Old One, to distinguish it from the companies formed as a result of its example). Its capital of *f* 600,000 was divided into 1,200 shares, all of which were allocated among savers of the Habsburg area.

Its success encouraged an extraordinary flurry of activity. In 1779 the *Camera Mercantile dell'Assicurazione Marittima* (Mercantile Chamber of Marine Insurance; *f* 500,000) was set up, and in 1782 the *Privilegiata Compagnia d'Assicurazione, Commercio e Sconti di Trieste* (Privileged Insurance Company, Commerce and Discounts of Trieste; *f* 400,000). In 1786 the *Banco d'Assicurazioni e Cambi Marittimi* (Bank of Insurance and Bottomry) was established with capital of *f* 400,000; in 1787, the *Camera Mercantile* ceased its activities, but its place was taken by the *Camera d'Assicurazioni e Cambi Marittimi* (Chamber of Insurance and Bottomry; *f* 500,000). In 1789 a major financial disaster forced the *Privilegiata* to close, but the enterprising people of Trieste did not allow themselves to be discouraged. The same year saw the foundation of the *Società Greca d'Assicurazioni* (Greek Insurance Company; *f* 500,000).[76]

The creation of large insurance companies would not automatically have led to the disappearance of the brokers, had the focus of the companies not been matched by a restructuring of the market as a monopoly. The Genoese company brought about the extinction of intermediaries, but in Naples, with its imperfect monopoly, they continued

to play an important role. In a way the market of Trieste was an exception: it had launched its firm under free competition, but because marine insurance was an entirely new field of enterprise for the city, it developed without corporate resistance, and thus established the practice of direct negotiations with company representatives.

It was clear, in any case, that the advent of well-capitalised companies at least reduced the role of the brokers, who, if they were not recruited into management functions by the new corporate insurers, tended most strenuously to oppose their foundation. It is no coincidence that the company revolution took hold with much more difficulty in markets where the traditional structure was more deeply rooted. The realisation of the first companies was made possible, with government support, in places where it was necessary to remedy backwardness, as in Trieste and Ancona, or at least serious decline, as in Genoa and Naples. The first companies in Venice and Livorno, instead, came into being much later, around 1787–88, and through private initiative.[77]

The conservatism of Livorno and Venice was due primarily to the excellent results achieved by remaining faithful to tradition. Until the rise of Trieste the two markets had maintained their dominance over all the other cities of the Italian peninsula, while development achieved under the traditional model, with brokers performing functions outside of the sphere of brokerage alone, strengthened the interdependence of various market participants, consolidating a block of interests that came to constitute the biggest obstacle to innovation. Of the 29 brokers active in Venice in 1770, as many as 16 were involved in both brokerage and underwriting, and contributed decisively to the market's supply of capacity.[78] In Livorno, in contrast, the combined resistance of brokers and international trade intervened. Livorno's insurance market relied mostly on orders related to entrepôt trade, which was tightly controlled by foreign merchants by means of correspondents. These foreign traders imagined that the birth of a company, whether a monopoly or not, would in any case have resulted in increasing costs, and England, in particular, managed to sabotage all the projects developed by local merchants between 1748 and 1751.[79] In the end, the need to meet constantly increasing demand enabled innovators to carry the day, even where the resistance to change was greatest, although in general the new companies could not immediately operate within a framework of impersonal relations. Even though the contribution of investors from outside the world of maritime trade was encouraged, shareholdings were initially based on pre-existing networks of relationships, perhaps coincident with the previous circle of individual underwriters who, in the

earlier stage, had used the services of a broker, and in setting up a company, thought of the latter for the technical direction.[80]

On the eve of revolutionary upheaval, insurance in Italy had not yet completed its transition. It was a varied and complex state of affairs, its more modern institutions delayed by the weight of tradition. The endless wars of the turn of the century, however, had a selective effect. In 1795, in Livorno, where the desire for reform had aroused the strongest resistance, a colossal financial disaster marked its definitive downgrade. Things did not go much better for Venice and Genoa.[81] The Trieste market, however, having avoided obstructions to corporate underwriting, had established a solid oligopoly with the financial wherewithal to overcome the situation unscathed. The year the Livorno market collapsed, Trieste's turnover was an estimated *f*70 million. Five large companies, with combined capital of *f*3.7 million, undertook the conquest of foreign markets by opening numerous agencies in other Italian commercial centres. Thus they ushered in an expansionary cycle which was not broken even by military occupation of the city in 1797. In 1804 the Trieste market had 15 companies, and after overcoming the Napoleonic storm was ready to open up to the new businesses of fire and life insurance.[82] Transition to a new state of affairs thus happened in the most violent and spectacular way: the old markets, once glorious, could not innovate, and sank suddenly, while the last on the scene, having embraced with conviction the path of financial concentration, overcame the trial of the century, and became the undisputed protagonists of the Italian market at the time of industrialisation.

Notes

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13. The uncovered portion had to be one-tenth under the French *Ordonnances* of 1681 and in Amsterdam; one-eighth under the 1721 law in Rotterdam, and one-fifth under the 1732 law of Bilbao. A Venetian law of 1602, later revoked by the new sea code of 1786, prohibited insuring ships for more than two-thirds of their value. Baldasseroni, A.: *Trattato delle assicurazioni marittime*, Florence: Bonducciana, 1786, I, pp. 268–72.
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17. Ceccarelli, *Un mercato del rischio*, pp. 27–47; Ceccarelli, *Tutti gli assicuratori sono uguali*.
18. For the text of the *Statuti*, see Baldasseroni, *Trattato delle assicurazioni marittime*, III, pp. 500–15; Pardessus, J.M.: *Collection de lois maritimes antérieures au XVIIIe siècle*, Paris: Imp. Royale, 1837, IV, pp. 598–609.
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51. Ceccarelli, *Un mercato del rischio*; Ceccarelli, *Tutti gli assicuratori sono uguali*; Giacchero, *Storia delle assicurazioni*, pp. 67–74; Doehaerd, *Chiffres d'assurance a Genes*; Nehlsen-Von Stryk, *Aspetti dell'assicurazione marittima*, pp. 523–4; Tucci, *Gli investimenti assicurativi a Venezia*; Tenenti & Tenenti, *Il prezzo del rischio*, pp. 186–200.
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55. Giacchero, *Storia delle assicurazioni*, pp. 81–3. See also Tenenti, A.: *Naufrages, corsaires et assurances maritimes à Venise (1592–1609)*, Paris: SEVPEN, 1959, pp. 59-65; Schwarzenberg, *Ricerche sull'assicurazione marittima*, pp. 62–72; Tucci, *Gli investimenti assicurativi a Venezia*, pp. 635–42.
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57. Addobbati, *Commercio, rischio, guerra*, p. 172; Spooner, *Risks at sea*, p. 6.
58. Giacchero, *Storia delle assicurazioni*, p. 125.
59. Cassandro, M.: 'Gli ebrei di Livorno nel Seicento: Aspetti economici e sociali', *Rassegna mensile d'Israel*, ser. III, vol. 50, no. 9–12 (1984), pp. 567–82; Stefani, *L'assicurazione a Venezia*, I, p. 158.
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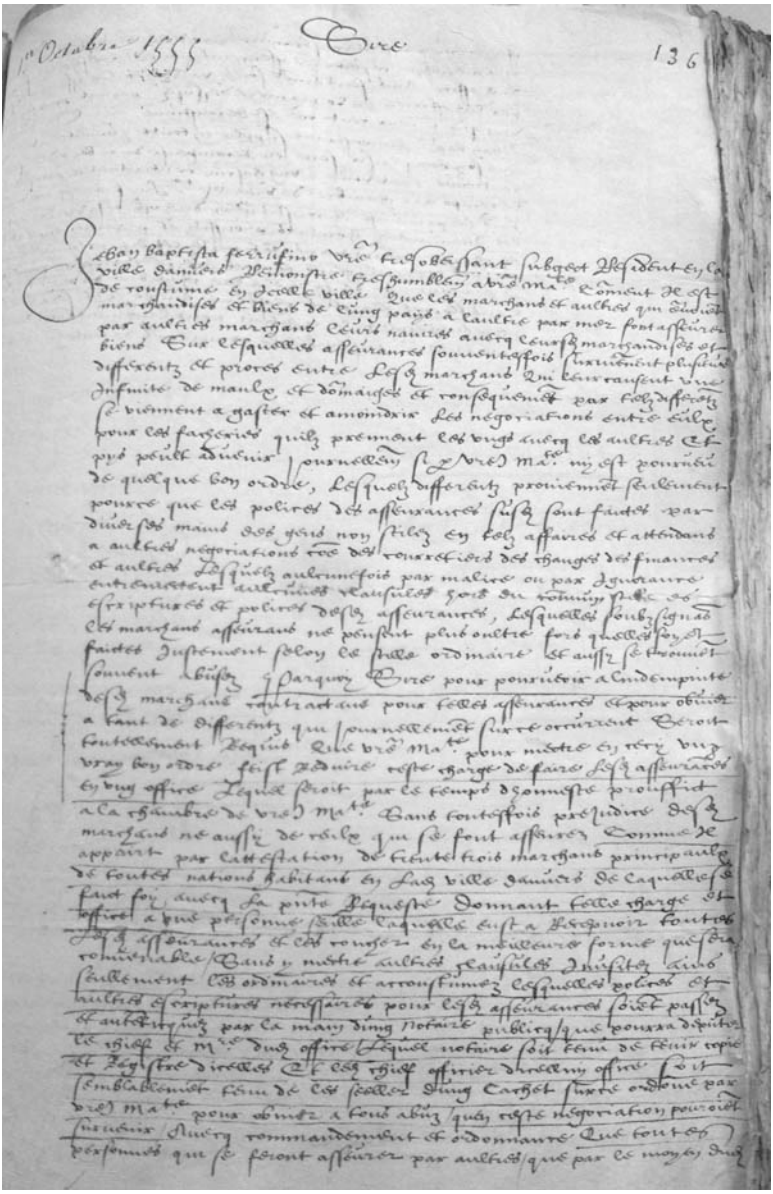

Giovan Battista Ferrufini's petition, dated October 1555, for the creation of a monopoly public broking office which was to control insurance broking and registration in the city of Antwerp. Ferrufini's proposal enjoyed limited and brief success. ARB, Papiers d'Etat et de l'Audience, 145, fol. 136r

4

Antwerp 1490–1590: Insurance and Speculation

Dave De ruysscher

Many Antwerp merchants began to use marine premium insurance in the years between about 1520 and 1560. Foreign traders who had migrated to the city following the decline of Bruges, from around 1490, had underwritten and purchased insurance, and it began to displace other risk-transfer practices from about 1520. In the 1530s and 1540s supply was closely connected to the speculative atmosphere of the Antwerp bourse, but by the 1550s marine insurance was widely practised, and Antwerp had become a leading European insurance centre. However, the swift growth in popularity of insuring, and particularly of underwriting, were based on slight foundations.[1]

Antwerp underwriters were more cautious overall than their contemporaries in insurance centres such as Burgos and Florence, as information asymmetries and contractual leeway were considerable, even though many policies were issued. As a result, insurers generally limited the value of their signings. When risks became losses, they commonly delayed payment of claims. Interventions by the prince and the city government from the later 1540s were intended to address insurers' protracted lawsuits. Ultimately, more than 15 years of debate between and among merchants and legislators, from 1555 to 1571, yielded a legal framework which both supported and limited marine insurance practice. Nonetheless, in contrast to southern European insurance centres, Antwerp's regulation left much agency to the merchants themselves, particularly in matters of broking and contract wording. Furthermore, Antwerp's insurance market remained dependent upon the success of her trade. Shocks caused by the Dutch Revolt reduced the volume of underwriting, and, after a short revival in the early 1590s, it withered away. Only around the middle of the seventeenth century was it resurrected.

The rise of Antwerp underwriting

Marine insurance was firmly established in Bruges by the middle of the fifteenth century. Leading resident Genoese and Castilian merchants, as well as Florentines, Catalans, Venetians, and Portuguese who traded there, often insured the freights they shipped to and from the Low Countries.[2] Records of the Bruges City Court dating from after 1450 show the predominance of Mediterranean-style premium insurance.[3] Merchants transferred portions of the risks of marine transport to multiple underwriters, men who were otherwise uninvolved. When emigrating members of the city's merchant community transferred their commercial activity to Antwerp, they brought with them their marine insurance expertise.

However, in Antwerp premium insurance was not immediately offered or embraced. This followed from the path dependence of marine trade and insurance practices in the city, and from a relative lack of supporting institutions, particularly broking, which affected insurance supply. In the first two decades of the sixteenth century, Antwerp merchants trading between Arnemuiden, Middelburg, or Flushing (Vlissingen), ports dependent on Antwerp trade, and Iberian or French destinations typically transferred marine risks through provisions in the charter or carriage contract. Shipowners, charterers, and masters could use the contracts to transfer the financial risk of cargo losses arising from wreck, capture, or arrest to the counterparties.[4] To further manage risk, captains sometimes promised to sail in convoy with other ships.[5]

In the early 1500s many disputes relating to freight damaged in transit to or from the Scheldt Estuary were resolved under the rules of average, which largely considered the ships' masters' actions. The Antwerp City Court imposed the principles of both 'general' and 'particular' average. General average applied when losses had been inflicted deliberately in order to save a vessel (such as by cutting away an anchor, or jettisoning cargo). Since the losses had been suffered for the common benefit of all the owners of the vessel and the merchandise aboard, the financial cost was borne jointly by all the owners.[6] If the losses affected merchants of one nationality only, the consuls of that nation administered the case. However, if the owners were of different nationalities, the City Court intervened to impose judgements based on average calculations made by expert merchants. Specialist adjusters could be appointed in either forum.[7] The Antwerp aldermen admitted their lack of affinity with what they called 'maritime law', but what was meant was average adjustment.

Particular average was applied when losses were accidental or weather-related. Rather than dividing the cost, the owners of the lost or damaged cargo received no indemnity, unless the loss could be attributed to the conduct of the captain.[8] Disputes involving particular average were less frequent than those over general average, but related lawsuits were sometimes brought in Antwerp courtrooms. If, for example, a ship's master had been commissioned to sell a cargo, but was not negligent and had not assumed contractual liability for average, he could claim compensation from the commissioning owners of the merchandise for the loss of his expected gain.[9] Similarly, a master could sue to recover wages refused to him following the capture of a cargo.[10]

For cargo owners, risk-transfer clauses in contracts of charter or carriage could fill the gap left by particular average. Furthermore, in this early period many shipments to the Low Countries were insured outside Antwerp, for example at Bruges, by underwriters of southern European origin. In the first three decades of the sixteenth century, Bruges remained a Dutch insurance centre, and merchants that had left the city continued to use the services of brokers and average adjusters residing there.[11] As before, insurance was also acquired abroad, often by way of commissioning compatriots.[12] In the 1490s and 1500s, shipments of alum from Mazarrón and Cartagena to Antwerp (which since 1491 had staple rights for the commodity) were commonly insured at Burgos, as were cargoes of wool and woad shipped respectively from Bilbao and Bordeaux to ports in the southern Low Countries.[13]

These developments persisted until around 1530. Conventional insurance underwriting remained very exceptional in Antwerp, even though local underwriters had been active since around 1520. During that decade the Antwerp merchant William van der Lare made ledger entries recording premiums received and paid,[14] but the number of references is small, and several identified by De Groote as insurance premium rates in fact record the costs of chartering and the wages of charterers, not insurance prices.[15] Furthermore, traces of premium insurance are almost entirely absent from other Antwerp sources dating from between 1490 and 1530, including court records,[16] notarial ledgers,[17] and aldermen's certificates.[18] A single indirect reference is made in one notarial source, which states that a debtor was commissioned to sell a tapestry abroad '*op assuerantie*' (on insurance), although it is not clear whether premium insurance was meant.[19] An exception in an alderman's certificate may exist in a single reference to a notarial deed of insurance of an unknown type.[20]

All this points towards path dependence in risk transfer among merchants trading in Antwerp during the first three decades of the sixteenth century. Until around 1530, traders with roots in southern Europe acquired premium insurance at Bruges, and also at Burgos, and most probably in Italian cities, but French, Dutch, and German merchants continued to rely on the contractual liability of charterers and shipmasters. Demand remained relatively stable from around 1500 until the end of the 1540s.[21]

Structural factors contributed as well. Maritime trade was relatively new at Antwerp, even in the 1520s. Throughout the fifteenth century and most of the sixteenth, the city had flourished through fair-based trade and overland imports. Its port was modest. The slow integration of overseas trading explains significant path dependence in the organisation of maritime trade. During its Golden Age, many merchants doing business in Antwerp continued to work with shipmasters from other cities, often Dutch,[22] and shipowning was relatively uncommon.[23] Merchants invested in temporary freight contracts and commission agency, rather than in vessels or shipmasters with fixed positions.

A certain remoteness in marine affairs persisted throughout the 1500s, although some fundamental requirements for premium marine insurance, such as basic know-how and an interconnected network of financially reliable potential underwriters, had been present at Antwerp since the first years of the 1500s. No substantial shift in risk or political circumstances had occurred, although traffic over sea, both on the eastern and western routes, had suffered periods of frequent captures and arrests in the 1510s and 1520s, as well as after 1530. In these periods convoys and armed escorts were only sometimes used, more often in eastbound than in westbound trade, both before and after 1530, when premium insurance began to gain traction.[24]

Brokers and finance

The spread of insurance in Antwerp from about this time was accompanied by intensified broker activity, which was essential to efficient underwriting, and which resulted from renewal of the city's financial infrastructure. During the final quarter of the fifteenth century Antwerp merchants had flocked to a meeting place in the *Wolstraat*, near the city's markets. Risk-taking and speculation had become a prominent part of Antwerp business by the 1520s. This was acknowledged in the relocation of the Antwerp bourse around 1531 to a building near the

Meir, which was further from the port. Merchandise traded there was not always present, and commerce became more financial.

This concentration of trading at the new bourse building coincided with an official liberalisation of the broking profession, which was, for the first time, opened to foreigners and non-citizens.[25] Fierce competition resulted in the application of new arrangements. Within the new competitive, speculative environment, brokers added more products to their portfolios. Bills of exchange, charter-parties, and letters obligatory, which had been used in Antwerp before the 1530s, were now broked on a large scale in the new exchange building. The speculative approaches went hand in hand with the spread of wagers, games of chance, and lotteries.[26] Premium insurance, its basic features known, found fertile ground at the new bourse, and became commonly traded there.[27]

The physical concentration of merchants allowed brokers more easily to solicit multiple underwriters to insure ships and cargoes. The earliest preserved Antwerp insurance policy, dated July 1531, covered both hull and cargo for a voyage from Lübeck to Arnemuiden, and was valued at 1,883 Flemish pounds (*l*.). The contract includes the names of 44 underwriters, of whom 41 were Spanish, Portuguese, or Italian (including Florentine, Lucchese, Genoese, and Lombard merchants). The three remaining signatures include one south German and one Frenchman. Few underwrote values greater than 50 pounds. The dates of the underwriters' signatures reveal that they were collected over the period of one month, between 13 July and 14 August. Only five merchants residing in Bruges participated, hinting at dwindling demand among underwriters there.[28] The combined insurance of hull and cargo, a feature typical of arrangements entailing the liability of shipmasters and charterers rather than of premium insurance, as well as the relatively long period of subscription, point to only modest familiarity with the practices of underwriting. Yet the 1531 policy also demonstrates the potential of the large mercantile community at the bourse, which would soon engage fully in underwriting.

In the 1530s Antwerp underwriters and insureds belonged to the same segment of high-profile, large-scale merchants involved in general trading companies and international finance.[29] As was the case in other contemporary insurance centres, they did not specialise in insurance, but instead adventured in many different mercantile agreements and transactions. This is clear from the 1531 policy, which contains six signatures on behalf of general trading companies, including four representing Italian merchant families. Two signatures represent pairs of merchants who together assumed a portion of the sum insured.[30] Both

strategies – binding a partnership and seeking a coalition of underwriters for insuring a single share – were common in contemporary Florence. They reflect underwriters' cautious attitudes,[31] and remained typical of marine insurance in Antwerp even during its heyday from around 1550.

By the 1530s the links between finance and insurance, as well as the structural features of Antwerp's maritime trade, allowed for the extension of policy terms and the underwriting of long and distant voyages. In contrast, in Burgos and Florence in the 1510s and 1520s the limits of coverage were conservative, and closely watched by the authorities, which imposed model policy forms.[32]

Antwerp's lack of supervision, in combination with the embedding of insurance practice at the bourse, led to speculation in insurance contracts. A *consilium* written by the Leuven law professor Elbrecht De Leeuw (Leoninus) tackled legal arguments raised in a suit brought in the Council of Brabant over an insurance contract. The case was an appeal against a judgement of the Antwerp City Court, most probably from 1540. The Genoese merchant Leonardo Gentili had insured a cargo in Antwerp in January 1540 for a voyage from Chios to Ancona, but the policy had been drawn up 40 days after the loss of the vessel and its cargo. According to De Leeuw, it was a 'custom of Antwerp' that late insurance was legitimate, on the condition that news of the damages could not have reached the place where the contract was signed, assuming that news travelled at one mile per hour.[33]

The case shows that by 1540 marine insurance was being placed in Antwerp which involved routes which did not touch the city or its neighbouring ports, known as 'cross risks'. Further, the policy of 1531, and two others dating from 1535, insured voyages between Amsterdam and Sweden.[34] It seems that such cross risks could be insured when the place of arrival and/or departure was within Antwerp merchants' networks. This is further demonstrated by references from the later 1530s made in a letterbook of the Van der Molen trading house to insurances for voyages to Chios and Messina.[35] Insuring cross risks was common in Florence in the 1520s, where about 30 per cent of policies covered sailings which did not involve Tuscan ports. Florentine underwriters commonly insured voyages from far-away locations, when local merchants' agents resided there.[36]

The practice of insuring cross risks is not in itself an indication of underwriting experience. At Burgos, which was an established insurance centre by the middle of the sixteenth century, nearly all insurances covered voyages with a port of departure or destination in the Iberian regions, even in the 1560s and 1570s.[37] In other sixteenth-century

insurance centres with long traditions, such as Venice, an earlier preference for underwriting voyages departing or arriving at the local area was reflected in lower premium rates.[38] Underwriting in the port of departure allowed for the best exchange of information about the insured vessel, its captain, and the merchandise covered.[39] The insurance markets of early sixteenth-century Florence and Burgos were widely networked, but at the same time were formally restrained by imposed contractual forms and supervision. As a result, speculative practices such as 'late insurance' were almost never used there.[40] Antwerp's relative remoteness from maritime traffic and the lenient approach of its municipal government affected the conditions of insurance for such insured routes. As the *consilium* demonstrates, in Antwerp insuring vessels 'lost or not lost' had, early on, evolved from an exceptional contractual provision into a standard term.

A thin legal framework

Legislative support for marine insurance in Antwerp was minimal in the 1530s and 1540s, but judges set out some standards of behaviour, and parties to insurance contracts more or less complied with them. The 1531 policy stipulates that legal arguments could not be used to undermine the language of agreements,[41] but the two Antwerp insurance contracts of 1535 do not contain a comparable provision. Instead, the insurers warranted to submit to any jurisdiction adjudicating the validity and quantum of claims.[42] The City Court guarded the balance of interests between insureds and underwriters, as well as between creativity and fraud prevention. Antwerp judges did so with crude standards, and often imposed oaths on plaintiffs or defendants in order to assess their pleas. In 1537 the Antwerp aldermen advocated that procedural rules for litigation involving letters obligatory, recently imposed under princely law, would be extended to cases regarding bills of exchange and marine insurance.[43] This demand was honoured in an ensuing princely ordinance of May 1537, which required insurers to deposit the indemnity sought before contesting insureds' claims.[44] This rule served to prevent lawsuits from dragging on when underwriters refused claims.

The ordinance adapted procedure before the Antwerp City Court to only a limited extent. In the period up to 1550, neither the central government of the Low Countries nor Antwerp's urban leaders had intervened by promulgating laws which restricted marine insurance contracts. As a result, and in spite of some control *ex post* in the City

Court, much agency was left to merchants. All in all, few regulations existed, and those that did concerned primarily procedural delays.

Many policies of the 1530s included a clause stating the underwriters' requirement to pay when no news of a vessel had been heard for a year.[45] In 1544, in a lawsuit before the Antwerp City Court, this rule was referred to as a 'usage and custom of the [Antwerp] Bourse', thus judging the custom applicable even when contracts did not specifically include the clause.[46] The limited number of legislative prescriptions in place arose from the Antwerp aldermen, who continued to practice a conservatism which had been common to the city's judges throughout the fifteenth century. Even though expertise in legal formulation was being acquired from the later 1400s, and a willingness to create new law which opposed local legal tradition began to emerge during the early 1500s, a general policy of crafting rules governing the contents of contracts, among them mercantile agreements and insurance policies, was implemented only after 1550.[47]

The small number of rules corresponded to the variability of the conditions of insurance policies. They were written in many languages (including French, High German, and Spanish), and in spite of their similarities (all of them contained a liberty clause, for example, and covered the risks of the seas and of men), the differences were quite substantial. Some contracts insured against barratry, or damage caused by the misconduct of the captain and his crew, whereas others did not mention the peril. Some policies of the 1550s stipulated that the costs of the sale of insured merchandise were covered, whereas others did not.[48] This divergence in clauses lasted until the early 1570s.

The minimal legislative framework, as well as the general practice of observing contractual leeway, was further reflected in Antwerp insurance policies' frequent reference to the combined customs of London's Lombard Street and the Antwerp Bourse,[49] thus pointing to wider insurance practice, and the few unwritten principles and standards which applied in either place. The clause remained common until the early 1570s. When Gabriel Meurier inserted a model insurance contract in a letter-writing manual published in Antwerp in 1558, he mentioned the customs of Antwerp and London.[50] In practice, brokers and notaries determined the specific wordings of insurance policies. Privately written agreements were not yet common in the first half of the sixteenth century; most premium insurance contracts were drawn up in the form of a notarial deed. This approach did not exclude brokers. A notarial insurance contract of 1541 mentions the assistance of a broker, for example.[51] Regulation of the broking profession was almost entirely

absent, however, and brokers active on the bourse arranged currency exchange and commodity contracts, as well as marine insurance.[52] This mirrored the lack of specialisation among insurance underwriters.

It is difficult to assess the relationship between premium rates in Antwerp during the decades up to 1550 and those which were applied elsewhere, since none of the extant policies from the period state the price of cover.[53] The sole reference to a rate (15 per cent for a voyage to Messina in 1538–9) is roughly comparable to rates at Ragusa (Dubrovnik) at that time for similar voyages.[54] The few surviving sources provide only scant information about the merchandise insured and the trading networks of those involved. In contrast to Christopher Ebert's recent hypothesis,[55] they indicate that during its early developmental phase, Antwerp's insurance market did not hinge upon Atlantic trade, but also covered the import of Baltic grain. Contracts of 1531 and 1535 covered voyages from north-eastern Europe to Amsterdam and Arnemuiden (Middelburg). Court cases dating from the 1540s confirm this picture.[56] Moreover, the ledger of an unknown Antwerp broker contains entries referencing policies signed in 1535 and 1540 which insured shipments of grain to Madeira and the Canary Islands.[57] The share of pre-insurance contracts related to eastbound trade, and which focused liability on the charterer or shipmaster, had declined, even though contracts granting risk transfer, and typically concerning shipments from northeast Europe, were occasionally signed even in the 1550s and after.[58] Further, up until about 1550, for Antwerp trade on western routes to the Iberian Peninsula and French ports such as Bordeaux, insurance was still commonly signed at Burgos[59] or elsewhere.

Flaws in information exchange and demand

Near the end of the 1540s, ships that moved to and from the Gulf of Biscay were frequently attacked by groups of Scottish corsairs. The resulting sudden rise in claims before the Antwerp City Court prompted underwriters to protract trials in order to avoid payment.[60] The perverse effect of the heightened danger was the wider use by merchants of marine insurance to spread risk. The use of pre-insurance contracts declined further, as did resorting to foreign underwriting centres. This rising demand gave an impulse to the spread of insurance practice over larger groups of traders in Antwerp, covering more routes than had previously been insurable, and to reshuffling insurance networks.

The ledgers of insurance broker Juan Henriquez, which cover 14 months from August 1562 to September 1563, show that by that time

more members of Antwerp's mercantile community were taking out insurance. Henriquez's share of the Antwerp insurance broking market was high, and he was in his time considered a monopolist. No less than 261 merchants appear in this record as insured.[61] Whereas the most frequently insured in Henriquez's ledgers still conform with the picture of the first half of the 1500s – high-flying merchants involved in marine underwriting – smaller traders buying insurance only occasionally and for small cargo values are the most numerous.[62] In March 1565 a petition advocating average adjusters was signed by 83 merchants who claimed to act on behalf of more than 600 persons 'involved in marine insurance'.[63] The number does not seem highly exaggerated, and is equal to about half of Antwerp's estimated total mercantile community.[64]

As a result, some brokers gained a fair proportion of their income by engaging in insurance negotiations, for which they were paid by the insured. In February 1558 it was said that some brokers earned between 200 and 300 guilders (33 to 50 Flemish pounds) annually in insurance broking.[65] With brokerage at 0.25 per cent of the sum insured, this represents annual coverage of between 13,200 *l.* and 20,000 *l.* In comparison with Florence in 1524–6, where forty or fifty of 320 active underwriters regularly underwrote large sums,[66] the supply side of the Antwerp market in 1562–3 remained somewhat restricted. Henriquez's books name 184 underwriters, but about sixty were the top insurers, underwriting more than 50 contracts each. They worked alongside more underwriters than in earlier years, but the newcomers were occasional insurers, often subscribing only small values.[67]

On the demand side, the Antwerp insurance market was large. Henriquez arranged 1,621 policies, an average of at least three each day, during a 14-month period when he was the city's most important broker.[68] The number is high for a single intermediary, and when compared with other marine insurance centres: in Florence in 1524–6 two policies were drawn up each day on average.[69] Even Burgos during its most vibrant period, 1565 to 1570, saw less activity, when an annual average of 442.5 registered policies granted cover of 632,540 ducats, roughly 189,762 *l.*[70] In Antwerp in 1563 alone, 487,000 *l.* were insured through Henriquez. Even though his position was dominant, other, more modest insurance brokers were also active.[71]

Competition between Burgos and Antwerp underwriters occurred primarily for risks on trade routes which lay within the commercial networks of both cities, and where Burgos had the commercial lead until about 1550. These included voyages from France, which were the most commonly insured routes in Antwerp in 1562–3. Known

Antwerp premiums for Bordeaux-Antwerp include 5 per cent in 1557 and between 5 and 9 per cent in 1562–3.[72] Prices at Burgos were 5.5 per cent for Bayonne-Antwerp and 4.7 per cent for Bordeaux-Antwerp in 1567–8. Insurances for voyages from Italy, the Canary Islands, and Madeira to the Low Countries were also usually made at Antwerp, although rates for Canary Islands and Madeira shipments were slightly lower at Burgos. Competition to insure the trade from Lisbon and Cadiz was stiff. At Burgos, shipments from Lisbon to the Low Countries were insured at between 5 and 5.5 per cent in 1566–7,[73] while rates at Antwerp for the same route oscillated around 6 to 7 per cent.[74]

The number of insurances made at Burgos for voyages to ports in the Low Countries had dropped significantly by 1565. Interregional routes in the northwest were no longer commonly insured there either. Price played a modest role. Antwerp–London voyages were insured at rates between 2 and 3 per cent.[75] Modest premiums were also common for shipments from north-eastern Europe, a trade in which Antwerp and its dependent ports had a longer tradition. Exceptional insurances purchased at Burgos for trips from Narva to the Low Countries in 1566 and 1568 were insured at 9 per cent,[76] whereas in Antwerp comparable voyages were insured at 6 to 8 per cent.

In spite of its popularity, Antwerp marine underwriting remained somewhat underdeveloped. Even though many ships sailing to and from the city and its dependent ports contained insured merchandise, their cargo was typically only partially insured. Even until the 1590s, many merchants covered only small portions of cargoes,[77] which reduced the utility of insurance as a warranty against the risks of seaborne transport. For the often-insured Antwerp to Bordeaux route, according to Henriquez's ledgers the average sum insured per contract is 255.41 *l*. Even for the rather short trip from Antwerp to Rouen (21 policies), an average of 259.52 *l*. was insured per policy. The average sum insured often rose when colonial goods were transported, but insured values remained relatively low. For the Cabo de Gué to Antwerp route (39 policies) the average insured value was 517.42 *l*. For voyages from Santhome to Lisbon (67 policies) the average was 380.71 *l*.[78]

Fractional insurance was also common elsewhere, since buyers offered up only portions of their cargo to be insured. However, restraint stemmed also from the supply side, reflecting underwriters' selective risk appetite. They could accept only small shares of values offered, which meant that more underwriters were needed to cover shipments on certain colonial trade routes, for example. The average number of insurers signing such policies was more than 11, and sometimes more than 15 for

cover from Cabo de Gué to Antwerp. By contrast, an average of seven underwriters signed policies covering the Antwerp to Bordeaux route, and 6.2 for Danzig to Antwerp.[79]

The phenomenon is explained by the slow pace of information-gathering when underwriting long-distance trade, even when distant ports were within underwriters' commercial networks. This is evident also in the larger numbers of underwriters signing insurances for routes originating in nearby ports which were not Antwerp-dependent, such as Amsterdam.[80] Because by the 1560s premium rates had largely converged internationally, prices did not much correlate with the nature of the cargo.[81] However, underwriters could still adjust the value of their signings in the interest of individual risk management. The premium was only one indication of the full value of the policy.

Underwriters in other insurance centres limited the amounts for which they bound themselves,[82] but there are clear indications that Antwerp insurers were more reserved than those accepting risk in other cities. The average value insured under an Antwerp policy was lower than at Burgos. In 1565, 358 known contracts were signed there for a total value of 846,545 ducats, or 253,963 *l.*, an average of 709.40 *l.* per policy.[83] At Florence in 1524-26, some 881 policies were signed; their estimated average value for 1563 is 487.98 *l.*[84] By contrast, in Antwerp Henriquez arranged policies worth on average 348.83 *l.*[85]

Individual signings at Florence, which averaged 50.48 *l.* from 1524–6, were comparable to those in Antwerp (averaging 43 *l.* in 1562–3), but in Burgos they seem to have been generally higher, with examples from 1562 and 1573 averaging between 70.5 *l.* and 80 *l.* Differences as to the number of underwriters per contract are therefore probably not the explanation.[86] The nature of merchandise was not a proxy either. Even though a majority of the policies underwritten at Burgos covered colonial shipments, a trade less preponderant in Antwerp, insurances made there for cargoes on routes from French ports to Iberian destinations, for example, also had higher insured values than comparable Antwerp contracts, with an estimated average of 337.99 *l.* per contract.[87]

The larger signings of Burgos underwriters, as well as those of Florentines, are most probably attributable to their higher level of risk assessment. Their more profound interest in risk evaluation arose from the better information transmittal made possible within their institutional framework, and allowed some of them to cover larger portions of cargoes. The integration of underwriters in international mercantile networks could result in more frequent insurance of cross risks, which presented a commensurately greater risk to underwriters, and thus the

more pronounced effort of Antwerp's more reluctant underwriters to limit insured values. About 16 per cent of routes insured through Henriquez in 1562–3 were cross risks. However, in Florence in 1524–6 cross risks were around 30 per cent of all insured risks, while in Burgos the number was minimal. Moreover, the low insured values on routes from French ports to Antwerp make it clear that the share of merchandise insured had more to do with deficiencies in information transfer than with the trajectory of voyages.

Further arguments support the assumption of restraints on underwriting in Antwerp, including the relative lack of variability in premium rates there. Throughout the sixteenth century premium rates charged in Italian cities differed substantially depending on the type of vessel and its armament.[88] There is no evidence that, for example, ship type or defensive capacity influenced Antwerp insurance rates.[89] Moreover, reinsurance was common at Antwerp,[90] and was perhaps accompanied by a re-evaluation of risks underwritten, and reflective of hesitation and second-thoughts, as well as further risk-spreading. All these factors suggest a less sophisticated application of marine insurance at Antwerp than in contemporary southern European insurance centres.

Fractional insurance and accordingly lower premiums offer an explanation for the accelerated spread of insurance-buying among larger groups of merchants in mid-sixteenth-century Antwerp. At the foundation of lower rates were underwriters' restraint and the structural divide between Antwerp's maritime trade and its insurance practice. Underwriters hit the brakes, unwilling to risk too much of their capital, because they assumed risk without in-depth risk assessment. Some historians have proposed this habitual restraint, or risk calculation on the part of insureds, as sufficient explanations for low value-to-coverage ratios,[91] but for Antwerp they are inadequate. The increasing popularity of fractional insurance must also relate to prevailing practice at the vibrant Antwerp bourse. Merchants could, in theory, look abroad to acquire insurance for greater shares of their merchandise, sometimes even at more advantageous rates, but the *larghezza* of the Antwerp market drew them in.

It has been shown that the financial reliability of underwriters in other centres was a variable considered seriously by insureds and their brokers, which explains in part the prominence of wealthy merchants among underwriters at Antwerp and elsewhere.[92] On a European level, information asymmetries meant that some insurance centres could attract more orders in spite of inferior products. A level of premium rate convergence and harmonisation was reached throughout the continent

because such information was widely spread, for example through merchants' letters,[93] but the rate was an imperfect expression of the value of an underlying insurance contract. This was especially true with regards to the enforcement of agreements, which depended upon underwriters' attitudes, political and judicial support, and the variability of contractual terms. Such information did not travel as easily as rates. All this meant that Antwerp could become a popular marine insurance centre despite the generally more advanced institutional development of other underwriting centres.

The increased use of marine insurance in Antwerp around 1550 resulted in some specialisation, driven primarily by profit-seeking and the establishment of dedicated marine underwriting partnerships. The earliest traces of such a company date from 1553.[94] In March 1556, another company, with four partners, was dissolved with a loss of 381 *l.*[95] In July 1559 an experienced underwriter, Christopher Pruynen, established a partnership '*des septante perceros*', of seventy shares, to engage in marine insurance. The 14 shareholding partners effectively invested their capital in Pruynen, who signed policies on their behalf. In 1563 the apparently successful partnership was renewed, this time with 12 partners, but in 1565 it was dissolved after bearing a loss of some 7,800 *l.*, which meant that the partners had not only lost original investments totalling 800 *l.*, but were also liable for a substantial debt.[96]

Such enterprises were very risky. A sudden change to the political situation could result in swift and numerous ship captures and arrests, for example, and thus in underwriting losses. The average return for underwriters mentioned in Henriquez's ledgers was 2.3 per cent, whereas the fixed return on investments in annuities in 1562–3 was 6.5 per cent.[97] Alone, the distribution of liability over many partners was not a sufficient strategy to tackle the risks inherent in marine insurance. Speculation took the form of specialisation when merchants acted in partnerships as passive insurers relying upon the judgement of a sole underwriter. However, like Antwerp marine insurance overall, such investments were hampered by the mechanisms and deficiencies of the market. While rising demand typically reflected concerns over privateering and war,[98] which could be tackled through higher rates, the solution did not fundamentally mitigate the risks that insurers were assuming.

The search for legal standards

The emergence of a large group of occasional buyers meant earlier constraints, which had been important among merchants in the 1530s and

1540s, were less important during the second half of the sixteenth century. This, combined with contractual leeway, widened underwriters' powers to protract payment. As early as 1548, underwriters' refusal to pay claims, and the lawsuits that ensued before the Antwerp City Court, attracted the interest of the Governor of the Netherlands, Mary of Hungary. Reports about the Antwerp insurance market were solicited,[99] and drafts of a princely ordinance drawn up. They focused primarily on arming ships and organising convoys, but also contained some rules for marine insurance.

Officials sought feedback on the draft ordinance from merchants, captains, and seamen of the Low Countries' ports.[100] An ordinance issued in January 1550 prohibited insurance of all but duly armed ships, and limited cargo insurance to nine-tenths of its value.[101] Merchants' input is evident in a June 1549 draft, which had placed an insured-value limit of one-third on cargoes that did not sail to the Mediterranean, and which prohibited hull insurance altogether, but the ultimate ordinance proclaimed hull insurance legitimate, and provided a more lenient coverage ratio.[102]

The few insurance-related sections of the ordinance, and of another imposed in 1551,[103] were too minimal to turn the tide, and lawsuits between underwriters and insureds remained common.[104] In response to the sustained deadlock, some merchants even advocated that the Habsburg Emperor, who was Duke of Brabant and overlord of the City of Antwerp, should act as official insurer, replacing the many unreliable underwriters.[105] Moreover, in 1551 Castilians in Antwerp began lobbying for their own jurisdiction, in part to establish a more efficient forum of dispute resolution for marine insurance.[106]

The City Court managed the lawsuits in the same way it always had, by focusing on fraud prevention and contract fulfilment. However, unrest continued in the City Court among underwriters and their advocates over the legalistic exploitation of contractual terms. The problem was aggravated by buyers' sheer number and inexperience. In October 1555, the Antwerp-resident Italian merchant Giovan Battista Ferrufini proposed that the princely Council of Finance require that all contracts be drawn up by a designated public broker. This official would structure policies in the 'best form possible' and arrange for their certification with the sovereign's seal by a notary-assistant. Uncertified policies would not be subject to the court's jurisdiction. Ferrufini envisaged a monopoly combining insurance broking and registration, in exchange for an annual sum of 500 guilders (83.33 *l.*) to be paid, after a trial period of ten years, for the remainder of his life. He proposed to

charge 0.25 per cent of the sum insured for each insurance contract, as was usual for brokers.[107]

When the princely commissioners, all of them financers active in the Antwerp market, endorsed Ferrufini's proposal, he fine-tuned his ideas and submitted a model insurance policy, which he presented as containing the standard terms currently in use. However, many parts of his proposed standard contract were much more restrictive than custom allowed. For example, insurance 'lost or not lost' was ruled out, as was cover for barratry.[108] Between October 1557 and February 1558, 165 merchants of many nationalities, among them many occasional insurance buyers, objected to the plan. They advocated a free market in broking and demanded that legislation be drafted with the input of Antwerp's merchant community.[109]

Following some Italian nations of merchants, Ferrufini scaled-back his proposal to the office of registrar only, albeit assisted by four brokers. These most probably represented the leading nations, despite their significant loss of jurisdiction in the increasingly internationalised Antwerp market.[110] Four commissioners were appointed to launch new negotiations, and Ferrufini further backed down. He continued to propose himself as official registrar, but accepted complete freedom of choice in the selection of brokers.[111] Compromise drafts were made of ordinances and model contracts which more closely followed mercantile practice, for example by permitting post-loss policies and cover for barratry.[112] Ferrufini was appointed as registrar in the spring of 1559,[113] while the ordinance was still being finalised.[114] However, no law was passed, most probably because of new action against centralised registration.[115]

Merchants continued to challenge the appointment of a sole registrar, even after Ferrufini's death or retreat around 1561.[116] New plans to nominate a registrar were blocked in 1563.[117] The animosity delayed the crafting of a set of legal standards, which was now demanded by large groups of merchants. The initial official response to the renewed opposition was a unilateral princely law of October 1563[118] which was much stricter than the 1558 and 1559 compromises. Policies issued 'lost or not lost' or covering barratry were prohibited, and a fixed policy form imposed, to which nothing could be added and which could not be interpreted according to custom. A temporary ban on marine insurance was promulgated in 1569 by the Duke of Alba, following English privateers' capture of a large cargo of bullion belonging to the government,[119] but marine insurance was again permitted in October 1570,

and a new registrar, Diego Gonzalez Gante, appointed by the central government.

Meanwhile the princely authorities had caused a stir by acknowledging that the Castilian merchant community nation of Bruges would have jurisdiction over insurance contracts among members of the organisation, of which a considerable number traded in Antwerp, and between those under the authority of its consuls.[120] Together with Gante's appointment, a new princely law was passed which contained some moderate sections and another model contract.[121] It again provoked immediate reaction from Antwerp merchants. In June 1570, before the prohibition of marine insurance had been lifted, Antwerp's aldermen had proposed a set of rules which were close to the compromises of 1558 and 1559. They were part of a wider municipal law project (*costuymen*) which they submitted to the princely councils.[122] All this activity culminated in a new princely ordinance of January 1571, which included a standard contract, and stuck, for the most part, to the 1558–9 solutions, although it did not give up on centralised registration.[123] As for the contents of contracts, the new legal texts of the *costuymen* and the 1571 princely law limited certain practices, but also supported concrete insurance clauses.

No evidence has come to light of an official registrar's activities in Antwerp after 1559, 1563 or October 1570, most probably because the merchants refused to cooperate. Merchants even took the initiative of appointing adjusters for average calculations.[124] Moreover, it seems that only the contractual terms imposed under the 1571 princely ordinance were applied in mercantile practice. A 1566 insurance contract, for example, contains clauses referring to the customs of the London Estrada (Lombard Street) and on barratry, both of which had been outlawed in 1563.[125] But in the later 1570s, standard policies were printed after the model attached to the 1571 ordinance. Private printers sold Dutch, French and Spanish language versions.[126]

Even though policies continued to be made in the form of notarial deeds after 1571, printed private contracts became fairly typical of the Antwerp marine insurance market. The use of the 1571 model contract shows acceptance of the new legal framework, and of its interpretation by Antwerp judges. The absence of restrictive clauses indicates merchants' continued approval of the judgements and jurisdiction of the Antwerp City Court: policies of the 1580s and 1590s generally did not contain mediation clauses which blocked official courts' jurisdiction, nor provisions renouncing the application of law.[127] Moreover, it

seems that from 1571 to 1608, litigation of marine insurance contracts was relatively exceptional, and when disputes did go to law, few arguments over contractual clauses were brought forward by underwriters' advocates.[128]

The process of crafting legal standards for contracts of marine insurance demonstrates that the Antwerp merchants had a large say in what was imposed under law, by both the municipal government and the central princely authority. One issue brought to the negotiating table was that the international insurance market made it possible to insure cargos at different locations, allowing merchants to make multiple claims for the same losses.[129] It was also feared that blocking recourse to the courts, or to contractual exceptions to restrictive legislation, would encourage merchants to make insurance contracts elsewhere.[130]

The long debates leading up to the 1571 consensus not only concerned freedom of contract, but also, when opinions differed, concrete rules. Questions arose over some of the contractual terms (such as barratry and reshipment) and the details required in contracts (such as the name of the vessel or master). Merchant-underwriters of different nationalities could have differences of opinion, based on their familiarity with, or reservations regarding, certain contractual provisions. For example, barratry was not an accepted peril in Genoa or Spanish insurance centres, but other groups of merchants considered it insurable under cargo policies.[131] Complaints about brokers tampering with clauses in order to conceal fraud had some truth to them, but were also seriously exaggerated by those proposing centralised broking.[132] The linchpin of the problems lay with underwriters who concealed their rent-seeking behaviour by exploiting contractual provisions to their favour in the courtroom, and, more fundamentally, in the deficiencies of information exchange and risk assessment.

Antwerp was a market of many insurance buyers, where insured values were low, and where insurance had as much to do with speculation as with risk assessment. When, in the later 1540s, underwriters began to use the City Court to delay payments by having their advocates niggle over the clauses of signed contracts, it became clear that variability in terms of policies had become a weapon in the hands of underwriters. All this conforms only partly to the theories of New Institutional Economics (NIE), which state that newcomers to markets invite state-implemented rules, because informal ethical considerations and peer pressure are effective only within closed groups. Even though the opening of the insurance market meant that earlier constraints had less impact on the behaviour of underwriters, crafting a set of standards was a combined

effort of governments and merchant groups, and was not entirely a product of state intervention.

Furthermore, in the 1530s and 1540s, when the Antwerp insurance market was still 'collectivist' (to employ the terminology of NIE), the City Court had been important in enforcing insurance contracts. Even though frequent underwriters were of many nationalities, their business profiles were comparable, and their social-economic relations very close. Mercantile customs were acknowledged, and merchants considered procedural rules as customary. No traces can be found of a parallel circuit of insurance policy enforcement which referred disputes to merchant arbiters who applied the Law Merchant or customary law. Nor did Antwerp have a specialised court of merchant-judges. Moreover, the examples of Ferrufini's proposal and the plan for nations to have representative brokers show that negotiations also turned on motives of rent-seeking and power. The long period of discussions (1555–71) was necessary to overcome these problems, but also to reconcile views on concrete rules which could not be deduced from economic conditions.[133]

In the later 1560s and in the 1570s, the Dutch Revolt pushed capital out of Antwerp, which reduced the practice of marine insurance there; ultimately its dependence on the financial strength of underwriters led to its demise. In the 1580s and 1590s, merchants wanting to insure freights to and from the Low Countries obtained insurance in other cities such as London, Rouen, Hamburg, and Amsterdam, as well as Venice and Palermo.[134] Still, a small nucleus of Antwerp underwriters remained active, and resumed activities after the 1585 reintegration of the city into the Habsburg territories. Some policies were underwritten in Antwerp in the early 1590s for shipments from Hamburg or Amsterdam to Italian ports. Premium rates were high, at 16 per cent to 18 per cent, but not higher than those charged before.[135] Yet the revival was temporary and modest. Many merchants who had traded in the city now imported to other locations, which also meant that they more commonly insured elsewhere.

The fragility of marine insurance and the outsourcing of maritime trade, which had been features of marine commerce in Antwerp throughout the sixteenth century, meant that few incentives remained to concentrate insurance buying in the city. Underwriting continued through to the 1620s,[136] but was only occasional. A municipal law of 1608 was restrictive in matters of marine insurance, which attests to the alienation of legislators from merchant practice. Moreover, the demise of local insuring is made clear through payments made abroad by large

Antwerp firms, and in its absence from court records. Only from around the middle of the seventeenth century was marine insurance again practised on a large scale in the city.[137]

Antwerp's exceptionalism

Sixteenth-century Antwerp differed in some respects from other European insurance centres. Marine insurance was deeply entrenched in dealings at the Exchange, where assessment of risks and information exchange were not as thorough as elsewhere. This can be seen in comparatively low average sums insured per contract, and in the variability of contract wordings. In this respect, Antwerp was different from Florence and contemporary Burgos, where strict regimes were in place to govern insurance policies, and sums insured were generally higher under a more limited number of contracts. At Florence, the characteristics of skilful and guided insurance practice were accompanied by a considerable share of insurances covering cross risks. The low value-to-coverage ratios at Antwerp, where such distant insurances were also underwritten, point towards relatively lower levels of insurance sophistication within Antwerp's mercantile setting. Whereas at Florence an institutional framework could guide newcomers to practise marine insurance cautiously, a set of rules regarding contractual provisions was not present at Antwerp during its Golden Age.

The Antwerp case shows how marine insurance underwriting could thrive in spite of modest foundations, and remain a far-from-ideal instrument for mitigating the risks of long-distance trade. Moreover, Antwerp's case illustrates the risk of confusing rational economic behaviour (underwriters imposing quotas on insured values) with the overall utility of marine insurance in terms of its coverage of risks. It yields arguments concerning the imperfection and asymmetry of information within the broader European marine insurance market.

Only after 1550 did the characteristics of the Antwerp insurance market pose problems, when an exogenous factor – a rise in privateering – resulted in increasing demand for insurance, and rising profit-seeking by underwriters. These factors triggered government initiatives to reform the Antwerp market. Pressure exerted by many insurance buyers was considerable, a political factor to be taken into account. A new policy of imposing standards for marine insurance contracts, pursued by princely as well municipal governments, was incited by these developments. What was ultimately put to paper as rules was built on the embedded attitudes of Antwerp's rulers and judges, but was much more

detailed. Contractual provisions were for the first time elaborated in legislation, but merchants participated in drawing up sections of the legal texts, resulting in compromises between differing views.

After 1571, Antwerp judges could make use of legal provisions that replaced earlier, crude standards and principles. The compromise-like rules of Antwerp's municipal law and the 1571 princely ordinance were used and copied by other marine insurance centres such as Amsterdam and Hamburg.[138] However, in spite of the lasting renown of Antwerp law, the political events of the later decades of the sixteenth century pushed capital out of the city. The corollary was the displacement of marine insurance.

Notes

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67. De Groote, *De zeeassurantie te Antwerpen en te Brugge*, pp. 157–8; Puttevils and Deloof, *Pricing risk in marine insurance*.
68. Puttevils and Deloof, *Pricing risk in marine insurance*.
69. Ceccarelli, *Un mercato del rischio*, pp. 163–4.
70. In 1563, in Dutch–Spanish monetary dealings one *ducado* was valued between 67 and 68.25 Flemish groats. In 1569, one Flemish pound was considered equal to 1,200 Castilian maravedis (Vazquez de Prada, 1960–1, I, pp. 239, 270). As a result, it can be estimated that in 1562 one *ducado* was 0.30 *l.* Fl. Casado Alonso, *El mercado internacional de seguros de Burgos*, p. 283.
71. De Groote, *De zeeassurantie te Antwerpen en te Brugge*, pp. 154–5, 157.
72. Ibid., p. 136; Wastiels, A.: *Juan Henriquez, makelaar in zeeverzekeringen te Antwerpen (1562–1563)*, unpublished Masters' thesis, Ghent University, 1967, pp. 326–426.
73. Casado Alonso, *El mercado internacional de seguros de Burgos*, pp. 297, 302–3.
74. Wastiels, *Juan Henriquez*, pp. 557–98.
75. De Groote, *De zeeassurantie te Antwerpen en te Brugge*, pp. 137–8; Wastiels, *Juan Henriquez*, pp. 102–3, 113–15, 137–9.
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78. Wastiels, *Juan Henriquez*, pp. 215–16, 291–308, 836–40, 844–8.
79. Ibid., pp. 113–15, 326–426, 836–40.
80. Ibid., pp. 295–308, 444–56.
81. Puttevils and Deloof, *Pricing risk in marine insurance*.
82. Ceccarelli, *Un mercato del rischio*, p. 64.
83. Casado Alonso, *El mercado internacional de seguros de Burgos*, p. 283.
84. The ratio of the *fiorino largo d'oro in oro* vis-à-vis the pound of Flemish groats is an estimated 0.65, based on the unskilled labour wage rates in both currencies at similar times. Ceccarelli, *Un mercato del rischio*, pp. 161, 208.
85. Puttevils and Deloof, *Pricing risk in marine insurance*.
86. Ceccarelli, *Un mercato del rischio*, pp. 208, 224–5; Basas Fernandez: *El seguro maritimo en Burgos*, pp. 29, 36; Puttevils and Deloof, *Pricing risk in marine insurance*.
87. Casado Alonso, *Los seguros marítimos de Burgos*, p. 234.
88. Ceccarelli, *Un mercato del rischio*, pp. 112–20; Tenenti, A.: 'Assicurazioni genovesi tra Atlantico e Mediterraneo nel decennio 1564–1572', in Schneider, J. (ed.): *Wirtschaftskräfte und wirtschaftswege. II: Wirtschaftskräfte in der Europäischen expansion: festschrift für Hermann Kellenbenz*, Stuttgart: Klett-Cotta, 1978, p. 13; Tenenti, *I tassi assicurativi sulla piazza di Venezia*, pp. 23–5; Piccinno, this volume.
89. Brulez, *De firma Della Faille*, pp. 157–78.
90. De Groote, *De zeeassurantie te Antwerpen en te Brugge*, p. 134; Wastiels, *Juan Henriquez*, pp. 52–3.
91. Brulez, *De firma Della Faille*, p. 174; Tenenti & Tenenti, *Il prezzo del rischio*, pp. 155–6.
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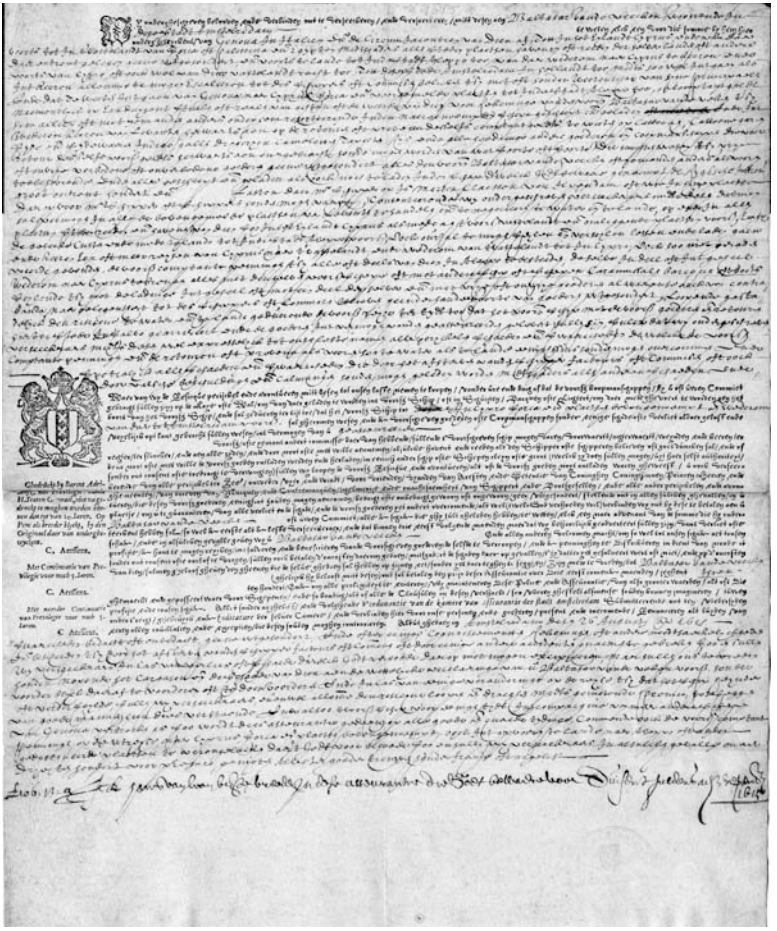

Policy dated 3 September 1615, one of the earliest extant to have been underwritten in Amsterdam. SA Library, no. 15,009:8342

5

Amsterdam 1585–1790: Emergence, Dominance, and Decline

Sabine C.P.J. Go

> That in this City undeniably the most *Insurance* of all Merchants in the whole of *Europe* is done, this no one needs to doubt; since not only the Inhabitants but even Foreigners, rather insure here… Because one finds in this city a great number of Underwriters, being… prominent and wealthy Persons, in which all have great trust, and so regarded, that from all over Europe the commissions of Insurance, both on Ships as well as Merchandise, flow here.[1]

Amsterdam had acquired the reputation as Europe's dominant insurance centre long before Le Moine de L'Espine's volume *The Commerce of Amsterdam* first appeared in 1696. The city's insurance industry emerged in the third quarter of the sixteenth century, quickly developed into a thriving business, and held onto its prominent position for more than a century. The beginning of the end came in the eighteenth century, and was only relative at first; it did not become abundantly clear until the nineteenth century that Amsterdam had lost its position of leadership, and was in fact reduced to a second-rate insurance market. This story of the emergence, maturity, and eventual decline of a market is inevitably rooted in the interactions of the individuals and groups involved, and the institutional framework which governed their transactions.

The emergence of the Amsterdam market

Amsterdam, the city along the IJ in the province of Holland, became Europe's leading commercial centre at the end of the sixteenth century. It was known for its staplemarkets and an abundance of capital, and for

the commercial infrastructure that advanced its mercantile expansion. By 1600 the city's trade network encompassed north-eastern Europe, the White Sea, the Mediterranean and Levant, northern and western Africa, the Caribbean and South America, North America, and southeast Asia. A large variety of products – including cheese, herring, wine, figs, spices, flax, hemp, gold, salts, hides, furs, gems, and grain – were available through Amsterdam's merchants and brokers, and from the foreigners who had flocked to the city to conduct business. Institutions, including the *Wisselbank* (1609) and the Exchange (1611), formed the backbone of her commerce.[2] A promising marine insurance market had emerged to support this thriving economy and expanding trade network.

Marine insurance was only one option for Amsterdam's merchants and shipowners. Alongside risk management and mitigation strategies,[3] mutual risk transfer structures were popular among shipowners in certain areas of the Netherlands, but functioned effectively only under very specific constraints, primarily the homogeneity of the population of skippers.[4] Conventional premium insurance had the advantage of its availability, in principle at least, to all, unlike coverage under mutuals, which was often limited to guild brothers. It was less expensive than bottomry, another popular alternative. So, when commerce and trade flourished in Amsterdam, insuring became an ever more popular instrument for dealing with the financial consequences of shallow waters, reefs, winter gales, piracy and inferior navigation.

Mediterranean merchants most probably introduced marine insurance to Amsterdam, as they arrived in the trade centres of the Low Countries with commercial and financial expertise, experience, and networks, as well as merchandise and capital. Insurance knowledge had reached Bruges and Antwerp, in the southern part of the Netherlands, by at latest the third quarter of the fifteenth century.[5] It is not clear when insurance was first underwritten in Amsterdam, but it seems likely to have been in the third quarter of the sixteenth century. The oldest surviving policies in Dutch date back to 1592, but their contractual language is quite advanced, and the policies are printed, with handwritten additions, all of which indicates that the market had not only developed certain conventions by this time, but that it had expanded sufficiently to justify printing blank policies. Even though hard evidence is lacking, it seems probable that marine insurance had been routinely practised in Amsterdam well before the 1585 event which triggered its rise to significance: the fall of Antwerp.[6]

When Antwerp fell victim to the power struggle between the Spanish throne and Dutch insurgents, a great number of merchants left the city in search of safer environs. Many of these refugees, some with

origins and networks in the Mediterranean, settled in Amsterdam. The importance of these immigrant merchants was greater than their number, as they were among the most innovative and risk-taking individuals of the mercantile population. According to Oscar Gelderblom, they were often young entrepreneurs who explored new trade routes and businesses. They were also the men most inclined to experiment with innovative products and services. Thus, the use and application of insurance, a financial novelty in Amsterdam, was advanced by this human influx, not only by way of increased available underwriting capital and expertise, but also due to rising demand: more entrepreneurs were present and willing to try it.[7]

Amsterdam merchants trading high-value cargoes to and from the Mediterranean and Levant were among the first to use insurance, since pirates made the route unusually hazardous.[8] Moreover, trade on these routes was mostly high-margin: relatively high profits allowed the expense of insurance premiums. Products such as figs, brandy, and ivory were among the merchandise insured in these early days.[9] However, it was not long before less valuable cargoes were insured. The oldest extant Dutch insurance record, issued in 1592, concerns three policies insuring shipments of rye on the vessels *Zeehondt*, *Roode Hond*, and *Sint Jacob* from Zeeland to Genoa or Livorno. The cargo aboard the *Roode Hond*, the largest of the three ships, was insured for 450 Flemish pounds by underwriters Isaac le Maire (200 *l.*), Reynier de Loeker & Compagnie (150 *l.*) and Emert Pellicorne (100 *l.*). The premium was 16 per cent.[10] Ships were also insured, and earlier than has often been thought.[11] It was not uncommon for ships to have a number of owners (*reders*) through an organisation known as *partenrederij*. Some vessels sailed only partly insured because only some of the co-owners opted to insure, as occurred with the whaling vessel *Bloemendaal* in 1756.[12]

Merchants and shipowners, underwriters and brokers

It soon became routine for merchants, and later for shipowners, to commission a broker to recruit sufficient underwriters to provide the desired coverage.[13] Alongside these three key groups of actors on the Amsterdam marine insurance market was a fourth: the urban authority. In contrast to other Dutch cities, Amsterdam's authorities were suspicious of the broking profession, and afraid that the intermediaries' information advantage would lead to manipulation of markets in general, and prices in particular, and thus damage the city's commercial reputation.[14] In 1530 the magistrates allowed brokers within the city walls, but only those accredited by the municipality. In 1578 the Brokers' Guild was

officially established.[15] All accredited brokers were obliged to enter the Guild, and to honour various regulations and obligations.

In spite of the city's strict regulations, formalised under by-laws and ordinances, an increasing number of unauthorised brokers was active. These *bijloopers* or *beunhazen* were forced to do their business in alleyways and outside the Exchange, but they had the advantage of illicitly being unconstrained by various municipal and guild regulations. Moreover, they charged lower fees than accredited brokers, and they soon became a force to be reckoned with. About 290 brokers were accredited within the city at the beginning of the seventeenth century, but an estimated 600 unauthorised brokers were active as well. None of the brokers, neither accredited nor *bijloopers*, were as yet dealing exclusively in insurance, which was only one of the products and services they offered. Not until the second half of the seventeenth century did several brokers focus on the insurance business.[16]

By the end of the first quarter of the seventeenth century it was already routine for merchants to commission brokers to handle their insurances.[17] The broker's task was to find underwriters of good credit willing to co-sign the risk. The intermediary would negotiate the premium rate and any specific clauses of the policy, and generally would collect the premium and draw up the policy. In cases of loss, brokers would often be involved in notifying the underwriters and settling the claims.[18] Underwriters, on the other hand, often relied on brokers' knowledge of buyers' reliability and trustworthiness, and would engage them to collect premiums and handle claims.

Merchants, shipowners, and underwriters did not seem to mind whether or not a broker was accredited. It was more important that the individual was knowledgeable, and maintained a good network of underwriters, so that he could deal with larger sums or more complex risks. In time, the two groups of brokers melted together, and the distinction between *beunhazen* and authorised brokers all but vanished. This is illustrated by the Amsterdam brokerage firm De Vos & Zoon. On 4 March 1760, the company arranged insurance for the ship *Crown Prince of Denmark*, owned by the Royal Danish Asian Company of Copenhagen. The total sum insured was *f* 90,000 (Dutch guilders); the premium was 7 per cent. De Vos & Zoon was a *bijlooper*, but in spite of its unauthorised status it was able to service prominent clients, and to arrange large underwriting sums.[19]

Of course, many or most of those using the Amsterdam insurance market came from the city itself or its vicinity, including places such as Oostzaan and De Rijp. Foreigners, though, were important users of

brokers, and typically commissioned local intermediaries. The insureds, local and non-local, comprised the most heterogeneous group within the market: their only common denominator was their desire to transfer all or part of the risk of long-distance trade to third parties. However, in doing so, not all acted honourably. It was not uncommon for merchants or shipowners to buy insurance when they had already heard that the vessel or its cargo were damaged or lost. The municipal ordinance of 1598 dealt with these issues: depending on the distance the ship had travelled by the time disaster struck, a maximum number of hours, days, or months was considered reasonable for an insured to remain unaware of any misfortune. After this period had elapsed, one could assume that the insured was aware of the loss of his assets, and any insurance signed after that period was considered invalid.[20] An insurance bought by Diolog Lopes Telles provides an example of this type of fraud. He had his merchandise insured en route from Bayonne to Amsterdam. However, soon after the underwriter, Jacques Hack, had underwritten the policy for 100 Flemish pounds, he learned that the vessel of carriage had been taken by Dunkirk privateers, and declared the policy void.[21]

Of course, many more examples exist of merchants conducting themselves with honour. Philips and Guilebert de Flines commissioned their broker, Pieter Sijmon, in 1617 to have their ship *De Moscovische Valk* and its cargo insured for 1,200 Flemish pounds. By three o'clock in the afternoon Sijmon had found eight underwriters for a total of 1,000 pounds. By five o'clock, however, the De Flines brothers went up to their broker's office to inform him that the ship had been lost, and revoked their commission.[22] To prevent such problems, one could buy an insurance on *Goede en Quade Tydinghen*, which meant that the insurance was valid even if the insured could have known of any loss; it was up to the underwriter to prove that the insured had known of any possible loss in advance of the purchase.[23]

The supply side of the market, the underwriters, is more difficult to outline, since underwriting was, for most, merely a sideline. Underwriters were primarily merchants, shipowners, or both, and simply invested part of their capital in underwriting, which was only one investment opportunity among many. The first were among the wealthiest of Amsterdam's merchants, and could afford to take risks. As more merchants garnered wealth, more took up the sideline, risking limited parts of their capital in the insurance market.[24] Joan Hulft (1610–77) was active as an underwriter, but was foremost a merchant, shipowner, and ropemaker. Abraham Boddens (1628–79) was known as a merchant in English manufactures, but he also wrote insurance policies.[25]

It was not only Amsterdam's *burgers* who were active as underwriters; wealthy merchants from surrounding towns, including Broek in Waterland, Oostzaan, and Edam, became aware of this new investment opportunity, and like those seeking coverage, they too most probably commissioned Amsterdam brokers to find suitable policies to write.[26] This dual nature of underwriters adds an extra layer of complexity to the insurance market, since these two groups of actors, insureds and underwriters, were to a degree interchangeable. A merchant could one day commission a broker to have his ship and merchandise insured, and the next commit himself as underwriter to a policy covering the valuables of one of his fellow merchants.[27]

In time some underwriters became more active, and developed specialised skills and expertise. Others remained impromptu insurers. Patterns of activity can be observed among these two groups. For example, among the first, the active insurers, Jewish underwriters were absent from the market on the Sabbath. Others kept a seasonal pattern: they would retreat at the end of the autumn, and return when the winter storms had abated. The insurers among the passive group tended to enter the market when premium levels were high, and exit when they declined, or after they had suffered a loss. This group in particular suffered heavy losses, as its members often lacked the knowledge and expertise required to assess risks adequately, and were frequently left with the bad risks that other, more experienced underwriters would not accept.[28]

As Frank Spooner put it, the market saw a high turnover rate among underwriters as a consequence of these factors. Based on contemporary lists of active underwriters compiled by Hendrik Sligtenhorst and his successors in the eighteenth century, Spooner analysed underwriters' commitment and continuity. He argued that underwriters reacted primarily to political instabilities, whereas financial crises did not seem to influence their level of activity. In the relatively peaceful time between 1757 and 1771, the number of underwriters on Sligtenhorst's lists dropped from 77 to 68. In 1777, when the threat of war was imminent, the number of insurers increased to an all-time high of 91. The number then dropped, to 57 in 1787 and a mere 52 in 1792.[29] Although the Sligtenhorst lists – themselves evidence of the institutional maturity of Amsterdam's market – are not complete, they undoubtedly name the most prominent and active underwriters. Even though the total number active at any one time was probably greater, the trends identified by Spooner remain valid. In spite of these trends, however, some insurers managed to survive in the business for a relatively long time. Jacob de

Clerq and Zoon, Adriaan Scharff, and Abraham Bruyn are listed as active in 1757, and remained so until 1795.[30]

Years of heavy storms or increased activity among pirates and privateers could affect underwriters significantly, as could inadequate risk assessment and simple bad luck. Together the claims these misfortunes brought caused some underwriters to suffer large losses. Some were driven to bankruptcy, including Jacob van Neck in 1673 and Arend van Staphort in 1777.[31] But despite these unfortunate examples, the surviving records of an as yet unidentified Amsterdam underwriter demonstrate that there was money to be made. The anonymous underwriter booked a profit of *f*17,793 (25.6 per cent) in 1725, despite paying claims of *f*51,654. Between 1725 and 1728 his total profits amounted to *f*61,911. Overall, the underwriter managed to earn a return of between 12 and 25.6 per cent per year over a four-year period.[32]

Ordinances, by-laws and the Chamber of Insurance

Insureds, underwriters, and brokers together comprised the commercial element of the insurance market. The fourth force which influenced it consisted of the regulatory side: Amsterdam magistrates and their representatives, and the regulatory framework they created to govern the insurance business.

In 1598 the city promulgated its first insurance ordinance. The regulation itself was hardly a novelty; preceding ordinances of Antwerp and Bruges had clearly influenced the legislators, and features of the cities' *Placcaten* of 1563, 1570, and 1571 can easily be discerned in the Amsterdam ordinance.[33] It consists of 36 articles, and states that all policies that contradict the ordinance are void. Other stipulations specify the information to be recorded in a policy, how to deal with possible fraud (such as when one suspects that the insured had knowledge of a possible loss at the time the insurance was purchased), procedures for the repayment of premiums when insured assets are not transported, and the maximum percentage of insurance coverage permitted.[34] The Amsterdam ordinance did not require policies to be registered, contrary to the *Placcaat* of 1571, which required all insurance transactions to be registered by Diego Gonzalez Gante, the inspector of contracts.[35] The Amsterdam merchants most probably objected to registering their trade secrets for all to see.

The truly innovative feature of the ordinance was the way its regulations were to be upheld and enforced. As part of the ordinance, the *Kamer van Assurantie* (Chamber of Insurance) was founded as a

subordinate court to adjudicate all insurance cases related to the city of Amsterdam.[36] Its formation marks a clear break from the way insurance disputes were dealt with in cities that preceded Amsterdam as commercial centres.[37] In Bruges and Antwerp insurance issues were often handled ad hoc, for example by consular courts linked to certain nationalities.[38] The Amsterdam magistrates chose a different path: their objective was to have a single court to deal with all insurance cases, which were often complex. Prior to the foundation of the Chamber the city's highest court, the *Schepenbank* (the *Eschevins Court*, akin to a court of aldermen) had jurisdiction over insurance cases, but their increasing number and complexity had strained its capacity, and thus a different solution was necessary. Rather than follow the constructions of Bruges or Antwerp, the magistrates chose to set up a court to service all, regardless of their nationality, religion, or profession.[39]

And so it was that the Chamber was established to handle all insurance cases that were in any way related to Amsterdam. Even in unrelated disputes, parties could still choose to bring their case to be heard by the Chamber's commissioners, the *Assurantiemeesters*.[40] Not long after its instatement the municipality added settlement of disputes over average to the Chamber's responsibilities, hence the name Chamber of Insurance and Average (*Kamer van Assurantie en Averij*, or KvAA). Average and insurance cases were heard, decided, and administered separately, and linked only when a ship or cargo involved in an average case had also been insured.[41]

It was long thought that the Chamber, which was prominently located in Amsterdam's City Hall, started to function only after the granting of its formal charter in 1612. The loss of all records prior to the eighteenth century contributed to this supposition. However, the Chamber's *Statutenboek* has been located, and provides proof that the Chamber was in fact functioning from its foundation in 1598.[42] The *Statutenboek* also contains valuable information about the early, crucial decades of Amsterdam's insurance market in general, and the KvAA in particular. It lists the names of the commissioners, the secretaries and ushers between 1598 and 1621, the varying oaths that were taken by the Chamber's officers, and a prayer.

The main part of the *Statutenboek* consists of the original ordinance of 1598, and notes on how it was interpreted and applied by the *Assurantiemeesters*. Their aims were to formalise procedures and routines, and to clarify why certain verdicts were passed, and how calculations were made. These measures were undoubtedly intended to prevent future disputes, and to advance the smooth running of the insurance

market. On the recto folios of the *Statutenboek* are found the formal regulations; the verso folios clarify certain terms and contain alterations, some of which were later formalised. Concepts like *Gelt van verseker-inghe* (money of insurance), the term of validity of an insurance policy, the calculation of exchange rates, and the percentage an insured was to retain at his own risk are clearly defined and explained. Several issues are illuminated further through model calculations, followed by references to cases and the commissioner's verdicts upon them. The book does not report cases. Instead it includes the text of reference cases intended to elucidate the Chamber's position and procedures.[43]

Many of the Chamber's routines appear to have been well established. The commissioners convened on the same days as the court of aldermen, and their verdicts had the same standing.[44] Eighteenth-century archives show that when a case was brought before the court, it was at first registered in the *Rol van Assurantiezaken*. Once the case had been concluded it was crossed out, and the ruling recorded in the *Vonnissen ter zake van Assurantie*.[45] The time between a loss and the verdict of the Chamber could vary greatly, which was, of course, not always a consequence of the Chamber's efficiency, but rather a result of the speed of communication in the early modern era. At times justice was quick, however. A case heard in July 1598, for example, related to an insurance policy underwritten on 27 and 28 May 1598.[46] If a party to a dispute did not concur with the KvAA's verdict, appeal was possible at the *Schepenbank*, within ten days and at a cost of *f* 12. A second level of appeal was possible at the *Hof van Holland*, and as a last resort one could turn to the *Hooge Raad*.[47]

The position of Commissioner of the Chamber of Insurance was clearly not attainable for all. Among the names of the commissioners during the period of the KvAA's existence between 1598 and 1793 are some of Amsterdam's most prominent families: Bicker, Van Loon, Roeters, Hooft, and Trip. The status of the position is underlined by the fact that many of those serving as *Assurantiemeester* had experience as a dignitary of other prominent municipal boards and offices, such as the College of the Admiralty and the Chamber of Maritime Affairs. Many commissioners of the Chamber had been or would become *Schepen*, and a number would even be promoted to one of the city's *Burgomasters*. In total, 110 commissioners served, some for only a year, others for as long as a few decades. On average, the commissioners held their position for six years, usually consecutively. Jacob Bicker Hendrickszn was an exception: he served for six years from 1677 until 1682, and was reinstated in 1684 to serve for a further thirty years.[48]

Although many commissioners held positions within the municipal government, most had a mercantile background, with interests in maritime trade as a shipowner, merchant, or financier. *Assurantiemeesters* were hardly ever known to be underwriters. Accepting the position of *Assurantiemeester* meant that all underwriting activities had to cease, which was not a very appealing prospect for underwriters. For some commissioners this stipulation was apparently too difficult to comply with: Jacob van Neck was *Assurantiemeester* when he filed for bankruptcy due to underwriting losses.[49] Nonetheless, many commissioners were related to well-known underwriters, and they undoubtedly moved in the same social circles. Pieter van de Poll, commissioner between 1732 and 1748, was related to Jan and Jacobus van de Poll, both of whom were active as underwriters. Similarly, commissioners Nicolaas and Arend Warin were related to the whaler and underwriter Antoine Warin.[50] These familial and social ties may be the reason that many of the Chamber's verdicts seem to have favoured the insurers, as Bynkershoek, a member of Republic's highest court, once reflected. However, more research is needed to corroborate this assertion.[51]

New commissioners were appointed annually, but never were all the *Assurantiemeesters* replaced at once. The authorities clearly valued the consistency of the Chamber's verdicts, and the preservation of its expertise and experience. This is also underlined by the annual date of (re)appointment. Originally the new Board of Commissioners was instated on Good Friday, as was the case with other municipal boards, but as it was common for commissioners to accept new positions in the city's government, they might then lack the time to conclude insurance cases carefully. In order to assure a conscientious treatment of all matters before them, the Chamber's new commissioners were appointed at the end of February.[52]

The *Statutenboek* indicates that the commissioners were called upon not long after the Chamber was founded. The oldest reference to a case dates back to 14 July 1598, but it was clearly not the first to be heard there.[53] As the *Statutenboek* does not hold the original verdicts, only indirect evidence reveals the number of cases adjudicated by the *Assurantiemeesters*, and only for the period from 1598 until approximately 1613. The *Statutenboek* refers to 21 registers in total; the highest folio number is 254, in Register 14. If these 21 registers each consisted of, on average, 200 folios, and if each verdict filled two folios, the Chamber dealt with approximately 2,100 cases in 15 years. This is a conservative approximation, however, as it is likely that most registers held more than 200 folios, and most verdicts probably required only one folio,

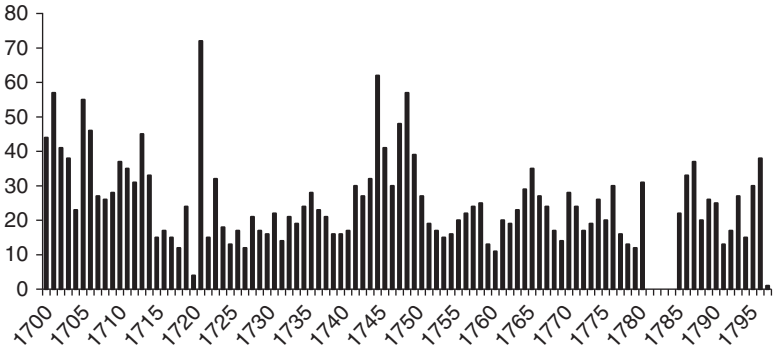

Figure 5.1 Volume of insurance cases heard before the Chamber of Insurance and Average, 1700 and 1798
Source: SA 5061 ASA 2791–2805.

bringing the estimate of the number of cases to roughly 4,200. It is not known how many cases dealt with insurance, and how many with average.

Even though these rough estimates provide no direct information about the size of the market, they do seem to indicate that Amsterdam's insurance market was of considerable size earlier than has often been argued.[54] Unfortunately no data have been found for the period of about 1620 to 1700, but most eighteenth-century records have been preserved. They show that the number of cases adjudicated by the Chamber increased in times of war – as, for example, during the War of the Austrian Succession (1740–48).[55] Figure 5.1 illustrates the number of insurance cases handled by the Commissioners in the eighteenth century.

The Chamber's archives do not specify the professions of the plaintiffs or defendants. However, certain prominent underwriters or merchants appear in the recordings of the verdicts, including Nicolaas van Staphorst, Hendric Speciaal, Claas Ploeger, and Adriaan Scharff. Occasionally, the name of a litigant can be traced as that of a known insurance broker. Jan Bijl and Francisco Gallacini, for example, were brokers.[56] The Amsterdam Chamber seems also to have acted not only for its own citizens, but also for merchants, shipowners, and underwriters from elsewhere.[57] The fact that foreigners relied upon the Chamber for justice is indicative of the scope of the Chamber's authority. In the second half of the eighteenth century a notary by the name of A. Mijlius appears in the Chamber's records as council for appellants. This is an

indication that by then the insurance industry had reached a certain degree of professionalism and specialisation.[58]

The insurance market in the seventeenth and eighteenth centuries

The emergence of the insurance market in Amsterdam in the sixteenth century was made possible by the coincidence of demand for new ways to deal with the risks of long-distance trade and the influx of capital in need of investment opportunities.[59] Growth of the market was fuelled by the municipality's realisation of its potential, alongside the growing understanding among merchants of the benefits of insurance relative to alternatives. Underwriters must have made adequate profits, as increasing numbers of insurers entered the market, and ever more and larger risks were covered in Amsterdam.

During the seventeenth and eighteenth centuries the market expanded not only in size, but also in scope. The industry matured from a sideline activity into a business in its own right. In the early decades merchants, brokers, and underwriters would meet in the *Warmoesstraat*, the *Nieuwe Brug*, or the *Oude Kerk*. After the Exchange opened in 1619, those seeking insurance and those willing to underwrite policies would congregate there.[60] The market's maturation and development were reflected in a number of ways: the number of participants increased, particularly during the seventeenth century, as more underwriters, brokers, shipowners, and merchants became involved, at times in more than one role, albeit with varying degrees of commitment.[61] The range of insurable merchandise also expanded, from high-value goods to bulk cargoes such as grain. Slave cargoes were also insurable. Ships, both mercantile and whaling or fishing vessels, could be covered, as could components of ships and fishing equipment.[62]

The range of insurable routes also grew. Coverage of simple A-to-B voyages was augmented by numerous examples of insurances of triangular or flexible routes. In 1598 a policy was written for a journey from Portugal to Middelburg, in the Dutch province of Zeeland, or to Rotterdam or Amsterdam.[63] In 1601 a vessel was insured for its voyage from Amsterdam to Port Viane via Emden and Port o Port (Oporto), and back to Amsterdam.[64] This expansion of the market is further illustrated by the regular and official listing of premium rates in the *Prijscouranten*. In 1626 the merchant's newssheet listed ten groups of destinations, of which eight related to southern-bound routes, including destinations such as Smyrna, Constantinople, and Alexandria. Northern routes

were combined into one group consisting of Riga, Köningsberg, Danzig, and Stettin. However, by 1686 the *Prijscouranten* listed 17 groups of destinations, including one port in the West Indies.[65]

The Amsterdam insurance market acquired a reputation as the only market where all risks could be insured, every possible route and risk could be covered, and any asset or merchandise was insurable.[66] The expansion and progress of the market led to further innovations. Time-based insurance, for example, which covers a vessel not for a specific voyage, but for a certain period, was an Amsterdam invention. Whereas early insurance policies covered all possible risks, man-made or natural, or covered the risks of the seas or of men only, later policies insured or explicitly excluded specified risks. An insurance excluding war risks, the so-called *vrij van molest* policy, first appeared during the War of the Spanish Succession (1702–1713).[67]

These innovations were a sign of the industry's vigour and its ability to adapt to changing circumstances and needs. Another indication of the market's increased maturity and efficiency was the declining rate of premiums.[68] Insurance prices declined over time, as more underwriting capital was committed to the market, and as underwriters developed skills and became more adept at assessing risks. Intelligence about premium rates, the state of vessels, the special or prevailing risks of specific harbours and routes, and the skills of individual captains and crews were circulated, making improved risk assessment possible. Moreover, authorised brokers were obliged by the authorities to collect information on premium rates, and to publish them in the *Prijscouranten*, which became an important reference point for underwriters both in Amsterdam and in other mercantile centres. This was how the market was 'made', as Spooner has argued.[69]

Some factors pushed premium rates up, of course. Violet Barbour argued that numerous fraudulent practices hindered the industry, and had a negative effect on insurance prices. War, or even the threat of war, would drive rates up temporarily.[70] However, despite these factors, premium rates trended downwards overall during the seventeenth and eighteenth centuries.[71] This trend was due partly to the development of market procedures and customs. During the early phase of the industry, every aspect of each transaction was negotiated. As the industry matured, certain practices were standardised and routines developed, which increased the market's overall efficiency and thus decreased transaction costs. For example, the level of brokers' fees was harmonised. Initially, the fee was variable, and brokers were remunerated by both insureds and underwriters. Over time, a standardised brokerage fee was

settled upon, and customarily paid by the underwriters. By the second half of the eighteenth century it was accepted routine for an insurance contract to be settled by verbal agreement. A broker would then prepare a draft policy, a so-called *sluitbriefje* (closure note, or lineslip in modern insurance parlance). The policy itself would be drafted at a later time. These and other routines indicate that elements of insurance transactions were no longer subject to debate in a mature market.[72]

Institutional frameworks

Other distinctive features characterised the Amsterdam insurance market in this period – features which played a role in its long-term development and eventual decline. They relate to the conduct of the groups of actors involved, as well as the institutional framework governing the industry. The choices and conduct of these parties, and, in particular, the way these groups interacted, was decisive. The market was highly fragmented: it consisted of individual underwriters and merchants, of a community of brokers itself divided into two groups, and a court which often chose to turn a blind eye to formal regulations. Merchants and shipowners could one day commission a broker to arrange insurance on their behalf, and the next act as an underwriter. Unlike the accredited brokers, buyers and sellers lacked formal organisation, so no data exist to define them, apart from scattered information about individuals. Their dual role may have curbed fraudulent behaviour, since a merchant who had taken out insurance and also acted on occasion as an underwriter may have thought twice before swindling fellow underwriters with a fraudulent claim. The previously mentioned honourable conduct of the De Flines brothers may also have been related to the reality that, even though the Amsterdam insurance market was the largest in Europe at the time, it still comprised a limited community of underwriters, merchants, shipowners, and brokers repeatedly dealing with one another. Information about dishonourable behaviour by insureds would have been shared among brokers and underwriters, making future insurance transactions impossible for them or, at the very least, more expensive. If one wished to make use of the insurance market in the future, it was unwise to antagonise the underwriters, for, according to Abbé Desnoyers, writing in 1776, Amsterdam's '*Corps des Assureurs* is the most powerful to intervene in the trade of Europe'.[73]

Amsterdam underwriters were known for their individualistic behaviour, and for writing relatively small amounts. This was one

of the strengths of the market during the sixteenth and seventeenth centuries, since maritime catastrophes hardly ever meant the ruin of an underwriter, because the risks were so well spread. In 1693 the so-called 'Smyrna-fleet' was lost in the Bay of Lagos. This fleet of 400 British and Dutch ships was attacked by the French. The financial consequences in London were disastrous, according to British contemporary observers, as part of the combined fleet was insured there, and 'many merchants left the Royal Exchange with the faces of men under sentence of death'.[74] Although Amsterdam underwriters probably lost *f* 12 to *f* 14 million, the effects were far less disastrous, as the risks had been spread among a large group of underwriters, and scant reference is made to the catastrophe.[75]

As intermediaries, brokers were in a unique position. They brought together supply and demand, whether among local merchants and shipowners, or underwriters who lived outside the city. Brokers, even those unaccredited and unauthorised, thus played an important role in market accessibility, as Le Moine de L'Espine and le Long observed.[76] Thus, brokers were in many ways the axis of the market. They were in a favourable position in terms of information, although unfortunately not all seem to have used this advantage for the benefit of their principals. Especially during the eighteenth century, many complaints were heard about brokers dealing on their own accounts, and manipulating price levels. Consequently, brokers were mistrusted by many, including the Amsterdam authorities. Merchants resented the influential position of the brokers, and disliked the fact that brokers, whom they considered to be their servants, assessed their wealth and creditworthiness for a transaction.

This antagonism affected Amsterdam brokers' standing, and thus the way they interacted with other parties. They had few friends among the municipal authorities, including the *Assurantiemeesters*.[77] Evidently, a number of them had been reluctant to inform insurers of misfortunes, especially if they had just convinced these underwriters to sign an insurance policy. Thus, many underwriters were not informed of losses, or learned only belatedly. In 1640 it was determined that only officers of the Chamber were allowed to inform underwriters of casualties, while brokers and notaries were prohibited from dealing with this task (and since notarial deeds were not required in Amsterdam insurance transactions, this ruling mainly affected brokers).

More importantly, the commissioners of the Chamber of Insurance did not acknowledge the Brokers' Guild's claim to a monopoly, which seriously undermined the position of the accredited brokers.[78] One of the main disadvantages of commissioning an unaccredited broker was

that policies drawn up by *beunhazen* were not valid in legal procedures.[79] When these 'illegal' policies were accepted by the Chamber, the accredited brokers – and their guild – lost a key competitive advantage. With these and other regulatory actions the commissioners weakened the position of the authorised brokers, and thereby influenced how parties interacted, and the way the market functioned.[80] The effect was positive, as the number of accredited brokers was not sufficient to handle all the business, and the increased competition had a downward effect on price levels.[81]

The *Assurantiemeesters* also shaped the progress and development of the industry in Amsterdam through their adjudications, their alterations to the Insurance Ordinances and by-laws, and their interpretations of the city's regulatory framework. Often the Chamber chose to follow the 'rules of the street' rather than the letter of the law. For example, according to the Ordinance, only standard policy forms were permitted. However, examples survive of policies that differed from the standard texts, and even of policies with clauses that contradict the Ordinance, but which had nonetheless been endorsed with the signature of the Secretary of the Chamber. Although the Ordinance required settlement of all premiums in cash, brokers and underwriters kept current accounts which they settled following an agreed period, and it is likely that the Chamber's commissioners were aware of these practices.[82]

When the Chamber was established in 1598, it was the city's objective to create a court which would alleviate congestion in the *Schepenbank*, and deal expertly with increasingly intricate insurance cases. Undoubtedly, it was the city's intention to influence positively the conduct of the parties involved, to prevent fraud, and to stimulate the city's commerce in general, and the insurance business in particular. It is difficult to determine whether or not the Chamber met its objectives. Regardless of the fact that many records have been lost over time, no record has come to light of fraudulent conduct averted due to the intimidating threat of effective enforcement by the Chamber or any other Amsterdam court.

A few sources indicate that the Chamber was held in high regard, and that its authority was indeed acknowledged by the industry. The number of cases brought before it, and the fact that the commissioners were entrusted with important general average cases, imply that their expertise was valued. Furthermore, not only Amsterdam citizens relied upon the Chamber's adjudication. Foreigners also submitted their cases to the court. No evidence suggests a reverse movement, of Amsterdam *burgers* taking their insurance disputes to another court. The

fact that prominent Amsterdam citizens would serve as *Assurantiemeester* is indicative of the court's standing: they surely would not have lent their names and time to a court that was not taken seriously. Even though some policies stated that any issues would be dealt with outside the Chamber of Insurance, they do not imply that the KvAA's authority was undermined. It is likely that the parties wanted to avoid the costs of the Chamber's adjudication. Cost awareness is also one of the reasons that some parties chose arbitration over formal litigation, while the possibility of recourse to the courts usually increases the effectiveness of arbitration.[83]

All of this is in sharp contrast to the situation on the Rotterdam insurance market, where brokers, insureds, and underwriters cooperated to improve practices and procedures, and to advance the city's insurance business.[84] In Amsterdam, structural collaboration between these various groups was unlikely at best in the eighteenth century, when market decline set in, even if only in relative terms. However, the downward trend was unstoppable as other insurance markets, most notably London, expanded and assumed Amsterdam's leading position.

The beginning of the end

The nineteenth century is often seen as the era when the Dutch insurance industry was lost to other centres, but the decline set in as early as the eighteenth. The state and development of the Dutch economy and its commerce, suffering from increased competitive pressures from France and England, was at the foundation of this decline, but industry-specific factors played a role. The Amsterdam market, fragmented and with an increasing discrepancy between formal regulations on the one hand, and daily practices and procedures on the other, seems to have lost its ability to adapt and innovate. In particular, the market was unable to recognise the importance of the larger capital bases necessary to cover the growing average sums insured. Although every industry in the era of the *ancien régime* was hindered by the fact that mercantile enterprises were often limited by the life span of the entrepreneur, this issue was more important in insurance. The validity of insurance contracts could stretch over a period of several years, and since it concerned an intangible product, it was largely based on trust. As average sums insured increased, it became more important for merchants and shipowners to have guarantees that insurance claims could be met. As the stakes were higher, insureds did not want to run the risk that their

claims were not paid because their underwriter had died or become insolvent.

The problem of failing underwriters is directly linked to the emergence of mutual insurance societies, reinsurance, and insurance companies.[85] Given Amsterdam's dominance in the preceding centuries, it is all the more surprising that it was not until the third quarter of the eighteenth century that an insurance company was established there. Proposals had been made, though: four prominent Amsterdam merchants colluded in 1628 in an attempt to monopolise the market through the establishment of the *Ghenerale Compagnie van Assurantie*, which was to supply compulsory insurance for virtually the whole mercantile and whaling fleet of the Republic. In return, the company would receive a monopoly over trade to the Levant and North Africa. The plan met with fierce opposition, fuelled by the claim that only extremely cautious merchants would take out insurance, as the premium would be too much of a strain on prevailing thin profit margins. In the end, after years of debate, the plan was rejected, and the insurance company was never established.[86]

Almost a century later insurance companies were established up in London, Hamburg, and as nearby as Rotterdam and Middelburg. The projectors of the future *Maatschappij van Assurantie, Discontering en Beleening der Stad Rotterdam anno 1720* first tried their luck in Amsterdam. When they were turned down, they went to Rotterdam, where they were received with enthusiasm.[87] Another Amsterdam initiative came in 1719, when Jozias van Asperen and 264 fellow merchants put forward an ambitious plan to set up an insurance company. Van Asperen claimed that their prospective company would prevent merchants and others from defecting to other markets to find cheaper insurance. The company was to launch with a capital comprising 120 tonnes of gold, and to be managed by eight directors. Fierce opposition arose, and several prominent *Amsterdammers*, including *Assurantiemeesters*, aldermen, and merchants, stated that they feared the company would harm the city's commerce, since it would dominate the market, drive out smaller, private underwriters, or force them to accept lower premiums or unfavourable conditions. Van Asperen stated that the company would settle claims without an adjustment procedure, but would also respect the Chamber's authority. Opponents countered that it would be damaging to trade if relatively small, private merchants had to oppose a large insurance company when arguing a claim. Merchants, so they argued, would prefer to deal with private underwriters, rather than a large company. The *Burgomasters* ultimately rejected Van Asperen's plan, in line with the balance of power within the municipal authorities.[88]

The records of the Chamber include an interesting side-note on this issue. From August 1720 until the end of the year, cases brought before the Chamber came to a standstill (Figure 5.1), but a boom occurred in January 1721, primarily concerning complaints about overdue premiums. A number of claimants were among the list of opponents. Plausibly, they had attempted to influence the debate by delaying pursuit of their debtors, thereby emphasising their claim that it was safer for merchants and shipowners to deal with private underwriters than with a large corporate insurer.[89]

The Amsterdam underwriters, known for operating individually, colluded at times when their position or profitability was threatened.[90] They were clearly successful, and underwriters were considered to be a very powerful group. In the end, however, their resistance to change, and their inability to recognise the changing needs of their clients, led to the demise of the industry. The Amsterdam underwriting market failed to increase its capital base, nor did it address the problem of continuity. When the demand for larger sums insured bore down, the private underwriters were unable to cover such policies at competitive rates. Merchants and shipowners diverted their business to other markets. In the nineteenth century, the devastating effects of the Napoleonic Wars and the Continental Blockade weakened the market, while steam and steel reshaped long-distance trade. Amsterdam was reduced to a second-rate market, no more than a derivative of London, the new international centre of marine insurance. Despite its earlier innovations and a later façade of strength, little cracks had begun to appear: gaps between formal and informal institutional structures, and between the distinct subgroups of market participants who were unable or unwilling to adapt their practices and routines to economic developments in general, or to changing, industry-specific demands in particular. As these gaps widened, the Amsterdam market's ability to compete with its rivals ultimately rendered it unimportant as all but a local one.

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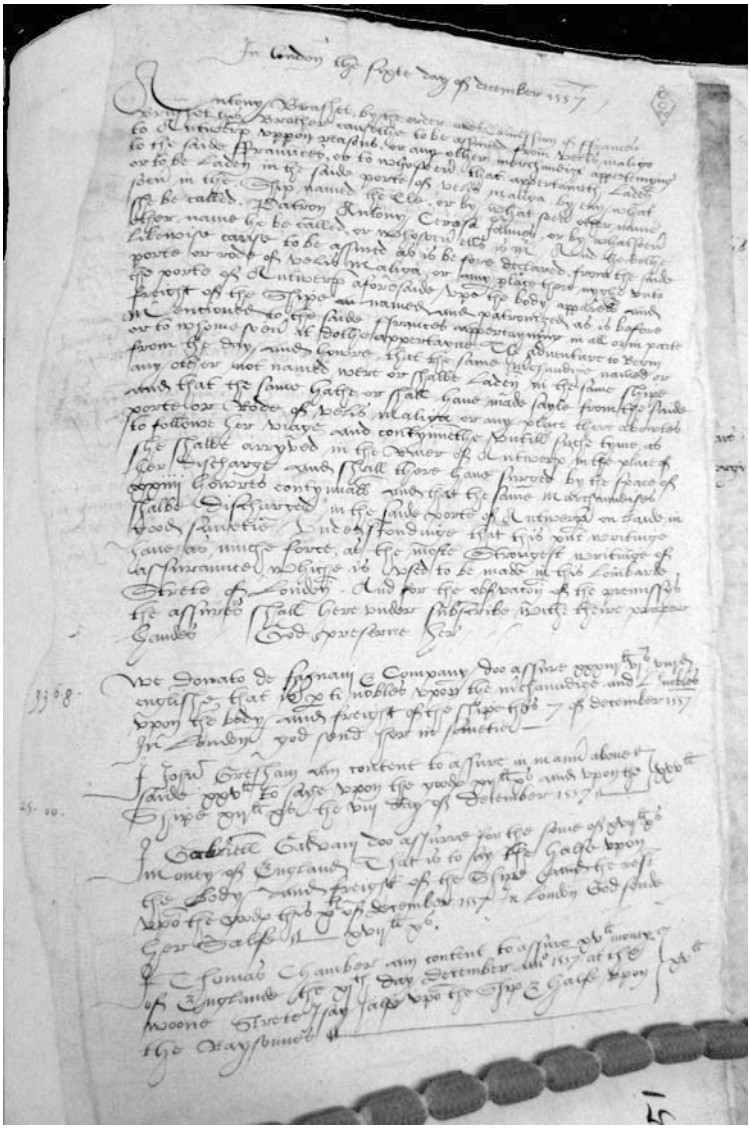

Policy dated 6 December 1557, underwritten in London on the vessel *Ele* and her cargo for a voyage from Vélez Málaga to Antwerp by ten private underwriters including the Flanders merchant John Gresham, cousin of Sir Thomas. The policy was purchased by Anthony Brashet on behalf of his brother Frances, and covers cargo belonging to the latter or 'whosoever that appertaineth'. TNA HCA 24/30/151

6

England 1523–1601: The Beginnings of Marine Insurance

Guido Rossi

Extant information about early English marine insurance follows a discontinuous trend. It is remarkably scarce until the mid-sixteenth century, when it increases substantially in the space of a few years, only to fade again after a few decades, and return to growth towards the end of the seventeenth century. After that, plenty of records remain. However, this misbehaving trend does not affect our knowledge as much as would appear to be the case at first sight. The reason lies in the unparalleled continuity in English insurance policies, which remained nearly identical from the 1570s to the policy model prescribed in the Marine Insurance Act of 1906 (First Schedule). This makes up, at least in part, for the gaps in the available evidence during the seventeenth century.

At the same time, and, crucially, the continuity of the English policy form encourages focus on the short, but extremely dense formative period of English insurance, the late sixteenth century. During the span of a few decades English insurance customs detached themselves from their Italian origins and moved towards Dutch and Flemish practices, mainly those of Antwerp. The customs were written down after the example of Dutch compilations, and the policy model crystallised with the establishment of the Assurance Register, held within London's Royal Exchange. Accordingly, this chapter seeks to reconstruct the shift from the Italian legacy to the creation of English marine insurance. It explores the origins of the Italian heritage before considering the rupture with Italy, the growth of Dutch influence, and the formation of the London insurance market. Finally, it seeks to explain the reasons behind the London market's limited early success.

The Italian inheritance

Until the establishment of the Royal Exchange in 1567, merchants active in London gathered, twice daily, in Lombard Street. The term 'Lombard' originally denoted simply 'Italian' (or, rather, northern Italian). Whilst elsewhere, such as in northern France, the name progressively came to denote moneylenders irrespective of their origins, in London it maintained its original connection with Italy.[1] Initially, the commercial usages applied in Lombard Street, aptly called 'Lombard Street customs', were a by-product of Italian influence, and insurance was no exception. Most historical introductions to English insurance open, therefore, with the statement that the beginnings of London insurance are to be found in Italian insurance custom. This is true, of course, but it adds little to our knowledge. The Lombards arrived from several Italian regions whose customs differed significantly from one another. Especially for maritime commerce, there were three main Italian *nationes*: the Genoese, the Florentines, and the Venetians. The origins of English insurance are probably to be traced to one of them, or to their combination. But which Lombard group made the greatest contribution to their development?

The earliest evidence of Italian maritime trade with England dates back to the late thirteenth century.[2] However, the growth of maritime commerce between Italy and England was slow. For a long time the bulk of the trade was not direct but mediated, mainly via Sluys. Italian merchants typically availed themselves of northern shipmasters, usually Dutch or Flemish, who operated small vessels on short routes.[3] Progressively, though, the volume of trade grew to the point that larger shipments and direct routes became more efficient. During the early fifteenth century Italian merchants began to settle at selected points on England's southern coast. The Cinque Ports (especially Sandwich) were strategically placed at the narrowest point of the English Channel, and so closest to the Continent, but they were more distant from the Mediterranean, and they required crossing the entire, notoriously treacherous English Channel. Plymouth, in contrast, allowed the Channel to be avoided entirely, but was more distant from the main internal markets. The best compromise was found in Southampton, which was close enough to both the Atlantic route and the main English markets. While Plymouth and Sandwich remained important ports, Southampton soon became by far the most trafficked port for international commerce, especially with Italy.

The growth of Southampton played a crucial role in the establishment of insurance in England. Unlike other commercial activities, early marine insurance was not a lucrative business. As such, insurance remained for the entire late middle ages a side activity to maritime trade. Merchants insured only if they were deeply involved in such commerce. It is very probable that insurance began to be practised in England (at least on a significant and continuative basis) during the early fifteenth century, precisely because of the growth of Southampton. With the increase in the number and quantity of shipments from England it became more convenient to insure them locally, if only because the cargo shipped could be known with certainty only at the place of departure. It is probably no coincidence that one of the earliest pieces of evidence of Italian insurance policies made in England, that found in the ledgers of the London branch of the Borromei Bank, dates to the 1430s.[4]

The growth of direct shipment between England and the Mediterranean during the early fifteenth century saw a clear Genoese predominance among the Italian nations engaged in maritime commerce with England. This is reflected in both the number of vessels involved, and the amount of merchandise shipped from the country. Genoese vessels supporting its commerce with England were at least twice as numerous as Venetian ones,[5] while the level of Florentine sea trade with England was hardly relevant.[6] The most accurate evidence of the value of Italian exports from England is found in the petty customs paid by foreign merchants to export English wool and other merchandise. Genoese exports from Southampton for the year 1439–40 were nearly 14 times higher than those of the Florentines and the Venetians combined. The Genoese paid £14,035, in contrast to £516 paid by the Venetians and £506 by the Florentines.[7] The situation in Sandwich, the second main international gateway to England at the time, was even more favourable to the Genoese. All the three accounts of the later subsidy levied in 1452–53, dating from 1455 to 1469, reveal the presence only of Genoese merchants, both resident and non-resident.[8]

The growth of direct trade between England and Italy greatly encouraged insurance. This is particularly evident in Genoese records. Until the mid-fourteenth century policies for voyages to or from England are attested only very sporadically. Towards the end of the century their number began to grow,[9] until the trade boomed during the first half of the fifteenth century.[10] This seems important, for soon thereafter the first evidence of English merchants' involvement in insurance begins to appear. What exists, however, is mainly indirect evidence, which

suggests more of an acquaintance with insurance custom than any particularly active role.[11] Nonetheless, it is very probable that, by the mid-fifteenth century, English merchants (or at least London merchants) were becoming familiar with insurance. In all probability this familiarity with the new instrument grew during the late fifteenth century, as the first-known policies written in English date to the early sixteenth century. The earliest known is of 1523.[12]

While Italian influence on the beginning of English insurance is extremely probable, it is considerably less clear where, specifically, it originated. Italian nations followed very different mercantile customs. The preponderance of Genoese maritime commerce with England, especially compared with the levels of Venetian and Florentine trade, would suggest that the earliest influence on English insurance came from there. Some indirect confirmations, beyond the sheer volume of trade, point directly to this possibility.

Venetian merchants were not as prone to insure as their Genoese counterparts, for they were already protected by the *muda* system, under which the state fleet was 'lent' to the merchants. This convoy system provided sufficient protection of cargoes to reduce merchants' risk aversion, and so decreased their incentives to insure.[13] Further, the fifteenth-century Venetian insurance market suffered from an endemic paucity of underwriters, which kept the cost of insurance high. Under many Venetian policies of that period, much of the specified cargo's value remained uninsured. Lastly, but equally significant, Venetian underwriters had a markedly restrictive attitude towards the insurance of foreigners.[14]

Aside from its lower volume of exports from England, Florence had a remarkably unfavourable attitude towards the insurance of foreign merchandise, and upheld a stringent state monopoly over maritime commerce. Such restrictions were lifted only around the mid-fifteenth century. It was only in 1464, for instance, that Florence allowed the insurance of foreign merchants' goods laden on foreign vessels, and then only when they arrived at or departed from the port of Pisa, the Florentine commercial port of the time. Under such conditions Florentine merchants often preferred to insure their cargoes in Genoa, even when the merchandise came from Florence itself.[15]

Genoa, by contrast, had neither Venice's relatively low volume of insurance, nor the Florentine restrictions. On the contrary, it encouraged foreigners to insure, so long as they employed Genoese vessels. This, of course, does not prove per se the Genoese influence on the origins of English insurance, but it might suggest it, especially when

combined with the great volume of Genoese maritime trade with England. What we do know is that the evidence attesting to the English merchants' exposure to insurance starts around the mid-fifteenth century, at which time both Genoa's English trade and her insurance there were at their apex.

Genoese primacy of influence was short-lived. The city continued to play a pre-eminent role in European commerce for a long time, and insurance was no exception, but the very structure of Genoese insurance policies became increasingly less suited to foreigners. The main challenge facing medieval marine risk-transfer instruments was their usurious nature, since the risk carriers typically advanced trade capital, and the risk premium in part comprised interest charges. From at least the decretal *Naviganti* of Pope Gregory IX in 1236, such policies were void.[16] The pervasive jurisdiction of ecclesiastical tribunals made the prohibition rather effective, and numerous attempts to circumvent it by camouflaging the premium met with dubious success. Eventually, in 1369, Genoa opted for drastic measures, and passed a statute prohibiting ecclesiastical jurisdiction in matters of insurance.[17] The prohibition worked well, but its success meant that Genoese merchants had no incentive to develop their policies any further. Elsewhere the mid-fourteenth-century insurance policy style, which had evolved with the goal of disguising the premium from the ecclesiastical prohibition of usury, progressively gave way to overt insurance. In Genoa, however, the statute's ultimate effect was to halt development of the city's insurance practice, and freeze its peculiar style.[18]

If Florentine maritime trade with England was slow to build, it gained momentum during the late fifteenth century. The first known insurance made by Florentine merchants residing in London dates to 1426.[19] From the 1430s Florentine merchants started to use the same route as the Genoese, concentrating their trade in Southampton.[20] Initially, they may have used Genoese intermediaries, but over the turn of a few years their presence in Southampton became more institutionalised,[21] and by the mid-fifteenth century Florence was beginning to catch up with Genoa. This development finds some confirmation in the comparison of premium rates for voyages on the routes Genoa to England and Pisa to England. The premium in Florence was 12 per cent to 15 per cent in *c*.1442.[22] Ten years later, in 1453–4, Genoese insurance policies for the route Genoa to England were made for a premium of 8 per cent to 13 per cent.[23] The rates were, of course, still considerably higher in Florence, but the difference was not so great, especially considering the length of the route. Anglo-Florentine maritime relations were growing

at fast pace, but in all probability Genoese pre-eminence began seriously to be challenged only at the turn of the century.

Genoa's predominance in English trade was closely connected to Southampton. So long as Southampton retained its pivotal role in international commerce, the Genoese kept their position. However, at the end of the fifteenth century Southampton began to give way to London. By the first decades of the sixteenth century improvements in shipbuilding and rigging allowed most vessels to navigate the Thames.[24] London was already the main financial centre in England, and its force of attraction proved irresistible to international trade. Ships increasingly called directly at London, thereby bypassing Southampton.[25] In the space of a few decades English and foreign merchants alike left Southampton, and most of them relocated to the capital. The decline of Southampton was swift: by the late 1520s only two foreign merchants, both Genoese, are still attested there.[26] The reorganisation of English international commerce played significantly to the disadvantage of Genoa. In the space of a few decades Genoese maritime trade with England came almost to a halt. Genoese ships no longer sailed from England, and English ships now called at Leghorn instead of Genoa.[27]

The shift from Genoa to Florence had significant repercussions on insurances. During the same years the volume of insurance underwritten in Florence for voyages to or from England grew considerably. Over one hundred such policies from the years 1520–27 are preserved.[28] Revealingly, the first English Consul in the Mediterranean was a Florentine.[29] By the 1520s London merchants were insuring directly in Florence for voyages to or from the Mediterranean. Some of them were stably based in Florence itself, and they are often attested as underwriters of Florentine policies to or from England.[30]

The increasing volume of Florentine insurance in England probably played an important role in the early development of English insurance policies. Unlike the Genoese, who continued to camouflage the premium, Florentine policies were drafted openly as early as the end of the fourteenth century. They laid out the main elements of the contract in plain words and a simple style, thus providing a straightforward model to imitate. The known English policies written in the first few decades of the sixteenth century are too few in number and too succinct in style to argue for a clear derivation from the Florentine model, but if we look at the late sixteenth century, by which time they become as numerous as stylistically consistent, the similarity with Florence is remarkable, and has been noted by many scholars.[31] Thus, while it is

likely that English merchants made their first acquaintance with insurance via the Genoese, it would seem probable that the main influence on the development of English insurance customs came from Florence.

The emergence of distinctive London insurance

The increasing concentration of maritime commerce in London provided the missing element to the development of a local insurance market. London was already England's main financial centre; now it became also one of its major gateways for international maritime trade. By 1561 some 327 English merchants were trading in London.[32] Not all the Italians active in Southampton relocated there, and many left England for good. The increasing number of local merchants, coupled with a significant reduction in the number of Italians, entailed the progressive substitution of Italian with English capital to finance insurance underwriting. A rising number of English merchants began to invest part of their capital in the insurance business.

By the mid-sixteenth century English merchants involved in insurance vastly outnumbered foreigners. It was then that the first two elements of a properly English insurance 'type' began to appear: native language and local brokerage. Extant policies issued before the 1540s are written in Italian, but most of the underwritings are in English.[33] In all probability the nationality of the underwriters was a decisive element in the shift of language, which took place soon thereafter. Four out of five known surviving policies issued in the 1550s were written in English,[34] and by the 1560s it had become the default language of both policies and signings. Foreign insurers on the known policies of the time were so few that no broker could have relied on them for his clients. This was probably a decisive factor in the shift from foreign to local brokerage. Until the mid-sixteenth century broking remained in the hands of a few foreigners, probably Italians,[35] while English or 'common' brokers were prohibited from dealing in insurance.[36] Over a few years this changed altogether, and by the early 1570s the common brokers were routinely arranging insurance cover.[37]

The decline of Italian influence on the English insurance market coincided with the rise of the Dutch. Over a few decades Dutch and Flemish merchants operating in London grew in number as much as in the volume of business. In 1567 the Dutchmen in London already numbered more than 2,000, and their volume of trade with England far exceeded that of the Italians.[38] Their ascendance was also visible in brokerage: the Dutch *natio* was the only one having two official 'foreign brokers' in

London, whereas all Italian main groups, previously represented with three to five brokers per *natio*, now had just one 'foreign broker' each.[39]

Italian brokers operating in London decreased in number both because of the dwindling population of their countrymen in England, and in consequence of the decline of maritime trade between England and the Mediterranean at this time. While Italian maritime commerce with England was decreasing, English trade with Italy ceased almost altogether between the 1550s and the 1570s, and English vessels virtually abandoned the Mediterranean.[40] The increase in Anglo-Dutch maritime trade thus occurred at a most propitious time to supplant the old Italian influence. Expanding volumes of trade with Dutch and Flemish centres had a crucial impact on insurance. In the mid-sixteenth century maritime commerce was still the main vehicle through which insurance customs were spread. Antwerp, the main commercial centre of northern Europe, was also its main insurance market. Its insurance customs were thus able to exert their influence on the young London market, just as the city's historical link with the Italians was becoming increasingly loose.

The customs of Antwerp spread rapidly in England because of both the increase in trade, and their inherent qualities. By the mid-sixteenth century Italian insurance custom had already been developing for centuries, thus reaching a relatively mature stage. This was an obstacle to further change. Antwerp's insurance market was comparatively young, and its swift expansion was attracting merchants from different regions. In the space of a few decades a number of divergent customs and policy styles were being used in the same place. Antwerp was thus a thriving, if somewhat chaotic insurance centre where merchants could choose between different and competing usages.[41] In this scenario, the most efficient customs progressively imposed themselves over others. In turn, strong connections with England ensured the rapid spreading of such customs to London, at the very moment when the 'old guard' was being replaced by new, local brokers, and the language of the policy was moving from Italian to English. It is hard to imagine a more favourable time for change. London's insurance market was only beginning to develop a properly 'local' set of customary insurance rules, and was therefore particularly receptive to innovations. One of the most important, for example, was the clause 'to whomsoever it may pertain', which allowed the insurance of merchandise without specifying its ownership.[42]

While commerce was the main cause of the Low Countries' influence on English insurance, it was not the only one. Religious differences also played an important role. Dutch merchants shared the same feelings

about popish Italians as their English counterparts. Mistrust, disfavour, and sometimes open ostracism of Catholic merchants in the late-sixteenth-century London mercantile community is often overlooked, and largely underresearched. Yet it played a role more significant than is often assumed in severing the last few links between English and Italian insurance custom. During the 1570s, for instance, each of the most important Italian merchants still active in London – Genoese Benedict Spinola, Florentine Philip Corsini, and Lucchese Acerbo Velutelli – faced temporary imprisonment (albeit on different occasions) for minor charges, probably fabricated.[43]

Institutional instability

With Italian dominance fading away, the increasingly strong influence of Dutch custom, and the rising number of English underwriters, the London market underwent a period of swift development. Smooth transitional phases in customary law, however, require institutional stability. This was almost entirely lacking in mid-sixteenth-century London. The moment that English merchants began to take an interest in the insurance business, so too did English law courts. Over the turn of a few decades the courts of Admiralty, Chancery, and King's Bench all laid claim to jurisdiction over insurance matters. Turning to a law court was not the usual mercantile practice; arbitration was largely considered the proper course for a merchant, in London as elsewhere. Because arbitration panels comprised merchants, the subject matter remained within a well-defined circle of peers who shared the same usages.

Reputation incentives work better in closed systems, where one has little alternative but to abide by the social rules, so as to preserve one's status and remain within the system. When the number of investors grows, new players enter the system. While a relatively low number of new players may be easily absorbed, the swift entry of a large number creates serious difficulties for the preservation of the system. The best way to maintain it is to adopt dispute resolution mechanisms which preserve the cohesion of the weakened system.[44] So, for instance, when Amsterdam took the place of Antwerp as the Low Countries' leading centre of trade, it soon proceeded with the establishment of an Insurance Chamber.[45]

By contrast, if the growth of players is accompanied by a similar increase in the number of different institutions all equally able to pronounce upon a dispute, the system is further weakened. This was happening in London. A vast number of English merchants quickly

took an interest in underwriting, entering a circle of investors which had been relatively narrow so far. Their inflated number soon attracted the attention of several law courts, all equally interested in carving out a share of the new and lucrative business.

Of forty surviving policies underwritten by 246 individuals in the years 1573 to 1593,[46] only nine names are those of foreigners, an insignificant proportion. A large majority of the insurers (165) underwrote only one policy; a relevant number, 31, underwrote two. Only another 31 underwrote more than five of the known policies, and among them many insured in their name and in the name of their business partners, or on behalf of someone else, typically another English merchant.

These data suggest a very open insurance market, consisting mainly of occasional investors placing one-off bets, and often not trying their luck again, or not for a long time. When a ship arrives safely at its destination, the insurers 'never offer money again', complained a merchant in the 1570s.[47] Under such conditions social cohesion becomes progressively looser, and reputational incentives increasingly weaker. The temptation to plead before a court of law, where lengthy procedure and formalism could easily be played to one's advantage, was often hard to resist, especially when the investor was not planning to underwrite again, and so did not need to build or maintain his reputation.

Pleadings before law courts became increasingly frequent from the mid-sixteenth century, and the High Court of Admiralty in particular attracted a growing number of cases. Roman law (applied in Admiralty) had some connections to insurance, but was not entirely suited to it. The main advantage of pleading before the Admiralty was the lengthy process. Suits in the Admiralty could take years, and in the meantime the insured was often forced to accept a transaction for just a part of his credit. From a merchant's point of view, this was tantamount to cheating, but, again, reputational incentives were of little interest to occasional investors. The London mercantile community was faced with a twofold issue: furthering certainty in the rules applicable to insurance, and resisting centrifugal tendencies on matters of jurisdiction.

The answer came in the late 1570s and early 1580s through the codification of insurance customs and the establishment of an insurance registry on the one side, and the establishment of a specialised insurance court on the other.[48] The insurance court was meant chiefly to stop the interference of law courts in marine insurance matters, and to bestow some cohesion upon an increasingly chaotic market. The registry would curb fraud and assist in the implementation of the body of

rules, which would, in turn, ensure uniformity in the interpretation of insurance policies.[49] A further (and perhaps unforeseen) consequence of the insurance registry was that it contributed greatly to the uniformity of the wording of English policies. The language of policies was soon frozen, and did not undergo any significant change until the twentieth century. If the reference in policies to the customs of Lombard Street made little sense in nineteenth-century London, it was even less helpful in eighteenth-century American policies. In both cases, however, it was testament to the strength of tradition.

London's early insurance market: a limited success

The measures taken on both institutional and normative levels restored some degree of order and homogeneity to the London insurance market and its practice, at least for a period. Surviving evidence shows considerably fewer insurance disputes before the courts of law in the 1580s than previously, a probable sign that the newly established insurance court was functioning well enough. Premium rates remained low. On the London to Leghorn route, for example, the rate was 7 per cent in 1582,[50] peaking at 8 per cent towards the end of the year.[51] By 1584–85 it was stable at 6 per cent.[52] The registry office was also operating (all the figures above come from registered policies) and it probably functioned well. The Registrar, Richard Candeler, was a teller of the Exchequer who had been dismissed from office in 1571 for converting the enormous sum of £4,618 to his own personal use.[53] In 1597, having run the insurance register for over twenty years, Candeler was able to return the entire amount to the Exchequer.[54] It is not known whether the registry was a complete success, but at least it cannot have been an utter failure.

It is more difficult to evaluate the new insurance code. In the sixteenth century the term 'codification' was a loose one. Although it seems probable that the code received formal sanction from the Crown,[55] merchants did not necessarily feel bound by it. They might have considered it as providing written evidence of their customs at a given moment, and therefore subject to change over time. So, for instance, in *Adderley* v. *Symonds*, a life insurance case heard at the end of the sixteenth century (1599–1601), most of the witnesses deposed against the need to state the furthest point of the voyage,[56] whereas the insurance code stated the opposite.[57] Despite this, the code provides precious information about both the specific rules of the London market and the overall attitude of the mercantile community towards insurance.

Early modern compilations on commercial rules typically sought to codify the applicable customs, while at the same time introducing changes and improvements. They did not merely photograph market practice, but sought to enhance it. Looking at the improvements introduced, it is possible to evaluate the aims of the compilation. The London insurance code was the product of a very young market which needed additional care to develop further. For the compilers of the code, care chiefly meant protection of the insurers from fraud by their insureds.

Looking at underwriting trends, the compilers might have had a point. Insurers did not seem to follow any long-term strategy. The average underwriter, of limited financial means, was in no position to diversify his risk significantly. Without sufficient capital to invest in a number of policies, underwriting was necessarily a gamble – as risky as it was potentially lucrative. It is not a coincidence that insurance was often associated with wagering. Underwriters did not look at statistical probability, but simply reacted emotionally to success and misfortune alike. Thus, risk aversion decreased with a series of successful voyages (or lucky bets). Sometimes an investor needed a series of successful voyages before starting to raise the stakes. For others, one or two safe voyages were enough. But most of them shared the same behaviour: the more they gained, the more they risked. Conversely, risk aversion greatly increased after a loss, and the same insurer typically lowered considerably the amount of further underwritings. Again, it was only after another fortunate series of voyages that the typical insurer would increase his underwriting once more.[58] Confidence is slow to build, whereas panic is fast to spread. Since losses were statistically unavoidable, a single serious misfortune after a series of successful voyages could well lead to significant and sudden contractions in the market.

Early modern insurance markets, however, did not depend entirely on individual risk aversion, and, of course, risk aversion itself did not depend solely on the individual risk propensity. Otherwise, it would be difficult to explain why some markets prospered while others declined, given the overall homogeneity of investment strategies (or the lack of them). The reasons are more complex, and are to be found first and foremost in the institutional framework of the market, together with its liquidity.

Credit access was crucial when underwriters suffered a loss. The difficulties of the Spanish insurance market of Burgos during the 1570s, for instance, turned a serious situation into financial ruin for many underwriters, for the impoverished local business community could not support their financial needs.[59] Until political and military events

turned against it, the same did not happen in Antwerp: the market was sufficiently liquid, and credit access relatively cheap. This made it safer to invest in a policy, for it was easier to limit the consequences of a few losses (though perhaps not of a series of catastrophes).[60]

It is not easy to provide a clear picture of sixteenth-century London credit access, but in all probability the market was too young to be sufficiently liquid. This might justify the attitude of the insurance code: in the trade-off between supporting potential insureds and encouraging potential underwriters, priority had to be given to the latter. The markedly pro-insurer attitude of the London insurance code is clearly visible in a number of cases. For example, precious cargo could not be insured against barratry, nor against detention or arrest in the country of departure.[61] A forfeiture of the premium, instead of the customary half of one per cent, was applied both in cases of the insured's cancellation of the insured adventure, and when the cargo had temporarily to be unladen while he procured a licence to ship it.[62] The broker was made jointly and severally liable with the insured for the payment of the premium.[63] Insurers were no longer liable for the insured's legal expenses incurred to release a seized vessel or cargo.[64] Trans-shipment of the cargo was encouraged, instead of its abandonment to the insurers,[65] and the right of abandonment itself was subjected to stringent limitations.[66]

Even more than credit access and market liquidity, the prevailing institutional framework seems to have played a crucial role in early insurance markets. Scholarly analysis of institutional structures often focuses on the larger picture, and perhaps it works well on a macro level, but the historical development of early markets was typically a product of local circumstances, dictated more by power relations between different groups than by abstract economic and political considerations. With the *Pragmática Real* of 30 April 1562, for instance, the Spanish Crown prohibited insurance against pirates. The rationale behind the prohibition was to encourage shipmasters to fight on, instead of surrendering without much resistance. If insurance encourages moral hazard, narrowing the scope of insurance necessarily reduces it, but it is highly doubtful whether merchants would have agreed upon the opportunity of such a draconian rule.[67] The emphasis on the relationship between government accountability and economic progress, argued by scholars such as Douglass North, is not entirely applicable in an early modern context, for it presupposes powerful and highly centralised governments. The prohibition of insuring against piracy was enacted in Spain, but not in England, primarily because the King of Spain was in a position to impose it, while the Queen of England was not.

Decisions by governments, even by those which relied on mercantile support, could have disastrous impacts on the insurance market. Such is the case of the Republic of Venice, which avoided significant interventions in maritime commerce until its decline became all too apparent. Only then did it begin to enact a series of measures as protectionist as they were anachronistic. One such measure, in 1586, was the prohibition of insurance on foreign vessels.[68] The prohibition clearly did not encourage insurance, and was probably aimed more at protecting domestic sea carriage than at defending the insurance market.

The English government did not take any such direct approach. Rather, it sought to encourage the establishment of local institutions to foster its main insurance market, located in London. The coordinated effort leading to the establishment of the insurance court, register, and code was as much the product of the Aldermen's Court of London as the Queen's Privy Council. The Aldermen's Court was the driving force behind the innovations, but the Privy Council's support was crucial in overcoming the resistance of some interest groups. The indirect approach of the English government might have been more productive than a more interventionist attitude, but this does not necessarily mean that the choice was a deliberate one. It is also possible (indeed, even probable) that the government could not go beyond that.

Doubtless the institutional reforms were beneficial to the London insurance market, but in the long run they did not yield the desired effects. The main shortcoming remained the lack of coordination with other institutions. The insurance court might have furthered cohesion among merchants, but it lacked exclusive jurisdiction over marine insurance disputes. Effectively, it relied on spontaneous cooperation. The system operated for a few years only before a statute was needed, in 1601, to impose its jurisdiction forcibly (43 Eliz. c. 12). The scope of the statute, however, was progressively eroded by common law Courts.[69] More than anything else, it was the absence of an exclusive jurisdictional forum for insurance disputes that hindered the formation of a homogeneous, close-knit group. This, in turn, had serious consequences on the substantive rules, as well as on the overall success of the insurance market itself.

Customary rules are the product of social groups, and thus require a homogeneous group to underpin them. The absence of a single court weakened insurance rules both directly and indirectly. Directly, they were not applicable before common law courts. The King's Bench, for example, analysed the insurance contract in terms of *assumpsit* (an action for recovery of damages following a breach of contract); it

is difficult to think of anything less compatible with insurance customs than that. Indirectly, jurisdictional plurality acted as a powerful centrifugal force on merchants. Weaker social cohesion, in turn, had a negative impact on the applicability of mercantile usages. Even if such practices were now written down, they were still considered customs: their effective application depended on the community that used them.

The poor reliability of London insurers during the formative period of English insurance is thus probably to be ascribed to the institutional environment. The single underwriter might be trusted, but not the underwriters as a group: they had no clear incentives to act as such. Ultimately, the success of English insurance depended considerably upon the certainty of the applicable rules, but such certainty was achieved only after the common law managed fully to absorb insurance litigation during the eighteenth century. Thus, the growing autonomy of the judiciary ultimately slowed down the growth of the insurance market, instead of furthering it – but this could hardly be imputed to the government.

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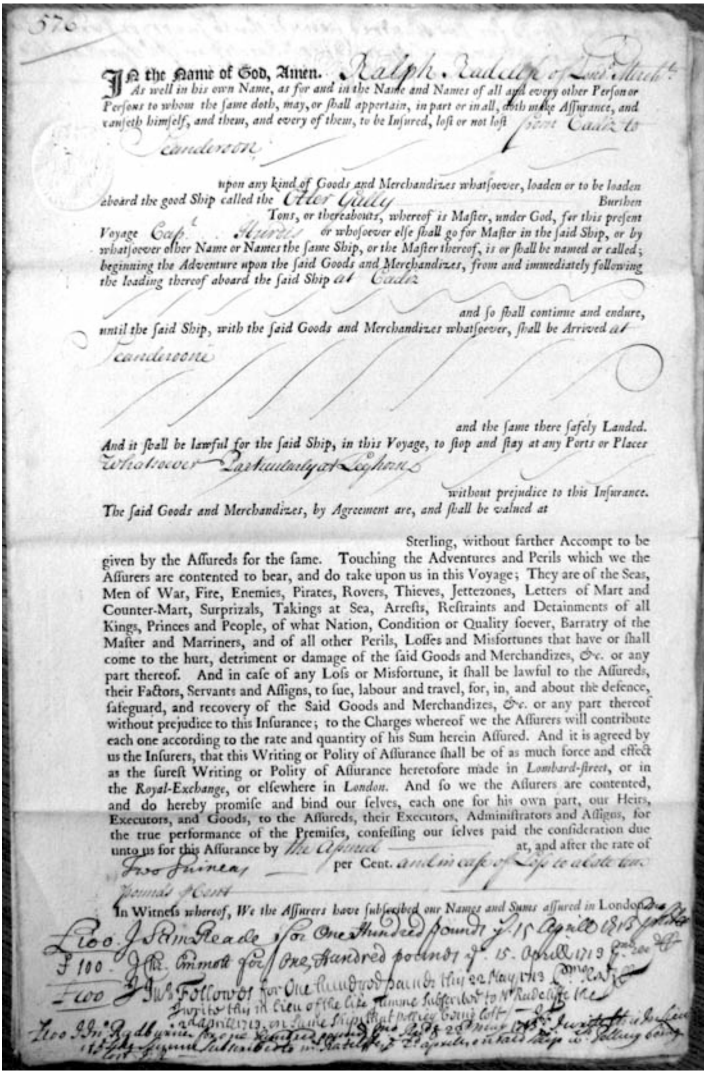

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In the Name of God, Amen. Ralph Radcliffe of Lond^o Merch^t
As well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance, and causeth himself, and them, and every of them, to be Insured, lost or not lost from Cadiz to Scanderoon

upon any kind of Goods and Merchandizes whatsoever, loaden or to be loaden aboard the good Ship called the Otter Galley Burthen Tons, or thereabouts, whereof is Master, under God, for this present Voyage Capt. Harris or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandizes, from and immediately following the loading thereof aboard the said Ship at Cadiz

and so shall continue and endure, until the said Ship, with the said Goods and Merchandizes whatsoever, shall be Arrived at Scanderoone

and the same there safely Landed.
And it shall be lawful for the said Ship, in this Voyage, to stop and stay at any Ports or Places whatsoever Particularly at Leghorne
without prejudice to this Insurance.
The said Goods and Merchandizes, by Agreement are, and shall be valued at

Sterling, without farther Accompt to be given by the Assureds for the same. Touching the Adventures and Perils which we the Assurers are contented to bear, and do take upon us in this Voyage; They are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettezones, Letters of Mart and Counter-Mart, Surprizals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Marriners, and of all other Perils, Losses and Misfortunes that have or shall come to the hurt, detriment or damage of the said Goods and Merchandizes, &c. or any part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assureds, their Factors, Servants and Assigns, to sue, labour and travel, for, in, and about the defence, safeguard, and recovery of the Said Goods and Merchandizes, &c. or any part thereof without prejudice to this Insurance; to the Charges whereof we the Assurers will contribute each one according to the rate and quantity of his Sum herein Assured. And it is agreed by us the Insurers, that this Writing or Polity of Assurance shall be of as much force and effect as the surest Writing or Polity of Assurance heretofore made in *Lombard-street*, or in the *Royal-Exchange*, or elsewhere in *London*. And so we the Assurers are contented, and do hereby promise and bind our selves, each one for his own part, our Heirs, Executors, and Goods, to the Assureds, their Executors, Administrators and Assigns, for the true performance of the Premises, confessing our selves paid the consideration due unto us for this Assurance by the Assured at, and after the rate of Two Guineas per Cent. and in case of Loss to abate ten pounds p Cent
In Witness whereof, We the Assurers have subscribed our Names and Sums assured in London

£100 J Samlleade for One Hundred pounds 15 Aprill 1713
£100 Jn^o Emmott for One Hundred pounds 15 Aprill 1713
£100 Jn^o Followes for One Hundred pounds this 22 May 1713
I write this in lieu of the like summe subscribed to M^r Radcliffe the 2 Aprill 1713 on same ship that policy being lost

Policy dated May 1713, underwritten in London for ‘Ralph Radcliffe of Lond^o, Merch^t’, covering goods during shipment from Cadiz to Scanderoon (modern Iskenderūn). The ‘boilerplate’ policy form was widely available from stationers. Five underwriters have signed the risk, three adding the note ‘*I write this in lieu of the like summe subscribed to Mr Radcliffe the 2d Aprill 1713, on the same ship, that policy being lost*’. Image courtesy of Hertfordshire Archives & Local Studies Centre, DE/R/B293/12

7

London 1426–1601: Marine Insurance and the Law Merchant

A.B. Leonard

Prior to a series of merchant-driven state interventions in the 1570s, the primary institutions of contract enforcement for insurance buyers and sellers in London were the merchant community itself, typically embodied in the city's Lord Mayor and Aldermen, and the merchants' own body of governing rules, part of the Law Merchant. In 1781 the underwriter John Weskett published his encyclopaedic *Complete digest of theory, laws and practise of insurance*, which describes the Law Merchant as follows:[1]

> The affairs of commerce are regulated by a law of their own, called the Law Merchant, or *Lex Mercatoria*, which all nations agree in and take notice of: and in particular it is held to be a part of the law of England, which decides the causes of merchants by the *general* rules which obtain in all commercial countries.[2]

The Law Merchant provided the rules for insurance both before state judicial oversight, and, in practice, afterwards as well. Like marine insurance itself, the genesis of the Law Merchant was in Italy, and was based on custom.[3] It operated alongside the civil and common laws of England, and functioned – according at least to some contemporary observers and current commentators – as a distinct third branch of the law.[4] As the common law jurist Sir John Davies argued early in the seventeenth century, 'laws as be common to other nations as well as us, have been received and used time out of mind by the king and people of England in divers cases, and by such ancient uses are become the laws of England in such cases, namely the general law of nations and the Law Merchant, which is a branch of the law, the imperial or civil law'.[5] The customary practice it outlines for insurance was

incorporated methodically into English common law only in the latter half of the eighteenth century, and was not formally enacted through statute until 1906.[6] London's marine insurance market operated successfully, and indeed reached international predominance, long before this occurred.

Davies observed the impact of the Law Merchant system as practised by the merchant-insurers of London. Richard Zouch, a seventeenth-century Admiralty judge, recorded a manuscript admission of Davis, who

> saith ... 'That until he understood the difference betwixt the Law-Merchant and the Common Law of *England*, he did not a little marvel that *England*, entertaining Traffic with all Nations of the World, having so many Ports, and so much good Shipping, the King of *England* also being Lord of the Sea, what should be the cause that, in the Books of the Common Law of *England*, there are to be found so few Cases concerning Merchants or Ships: but now the Reason thereof was apparent, for the Common Law of the Land did leave those Cases to be ruled by another Law; namely, the Law-Merchant; which is a branch of the Law of Nations.'[7]

Authorities over centuries regularly referred to the body of rules encompassed by the Law Merchant when called upon to intervene in insurance-related disputes. In some major maritime centres, its main tenets were compiled and codified as a corpus of marine regulation, during an era in which, Dickson reports, some contemporary English writers 'suggested that mercantile law should be codified, and administered by special courts so as to speed up the resolution of commercial disputes'.[8] Barcelona adopted insurance ordinances in 1484. Florence set out an insurance ordinance in 1523. Burgos adopted ordinances in 1538 and 1572, perhaps based on earlier codifications. Seville and Bilbao followed in 1556 and 1560, respectively. Philip II approved insurance regulations for Antwerp in 1563, and for the insurance in Spain of vessels to the Indies between 1556 and 1588. In 1563 and 1571, the most important Dutch *placaaten*, or written ordinances, were enacted. Rouen's *Guidon de la Mer* was adopted probably in the 1580s. Genoa passed regulations in 1610, Middleburg in 1689, Rotterdam in 1604 and 1721, and Amsterdam in 1598 and 1724.[9] Codification of the rules of insurance was widespread in the major western European port cities and trading nations from the sixteenth century, as customary law was written into the statute books.

The codification of any local Law Merchant transforms it into something else. It becomes the fixed law of the proclaiming authority, rather than the flexible, customary law of the merchant. This is problematical for some scholars. Ogilvie, for example, states

> If a coherent body of merchant law existed at all, it must have been customary and oral. But that means it is all but impossible to establish its existence. The absence of merchant law from contemporary written collections and legal manuals raises the question of how significant or widely used it can have been, given that other bodies of law did appear in written form at the same period.[10]

This opinion, drawn from a revived school of Law-Merchant deniers such as Sachs (who describes the Law Merchant as 'fictional'),[11] is caught upon two fundamental flaws. First, it ignores much concrete evidence of the existence and widespread use of the Law Merchant. This evidence includes pleas in the 1426 London insurance dispute of the resident Florentine merchant Alexander Ferrantyn, heard in the Guildhall in 1427. In arguing the case, both parties referred directly to the 'Lex Mercatorta' as the body of rules governing the disputed contract. In question was how a specific set of customary rules – in this case those of Florence – would treat a particular circumstance.[12] Another strong piece of evidence supporting a contemporary understanding and acceptance of a Law Merchant is Gerard Malynes's 1622 tome, entitled *Lex Mercatorta: or, the ancient Law-Merchant*. The book is a manual self-described as 'necessary for statesmen, judges, magistrates, temporal and civil lawyers, mint-men, merchants, mariners, and all others negotiating in any parts of the world'.[13] Denial of the Law Merchant refutes authorities such as the barrister Charles Molloy, who wrote in 1676 that 'The Law concerning merchants is called the Law Merchant from its universal Concern, whereof all Nations do take special Knowledge, and the Common and Statute Laws of England, takes notice of the Law Merchant, and leave the Causes of Merchants in many Instances to their own peculiar Law.'[14]

Secondly, denial of the uncodified Law Merchant overlooks one of its basic and critical characteristics: its flexibility. While a newly codified selection of Law Merchant customs may initially be identical to the Law Merchant itself, it probably would not be for long. It was in the nature of the Law Merchant to change over time and distance, in a manner suited to those applying it in and at a specific place and occasion, and especially as new circumstances arose. This flexibility allowed

the rules to be altered to account for evolving trade scenarios, and thus was of particular importance as the nature of European trade developed. It was one of the characteristics of insurance regulation, especially as practised in London, which made it such an effective tool for meeting the uncertainties of early modern merchant adventurers. The first informal codification of insurance law in London sought to remain flexible through frequent modification based upon changes in practice and the decisions of arbiters. In this way, it represented a meeting of the English common and civil law traditions.

An old sympathy for flexibility in the legal interpretation of regulations, such that intent, rather than the rules themselves, should guide dispute resolution, was bolstered by the dual legal principle of equity, or *aequitas*, outlined by fourteenth-century jurists. At that time, Baker argues, equity became 'institutionally separated' from the common law, as judges in the latter courts became more rigid and less discretionary. As well as comprising the 'spirit' of law, equity later became, in the words of Jones, a 'criterion for interpreting written law according to the true meaning of the lawmaker, on the basis that words were an imperfect vehicle for expressing legislative intention in detail'. In the later middle ages the idea of 'fairness' became a principal sense of equity, and in the 1570s, according to Ibbetson, merchants' descriptions of courts as 'of equitie' meant simply that 'strict law would not be applied'; the courts were not 'hamstrung by Common law rules and processes', and allowed them even to intervene 'against the rules of the Common law'.

All of this does not reflect the absence of rules, however. The lack of codification of the Law Merchant relating to marine insurance (or simple non-observation of the rules, as the Privy Council complained about in relation to insurance regulation in 1601, stating that some merchants 'refuse to submit and conform themselves to the order of Commissioners'), obviously overcame the problem of inflexibility.[15] Thus, the Privy Council called regularly for merchant arbitrators to decide cases 'as to justice and equity appertain'. Sachs argues that 'the practice of mercantile law . . . was more flexible than the translation of "the law merchant," with its reifying definite article, would imply',[16] but this is exactly its strength.

The 'force and effect' clause

The challenge to acceptance of the Law Merchant as a set of governing rules (let alone a distinct body of law) is compounded by another of its key characteristics: it varied from place to place, often subtly,

but sometimes dramatically. As the Ferrantyn case, mentioned above, makes clear, those deciding insurance cases in late medieval London were aware of such local inconsistencies, and respected contractual clauses which invoked the governance of a contract by one version of the Law Merchant or another. It is implied also in the decision of various Mediterranean insurance centres, and later Antwerp, to allow the members of various merchant nations resident there to adjudicate any insurance disputes arising within their own communities themselves.[17]

In recognition of this, almost all extant English-language marine insurance policies from the middle of the sixteenth century carry a form of a clause which indirectly places the contract under the jurisdiction of the Law Merchant, and which specifies which body of rules – which city's Law Merchant – is to be applied. This practice reduced ambiguities of interpretation, making the Law Merchant a more effective institution of contractual enforcement. The relevant body of Law Merchant appears almost always to have been stated explicitly in policies, within a clause which employed words such as 'this present writing of assurance shall have much force and effect as any policy of assurance heretofore made in' some specified location.[18]

The Ferrantyn case turned on such an expression of the locality of the Law Merchant governing his contract. The insured, Ferrantyn, was refused a claim for a vessel, the '*Seint Anne of London*' (John Starling, master), which was carrying a cargo of wine to England from Bordeaux. Both vessel and cargo, insured for £250 by 17 Italian merchants resident in London, had been seized by Spaniards, but Ferrantyn, through an agent, had repurchased the vessel and cargo, which the privateers had sold to Flemish merchants. The policy (referred to in the aldermen's court as a 'bill of contract') specified that the 'order, manner, and custom of the Florentines' was to govern the contract. The claimant requested indemnity 'by the law merchant and according to the manner, order and custom of the Florentines'. The disputing parties claimed respectively that Florentine custom required the indemnity to be paid despite the recovery, and that it did not. The case was to be decided based on a finding of settled Florentine Law Merchant (at least, as it was at the time). Both parties promised to produce notarised testimony from the Italian city which stated the prevailing local custom in such situations. So confident were the defending insurers that they paid the disputed £250, plus £100 as surety, into the court. In the words of the editor of the relevant *Calendar of plea rolls*, 'the defendants appear to have pleaded that the words about the custom of the Florentines were qualifying words, and that payment was subject to certain exceptions and

conditions customary among the Florentines, but not mentioned in the contract. The plaintiff stood on the plain terms of the contract.'[19]

The modification of actual contractual terms by the application of specified local custom was to continue in London's insurance market for more than a century, but London practice was soon sufficiently established to provide a reference point. A contemporary English translation of the earliest known policy in the Admiralty archives, written originally in Italian and dated 1547, states that 'it is to be understood this present writing has as much force as the best made or dicted bill of assurance which is used to be made in this Lombard Street of London'.[20] Thus, the Law Merchant which was to govern the policy was that reflected in the insurance practices of the merchants of Lombard Street, home to the concentration of north Italian merchants who succeeded those who had introduced insurance to London more than a century earlier. (The phrase 'dicted bill' further implies the importance and validity at this time of verbal contracts of insurance, and that they also carried the full weight of the Law Merchant.)

Holdsworth states that such clauses, which appear in one form or another in all of the policies preserved in this series of Admiralty records, 'probably had the result of producing a uniformity in the legal effect' of all of them. It provided all parties to an insurance contract, and courts which may be called to adjudicate disputes, with a known – if uncodified – body of customary practice to govern proceedings. Jones argues that, with the force and effect clause, 'the merchant attempted to bolster up his position by incorporating [into his policy] the entire body of the Law Merchant, in so far as it was worked out in relation to marine insurance'. It had been 'worked out' to a considerable extent, as shown by the work of Francesco Rocci, a jurist of Naples and judge of the *Magna Curia*. His *Treatise on Insurance*, first published in Italian in 1655, presents one hundred 'notes' on insurance, many of which are not dissimilar to entries in London's draft 'Book of Orders of Assurances' compiled in the 1570s, with 126 articles.[21] Where it was not worked out, merchant-arbiters made decisions which added to the otherwise uncodified law.

Another document, comparable to a modern expert opinion, accompanies a second surviving policy under suit in the High Court of the Admiralty. It invokes the Law Merchant of Antwerp, stating 'That the use and custom of making bills of assurance in the place commonly called Lombard Street of London and likewise in the Bourse of Antwerp, is and time out of mind has been among merchants using and frequenting the said & several places and assurances.' Although the policy in question, which insures the Florentine merchant Robert Ridolphye (better known

for his plot to assassinate the Queen), mentions only Lombard Street, the accompanying legal opinion brings to bear the customs of both London and Antwerp. In this case, the point in question is the ability for one man to insure, in his own name, the goods of another. Rossi argues that this practice was permitted in the Netherlands, following the practice of Antwerp, but was prohibited under early Italian Law Merchant. London, by adopting this practice (typically expressed through the clause 'to whomsoever it might pertain') experienced 'a major rupture with the consolidated practice of Lombard Street'.[22]

The decision in a similar case under arbitration, involving a policy underwritten in 1558 and bearing the signature of 15 merchant witnesses, 'attests to the importance of the decision', according to Rossi. He argues that the finding approved a change from Italian to Dutch practice.[23] This major change to the Law Merchant prevailing among London merchant-insurers shows flexibility on their part to accommodate the needs of their insurance-buying customers, and of the courts (or at least, the Admiralty Court), to follow changing merchant custom in their decision-making approach. The rules were not written down, but still they could be amended.

Rossi argues that the change in London merchant-insurers' preference for Dutch over Italian practice is reflected in the jurisdiction clause: a change from making reference to the Italian-English Law Merchant of Lombard Street, to the insurance customs of the Dutch, which followed the precedents of Antwerp.[24] However, during this brief transitional period London was sometimes the point of reference adopted in policies made in ports with which the city traded. A 1566 policy underwritten in Antwerp contains the clause 'According to the usage and custom of Lombard Street of London and this Bourse of Antwerp'. At least four earlier Antwerp policies also referred to 'the street' in London. De ruysscher states that Antwerp's 'minimal legislative framework' and preference for 'contractual leeway' was reflected in frequent references in policies issued in the city to 'the combined customs of London's Lombard Street and the Antwerp Bourse, thus pointing to wider insurance practice, and the few unwritten principles and standards which applied in either place'.[25]

A further London policy in the Admiralty series, drawn up in 1555 to insure the merchant Anthony de Salizar, states that 'this assurance shall be so strong and good as the most ample writing of assurance which is used to be made in the street of London [Lombard Street] or the bourse of Antwerp or in any other form that should have more force.'[26] Van Niekerk states that 'it is not absolutely certain but at least highly probable that the points on which the [de Salizar] policy contravened

the [Dutch] *placcaat* [a regulation of 1563 which required specifically that the insurance customs of the Bourse of Antwerp be followed in the Netherlands] were at the same time the points on which it agreed with London insurance practices and customs'.[27] However, this explanation does little to clarify why some Dutch policies issued before the 1563 regulations cited London's authority, which reflected Italian practice. These clauses weaken arguments that the change in the authority clause in mid-sixteenth-century English insurance policies reflected a shift from preference of the Law Merchant of Italy to that of Antwerp/Amsterdam (although this change is apparent),[28] and strengthen Holdsworth's claim that the clauses were intended to produce a 'uniformity in the legal effect' under contracts prepared for merchants trading between commercial centres whose local Law Merchant, as it applied to insurance, was not itself entirely uniform with the rules adopted in other cities. Specifying the body of rules which were to apply would help to eliminate ambiguities during a period of transition. It also indicates flexibility. Since it seems extremely unlikely that the individuals drawing-up policies made such choices arbitrarily, merchants, insurers, and brokers must have been willing and able to choose the body of Law Merchant which at the time and place of use best met their needs and expectations.

Thus the locations cited to indicate the relevant Law Merchant authority for policies underwritten in London remained fluid, and followed practice. The Corsini policies of the 1580s show this clearly. Each states that 'It is to be understood, that this present writing is & shall be of as much force, strength, & effect, as the best & most surest polices or writings of assurance which hath been ever heretofore used to be made in Lombard Street, or now within the Royal Exchange in London.' The addition of reference to the Royal Exchange followed the establishment of a state-sanctioned policy drawing and registration bureau, the Office of Assurances, at that location, where Corsini's policies were drawn up. Reference to the Royal Exchange had appeared with the royal patent of 1575/6 which established the Office. The patent refers to 'the ancient custom of merchants in Lombard Street, and now the Royal Exchange'. This reference to the Exchange appears intended to add the weight of the accepted merchant custom of London to the policies to be drawn in the newly sanctioned Office (as well as to add legitimacy to the office itself). Meanwhile the customs of Lombard Street were to remain an important point of reference, just as those of the Royal Exchange were to become. A policy issued in 1641 in the Office of Assurances to George Warner of London cites 'Lumbardstreete or exc^{e}', the latter presumably a short-hand reference to the Royal Exchange.[29]

The absence in London of a regulation specifying the regional Law Merchant to be applied, as the 1563 Dutch *placcaat* did for the Netherlands, and the fluidity of the Law Merchant selected, must have contributed to the flexibility of the insurance product offered in London. Given the variety of force and effect clauses which appear in London insurance documents before the dominance of the Office of Assurance and the later widespread take-up of printed blank policy forms, presumably insurance brokers, underwriters, or buyers, or more likely a combination of them, had and actively made choices about which body of Law Merchant was to apply to each contract drawn up and entered, as had been the case with Ferrantyn in the early fifteenth century. This would have given London an advantage over its competitors, when the latter were more restricted in this choice, and especially when underwriting for foreign clients, who may have preferred a different, more familiar or appropriate, set of rules.

The authority of the Law Merchant specified by the force and effect clause could also be avoided directly, in favour of policy terms and conditions which suited the buyer and seller at the time of underwriting. Buyers may have preferred a narrower coverage than that typically offered according to the customs of Lombard Street, in exchange for a lower premium, or may have paid more for a broader cover. A policy of 1613, underwritten in the Office of Assurance, illustrates this. Goods aboard the vessel *Tyger* for its voyage from London to the near Mediterranean were insured under a policy which, in roughly the usual form, was 'to be understood that this present writing of assurance being made & registered according to the kings majesty's order & appointment shall be of as much force strength & effect, as the best and most surest policy or writing of assurance which hath been or heretofore used to be made Lost or not Lost in the aforesaid street or Royal Exchange'. However, the policy also overrides the specified customs of Lombard Street and the Royal Exchange, stating that coverage will remain in place should the cargo not be unloaded at the ports specified, that 'any order custom or usage or anything in this policy mentioned to the contrary notwithstanding'. Further, with regards to the conventions of news of losses, it states 'any order custom or usage heretofore had or made in Lombard Street or now in the Royal exchange in London to the contrary notwithstanding'.[30] With these additions to the usual wording, the drafters of the policy created a unique insurance product which met the specific needs of the insurance buyer, as well as acknowledging not only the authority of custom of the Royal Exchange, but also noting the authority of the Office of Assurance.

Policies issued to the estate of Thomas Brailsford between 1690 and 1692, after the closure of the Office of Assurance, include a force and effect clause which refers only to 'Lombard-street, or elsewhere in London'. As London insurance practice spread, so too did the use of London generally as a point of authority in such clauses. However, the authority of the custom of the Royal Exchange was permanently to return (even before the underwriters of Lloyd's began regularly to trade there in 1771). A policy underwritten in New York in 1760 states 'That this Writing, or Policy of Assurance, shall be of as much Force and Affect as the surest Writing or Policy of Assurance heretofore made in *Lombard-Street*, or in the *Royal Exchange*, or elsewhere in London', as do other US polices in this series issued to 1763.[31]

The clause was to change again over time and distance. An 1859 policy issued in Hong Kong to cover a shipment of opium states that the policy shall have as much force as any in, simply, 'London'. Outside Britain and the British Empire, it seems clear that the preferred jurisdiction took some time to settle. A policy underwritten for 'Messers Wales and Field' by the broker Chardon Brooks in Boston, Massachusetts on 17 September 1794 (see page 248), following the independence of the United States, states only that the underwriters agree that 'this writing or policy of assurance shall be of legal effect'. However another policy, underwritten six months earlier in Rhode Island, states that it 'shall be of as much Force and Effect as the surest Writing, or Policy of Assurance, heretofore made in the United States of America' (see page 204). An 1806 policy, underwritten by the Merrimack Marine and Fire Insurance Company in Newburyport, Massachusetts (and thus not by private underwriters, as in the previous examples), states no authority. This follows a precedent set for corporate insurance underwriting in London in the 1720s. A policy issued by the London Assurance in 1741 similarly includes no force and effect clause. A policy issued in Halifax, Canada and underwritten by 39 individuals (and subscribed on their behalf by their joint attorney, in 1836, prior to the incorporation in 1840 of the underwriters as the Halifax Marine Insurance Company) also contains no 'force and effect' clause, but refers disputes to 'referees mutually to be chosen', or else to 'His Majesty's Courts in Halifax'.[32]

Dispute resolution – arbitration

As might be expected, the norms of enforcement in insurance, which spread from Italy across western Europe, followed a similar early

geographical path to the practice of underwriting itself. De Roover states that judges in Bruges in the 1450s and 1460s consulted prominent Italian merchants to learn the norms of contract interpretation, and gave 'much weight' to their mercantile custom when resolving disputes. Thus, the Bruges courts accepted the weight of Italian Law Merchant principles. These include that the underwriters gain ownership of salvaged goods after indemnities have been paid; that cover does not commence until the vessel sails; that cover is void if the insured fails to disclose loss information before underwriting; and that indemnities need not be paid on overdue vessels until the insured has assigned title to the insured goods to the underwriters.[33]

The Bruges courts also accepted the Italian Law Merchant tenet that an insurance contract was void if the insured vessel was actually lost at the time of underwriting. This, however, must have been a grave limitation on the practicality of insurance in a time of severely restricted information flow. A vessel easily could have foundered months before news of the loss reached insurance buyers. Therefore, by the early seventeenth century, flexible London marine insurers had abandoned the custom that made void an insurance contract if the insured vessel was actually lost at the time of underwriting. The 1613 *Tyger* policy, cited above, includes the words 'lost or not lost', explicitly superseding the convention.[34] The 'lost or not lost' clause was to be included in all printed London policies issued thereafter.[35] This concession to buyers must have made the London insurance market more attractive than its competitors to most purchasers of insurance, in this respect at least, and especially to buyers of insurance for vessels which were overdue, which was a common but expensive practice.

With London's rules residing outside statute, it was principally those individuals within the insurance market, the merchant-insurers and brokers, who knew the customs which prevailed in specific situations. Thus, the usual initial method of dispute resolution was arbitration (taken here to refer to all dispute resolution methodologies outside the royal courts and not governed by the civil or common law) within the merchant community, including in the Mayoral court. Such recourse to arbitration by panels of experts was common to all Tudor jurisdictions, and was especially pervasive in mercantile cases. This had been the predominant practice in Italy, and continued in the succeeding insurance centres of Antwerp, Amsterdam, and Hamburg. Merchants and insurers typically avoided formal courts where possible, preferring *en camera* arbitration, whether formal or informal, which preserved their trade secrets, and was both faster and cheaper.[36]

The preference was not limited to insurance questions. Anthropologists have observed a consistent pattern of disputants, unwilling to involve agents of the state in their resolution, turning to chosen third parties, and states choosing to encourage arbitration as a less costly substitute for more formal procedures. The pattern of internal resolution of disputes is evident in the 1499 Ordinances of Bristol's new City Charter, which states the masters and wardens of its merchant-dominated Common Council were to meet up to twice weekly 'to hear complaints and set directions according to reason and good conscience between parties of the same company being at variance or debate, or to send the said parties with their causes as they have found them certified unto the mayor of Bristol'. As an anonymous English jurist wrote in 1694, arbitration could be adopted to 'prevent the great Trouble and frequent Expense of Law-Suits'.[37]

Merchants found the courts to be 'slow, expensive, and inasmuch as they raised the spectre of countersuits, vexatious'. In the 1566 action *Barnes* v. *Paviot*, 48 underwriter-plaintiffs stated they were willing to have their case settled 'by the order of merchants for avoiding of trouble, costs and expenses in law', a course apparently unacceptable to the Rouen merchant Charles Paviot, since the case was brought before the Chancery (after a parallel action had been launched by Paviot in the Court of Admiralty). A century and a half later, John Barnard, a wine merchant, politician, and leading underwriter, testified before a parliamentary special committee in 1720 that 'in Disputes about Losses or Averages the Insurers are generally desirous to have them adjusted by Arbitration, it being in their Interest to do so, and that the Insurers very often pay unreasonable Demands, rather than suffer themselves to be sued'.[38]

Evidence of the latter claim can be drawn from even the earliest extant policies. When an underwriter had paid a claim, it was customary to cross his name off the original policy document. An extant policy of 1555 shows that 16 of 22 subscriptions are struck out, indicating the vast majority had made good a claim against them, but six names are not, including that of John Blackman, the underwriter who is named in the suit.[39] A further reason to avoid the courts was that policies sometimes did not comply with regulation,[40] for example when policies were not registered as prescribed with an authorised authority, when stamp duty had not been paid, or when an insurance agreement fell outside the jurisdiction of the otherwise-appropriate tribunal. Although the number of litigation actions increased significantly during the sixteenth century – Ibbetson states that it was in the 1530s

and 1540s that 'insurance disputes began to become "legalised" '[41] – the number of insurance-related cases which reached the courts and for which evidence survives are relatively few, since arbitration remained the preferred alternative for merchants and their insurers (and possibly since disputes were relatively unusual amongst the merchant-insurers, although this is impossible to prove).

Recourse to arbitration was often agreed at the time of underwriting. This is shown in the 1555 policy of de Salizar, cited above, which states that 'if God's will be that the said ship shall not well proceed' the parties to the policy 'promise to remit it to honest merchants and not to go to the law'.[42] While the arbitration clause was not present in all policies, it appears to have been common, even if not lawful under the civil law. Another extant policy, underwritten March 1564, requires the parties, 'whereupon might grow any difference, to stand to the judgement of merchants indifferently chosen without going to any other law'.[43] Similar clauses appeared in policies issued in Antwerp, Amsterdam, and Rotterdam. A piece of Elizabethan legislation attests to a long history of arbitration within the community. It declares that 'Assurers have used to stand so justly and precisely upon their credits, as few or no Controversies have risen thereupon, and if any have grown, the same have from time to time been ended and ordered by certain grave and discreet Merchants, appointed by the Lord Mayor of the City of London, as Men by reason of their experience fittest to understand, and speedily to decide those Causes'.[44] London underwriters' preference for arbitration resulted in reduced transaction costs, and maintained commercial secrecy, granting insurance buyers a benefit not extended to those purchasing cover in cities where formal adjudication procedures were predominant or prescribed.

Marine insurance in the courts

The merchant community in London was relatively small. The group transacting insurance must necessarily have been somewhat smaller, as not every adventurer would choose to buy insurance. Thus, the community of merchant-insurers was also small, and likely close-knit, especially during the earliest period. However, as London's importance as a commercial port increased, and her insurance market gained in breadth and sophistication, the number of merchants, both local and foreign, purchasing insurance in London multiplied. This was caused in part by changing trade patterns, which brought increased insurance demand, and a requirement for new insurance products. Until the last quarter of

the sixteenth century most international trade from London was carried only very short distances, to Antwerp or Hamburg. Thereafter, however, English merchants and carriers began regularly to trade to much more distant ports. Vessels were sometimes years at sea. London garnered a much greater share of national exports, and commodities other than cloth became increasingly important trade items.[45] The long-established methods of private dispute resolution among the merchants would no longer suffice to resolve amicably or successfully all disputes arising under insurance policies.

Meanwhile, litigation became generally more fashionable. The total number of cases in the common law courts of King's Bench and Common Pleas numbered 2,100 in 1490. The total had risen to an annual average of 5,278 by 1560–63, and to 23,147 by 1606. At the King's Bench the number of cases increased by eight times during the reign of Elizabeth. The numbers of suits per capita were much greater than in the present day.[46] Merchants' preference for arbitration had done little to advance judicial knowledge of the Law Merchant governing the business, which fuelled a loop of self-enforcement: cases brought to royal justice were often sent back to the merchant community for arbitration. For example, in December 1573 the Privy Council committed for resolution a resident foreign merchant's complaint about 'the assurance of a ship' to 'Alderman Osburne, Hugh Offley, Wiliam Towrson, Blase Saunders, Barnard Field and Peter Perry, or any 4 of them, to make agreement if they can, or else to return in whom the fault is, and therewith their opinions what is to be done, that thereupon further order may be taken as to justice and equity appertain'.[47] Yet, although expertise in insurance matters was not rife within the judicial community, and not incorporated into the common law (even if a handful of cases were heard under it), final resort to the courts became more common.

The increase in disputes which reached the courts was widely recognised. The Insurance Act of 1601 makes specific reference to this mounting litigiousness, stating that 'of late years that diverse persons have withdrawn themselves from that arbitrary course, and have sought to draw the parties assured to seek their money . . . by Suits commenced in her Majesty's Courts, to their great charges and delays'. However, the correct jurisdiction for such actions was not firmly established, such that by the 1570s, according to Ibbetson, the situation was 'thoroughly anarchic'. Jones describes sixteenth-century insurance in London as existing (in a legal context) 'only precariously and chaotically'.[48] With jurisdiction disputes ongoing, several courts continued to hear insurance cases. As the insufficiencies of the merchant-insurers'

customary dispute-resolution institutions were revealed, multiple forms of law were brought to bear to fill the breach. King's Bench was a court of common law; Chancery of equity; the High Court of Admiralty an equity court which followed the international laws of the sea, part of the Law Merchant; London's Mayoral court applied custom under local Law Merchant. It is therefore unsurprising that legal historians describe the situation as chaotic: in these circumstances, buyers and sellers could not be certain even which law would be applied to a dispute, let alone how it would respond.

From 1573 to 1590 the Privy Council was drawn into at least 17 discrete insurance cases. Nine involved disputes brought by foreign merchants, often through the intervention of an ambassador. By long-standing convention, alien traders were under the special protection of local monarchs. In England, their actions could be heard by the chancellor, the council, or by a special commission. The latter approach was most typically favoured by the Privy Council when dealing with insurance matters. It usually first referred matters to arbitration by London's Lord Mayor and aldermen, or by a panel appointed by the Lord Mayor, and heard cases in person only when arbitration failed. Even then, Councillors typically sought, as a guide to settlement, direction from the merchants of London as to the prevailing custom. In July 1574 their Lordships heard a complaint from the foreign merchant Peter Mertines against his London insurers, 'certain merchants', about an insurance issued for a ship sailing from Southampton to Bilbao. In the first instance the Privy Council instructed the Judge of the Admiralty 'to commit the cause to certain indifferent persons to whom it might be heard and determined according to right and equity'. Five months later, the case having apparently gone unresolved, the Council instructed the Lord Mayor to *order* the insurers to appear before the appointed group of merchant arbitrators, which projected royal authority onto the case.[49]

Foreign merchants were buying insurance regularly in London in the sixteenth century, apparently attracted by keen pricing. The Rouen merchant Paviot's multiple suits left his trace in the record. Ten years earlier, in 1552, Emmanuell Caldera and Benedicte Roderiges had purchased insurance in London, through a broker, to cover merchandise to be loaded at Calicut. Jones reports 'this was done "after the computation of England" – there being marked differences in insurance rates between various countries'.[50] However, the price advantage was not always sufficient to appease buyers who deemed London practice to fall short. A 1592 letter from the London-based Italian merchant Bartholomew Corsini (a regular customer of London underwriters) to his Venetian

counterpart, Stefano Patti, stated that 'to insure goods [in London] we assure you we would pay ten to twelve per cent, and we assure you there would be no lack of underwriters, but in case of damages it is painful to try to collect the claim . . . we advise you to insure there [in Venice] and spend rather one or two per cent more'. It seems from the same Venetian archive sources consulted by Stefani, however, that local merchant-insurers were no less prone to dispute claims when buyers would not abide by Venetian custom (a fact perhaps lost on the distant Corsini). Stefani writes that 'insured parties accused [Venetian] insurers of being quarrelsome and failing to keep to terms. The latter blamed the insured parties of availing themselves of insurances to gain unlawful profits, instead of making use of insurances as a preventative measure against seafaring risks.'[51]

The struggle for jurisdiction

A sector governed by the Law Merchant was not suited to regulation under the Tudor divisions of English law into civil and common law traditions. The Privy Council's recognition of the insufficiency of the common law courts was recorded following a meeting held on 7 November 1576. A letter was drafted to Sir William Cordell, Master of the Rolls, and to the Justices Southcote, Harper, and Jeffries 'touching the hearing and examining of a matter in controversy' between a merchant and his insurers. 'For as much as the matter is of some weight, and therefore doubtful whether it may be tried by the Common Law or not, the Lord Chief Justice and the Lord Dyer are required to join with the above named, and to examine the said controversy anew, considering the circumstances require the advice and opinion of such as are learned in the Civil Law.'[52] Three months later, they were to establish a more permanent solution than this ad hoc panel of justices of the common and civil law, when their Lordships instructed the Lord Mayor to formalise arrangements for dispute resolution.

The details of the solution are set out in the records of the city's Court of Aldermen. In January 1576/7 the Court did, for the term of one year, 'elect nominate and choose, for the deciding and ending of the causes [of assurance, seven men] . . . as indifferent persons to order, judge, and determine all such causes touching assurance made or hereafter to be made, within the Royal Exchange, or the city of London'. Richard Candeler, patent-holder for the Office of Assurances and now styled 'Registrar of Assurances', or his designate was to act as recorder, incorporating new decisions into a draft insurance code (the *Book of*

Orders, another initiative of the Privy Council) to form an evolving, and thus flexible body of insurance law.[53] This direction indicates the flexibility of the rules governing insurance in London, and supports Rossi's contention that the rules were known contemporaneously to be 'subject to change'. Commissioners were not permitted to charge a fee for their services, so the creation of this permanent panel of arbitrators will have had a neutral or downward pressure on transaction costs.

Shortly afterwards, Admiralty Judge David Lewis was appointed by the Privy Council to sit as an additional commissioner. Almost concurrently, he received a Royal patent for the summary determination of maritime disputes, after his repeated complaints that his Admiralty post was insufficiently remunerative to supply a living wage.[54] Lewis was presumably appointed to lend the new body the Admiralty's procedural knowledge related to insurance disputes.[55] However, the Commission remained primarily an institution of the merchant-insurers. This did not suit everyone: foreign merchants, who comprised the most frequent appellants to the Privy Council on insurance matters, were not appeased. They complained, and in response their Lordships, meeting at Nonesuch on 15 June 1593, wrote to the Lord Mayor and aldermen: 'Merchant strangers, having occasion to deal in matters of assurance, remain discontented that no strangers are admitted to join with such English Commissioners as you appoint in these causes.' In appointing the Commissioners, the aldermen had 'omitted to make choice of some two or three strangers, a matter very meet to have been remembered in respect that many of sundry nations within the city are daily interested in causes of assurance'. The aldermen were ordered to appoint 'yearly unto the rest already established or in lieu of some of them three strangers of foreign nations, being merchants known to be of worth, judgement and integrity'.[56]

These men were always to be called to participate when merchant strangers were involved in arbitrations, following a principle in Edward I's *Carta Mercatoria* of 1303, which allowed foreign merchants to request that juries include up to six merchant strangers.[57] Such compromises served to maintain the flexibility of the rules in London. As has been shown, insurance practice varied between major trading cities. It seems likely that a foreign merchant acting as a commissioner would have a different understanding of the local rules in at least some circumstances. By inviting foreigners to participate in arbitration panels, not only was a valid reference point provided to the possible understanding of foreigners involved in disputes (as with the consultation to Florentine custom in the Ferrantyn case), but English merchants were exposed

to alternative customs which may have been preferable to their own. It would also, of course, have undermined national discrimination.

Insurance-related cases in the High Court of Admiralty dwindled at about the time of the Privy Council's creation of the semi-official court of Commissioners. The Admiralty Court was further pressured under the jurisdictional battles between the civil and common law communities, which heightened at this time under what Levack called a 'full-scale attack' launched by 'common law judges' against courts including Admiralty and Chancery. Judges issued writs of prohibition against appeals to civil law, for example, which required plaintiffs to come before the issuing court and justify their choice of venue. Levack argues, however, that too much may be made of the divisions between civil and common lawyers, who often acted together.[58] The example of the Court of Assurance, formal successor to the Commissioners under legislation of 1601, supports this view. Although it was constituted at the height of the division between law and equity, which in the Privy Council was embodied in the royal law officers, some motivations (presumably pragmatism and a desire to make the court effective) led these legal rivals to require that lawyers of both stripes were involved as Commissioners, along with the judge of the Admiralty, the senior legal figure involved.

The courts of King's Bench and Chancery, and the Privy Council itself, continued to hear insurance cases. This was in part a result of the lack of statutory power of enforcement on the part of the Commissioners of Assurance. In March 1601 the Privy Council wrote to the Chief Justice of King's Bench and the Judge of the Admiralty – heads of institutions locked in an ongoing jurisdiction battle – enclosing a petition from merchant-insurers which argued that the system was not working. They complained that 'certain orders devised and set down some years since and confirmed by us touching assurances among merchants upon the Exchange are not put in execution, but greatly impinged by wilfulness and forward disposition of some who refuse to submit and conform themselves to the order of Commissioners appointed to hear those causes'. They asked the judges to consult with leading merchants and consider a way forward.[59]

One of the merchants involved in the consultations was Malynes, who wrote that 'I have sundry times attended the Committees of the said Parliament, by whose means the same was enacted'. Malynes reported that the discussions 'were not without some difficulty', and attested to a weakness in the authority of the Commissioners of Assurance. 'There were many suits in [common] Law by Action of *Assumpsit* [breach of

promise] before that time, upon matters determined by the Commissioners for Assurances, who for want of Power and Authority could not compel contentious persons to perform their ordinances.'[60]

Proposed solutions were advanced in *An Act Concerning matters of assurances amongst merchants*. The 1601 law established formal dispute resolution facilities for insurance, including the creation of a specialised court 'for the hearing and determining of causes arising and policies of assurances', and for an 'office of assurances within the city of London'. The Act stated specifically that one aim of the legislation was that 'no Suit shall be depending . . . in any of her Majesty's Courts'. Provisions included the appointment of Court commissioners, to include a Judge of the Admiralty, the Recorder of London, two doctors of civil law, two common lawyers, and eight merchants (any five of whom constitute a quorum); that the court should be summary, forgoing formalities of pleadings and proceedings; that the Commissioners, who were to take an oath of office before the Lord Mayor and Aldermen, could call witnesses, could imprison, without bail, those who did not adhere to its summons, but could not charge fees for their justice or hear cases in which they are a party; that it should meet once per week at minimum in the Office of Assurance or elsewhere in public; and that appeals against its judgements could be made to the Court of Chancery, upon payment in the interim of awards into the Court, in order to avoid imprisonment, and which would be doubled if the appeal should fail.[61]

The new court created by the Act was a legislative afterthought. According to the address Sir Francis Bacon, presumed author of the bill, made to Parliament when he tendered it, the Court was introduced following discussions of an earlier version by a committee including Bacon, Walter Raleigh, Admiralty judge Dr Julius Caesar (a judge of the Admiralty and protégé of Assurance-Office proponents Walsingham and Lewis[62]), the merchant and former Lord Mayor Stephen Soame, and others. Bacon told the House 'The Committees have drawn a new bill far differing from the old. The first limited power to the Chancery, this to certain Commissioners by way of Oyer and Terminer [roughly, to hear and determine]. The first that it should only be there, this that only upon appeal from the Commissioners it should be there finally arbitrated.' The committee believed trials at Chancery would take too long, which merchants 'cannot endure', and that the appointment of Commissioners would fill a knowledge gap, which existed 'because our Courts have not the knowledge of [insurers'] Terms, neither can they tell what to say upon their Causes which be secret in their Science'.[63]

The committee's changes were innovative. The tribunal they sketched out was not a common law court, but nor was it purely a prerogative court, given its parliamentary constitution, although it seems to have been a creation of the Privy Council (which was itself a prerogative court). Its operation alongside, but outside, the common law allows it best to be classified as a court of equity (as were Chancery and the Court of Requests), but its informal charge of enforcing the Law Merchant governing insurance contracts places it most closely to the prerogative High Court of Admiralty, which Aylmer described as 'in a category by itself'. While the combination of civil and common lawyers was not uncommon in the English formal courts,[64] the odd constitution of the Commissioners of Assurance, neither jury nor panel of judges, *was* unusual. Yet by incorporating a group of merchant-insurers among its panel of Commissioners, as well as lawyers from both legal schools, the design of the Court of Assurance cleverly circumvented the twin problems of the common law jury's usual lack of legal knowledge, and the civil judge's sometimes arbitrary approach, while retaining familiar dispute resolution practice in London. The court was also able to act much more quickly than its competitors.

The Court of Assurance was, in effect, an extension of the dispute resolution system established by the Privy Council in the 1570s, and the Commissioners an expansion of the permanent panel of Commissioners of Assurance they created, and who were elected by Guildhall. The significant difference was the inclusion of common and civil lawyers, whom Bacon described as having little knowledge of the Law Merchant. The civil lawyers at least would have been comfortable with the notion of equity, the humanist ideal of law which permeated the civil law, and the universities' curricula. 'Equity', Baker wrote two centuries later, 'involved the relaxation of known but unwritten general rules of law to meet the exigencies of justice or conscience in particular cases.' Lieberman states that the 'elusive identity of English equity was simply a reflection of the ambiguous status of precedents in common law'. Thus, a certain flexibility of legal interpretation was to guide the Commissioners' decisions: when the judge of the Admiralty is included in the equation, civil lawyers, influenced by notions of equity, held the balance of power on the Commission. Fourteen of the 200 civil lawyers active between 1603 and 1641 and catalogued by Levack are listed as having acted as a Commissioner for at least a year; one, Edmond Pope, sat in the Court of Assurance for ten years from 1619. Many Commissioners were senior legal academics, including John Cowell, who sat 1603 and 1605, while he was Regius Professor of Civil Law at Cambridge.[65]

As for the common lawyers, presumably they were to learn on the job. Additional notes added to the extant contemporaneous copy of the *Tyger* policy hint at their thought process (although no direct evidence affirms that the notes were added by Commissioners of the Court). Beneath the contract wording reproduced in the copy, an extracted clause outlining permissions for putting-in of the vessel has been repeated, with the following added:

> The Question is: 1. whether it be Lawful or not for the said Ship to Touch twice at one port in this present voyage within the Scope limited if the Master & factors do think it so fit/And .2. though there were no express covenant that had relation to the factors' discretion yet in case the ship (having discharged her goods) should in the interim of time while monies were providing go 24 hours sailing thence & return in safety without loss of time or prejudice proved (not more than if the ship had stayed so long together in port) whether the assurance ought in conscience to be made void or no.[66]

The principles of equity, in the sense of 'exigencies of justice or conscience', seem here of utmost importance, as the adjudicators attempt to determine what 'in good conscience' ought to be their verdict.

An equitable solution?

The creation of the Court of Assurance was a sound solution to the challenges inherent in applying a constantly evolving set of rules to a complex business during a period of jurisdictional competition between the representatives of legal traditions which were not suited to methodical application of the Law Merchant. Indeed, through its personnel structure the Court blended the application of the civil and common law within a forum dominated by local and foreign merchants, the natural proponents and enforcers of the Law Merchant. The structure allowed the flexibility of the underwriters' body of customary rules to be maintained, and thus recognised merchants' changing needs and practices at a time when they too were quickly developing, as the evolution of policy language shows. Ultimately, however, the Court was eroded by continuing jurisdictional battles. It functioned for some years less than a century. The timing of its demise as a formal state institution remains a detail lost to history, but nothing concrete has been found yet in the record which shows it active after 1692, when the lawyer Bartholomew Shower argued successfully that 'the court

of commissioners of policies of insurance only extends to suits by the insured against the underwriters' and that 'any other construction would make a clashing of jurisdictions'.[67] Sadly, the Court's records have not been preserved. It is clear, however, that the Court of Assurance put an end to the 'thoroughly anarchic' legal environment which marred the English marine insurance market in the sixteenth century, providing London insurance buyers, and for most of its life London underwriters, too, with a formal, flexible tribunal to hear and determine disputes over policies of marine insurance within the context of the Law Merchant.

Notes

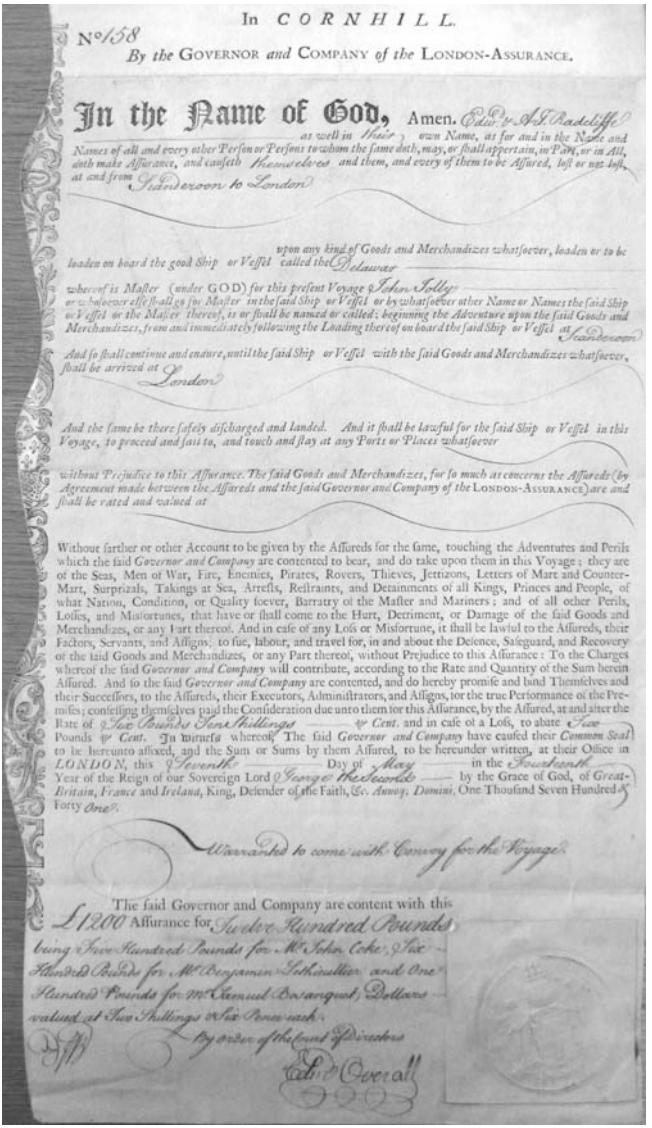
1. Many thanks are due to David Ibbetson and Guido Rossi for their comments on drafts of this chapter.
2. Emphasis here and in all citations is in the original. Spelling has been modernised throughout. Weskett, John (Merchant): *A complete digest of the theory, laws, and practice of insurance*, London: Printed by Frys, Couchman, & Collier, 1781, p. 321.
3. For a concise history of the development of the Law Merchant, see Benson, Bruce L.: 'The spontaneous evolution of commercial law', *Southern Economic Journal*, vol. 55, no. 3 (1989), pp. 644–61.
4. The debate over the distinction of the Law Merchant is lengthy. Orthodox opinion among legal historians sees the Law Merchant as a process, rather than a body of law. For this view, see Baker, J.H.: 'The Law Merchant and the common law before 1700', *Cambridge Law Journal*, vol. 38, no. 2 (1979), pp. 295–322; see also 'Introduction', in Basile, M.B., Bestor, J.F., Coquillette, D.R. and Donahue, C. (eds): *Lex mercatoria and legal pluralism: a late thirteenth-century treatise and its afterlife*, Cambridge, MA: The Ames Foundation of Harvard Law School, 1998.
5. Cited in Levack, B.: *The civil lawyers in England 1601–1641: a political study*, Oxford: Clarendon Press, 1973, p. 146.
6. Tellingly, the 1906 act (6 Edw. VII cap. 41) is subtitled 'An Act to codify the Law relating to Marine Insurance', indicating recognition of the pre-existing body of marine insurance law.
7. Zouch, Richard: *The jurisdiction of the Admiralty asserted against Sir Edward Coke's Articuli admiralitatis, XXII chapter of his jurisdiction of courts*, London: Printed for Tyton, F. and Dring, T., 1663, p. 79.
8. Dickson, P.G.M.: *The financial revolution in England: a study in the development of public credit*, London: Macmillan, 1967, p. 4.
9. Rossi, Guido: 'The Book of Orders of Assurances: a civil law code in 16th century London', *Maastricht Journal*, vol. 19, no. 2 (2012), p. 241, n. 2; Magens, Nicholas: *An essay on insurances,* 2 vols, London: J. Haberkorn, 1755, I, p. 1 ff.
10. Ogilvie, Sheilagh: *Institutions and European trade: merchant guilds 1000–1800*, Cambridge: Cambridge University Press, 2011, p. 266.

11. Sachs, Stephen E.: 'From St. Ives to cyberspace: the modern distortion of the medieval "Law Merchant" ', *American University International Law Review*, vol. 21, no. 5 (2006), p. 695.
12. Thomas, A.H. (ed.): *Calendar of plea & memoranda roles of the City of London preserved among the archives of the Corporation of London at the Guildhall, AD 1413–1437*, Cambridge: Cambridge University Press, 1943, pp. 208–10.
13. Malynes, Gerard: *Consuetudo, vel, Lex Mercatoria: or, The Ancient Law-Merchant*, London: printed for T. Basset and R. Smith, 1685 (first published 1622).
14. Molloy, Charles: *De jure maritimo et navali: or, A treatise of affairs maritime, and of commerce*, eighth edition, London: J. Walthoe (printer), 1744 (first published 1676), p. 461.
15. Baker, Sir John: *The Oxford history of the laws of England, vol. VI, 1483–1588*, Oxford: Oxford University Press, 2003, pp. 40–1; Jones, W.J.: *The Elizabethan Court of Chancery*, Oxford: Clarendon Press, 1967, pp. 9–10; Ibbetson, David: 'A house built on sand: equity in early modern English law', in Koops, E. and Zwalve, W.J. (eds): *Law & Equity: Approaches in Roman Law and Common Law*, Leiden: Martinus Nijhoff Publishers, 2013, pp. 56–7, 76.
16. Dasent, John R.: *Acts of the Privy Council of England, New Series*, vol. XXXI, London: HMSO, 1906, pp. 252–3; vol. VIII, p. 167; Sachs, *The modern distortion*, p. 760.
17. De ruysscher, this volume.
18. This phrase is used in almost all extant policies issued in London from about 1600.
19. Thomas, *Calendar of plea & memoranda rolls*, pp. 208–10.
20. TNA HCA 24/27 f. 199, policy underwritten for Giovanni Broke, 20 Sep. 1547.
21. Holdsworth, W.S.: 'The early history of the contract of insurance', *Columbia Law Review*, vol. 17, no. 2 (1917), p. 98; Jones, W.J.: 'Elizabethan marine insurance: the judicial undergrowth', *Business History*, vol. 2, no. 2 (1970), p. 55; Roccus (Rocci), Francesco: *A treatise on insurance* [first published in Latin, 1655], in Reed Ingersoll, Joseph (ed. and trans.), *A manual of maritime law*, Philadelphia: Hopkins and Earle, 1809; BL Add. Ms. 48,023, ff. 246–73, the 'Booke of Orders of Assurances' (1574?).
22. The practice later came to be part of some, though not all, bodies of Italian custom. TNA HCA 24/35 f. 46, legal opinion on the Ridolphye case, undated (1562?); TNA HCA 24/35 f. 283, policy underwritten for Robert Ridolphye (Roberto Ridolphi), 11 Mar. 1562.
23. Rossi, *Book of Orders*, pp. 243–4.
24. Rossi states that 'insurance policies appended to the Dutch *placcaaten* [ordinances] of 1563 and 1571 expressly referred to the customs of the Bourse of Antwerp'. Rossi, *Booke of Orders*, p. 243, n. 6.
25. '*A l'usance et coutume de las Strade de Londres et de ceste boursse d'Anvers*'. Quoted in French in van Van Niekerk, J.P.: *The development of the principles of insurance law in the Netherlands: from 1500 to 1800*, 2 vols, Kenwyn (Cape Town): Juta & Co., 1998, I, pp. 256, 256 nn. 261, 262; De ruysscher, this volume.
26. TNA HCA 24/29 f. 45, policy underwritten for Anthony de Salizar, 5 Sep. 1555.

27. van Niekerk, *Principles of insurance law*, I, p. 256 n. 262.
28. Rossi, *Book of Orders*, p. 242 ff.
29. GHL 062/MS 22,281 ff., policies underwritten for Bartholomew Corsini, 24 Sep. 1582; TNA C 66/1131, 17, Eliz. Part 9, M 41, Patent granted to Richard Candeler, 21 Feb. 1575; TNA SP 46/84 f. 159, policy underwritten for George Warner, 25 Jan. 1641/2. I am grateful to Dr Richard Blakemore for bringing this policy to my attention.
30. BOD MS Tanner 74, ff. 32–3, policy underwritten for Morris Abbot and Devereux Wogan, 15 Feb. 1613.
31. TNA C 110/152, Policies underwritten for the executors of the estate of Thomas Brailsford, 19 Sep. 1690–21 May 1692; LMA 063/MS32992/1, Policy of Thomas Newton, 27 Oct. 1760.
32. ALC (uncatalogued), Policies underwritten for Jaynaraen Lukhimchund, 23 Feb. 1859; for Wales and Field, 17 Sep. 1794; for Charles D'Wolfe, 29 Mar. 1794; for John Davenport, 15 Nov. 1806; and for B. Almen [?], 12 May 1836; HALSC DE/R/B293/1, Business records of the Radcliffe family, policy underwritten for Edward and Arthur Radcliffe, 7 May 1741.
33. de Roover, Florence Edler: 'Early examples of marine insurance', *Journal of Economic History*, vol. 5, no. 2 (Nov. 1945), pp. 198–9.
34. BOD MS Tanner 74, f. 32, Insurance policy on the *Tyger*, 15 Feb. 1613.
35. At least, it is included in all that I have examined.
36. Arbitration remains a preferred system of dispute resolution in London. For example, Lloyd's maintains an 'arbitration desk' at a central point on the floor of the Underwriting Room at its premises on Lime Street. Jones, *Court of Chancery*, pp. 266, 269, 271; van Niekerk, *Principles of insurance law*, I, p. 230, n. 155–6; Price, J.: 'Transaction costs: a note on merchant credit and the organisation of private trade', in Tracy, J. (ed.): *The political economy of merchant empires*, Cambridge: Cambridge University Press, 1991, p. 296.
37. Roberts, Simon: 'The study of dispute: anthropological perspectives', in Bossy, John (ed.): *Disputes and settlements: law and human relations in the west*, Cambridge: Cambridge University Press, 1983, p. 17; Charter quoted in Sacks, David Harris: *The widening gate: Bristol and the Atlantic economy, 1450–1700*, Berkeley: University of California Press, 1991, p. 89; *Arbitrium redivivum, or, the law of arbitration*, by the author of *Regula placitandi*, London, 1694 (unpaginated).
38. Hancock, David: *Citizens of the world: London merchants and the integration of the British Atlantic community, 1735–1785*, Cambridge: Cambridge University Press, 1995, p. 249; TNA C 3/26/78, petition of John Barnes and forty-seven others, 1566; *The special report from the committee appointed to inquire into, and examine the several subscriptions for fisheries, insurances, annuities for lives, and all other projects carried on by subscription . . . London: House of Commons, printed by Tonson, J., Goodwin, T., Lintot, B., & Taylor, W., 1720*, testimony of John Barnard, p. 44.
39. HCA 24/29 f. 45, policy underwritten for Anthony de Salizar, 5 Aug. 1555.
40. van Niekerk, *Principles of insurance law*, I, p. 231.
41. Ibbetson, D.: 'Law and custom: Insurance in sixteenth-century England', *Journal of Legal History*, vol. 29, no. 3 (2008), p. 293.
42. TNA HCA 24/29 f. 45, policy underwritten for Anthony de Salizar, 5 Aug. 1555.

43. Although suits under this policy clearly reached the courts. For a detailed discussion of the case, see Ibbetson, *Law and custom*, pp. 294–5. TNA HCA 24/35 f. 283, policy underwritten for Robert Ridolphye, 12 Mar. 1564.
44. van Niekerk, *Principles of insurance law*, I, p. 232, n. 167; 43 Elizabethæ C. 12, 'An Act Conc'ninge matters of Assurances, amongste Merchantes', HeinOnline, 4 Statutes of the Realm, 1547–1624, pp. 978–9.
45. Davis, Ralph: *English overseas trade, 1500–1700*, London: Macmillan, 1973, pp. 9–10, 53.
46. Williams, Penry: *The later Tudors, 1547–1603*, Oxford: Oxford University Press, 1995, p. 151.
47. Dasent, *Acts of the Privy Council*, VIII, p. 167.
48. 43 Elizabethæ c. 12; Ibbetson, *Law and custom*, p. 296; Jones, *Elizabethan marine insurance*, p. 53.
49. Prichard, M.J. and Yale, D.E.C. (eds): *Hale and Fleetwood on Admiralty jurisdiction*, London, Selden Society, p. lxxx; Dasent, *Acts of the Privy Council*, VII–XX, esp. VIII, pp. 262, 321, 326, 337, 349.
50. Bogatyreva, this volume; Jones, *Elizabethan marine insurance*, p. 58.
51. Quoted in Stefani, Giuseppi: *Insurance in Venice from the origins to the end of the Serenissima, vol. I*, Amoruso, A.D. (trans.), Trieste: Assicurazioni Generali, 1958, p. 104.
52. Dasent, *Acts of the Privy Council*, VIII, p. 230.
53. LMA COL/AD/01/022 (MR X109/037), Letter Book Y, fos 126–7. On the Book of Orders, See Rossi, *Book of Orders*.
54. For a discussion of the circumstances surrounding Dr Lewis appending to the panel, and the jurisdictional battle between the prerogative, common law, and private courts over jurisdictions in marine insurance disputes, see Ibbetson, *Law and custom*. Senior, William: *Doctors' Commons and the old Court of Admiralty: a short history of the civilians in England*, London: Longmans Green, 1922, pp. 79–80.
55. Ibbetson, *Law and custom*, p. 298.
56. Dasent, *Acts of the Privy Council*, XXIV, p. 313.
57. Ibid.; Oldham, James C.: 'The origins of the special jury', *University of Chicago Law Review*, vol. 50, no. 1 (1983), p. 173; Baker, J.H.: *The Oxford history of the laws of England, vol. XI, 1483–1558*, Oxford: Oxford University Press, 2003, pp. 613–14.
58. Levack, Brian P.: *The civil lawyers in England 1601–1641: a political study*. Oxford: Clarendon Press, 1973, pp. 73–8, 126; Steckley, George F.: 'Merchants and the Admiralty Court during the English revolution', *American Journal of Legal History*, vol. 22, no. 2 (1978), p. 143.
59. TNA PC 2/26 f. 138, *Privy Council letterbook*, 29 Mar. 1601.
60. Malynes, *Lex Mercatoria*, p. 106.
61. 43 Elizabethæ c. 12.
62. Levack, *Civil lawyers*, p. 28.
63. Bacon, Francis: 'Speech on bringing in a bill concerning assurances amongst merchants' (1601), in Spedding, James (ed.): *The letters and life of Francis Bacon, Vol. III*, London: Longmans, Green, Reader and Dyer, 1868, pp. 34–5.
64. Aylmer, G.E.: *The King's servants: the civil service of Charles I, 1625–1642*, London: Routledge, 1961, p. 44; Levack, *Civil lawyers*, p. 126.

65. Baker, *History of the laws,* VI, pp. 40–1; Lieberman, David: *The Province of legislation determined: legal theory in eighteenth-century Britain*, Cambridge: Cambridge University Press, 1989, p. 85; Levack, *Civil lawyers*, pp. 203–82.
66. BOD MS Tanner 74, f. 32, contemporaneous copy of a policy underwritten for Morris Abbot and Devereux Wogan, 15 Feb. 1613.
67. *Delbye* v. *Proudfoot and Others*, 1692, 1 Shower. K.B. 396 (89 ER 662).



In CORNHILL.

N°158

By the GOVERNOR and COMPANY of the LONDON-ASSURANCE.

In the Name of God, Amen. We by A. J. Radcliffe as well in their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part, or in All, doth make Assurance, and causeth themselves and them, and every of them to be Assured, lost or not lost, at and from Scanderoon to London

upon any kind of Goods and Merchandizes whatsoever, loaden or to be loaden on board the good Ship or Vessel called the Delaware

whereof is Master (under GOD) for this present Voyage John Jolly or whosoever else shall go for Master in the said Ship or Vessel or by whatsoever other Name or Names the said Ship or Vessel or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandizes, from and immediately following the Loading thereof on board the said Ship or Vessel at Scanderoon

And so shall continue and endure, until the said Ship or Vessel with the said Goods and Merchandizes whatsoever, shall be arrived at London

And the same be there safely discharged and landed. And it shall be lawful for the said Ship or Vessel in this Voyage, to proceed and sail to, and touch and stay at any Ports or Places whatsoever

without Prejudice to this Assurance. The said Goods and Merchandizes, for so much as concerns the Assureds (by Agreement made between the Assureds and the said Governor and Company of the LONDON-ASSURANCE) are and shall be rated and valued at

Without farther or other Account to be given by the Assureds for the same, touching the Adventures and Perils which the said *Governor and Company* are contented to bear, and do take upon them in this Voyage: they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Counter-Mart, Surprizals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners; and of all other Perils, Losses, and Misfortunes, that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandizes, or any Part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assureds, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Goods and Merchandizes, or any Part thereof, without Prejudice to this Assurance: To the Charges whereof the said *Governor and Company* will contribute, according to the Rate and Quantity of the Sum herein Assured. And to the said *Governor and Company* are contented, and do hereby promise and bind Themselves and their Successors, to the Assureds, their Executors, Administrators, and Assigns, for the true Performance of the Premises; confessing themselves paid the Consideration due unto them for this Assurance, by the Assured, at and after the Rate of Five Pounds Five Shillings & Cent. and in case of a Loss, to abate Five Pounds & Cent. In witness whereof The said *Governor and Company* have caused their *Common Seal* to be hereunto affixed, and the Sum or Sums by them Assured, to be hereunder written, at their Office in *LONDON*, this Seventh Day of May in the Fourteenth Year of the Reign of our Sovereign Lord George the Second by the Grace of God, of *Great-Britain, France* and *Ireland*, King, Defender of the Faith, &c. *Annoq; Domini*, One Thousand Seven Hundred & Forty one.

Warranted to come with Convoy for the Voyage.

The said Governor and Company are content with this £1200 Assurance for Twelve Hundred Pounds being Five Hundred Pounds for Mr John Coke, Five Hundred Pounds for Mr Benjamin Lethieullier and One Hundred Pounds for Mr Samuel Bevanguet, Dollars valued at Five Shillings & Five Pence each.

By order of the Court of Directors

Edm Overall

Policy dated 7 May 1742, underwritten by the London Assurance Company on goods aboard the vessel *Delaware* for her voyage from Scandaroon (modern İskenderūn) to London. The policy requires the vessel to travel in convoy, and covers three private merchants for varying amounts. Image courtesy of Hertfordshire Archives & Local Studies Centre, DE/R/B387/1

8

England 1660–1720: Corporate or Private?

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Speaking to the House of Commons in 1601 in support of *An Act Conc'ninge matters of Assurances, amongste Merchantes*, Francis Bacon outlined the fundamental importance of marine insurance to trade, and thus to the nation. With his usual eloquence, he explained to MPs how insurance means that with the 'loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighter rather easily upon many, than heavily upon fewe'. Bacon did not expand on the nature of the many who were to grant merchants, in exchange for 'some consideration of money . . . assurance made of their goods, merchandises, ships and things adventured'. He expressed no opinion as to whether insurance would best be provided by individuals (as it was almost exclusively when he spoke), or groups of individuals associated into companies (as it was to become).[1] Adam Smith was more certain. In *Wealth of Nations* he asserted that marine insurance is one of the very few commercial activities for which joint-stock companies constitute an appropriate form of organisation.[2] In the many decades between Bacon's silence and Smith's pronouncement, the question of private versus corporate underwriting was addressed repeatedly. This chapter examines the development of corporate forms of marine insurance underwriting in Britain over the centuries, culminating in the first chartering of British joint-stock marine insurance companies in June 1720.

In so doing, it compares two distinct motivations for underwriting. Proposals for the creation of corporate, and especially joint-stock, marine insurance companies began to proliferate in European commercial centres during the seventeenth century. These proposals are explored in the first part of this chapter. Two key observations can be made about early attempts to establish sanctioned, dedicated corporate insurers. First, projectors seeking formal approval of their ventures

typically framed their arguments in terms of the improvement of the marine insurance offer, and, in particular, its financial security, and thus the enhancement of trade. Second, underwriting was seen as a lucrative enterprise. Shareholders, directors, and the authorities approving insurance companies would all benefit. Marine insurance involves both public and private interests; incorporations intended to benefit the latter were almost always couched in exclamations of the benefits which would accrue to the former.

No incident encapsulates these debates over corporate versus individual underwriting, motivated by mutual security or personal gain, more clearly than a parliamentary enquiry held in 1720 to assess the merits of various proposals to form monopoly joint-stock insurers in Britain.[3] The arguments presented to the 'Hungerford Committee' are thus examined in detail in the second half of this chapter.

Early corporate forms

Historians of marine insurance have observed evidence of very early corporate insurers in, for example, a letter signed by King Lavrador Dinis of Portugal in 1293 which appeared to grant a charter to a common stock organisation instituted by the merchants of Lisbon and Flanders for the purpose of risk-sharing.[4] A century later Ferdinand I granted approval to a *companhia das naus* (company of carracks) as a remedy to the chaos of the seas; a risk-pooling element akin to insurance was incorporated into the plan, which demanded a share of profits (two crowns per cent) be levied to accumulate a catastrophe fund to replace vessels wrecked, 'to the benefit of all'. The institution possessed some characteristics of modern marine insurance, including rules governing the eligibility for indemnification (for example, to restrict payouts in cases of negligence, malice or fraud by the crew or the owner of the vessel, and the imposition of the ancient Law Merchant principle of general average), but it was a far cry from the corporate marine insurers which were to emerge centuries later.[5]

From its origins until probably the mid-sixteenth century, underwriting was undertaken primarily by individuals who signed policies on their own behalf, or sometimes to assume risk for mercantile partnerships which they represented. Perhaps the first surviving English evidence of underwriting 'companies' formed specifically to participate in marine insurance lies in Chancery records of 1561, which document the lengthy ordeal of two Spanish merchants, Emmanuell Caldera and

Benedicte Roderigues. The pair battled underwriters for the satisfaction of their claim on an insurance policy underwritten by two London companies of local and foreign-resident merchants nearly a decade earlier. Broker Lewis Lobo had arranged cover of £940 on the merchants' galleon *Saint John* and its cargo. The risk was split equally between two companies. The 'Bonaventurers' comprised 16 named individuals. The 'Fifteen Assurers', at the time of the court proceedings, were 19 men, some of whom were related. When the insured ship and all its cargo 'perished', the merchants sought a court order to press the companies into payment. Ultimately, the Lord Keeper found that the defending insurers (by now referred to as the 'late companies of Bonaventures' and 'likewise late company of Fifteen Assurers') were obliged to pay the claim.[6]

The record reveals little about the structure or nature of the risk-bearing companies involved, which may have been ad hoc ventures established to assume the specific risk in question, as has been suggested by W.J. Jones.[7] However, this seems unlikely, as such an approach appears to bear no advantage over individual underwriting in the traditional method. Advantage (in the form of reduced transaction costs for the risk bearers) arises only when a single individual accepts risk on behalf of all the members of the group on multiple occasions. The friction of determining the capital commitments and liability relationships between the participating individuals, whether partners or shareholders, can only be worth bearing when underwriting multiple contracts. The enlargement of The Fifteen to 19 also suggests a degree of longevity.

Either way, the case shows plainly that multiple named legal entities comprising associations of individual merchants and others were, in mid-sixteenth-century London, acting as insurers, and that they were recognised as such by the state. It shows too that such entities sometimes assumed risks too large for their collective means. The case also sheds light on the types of individuals involved in such corporate underwriting ventures. To take a single example, one member of the Fifteen Assurers was William Paten, most probably William Pattent, a scholar and government official who had held several public offices between 1548 and 1562, when he was appointed a Teller of the Exchequer (an office from which he was suspended in 1568 upon suspicion of fraud). Unlike many of the fellow members of the Company of Fifteen, Pattent was not primarily a merchant, nor, it appears, were his personal means extensive. However, he was able to participate easily in the business of marine insurance for profit through a corporate venture.

Joint-stock insurance companies

From 1629, and 1660 in England, entrepreneurs began to propose the underwriting of marine risks by state-sanctioned joint-stock companies. The capital stock of such companies was to be divided into shares, first subscribed (reserved for future purchase), then traded. Income from the payment of subscriptions, from premiums received, and from investment income would be accrued as a fund to pay claims.[8] Underwriting would be delegated to an individual or individuals, usually key shareholders. Public debate over the establishment of such joint-stock insurers was extensive, and typically turned upon the first of the two motivations for underwriting outlined above: advancement of the 'commonweal'. Companies, it was argued, would provide a stronger capital base to back the practice of insuring, which would benefit the commerce of the kingdom.

The first known proposal of this sort was made not in England, but in the United Provinces. In 1628, during the Dutch Revolt, four prominent merchant proposers argued to the States General that such a company, which they styled the *Ghenerale Compagnie van Assurantie*, would allow merchants to carry on a much more secure trade than before, since the company's size would decrease its risk of insolvency, and it would be easier and cheaper to use. Further, it would afford a means of freeing the Provinces from large extraordinary subsidies, which they declared unable to pay. However, the proposed company was not limited to marine insurance. It had ambitions as a naval force (to protect the shipping it insured), an asset manager, and as a trading and governing company. In addition to control of the marine insurance market (coverage was to be mandatory for almost all Dutch vessels), the projectors aspired to monopoly powers similar to those of the Dutch East India Company, and specifically a monopoly over Dutch trade in North Africa and the Levant. The plans drawn up by the projectors set out how its funds were to be invested at 'honest interest'.[9]

The Estates General initially responded favourably to the plan, but it was eventually rejected, in 1636, on numerous grounds. Of these, the joint-stock nature of the company was invoked least frequently. The Dutch interior provinces – those least interested in the dangers of navigation – argued in favour of the company, and against the raising of naval subsidies. They deemed the proposed insurance corporation sufficient in itself for the provision of adequate security for trade. Holland and Zeeland withheld judgement, as the nation's maritime provinces pushed for greater naval defence, arguing that, in the circumstances of

war, a strong navy provided better protection and encouragement to maritime commerce than insurance. Many prominent merchant citizens were involved in underwriting as a profitable sideline, which would be challenged by the scheme.

A formal written report, commissioned by the Burgomasters of Amsterdam and presented to the States General, was prepared by respected merchants who had been tasked with gauging opinion. It was altogether negative towards marine insurance, stating that it was rarely used, and then only as a protection of last resort, and implying that it encouraged negligence and reckless adventuring. They argued that disputes over claims would be cumbersome and unbalanced due to the preponderance of the company, and declared that the extra burden of an insurance premium would make Dutch ships uncompetitive for those merchants who did not already insure regularly, and an extra burden for those who did, since the proposed tariff was too high. 'If our vessels are further overcharged with the premium of insurance', the commissioners wrote, they will 'remain useless in our ports'. Thus, 'vessels of war' were deemed better than financial security, and the corporate insurance project rejected in favour of armed means of protection. Another blow to the plan came in 1634, when one of the four projectors withdrew his support.[10]

The conclusion looks like a setback for marine insurance in general, and for corporate insurers specifically. However, the proposal was judged inexpedient under the particular circumstances of an ongoing war which had resulted in large and frequent losses to shipping, higher insurance premiums, the increasing competitiveness of the English shipping sector, and the consequent need for the Dutch to reduce their costs of trade. Further, it seems likely that merchants would argue against the imposition of an additional transaction cost, and in favour of a proposal which offered them additional security paid for by the nation, just as those disinterested directly in trade would argue against making such a subsidy. No objection to the proposed Company of Insurance emerged from the interior provinces on the basis of its anticipated status as an underwriting corporation. Localised common interests lay at the centre of the debate.

An English proposal

In London in 1660 Colonel John Russell and others petitioned for Letters Patent to incorporate their proposed Society for Sea Insurance.[11] Their arguments for incorporation circled around issues of organisation

and security. The effects predicted were an increase in insurance, and thus in trade. 'Tis hoped and may be rationally concluded', the petitioners wrote, that 'scarce a Cargo will be sent to Sea without first Insuring and many Cargo more then now will be yearely adventured to Sea . . . Ant it may in time be hoped to become ye Generall Insurance Office of Europe.'[12]

The petition included a 'Rationall Guess' of income of £175,000 per annum, calculated from the projectors' estimate of the 'whole trade' of the nation at £7 million, assuming the insurance of the 'moyety' of all trade by the corporation at an average rate of 5 per cent.[13] The capital, to be provided under subscription by 'Noblemen Gentlemen and Marchants' was to be used as a fund to secure the insureds, and invested. A

> joynt stock of 500,000 *li* or more if it bee necessary . . . deposited in the hands of the East India Companie upon a moderate interest, or bee disposed of in some publique, secure and profitable way . . . And soe become an incouragment to all Marchants Owners of shipps or goods, and others as well Aliens as Natives . . . to and from all parts and places.[14]

The 1660 proposal exposed concerns, perhaps long-standing, about the reliability and security of the existing practice of individual underwriting. A particular defect in the 1601 marine insurance law was highlighted: 'The said stat. doth not restraine the cognizance of all Contracts and policies of ensurance unto Coin^{sr} appointed with exclusion of all other Judicatories to whome such Customes and usuage are little knowne.'[15]

The Council of Trade responded favourably, but made incorporation conditional upon modifications to the plan which appear to have been intended to prevent both profiteering by the projectors at the expense of insureds, and the erection of a monopoly. They required of the proposers

> that they shall not withdraw the joint stock of 500,000 *li* designed by them for a Bank or nay part thereof without first giving 6 Monenths warning thereof . . . That the said Society in case of any Loss shall make satisfaction without those abatements now in practis; leaving nevertheless all persons att their pleasure liberty to ensure elsewhere.[16]

Following this appraisal, the scheme disappeared from the record. The unwillingness of the promoters to establish the company without protective privileges points to their vision of the company as a lucrative business, rather than a necessary improvement to the infrastructure of trade. The broad benefits of marine insurance, outlined by Bacon 59 years earlier, were sufficient to persuade the Council of Trade of the legitimacy of a joint-stock insurer, but did not warrant the opportunity for rent-seeking from the merchant community. Russell's proposal shows how, in debates about marine insurance before 1720, the balance of public good and private benefit tended towards the former. Monopoly was rejected, and the promoters moved on.

The idea of corporate insurance advanced in other jurisdictions. Giuseppe Stefani has described the Venetian 'endeavours after monopoly' over marine insurance, which also arose as a result of deficiencies in the established order, and a desire to capitalise on them. A Venetian petition of 1680 proposed a monopolistic insurer with a joint stock of 100,000 ducats. The governing council of merchants refused it. However, the merchants observed the merits of corporate underwriting within an open market for marine insurance, declaring that they saw 'nothing to prevent the founding of such a company, providing the applicants did not lay claim against the freedom of anyone to make insurances and of anyone to be insured by whom he most thinks best'.[17]

A French proposal of 1686 added a mercantilist dimension to the debate. In an ordinance Jean-Baptiste Colbert, finance minister to Louis XIV, encouraged the establishment of a joint-stock marine insurance company. He was concerned over the outflow of insurance premiums, and thus specie, to England and the Dutch Republic, and hoped to remedy the loss by establishing a local insurance corporation. Colbert and the promoters of the scheme expected it would reduce French premium levels and improve the competitiveness of domestic insurance. It was also intended to 'give to the merchants who will use this way to reduce their risks the means to launch their business, and to further it more easily and safely'. However, the conservatively inclined merchants of Rouen, which possessed an entrenched private insurance tradition, saw no need to secure capital by issuing shares, since private underwriters' 'pledge was their word and the trust it inspired'.[18] A corporation was not established because the merchant population deemed it to be unnecessary to meet the needs of trade. They deemed a pool of ready capital unnecessary.

Joint-stock insurers proliferate

The years after England's Glorious Revolution of 1688 are widely recognised as those of a 'financial revolution' in England. This explosion of finance included the 'Bubble Era', one of the first joint-stock manias. In London the creation of joint-stock companies expanded through a boom in 1692–95, when shares were traded in at least 150 companies with total paid-up capital of £4.35 million. By the beginning of the eighteenth century, 'all of the requisite institutions of a functioning market' in shares were present in London. The promotion of joint-stock companies assumed a great pace: between September 1719 and August 1720, around 190 discrete joint-stock company promotions were underway. Companies differed in purpose and credibility. Some were purely speculative enterprises, and the exchange of their shares constituted risky, short-term investing. Others were more strongly grounded in commerce or industry.[19]

Those wishing to acquire fortunes in Change Alley and the coffeehouses of London favoured the quick returns of stock-jobbing over long-term capital investments. To create such opportunities, enterprising individuals devised innovative money-making schemes to acquire patronage, secure privilege, and realise profits.[20] From late 1717, even before the joint-stock frenzy, several subscriptions were opened for the funding of marine insurance companies. Like the scores of other entrepreneurs of the period, their promoters sought to establish companies whose shares could be 'jobbed'. Investors were attracted because the companies allowed potentially profitable access to a financial innovation linked to the expanding Atlantic trade.[21] The course of events fits precisely with the first three of Charles Kindleberger's five-stage model of a financial crisis. A disruptive innovation presenting profit opportunities (the widespread proposition of corporate marine insurance) is fuelled by loose credit (subscriptions offered with minimal or fractional deposits), leading to euphoria (the joint-stock frenzy). An inevitable bust follows the boom, leading to a final stage, revulsion.[22]

The marine insurance companies arising from the fray included one which later would become the Royal Exchange Assurance. It was initiated in 1717 by Mr Case Billingsley, whom William Scott describes as 'a solicitor interested in financial ventures, who had an office in the Royal Exchange', and his business partner James Bradley, who later sought royal approval for their project. Meanwhile, a noble patron was recruited: Baron Thomas Onslow, a member of a prominent trading

and political family. The adventure quickly became known as 'Onslow's Insurance'.[23]

The project attracted imitators. Late in 1719 the joint-stock insurer which was to become the London Assurance was launched. Two million pounds were subscribed, without deposit, by early November. In December the fledgling company merged with a third marine insurance joint-stock, 'Colebrook's Insurance', which had raised subscriptions of £800,000. A combined subscription of £2,000,000 was supported by 512 investors. First to subscribe was Walter Lord Chetwynd, and the combined project became known as Chetwynd's Insurance (and sometimes 'Chetwynd's Bubble'). A fourth initiative, projected by the goldsmith-banker Charles Shales and known as 'Shales' Insurance', was subscribed for £1,000,000, but in the words of Sir Frederick Eden, the project 'fell to the ground'. Meanwhile, the rivals charged ahead.[24]

In February 1720 John Hungerford MP raised concerns in the House of Commons about the proliferation of joint-stock subscriptions and the related recycling of royal corporate charters (Onslow's had been operating under the obsolete Elizabethan charters of the *Mines Royal & Mineral and Battery Works*). As a result the Commons ordered the formation of an investigative committee, to be headed by Hungerford.[25] The outcome was his *Special Report*, presented to the Commons on 27 April 1720. It comprises only 11 pages, but its appendices include 62 pages of the transcripts of the Hungerford Committee's hearings related to marine insurance, plus reproductions of various letters, reports, and other papers, including petitions submitted to the King in support of and opposing joint-stock insurance companies.

Hungerford's report is the earliest surviving comprehensive record of an in-depth English debate into the questions addressed by this chapter. The arguments within it echo those of previous debates, and indeed foreshadow those that followed. Key points of contention remained the same: questions and assertions about security, convenience, price, and monopoly were reiterated almost verbatim. Taken at face value the report addresses an important debate about the structure of the marine insurance business, and offers a tremendous advance on the question raised by the States General in 1629: whether marine insurance should be conducted by corporate organisations or individual underwriters. Considered overall, it highlights the differences between marine insurance primarily as a mutually beneficial or a personally profitable enterprise.

The *Special Report*: five arguments

A petition supporting Onslow's dives straight into a summary of the advantages of the joint-stock structure, stating that 'the Merchants and Trade of your Majesty's Dominions do frequently sustain very great Losses', and identifying the cause of the problem as the 'Want of an incorporated Company of Insurers, with a Joint-Stock, to make good all such Losses and Damages of Ships and Merchandize at Sea, as should be insured by them'. The petitioners made, as their first and central argument, the ability of a company to 'preserve many of your good subjects and their families from that ruin to which they are now exposed, by being assurers in a private capacity'.[26] This noble goal introduced their challenge to the surety of private underwriters. Sir William Chapman, chief promoter of Chetwynd's, argued that 'there has been a great Insufficiency in private Insurers; for that the Merchants have been Losers by private Insurers, within 20 or 25 Years, the Sum of £2,000,000'.[27]

The prosperous merchant and shipowner Joseph Paice MP, a signatory of Onslow's petition, presented a list of 33 private insurers who to his own knowledge had failed, and 'by most of whom he and his Principals have lost very considerable Sums of Money'.[28] Charles Shales, in support of his own petition, evoked shipping losses and ensuing insurer failures following the 1693 attack on the Anglo-Dutch Smyrna fleet (likely the same set of underwriter failures), stating that 'Thirty or Forty Persons, private Insurers, went off about Twenty Years ago').[29] Sir Justus Beck, a leading projector of Onslow's, declared that 'about three Years since many English insured at Hamborough, as judging it more secure' because of the 'great Losses by private Insurers' in England.[30] Qualitative evidence followed: individual insurers of London were called men of small substance, 'known scarce to any but [their common vouches], the office-keepers, or policy-brokers'.[31] It was claimed that there was 'scarce a Merchant upon Change who has long followed the Business, but has been a Sufferer by private Insurers'.[32]

The opposition, in counter-petitions presented by the merchants of London and Bristol, replied with an equally sweeping generalisation: 'the best Men upon the Exchange insure'. John Barnard, a merchant and later an MP, who had 'been conversant in the Business of Insuring Ships and Merchandizes at Sea for fifteen Years and upwards', testified that there were about 100 'Persons of very Good Repute, who insure Ships and Merchandizes at Sea', showing that any 'Pretence of Difficulties in gaining Insurance is altogether Groundless.' John Bourne, a broker of 'twenty five Years', confirmed this statement.[33]

The second argument declared the ability of companies to cover larger and more numerous risks. Humphrey Morrice, 'an eminent Merchant in the City of London', testified that Onslow's was less risk averse than private underwriters, and thus 'had given many Opportunities to Merchants to increase and enlarge their Adventures'. He declared that

> when private Gentlemen had refused to Assure any Thing for him upon Ships that he had sent abroad, this Company had readily Assured for him . . . upon moderate Terms . . . For Merchants [as private underwriters] run the Danger . . . of an Adventure of four or five hundred Pounds Value in a Vessel, [but] they not adventure so many thousand Pounds.[34]

Barnard, for the private underwriters, testified that since the invention of the insurance policy, individual merchants of modest personal fortune had united, each to underwrite a proportion of a very large risk. He attested that he had frequently participated in policies with 'five, ten, and twenty thousand Pounds and upward been insured on one Policy'. Bourne added that 'it is very easy to procure Insurances for the largest Sums'.[35]

Onslow's ability to assume larger risks was ascribed to the million pounds 'subscribed by the Subscribers to be the Fund of the said Corporation, whereby there will always be a Fund to answer their Policies'.[36] A readily transferrable and liquid pool of funds is indeed essential to the satisfactory operation of any insurer or group of underwriters, but claims that Onslow's capital was 'a Million of Money', and Chetwynd's £2 million, were inaccurate. In both cases the subscribed capital was nominal. Just one per cent of Chetwynd's total subscription of £2 million was paid-up, creating a fund of £20,000.[37] Onslow's total was to be 5 per cent of £1,152,000, yielding £57,600.[38] Thus, as with private underwriting, these corporate insurers relied upon the post hoc solvency of individuals.

The corporate proponents' third argument related to the ease of collecting claims. The projectors pledged to apply diligence and willingness to the satisfaction of legitimate claims, and accused private underwriters of vexatious litigation. A corporate structure was said to improve the process, such that there would be 'fewer Suits upon Policies than at present, for as the present Insurance is made, every Underwriter may try his particular Insurance, and in the case of a Corporation, there can be one suit . . . for the Corporation is one, against whom the suit may be brought'. Private underwriters were accused of frequent

unwillingness to pay claims unless the share of the loss borne by the insured (the 'abatement') was increased. Claims of complicated dealings and litigation were also made against the corporations, which 'may act but at certain Hours, may keep Holy-days, and in disputable Cases may make Referrences, and expect Reports, which may occasion great Delays'.[39]

It was stated that no customer complaints had been made against Onslow's, but the company had been transacting marine insurance business for only nine months at that time, an experiment too brief in length to substantiate adequately the argument in an era when voyages took up to three years.[40] Nonetheless, a strong case was made against the accusation of litigiousness among the private insurers. One witness declared that 'it was well known in Practice, that the Tryal of one Action did generally determine the Question upon the whole Policy, if that was not determined by Arbitration, which was the common Method for settling Losses . . . to prevent any Suit at all'.[41] Bourne confirmed this.

> The Insurers are generally very desirious to leave the said Disputes to the Arbitration of Persons, to be indifferently Chosen between them . . . when the Assured are Resolved to go to Law for Recovering their Demands, the Insurers generally Offer the Assured, That if he will bring his Action against one Insurer, they will abide by the Judgement that shall be given, and pay their Money accordingly.[42]

The fourth group of arguments revolved around the cost of cover. At least four more merchants, both English and resident Dutch, testified that they preferred to buy insurance in Holland, and could attest to the daily practice of English merchants insuring there, or that one could buy insurance faster and more cheaply in Amsterdam than in London, or that the Dutch trading community was sympathetic to the idea of marine insurance companies. The strongest case for the counter-petitioners was presented by the merchant stockbroker James Mendez.

> Great Insurances have been from time to time made here [in England] on account of Foreigners on Ships at Sea, for very great Sums of Money . . . the Reason of Orders from Foreigners has been from the Lowness of the Præmiums given, and for the vast Sums that are easily insured here, and the great Facility of recovering Losses and Averages . . . And that great Advantages accrue to this Kingdom by Foreigners causing their Insurances to be made here; And that the

> Business of insuring is at present so well done in London, and in such great Reputation both at Home and Abroad, that it cannot be better.[43]

In his affidavit, Mendez revealed that he himself was involved in insurance and reinsurance, the latter explained not by the unreliability of the London insurers (as the corporate supporters had argued), but by the willingness of foreigners unacquainted with them to try them, through a local agent who then sought cover for the risk in London.[44] One Mr Aston, an intermediary and signatory of the London counter-petition against the chartering of Onslow's, levied 'the rate of one per cent, and half per cent for standing bound for the insurers for causing insurance to be made', and declared he had never lost a penny under such guarantees.[45]

The fifth point of discussion was the question of monopoly. Initially, the projectors of Onslow's and Chetwynd's requested complete monopolies, each declaring that their company would be able to satisfy the entire marine insurance market.[46] Monopoly was swiftly rejected, so the corporate promoters changed tack. Acknowledging the great amount of work done by private underwriters, they switched to arguing that companies would expand hitherto inadequate supply. The debate reverted to the first point of collision: the number of reputable insurers in London. In answer, the private underwriters went further in their opposition to grants of any charter, arguing that even if they were not legally deprived, they would be in practice by the actions of a company, to the detriment of insureds, since 'on its Probation, it will Insure on low and easy Terms, and thereby soon beat out and ruin the private Insurers'. The corporates would then 'put their own Terms on the Merchant [and] will . . . very much incommode the fair Trader'.[47]

Merchants would be at 'Liberty to insure with the Corporation, or with private Persons . . . and therefore it will always be the Interest of the Corporation to insure on moderate Terms', the projectors answered, arguing that the presence of private competition would act as a safeguard against abuses. Companies would be forced to act with 'candour and fairness towards the merchant, because, without that, they must forfeit their credit, which would determine the merchant to insure with others and not to deal with the Corporation'.[48] In response to fears that the two companies would unite into a single, dominant monopoly, the promoters of both Onslow's and Chetwynd's expressed readiness to sign a pledge of non-cooperation.[49]

The numbers of signatories to the petitions reproduced in the *Special Report* give an idea of the levels of support for the various schemes, which were by no means fixed. The initial petition of 25 January 1718 in favour of Onslow's carried 286 signatures. The first counter-petitions boasted 575 from London and 111 from Bristol, among them the latter's mayor. However, by December 1719 Chetwynd's had gathered 374 signatures, and the combined number of counter-petitioners was just 184. The projectors presented a list of 45 individuals who in 1718 had petitioned against the chartering, but by December 1719 were supporting incorporation. Some had changed their minds on the condition that the companies' charters would not exclude private underwriters. Others differentiated between the schemes, declining to support the adventures of great speculators, but agreeing to put their names under those they considered more reputable, and genuinely interested in trade. Others had seen, in that year, the decline of those they had previously considered to be of 'repute'. Still others were impressed and persuaded by the activity of Onslow's, which had been trading successfully without state sanction.[50]

Assessment and action

Ultimately, both companies were granted charters.[51] The resolution of the debate was related in part to the details of the projects, but was primarily a product of the specific political circumstances of the day. However, when the report had been heard in the Commons on 27 April 1720, the House resolved

> That, for some time late past, several Subscriptions having been made by great Numbers of Persons in the City of London, to carry on publick Undertakings; upon which the Subscribers have paid in small Proportions of their respective Subscriptions . . . and that the Subscribers having acted as Corporate Bodies, without any legal Authority for their so doing . . . the said Practices manifestly tend to the Prejudice of the publick Trade and Commerce of the Kingdom.[52]

With specific reference to marine insurance, Attorney General Nicholas Lechmere had concluded in a 1720 report to the King that

> no satisfactory Reason has been offered . . . for Erecting such an Incorporation upon so large a Join Stock . . . the Ends of Trade will . . . be sufficiently served by a far less Joint Stock than is therein proposed . . . if

> your Majesty shall be graciously pleased to Erect such a Corporation, under proper regulations, I am humbly of Opinion, that it is by no Means advisable to create two or more Corporations of that Nature.[53]

It would be logical, therefore, to assume that the Bill and Act arising from Hungerford's report would abolish such joint-stock undertakings, especially those involving minimal paid-up capital ratios executed without royal permission. However, the title of the legislation commonly known as the *Bubble Act* put the legitimisation of Onslow's and Chetwynd's at its forefront. The *Act for the better securing certain powers and privileges intended to be granted by His Majesty for two Charters for Assurance of Ships and Merchandise at sea and for lending money on Bottomry, and for restraining several extravagant and unwarrantable practices therein mentioned* was better known to contemporaries as the marine insurance companies act.[54]

The Act granted royal charters to Chetwynd's and Onslow's, which were recast as the Royal Exchange Assurance and the London Assurance. Each was permitted to raise a joint stock of £1.5 million, even though Lechmere had found Onslow's activities 'under Colour and Pretence of the [obsolete] Charters aforesaid, and in the Names of the supposed Corporations, illegal and Unwarrantable, and if drawn into Precedents, of dangerous Consequence to the Publick.'[55] All other 'subscriptions . . . presuming to act as corporate bodies' were prohibited, including for insuring.[56] The Act created a duopoly in corporate marine insurance underwriting which was to last 104 years.

After almost a century of debate, theory had finally been subjected to practical experiment. Within nine months of its establishment, Onslow's had effected insurance policies to the value of £1,259,604. Billingsley had testified that this success persuaded 486 individuals who were not original subscribers of the company to take out insurance policies with it.[57] Furthermore, the 45 individuals who had changed their mind from opposing to supporting the incorporation testified that they had done so because, since the company began operating, premiums had been reduced, and business had been attracted from Amsterdam.[58]

The Attorney General, who earlier had ruled that the experiment was illegal, nonetheless found that no harm had been brought. He identified the aim of the enterprise as 'to Prove and Confirm by Experience the Usefulness and Benefit that such an Incorporation be of to the Trade of the Kingdom'. He further stated that 'tho . . . without legal Authority', the enterprise was also 'without any Comaplaint from the Persons with whom they made insurances, or any Objections to the Fairness of their

Proceedings'. His final report was in general favourable to the experiment of corporate marine insurance, finding a common benefit in the erection of an insurance company. He concluded that 'such a Corporation, not being made in any manner exclusive of others, and being granted under such regulations . . . may be of great advantage to trade'.[59] The actions of the future Royal Exchange Assurance had justified its incorporation.

Personal gain or the common good?

The enquiry leading to Hungerford's long parliamentary report had considered at least twenty additional proposals for joint-stock companies. According to the counter-petitioners, which included insurance brokers, notaries, private insurers, and others, Onslow's and Chetwynd's were just another side to the joint-stock mania which the committee had been struck to investigate, but for one important exception: they tampered with a particularly vital component of commerce, and thus the trade through which they and the nation earned its keep. Lechmere had also raised this point. In its support, the private underwriters had argued that the purpose of the marine insurance companies was the personal gain of the promoters, rather than the improvement of trade. They levied accusations of stock-jobbing against the projectors, asserting that they had financial interests at heart, and were merely creating 'another Stock to transact', rather than working to improve the conditions for trade. Samuel Butler, whose name appears on neither counter-petition, provided evidence that substantiated the fears.

> He had by Commission or otherwise Bought and Sold several thousand Pounds of the Stock of or belonging to the Societies of *Mines Royal, the Mineral and Battery Works*, *for Insuring Ships and Merchandize* [Onslow's], amounting a Sum of fifty thousand Pounds and upwards; and that the said Stock is bought and sold in Exchange Alley as commonly as other publick Stocks are; and that the said company keep Transfer Books at their Office, on the Royal Exchange, where they make Transfers of the said Stock, as other Companies do, and that the Said stock is Stock-Jobbed in Exchange Alley, in the same manner, as other Stocks are.[60]

It was clear to the petitioners 'that this Struggle for a Charter shewed plainly, that the only Design was that of Stock-Jobbing; because if the Benefit of Trade by an Insurance on a Joint Stock, was the only

Thing aim'd at, that might be as well done by a Partnership as by a Corporation'.[61] The promoters of Chetwynd's insisted that

> no such design could be reasonably suggested because it appeared now from the great numbers of the most eminent traders who had either subscribed or certified in favour of such a charter, that the weight of the sense of the best merchants, who were most interested in trade, was for such a charter, and who could not be charged with so sinister a view that of stock-jobbing without giving up the interest of trade itself, which was of more consequence to them than what could arise to them from the advantage of stock jobbing.[62]

Some merchants had objected to a charter for Onslow's, which had been known to job its stocks, but supported the idea of the incorporation of Chetwynd's. The promoters were conscious of reputations, and attempted to disassociate themselves from known stock-jobbers. The preliminary subscribers to Chetwynd's were recruited by Stephen Ram, the London goldsmith who had been its initial promoter, and included many notorious stock-jobbers. This investor group was rejected, to be replaced by subscribers more acceptable to the broad merchant community.[63] The behaviour of these potential customers was not irrational, and whilst their reasons for petitioning one way or another varied, the change of initial subscribers to Chetwynd's (when it was still known as 'Ram's Insurance') shows that they attempted to make rational judgements about the proposed companies and their potential benefit to trade, rather than their potential as profitable enterprises in which to invest.

It had not proved difficult for Onslow's to raise capital pledges (if not hard cash) totalling £1,152,000 by 27 August 1718. Following two small calls, £115,200 – 10 per cent – had been paid up by June 1719. By early 1720 it had undertaken £1.25 million worth of marine risk. Scott interpreted the decision to declare a dividend in autumn 1719 as evidence of the promoters' belief that the policies underwritten had left a satisfactory balance in favour of the company, since paid-up capital and premium income were sufficient to cover any arising claims. Subscribers were indeed numerous and on occasion substantial, but the low levels of paid-up capital restricted the company's ability to satisfy claims. Scott has showed that only a portion of Onslow's paid-up capital was reserved for answering claims. The projectors had spent £2,904.14.0 to purchase the shares, and thus the charter, of the Mines Royal. Further, large sums had been expended in pursuit of the new charter (including alleged

five-figure bribes to royal law officers). Thirdly, even after obtaining royal sanction, the company invested in highly speculative South Sea Company stock. The insurer sold a total of £13,050 worth of relatively safe East India Company shares to purchase it.[64]

The dividend had been paid prematurely, a fact brought home in 1721, after the disastrous loss of a number of Jamaica-bound ships insured by the company, which struggled to meet its commitments. It seems that the Onslow's Royal Exchange Assurance had satisfied successfully the demand for a new outlet for speculation, but had done so without meeting the needs of the merchant community for a financially secure source of insurance. As with the Bonaventurers and the Fifteen Assurers two centuries earlier, companies were again shown sometimes to assume risks too large for their means.

In the case of Chetwynd's, the future London Assurance, subscriptions for a joint stock of £1,200,000 had been made at Garraway's Coffee House. In general, the petitioners in favour of establishing insurance companies could claim to represent 'a very considerable part of the body of merchants on the Exchange of London'.[65] Lechemere confirmed this consensus in his report on Chetwynd's, written just two days after his report on Onslow's. Less evidence exists of investment speculation by Chetwynd's, but a picture of its activity may be drawn. Ram could not determine 'whether any of the stock sold out or whether it continue[d] in the hands of the first subscribers', but testified that no transfer was made of any of the stock, for it was the 'chiefest care of the persons concerned to think of methods to prevent stock-jobbing'. However, on 13 July 1720, when the South Sea shares reached £980, very near their peak, the Royal Exchange asked leave of the South Sea Company to subscribe £74,300 of its redeemable debt, in anticipation of the opening of the lists the following month.[66]

Stock-jobbing was rampant, and the chartered insurance companies joined in the speculation. As both objects of, and players in, the period's frenzied financial shenanigans, the two insurance promotions formed an integral component of the Bubble Era. In the words of Ned Ward, a prolific contemporary satirist, they became 'stock-adventurers' which, under the pretence of a trade, set out to realise short-term profits. Billingsley was an archetypal 'promoter' who took up the insurance project for the great returns it promised, and had previously accomplished a similar manoeuvre with the York Buildings Company. The integrity of insurance suffered.[67]

The charters were purchased from the Crown for the sum of £300,000 each. As a condition of incorporation, the two companies each promised

to lend the government a further £156,000.[68] Ninety years of debate and two years of intense investigation were overlooked in favour of by a bribe to an indebted King. Both insurers were bound to pay £100,000 to the Exchequer on 22 July and £50,000 on 22 September, as part of the agreement to discharge royal debts to the Civil List, which amounted to £700,000 a year. The London Assurance made £5 calls, and the Royal Exchange £10. A week before the second Exchequer payment was due, South Sea shares crashed to below £600 (from £1,050 on 17 July), and the companies could not pay. The Royal Exchange devised another subscription to increase its nominal capital from £1,212,000 to £2,424,000, but the plan was frustrated by the collapse of the stock market. Both insurers defaulted.[69]

On 11 June the King had told the House of Commons that 'it is a particular Satisfaction to me, that a Method has been found out for making good the Deficiencies of my Civil List, without laying any new Burden upon my Subjects'. He did not conceal his motivation: he had asked the Commons for 'ready concurrence to enable him to discharge the Debts of his Civil Government, without burdening his People with any new Aid or Supply',[70] an intention which ensured the charters would be granted for reasons quite irrelevant to insurance. The long debate presented in the *Special Report* had perhaps created an illusion of great consideration of the matter by the King, and even those who understood charters as nothing less than a sale of privilege were inclined to think that the project could benefit the nation. However, a sceptical comment by James Craggs, Secretary of State for the Southern Department, shows that despite all the discourse about the public good, some at least were under no illusion. 'There is no distinction of persons or circumstance. Jacobites, Tories, Papists, at the Exchange or in the church; by land or by sea, during the session or in recess, nothing is objected to provided there is money.'[71]

The King's indebtedness was paramount to the legitimisation of insurance companies. The conditions of chartering proposed by Lechmere had been intended to prevent the 'misapplication' of the companies' stock and capital, and he had argued that the ends of trade would be served sufficiently by having less of both, but in the end the companies were granted charters without the imposition of the Attorney General's caveats. The primary reasons for this lie in the entanglement of high politics and finance, rather than the interests of trade and the nation. The highest echelons of the British political elite were involved in the speculation. According to J.H. Plumb, Sir Robert Walpole was the architect of the companies' payments to the Crown, and it was very much in his

interests to see their share prices rise, since he traded in them. Walpole's accounts with his brokers show that he bought blocks of shares in both companies on 26 April 1720, the day before the *Special Report* was issued. Their total nominal value was £24,000; Walpole paid £2,550, and sold on 12 May for £5,162.10.0.[72]

Conclusions

Marine insurance was an instrument integral to trade. Contemporaries treasured it. Its betterment was therefore always the strongest locomotive for its institutional development. What distinguished Onslow's and Chetwynd's from the multitude of other stock-jobbing schemes was not just their promoters' political connections. They also garnered support from the London merchant community, at least some of which was attracted by the promoters' sound arguments about the insurers' promised contribution to the improvement of trade.

The petitioners claimed to be presenting schemes with broad national benefit, but the ultimate outcome of the debate rested upon their potential to deliver private gain. This explains why the *Bubble Act*, which is known for its measures to constrain joint-stock initiatives, granted exclusive royal privilege to two such companies. Politics and personal gain rendered it possible for such contentious enterprises to be legitimised at the time of fierce reaction against such activity. Pronounced benefits to the nation allowed marine insurance to serve as a pretext for stock-jobbing.

Following incorporation, both Royal Exchange Assurance and London Assurance paid little attention to marine insurance. They failed to take advantage of their privileges to provide comprehensive, cheap, and secure underwriting, claiming an initial 10 per cent of the market, a share which soon declined to about 4 per cent. Almost as soon as their received their charters in the face of massive debts and a stock market crash, the companies successfully petitioned to have them extended to the business of fire insurance.[73] The projectors were not aiming to revolutionise marine insurance for the benefit of trade and the nation; they were simply after profit. London's private insurers flourished, since under the Act they were free from further corporate competition. Ultimately combining within the Lloyd's market, they proved over two centuries the resilience of the private underwriting structure.

Julian Hoppit argues that the *Bubble Act* of 1720 represents the failure of the political process to act in the public good.[74] It seems rather that the political process in the sense of democratic practice, as well as the

emerging empirical paradigm, were ignored altogether. A.B. Leonard is correct to use the incorporation to debunk the theory of the hegemony of 'credible commitment' in the period.[75] Almost all of the recommendations of the *Special Report* were defied by the Act. For all the discussion on credit being 'public' and therefore inherently based on the state's ability to manage its fiscal apparatus and its willingness to channel that wealth to the servicing of debt, discussions of public good seem ultimately, in the case of marine insurance in 1720, to have been mere rhetoric.[76] Granting the charters was historically grounded and perhaps justified, but they were bestowed, in the end, for private reasons.

The debates continued long after 1720. In 1806 Frederick Eden, founder in 1803 of the life insurer Globe Insurance, penned an extensive tract arguing in favour of his effort to extend the Globe's activities into marine insurance, in breach of the 1720 Act.[77] In advancing his aim to have the Act repealed, he argued the benefits of corporate underwriting, declaring that due to 'the two principal Qualities which a joint Stock Fund may possess, and which must be wanting in a personal responsibility fund', such that 'in the Business of Insurance, stronger Probabilities of Security' are afforded by a joint-stock structure than by a private one. These were susceptibility to regulation, since their value was always known publicly, unlike that of private insurers, and a peculiar answerability to contracts.[78]

He also drew upon the old argument of security. 'The proprietors of some of the partnership Societies may collectively possess a capital of several million, but it may be disposed of by the reverses of the individual proprietors in trade.' Public companies, in contrast, were not to be affected 'by the private dealings of the individuals composing the body corporate'. He presented a long list of unchartered offices 'consigned to bankruptcy . . . for structural reasons'. On the subject of premiums and foreign business, he quoted the insurance of Ostend traders by a company at a rate two guineas per cent cheaper than by privates, although he acknowledged the practice of initially unprofitably cheap insurance as a tactic of the corporations to make themselves 'acceptable'.[79] His arguments echoed the earlier debate.

Almost one hundred years after the *Bubble Act*, Eden presented evidence very similar to that of his predecessors. No quantitative appraisal of the 1720 companies' business was given; they had been manifestly unsuccessful in capturing a large share of the marine insurance market. His discussion of the different forms of liability and their appropriateness to different types of insurance is lengthy, but ultimately contradictory. He first quotes Adam Smith's qualifiers for a valid joint-stock

company: that 'the undertaking must be of greater and more general utility'. He deemed insurance to be one such enterprise, and repeated Bacon's historic defence of the 1601 act. Yet he also argued that, for marine insurance, where policies were of short duration, a system of personal responsibility was not objectionable.[80] Smith had based his argument on his mistaken belief that insurance operations were routine and standardised, with little scope for abuse.[81]

Eden died in 1809, but had started the important process of repeal of the 1720 duopoly, achieved in 1824. H.E. Raynes argued that the proponents of the 1718–20 schemes had 'simply intended to do collectively what they had hitherto done individually', and that 'unfortunately the schemes were put forward at a time of great speculation, and became mixed up with the speculative finance of the bubble era'.[82] However, they were products of the era, and fuelled the frenzy. The persistence of the points of contention and the arguments used both in support of and in opposition to the idea of joint-stock marine insurance companies across centuries is clear, but during the height of the speculative activity of the Bubble Era, it was personal and royal enrichment, rather than the betterment of trade and the benefit of the nation, that weighed most heavily in the debate over a corporate versus the traditional private approach to underwriting.

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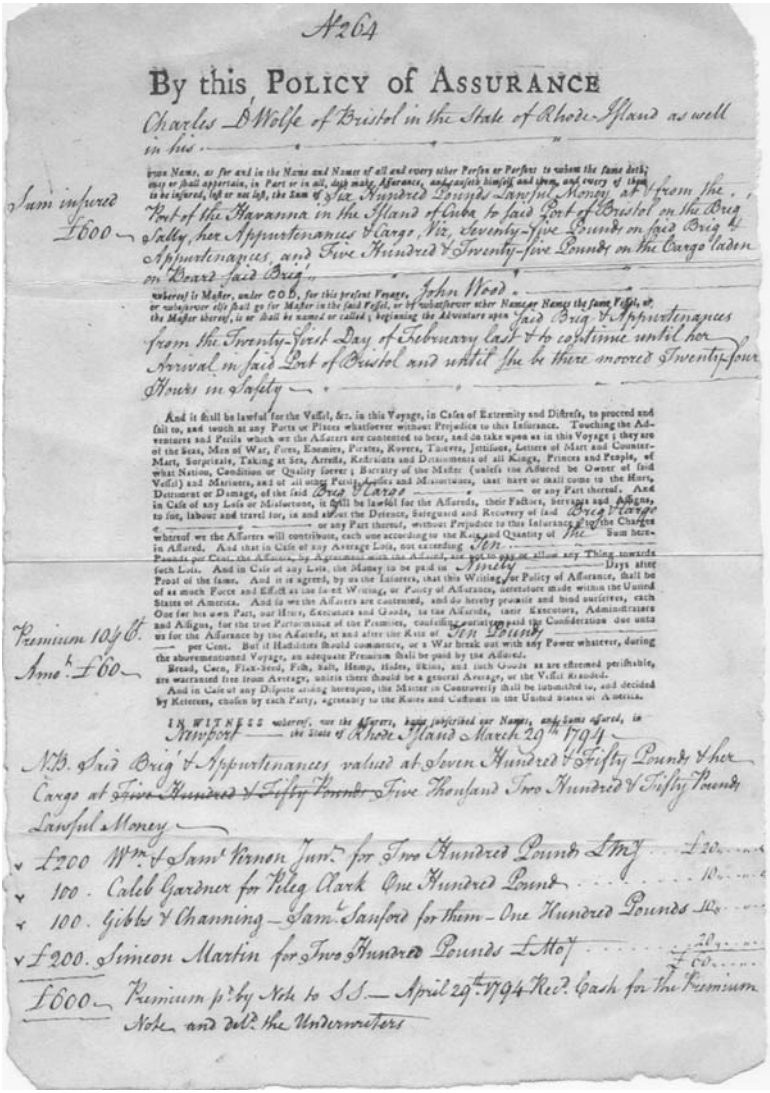

№264

By this POLICY of ASSURANCE

Charles D'Wolfe of Bristol in the State of Rhode-Island as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may or shall appertain, in Part or in all, doth make Assurance, and causeth himself and them, and every of them, to be insured, lost or not lost, the Sum of Six Hundred Pounds Lawful Money, at & from the Port of the Havanna in the Island of Cuba to said Port of Bristol on the Brig Sally, her Appurtenances & Cargo, viz. Seventy-five Pounds on said Brig & Appurtenances, and Five Hundred & Twenty-five Pounds on the Cargo laden on Board said Brig.

Sum insured £600

wherof is Master, under GOD, for this present Voyage, John Wood or whosoever other Name or Names the same Vessel, or the Master thereof, is or shall be named or called; beginning the Adventure upon said Brig & Appurtenances from the Twenty-first Day of February last & to continue until her Arrival in said Port of Bristol and until she be there moored Twenty-four Hours in Safety.

And it shall be lawful for the Vessel, &c. in this Voyage, in Case of Extremity and Distress, to proceed and sail to, and touch at any Ports or Places whatsoever without Prejudice to this Insurance. Touching the Adventures and Perils which we the Assurers are contented to bear, and do take upon us in this Voyage; they are of the Seas, Men of War, Fires, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Taking at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever; Barratry of the Master (unless the Assured be Owner of said Vessel) and Mariners, and of all other Perils, Losses and Misfortunes, that have or shall come to the Hurt, Detriment or Damage, of the said Brig Hazard or any Part thereof. And in Case of any Loss or Misfortune, it shall be lawful for the Assureds, their Factors, Servants and Assigns, to sue, labour and travel for, in and about the Defence, Safeguard and Recovery of said Brig Cargo or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we the Assurers will contribute, each one according to the Rate and Quantity of the Sum herein Assured. And that in Case of any Average Loss, not exceeding Ten Pounds per Cent. the Assurers, by Agreement with the Assured, are not to pay or allow any Thing towards such Loss. And in Case of any Loss, the Money to be paid in Ninety Days after Proof of the same. And it is agreed, by us the Insurers, that this Writing or Policy of Assurance, shall be of as much Force and Effect as the surest Writing, or Policy of Assurance, heretofore made within the United States of America. And so we the Assurers are contented, and do hereby promise and bind ourselves, each One for his own Part, our Heirs, Executors and Goods, to the Assureds, their Executors, Administrators and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for the Assurance by the Assureds, at and after the Rate of Ten Pounds per Cent. But if Hostilities should commence, or a War break out with any Power whatever, during the abovementioned Voyage, an adequate Premium shall be paid by the Assured.

Premium 10 p C. Amo £60

Bread, Corn, Flax-Seed, Fish, Salt, Hemp, Hides, Skins, and such Goods as are esteemed perishable, are warranted free from Average, unless there should be a general Average, or the Vessel stranded.

And in Case of any Dispute arising hereupon, the Matter in Controversy shall be submitted to, and decided by Referees, chosen by each Party, agreeably to the Rules and Customs in the United States of America.

IN WITNESS wherof, we the Assurers, have subscribed our Names, and sums assured, in Newport — the State of Rhode-Island March 29th 1794

N.B. Said Brig & Appurtenances valued at Seven Hundred & Fifty Pounds & her Cargo at ~~Five Hundred & Fifty Pounds~~ Five Thousand Two Hundred & Fifty Pounds Lawful Money

✓ £200 Wm & Sam Vernon Junr for Two Hundred Pounds L M £200

✓ 100. Caleb Gardner for Peleg Clark One Hundred Pound

✓ 100. Gibbs & Channing — Sam. Sanford for them — One Hundred Pounds

✓ £200. Simeon Martin for Two Hundred Pounds L M £200

£600 Premium p. by Note to S.S. — April 29th 1794 Rec. Cash for the Premium Note and del. the Underwriters

Policy dated 29 March 1794, underwritten in Bristol, Rhode Island for Charles D'Wolfe (DeWolf) on the brig *Sally* and her cargo for a voyage from Havana to Rhode Island by four private underwriters. The vessel and cargo are only partly insured, as they are valued under the policy at £750 and £5,250 respectively, but insured for £75 and £525. ALC, uncatalogued

9

America 1720–1820: War and Organisation

Christopher Kingston

America's economy grew rapidly throughout the eighteenth century, with expanding settlement of the interior, growth in economic output, and a doubling of population approximately every 25 years. Overseas trade played a vital role. Furs, fish, ship masts, whale oil, tobacco, rice, and indigo were exported to Britain and Ireland in exchange for a wide range of manufactured goods and textiles. A negative trade balance with Britain was compensated for in part by the export of fish, grain, flour, salted meat, and livestock to the Caribbean islands in exchange for sugar, rum, and molasses, and by exports to southern Europe. The colonies, well-endowed with timber for shipbuilding, also earned a considerable amount from the sale of vessels and the provision of freight services.[1]

The key actors in this vigorous and expanding maritime trade were, of course, the merchants in the port towns and cities. The use of marine insurance to spread maritime risk was vital to their activities, particularly on large ventures and during periods of heightened risk. However, in the early eighteenth century the volume of capital available was not yet sufficient to sustain a local marine insurance industry, so American merchants obtained insurance mainly in Britain, if at all. By the early nineteenth century, however, a thriving American insurance sector had developed. This chapter traces its development during its formative first century, with a particular emphasis on how its organisational form evolved, and how it came ultimately to diverge significantly from that of Britain.

In a nutshell, the argument is as follows. The eighteenth century was punctuated by a series of wars that periodically exposed American merchant vessels and cargoes to heightened dangers of enemy capture, while also disrupting communications with Britain, and therefore

access to her insurance market. Insurance premiums rose substantially and fluctuated rapidly during these wars, as rumours of military, naval, or political developments shifted perceptions of the risks to maritime commerce. Heightened wartime risks led to higher losses, increased premiums, and an increased demand for insurance, placing strains on the risk-sharing capacity of American insurers. In this way, war created the impetus for institutional development and innovation, as American merchants sought to contain mercantile risks in order to exploit lucrative wartime trading opportunities.

Insuring in Britain

By the early eighteenth century, London was displacing Amsterdam as Europe's most active marine insurance marketplace. The growing concentration of brokers and underwriters in the city created a liquid and competitive marine insurance market, with well-capitalised and well-informed underwriters. The market drew orders for insurance from across Britain and Europe, and from the American and Caribbean colonies.[2] Throughout the eighteenth century, a substantial share of American insurance was obtained in London and other British ports.

For American merchants, however, insuring in Britain entailed a variety of inconveniences. First, they had to pay commissions to their London correspondents for effecting insurance on their behalf. Their letters constantly enjoined correspondents to exert every effort to ensure that their insurance would be secured for the lowest possible premium, and with the most reputable and financially secure underwriters, two goals which were frequently incongruent. The agents, naturally, reassured their principals that they had faithfully acted as though the business was their own, and at times found it necessary to defend their conduct. But information was at the best of times incomplete, and the time taken for information to cross the Atlantic – often several months – increased the potential for misunderstanding. London merchant Robert Plumsted frequently had to remind his correspondents that when ordering insurance, 'Its quite Necessary to be as plain as possible in thy directions, to prevent Mistakes which in these Cases, are not sometimes to be Rectify'd.'[3] The slow speed of communication and the difficulty of producing documentation to support a claim also meant that when losses occurred, insured merchants sometimes had to wait years for their money, particularly if a claim was disputed.

Another drawback to insuring in London was uncertainty about whether orders for insurance would arrive on time. Because plans about

cargoes, routes, and dates of sailing were often highly fluid, insurance was generally not ordered until a vessel was almost ready to put to sea, or had already done so. When a vessel was soon expected to sail, the usual practice was to send orders for insurance by several other vessels, to ensure that the orders would arrive in good time. But the chance remained that these instructions would fail to arrive, or that London agents would fail to effect the insurance, before news was received of a vessel's loss, thereby leaving the merchant uninsured.

On the other hand, if a vessel made an unusually fast passage, tidings of its safe arrival might outpace the orders for insurance, thereby 'saving' the premium. Indeed, merchants sometimes tried their luck by instructing their agents to delay obtaining insurance in the hope that this might happen. In 1760, for example, Philadelphia merchants James & Drinker sent several copies of the following instructions

> We are now very closely engaged in loading the Friendship . . . [for London] . . . and hope she will be full and sail in 10 good working days, how many running days that may be, we can't say, indeed at this Season of the Year the Weather is very much unsettled. If she don't arrive in 3 Weeks after this reaches Thee please to procure Insured for our Account on our half said Ship £600 Sterling and £150 Sterling on our half Goods, valuing our half the Ship at £750 Sterling.[4]

The London underwriters were, of course, well aware of this practice, and compensated by charging higher premiums to vessels that were considered 'out of time'. One London merchant warned a correspondent that

> Attention will be paid to your instructions respecting Insurance but there is one circumstance which we presume did not occur to you which is that when a vessel is considered out of time the Underwriters demand an advance of Premium. They have regular information of the time of a ships sailing and if she has been out long enough to have reach'd her destin'd Ports. The same consideration which induces the merchants to insure directs the Underwriters to ask an equivalent Premium. We hope however you may save your insurance.[5]

All of these transatlantic principal–agent problems were greatly exacerbated during wartime, when the risks and rewards of maritime

commerce increased, and normal patterns of trade and communication between London and America were disrupted by enemy activity.

Beginnings of marine insurance in America

As one Philadelphia merchant explained

> 'Tis a Custom in all places where Insurances are made, that Offices for that purpose are set up. The Persons who keep those offices are stiled Brokers, & are middle Persons to keep records, & conduct matters regularly between the Insurer and Insured[6]

Although attempts had been made – probably short-lived – to establish marine insurance brokerages as early as 1721 in Philadelphia and 1724 in Boston, the earliest clear record of an active brokerage in America is that established by Benjamin Pollard in Boston in 1739,[7] at the outset of the War of Jenkins' Ear (1739–48). A record of insurance rates from Pollard's office during the war reflects the risk of seizure by Spanish privateers in the Caribbean. In 1744, for example, voyages to or from Caribbean islands were commonly insured at 14–16 per cent, several times the typical peacetime rates of 2–3 per cent.[8] Joseph Dowse took over Pollard's brokerage business in 1745, and Richard Jennys opened a second Boston brokerage in 1747.[9]

In Philadelphia, Buckridge Sims had opened a brokerage by 1743,[10] but Philadelphia merchant William Till informed a London correspondent that

> we have an Insurance Office here . . . but for my Part I have always looked on the Thing as a Novelty, and what they would be soon tired of. In this I am not mistaken. Some late Losses seems to Damp their Spirits and most of them begin to stagger. However I always resolved never to have anything to do with the affair, or be any ways concerned, but shall constantly write to London for Common and honest Insurances.[11]

Sims' venture appears to have been short-lived, but by 1748 Joseph Saunders had successfully opened a brokerage in Philadelphia, and a second brokerage was opened by Thomas Wharton in 1752. Wharton's decision to enter into the marine insurance business may have been to some extent a result of a fortuitous circumstance: Saunders had recently relocated his business, and Wharton had moved into the space

that Saunders had recently vacated, enabling him to advertise that 'the insurance office is there kept as formerly'.[12] Saunders at first ignored his competitor, but later advertisements in the *Pennsylvania Gazette* note that 'The Insurance-Office for Shipping is kept by him as usual', even as Wharton continued to advertise that the insurance office remained open at his location 'as formerly'.[13]

The mode of business in America's early insurance brokerages largely mirrored that which had been used for centuries by private underwriters in Europe. Brokerages were generally located near a coffee-house or other meeting place, and brokers maintained accounts with regular underwriters to whom they offered their risks. The broker acted as an intermediary between the merchant and underwriters in negotiations over the premium and other policy details, and wrote and recorded the policy, to which the underwriters subscribed their names, together with the amounts they chose to cover.

Broking policies could be a profitable sideline for merchants. Setting up a brokerage involved little more than having some blank policies printed, and many enterprising American merchants attempted to establish brokerages at various times. Some of these, however, appear to have done little business, or to have been relatively short-lived.[14] Building up a successful brokerage required both cultivating relationships with a group of knowledgeable and financially secure underwriters, and attracting business from a sufficient number of merchants to make underwriting worthwhile. Records are fragmentary, but suggest that each major port city supported no more than a handful of active, established brokerages at any time.

The French and Indian War

By the advent of the French and Indian War (1754–63), several brokerages were active in the major American ports. In most cases, the lack of surviving records makes it impossible to know what volume of business they did, but the records of Thomas Wharton's Philadelphia brokerage show a clear expansion of his business during the early years of the war, in terms of the number of policies underwritten, their size, and the number of active underwriters (Table 9.1).

In part, the impressive expansion of Wharton's business during the war was brought about by the increased demand for insurance caused by heightened war risks. Although the Seven Years' War was not officially declared in Europe until 1756, its opening shots were fired in Ohio in May 1754, igniting a brutal struggle between the French, the British,

Table 9.1 Transactions in Thomas Wharton's Philadelphia brokerage

	26 May 1755–4 Dec 1755	**12 Nov 1756–17 Sept 1757**	**13 Feb 1759–15 Oct 1759**
Number of policies	187	677	611
Underwriting transactions per day	2.10	5.37	9.27
Average sum insured	£277	£240	£440
Total no. of underwriters	17	30	36
of whom ≥ 1 transaction/week	7	13	24
Average no. underwriters per policy	2.16	2.46	3.70

Notes: Summary Statistics from Thomas Wharton's insurance ledgers, 1755–9, Leonard T. Beale collection, HSP Ms. (PHi) 1735. Figures are rounded to the nearest pound. Premiums on time policies (there are few) are estimated assuming risks lasted three months.

and their Indian allies for control of the North American interior.[15] The looming threat of war caused insurance rates to rise during 1755, particularly on European voyages. Generally, the perceived risk of war was factored into the premium, although some policies were insured against sea risk only, at lower rates. One could also build in ex post premium adjustments, as merchant Samuel Howell did in November 1755, when he visited Wharton's brokerage to insure £200 on goods on the *Nancy* from Philadelphia to London at a premium of 15 per cent, of which 11 per cent was to be returned if a war with France had not been declared by the time the vessel arrived.

Premiums to the West Indies rose throughout 1756. Philadelphia merchants James & Drinker paid 6 per cent on shipments to Jamaica in May, 8 per cent in August, and hoped to do it at 10 per cent in October, by which time a London merchant was advising his correspondents that 'Insurance is Upon the Advance having several Ships Lately taken & privateers increase in our Channel'.[16] American coastal risks were less affected, as 'We have not yet had any French privateers on our coast nor do we think there will be any until early next Spring'.[17] By February 1757 the premium on West Indies risks was from 10 per cent to 12.5 per cent, 'and will rise we fear, as we daily hear of Captures'.[18] In August 1757 James & Drinker paid 18 per cent on a voyage to St Kitts, noting that 'Premiums are already high and if the French should continue as successful as they have been in taking English Vessels about the Leeward Islands they will still more discourage our Underwriters, and

of Consequence Premiums will rise higher'.[19] The increasing rates can also be traced in the Wharton ledgers for individual ships, such as the *Muggy*, William Allison master, insured from Antigua to Philadelphia in November 1756 for 9 per cent, from Philadelphia to Antigua in January 1757 for 9 per cent and 10 per cent, from Antigua to Philadelphia in April for 12.5 per cent, and in June from Philadelphia back to Antigua at 15 per cent.

In such precarious times, few merchants could afford to risk foregoing insurance on any sizeable venture, but an additional and important explanation for the growth of Wharton's business is undoubtedly American merchants' increasing propensity to insure locally, rather than in Britain. Sending orders for insurance to London, always somewhat unreliable, became more so in wartime. Uncertainty about whether orders for insurance would reach London in a timely fashion sometimes led anxious merchants to purchase insurance locally, with the provision that policies would be void if insurance had already been obtained in London.[20] In November 1756, James & Drinker informed their London correspondents that

> As the Packets from New York have of late sail'd so very irregular . . . we thought it imprudent to depend upon them to carry a Letter for Insurance as that would have left us at a great Uncertainty whether it would be timely made in England or not, [which] determin'd Us upon getting all that we could done here.[21]

Losses became more frequent, but also more difficult to settle because of the difficulty of getting and sending proper documentation to support a claim. London merchant Robert Plumsted frequently complained that 'its very tedious Getting proofs of Interest from No[rth] America',[22] but insisted that in settling a loss

> proofs are Requir'd, especially as you have taken to make Insurances among yourselves, as between both, more than the Value may sometimes be Cover'd. I know thou would scorn to do any such thing, but It may be a Just pretence to delay settling a loss here, therefore please to be explicit in this respect.[23]

Accordingly, Plumsted advised his cousin William in Philadelphia that

> As proofs of Interest in time of War are very difficult to be Got, I should be Glad in future to know the shares of Ships, Cargoes &

> Freights thou Insures upon . . . that I may value the policys Accordingly, as it often prevents Great delays In Settling Losses, though in particular Cases, the Insurers have a Right to Require proofs.[24]

The war also made it much harder for American merchants to exert any control over the rates of premium paid by their London agents. They might set limits, but this too was risky, as it might mean forgoing insurance altogether, just when things became most dangerous. As Plumsted noted in 1756, 'from the Great Uncertainty of the times the price [of insurance] Varys almost daily'.[25] When Robert Plumsted procured £600 insurance for William on the *Molly*, from Jamaica to the Bay of Honduras and back to Philadelphia at a rate of 21 per cent, he considered it 'very Moderate Considering the Risque',[26] but William complained that he could have gotten a better deal in Philadelphia, to which Robert replied

> At thy Request I Show'd the Underwriters upon the *Molly* what thou says upon the premium Given for that Voyage (though I expected they would Laugh at me for so doing) . . . They pay no Regard to what is done with you, As they say you are not Acquainted with the Circumstances of these Voyages, so well as wee are, who are almost every day Furnish'd with Intelligence whereby to Form a proper Judgment of the Risque – therefore to Expect any Return of premium is quite out of the Question.[27]

Robert assured William that 'thou may allways depend on having what Insurances thou Commits to my Care done upon as Moderate Terms as anything Can be here with Good Men, which has been my Constant Study', but the following summer, William insured several West Indies ventures locally through Wharton's brokerage.[28]

The establishment of marine insurance in America added a further layer of uncertainty, by making it more difficult for correspondents in London to guess whether or not they should obtain insurance for their Philadelphia correspondents without specific orders. In 1757, uncertain as to whether William had insured in Philadelphia, Robert Plumsted obtained partial coverage on some voyages in London, but complained:

> if thou has made no Insurance upon the Vessel & Freight with you I think I shall hardly be justify'd as this Sum is not sufficient fully to cover thy interest. I wish thou would always say whether any Insurance is made with you upon any Vessel thou orders to be done here.[29]

An additional concern for London underwriters was that, particularly on the important West Indies routes, American merchants and underwriters were more familiar with the vessels and captains involved, and had more up-to-date information about local conditions, and that they might insure the 'best' risks among themselves, while writing to London for insurance on those vessels they considered more doubtful. These fears were probably justified. In March 1757, for example, James & Drinker informed a correspondent in Barbados that they would 'duly observe thy Orders respecting Insurance on the *Batchelor* & Cargo to Barbados, and if not to be done here, as our Underwriters have but a poor Opinion of her sailing, shall write to London or Liverpool to effect the same'. They shipped some of their own goods in the vessel in an effort to 'obviate the Prejudice against her', but were ultimately forced to write to Liverpool for the insurance, neglecting to mention the local underwriters' misgivings, and instead assuring their correspondents that the vessel was 'well Sheath'd here, and well fitted, an Able and Experienced Master', and that she planned to travel under convoy of a privateer.[30]

This stopped short of outright fraud, but it would certainly have been a concern for the British underwriters. Philadelphia merchant William Till worried as early as 1743 that this perception that 'the most dangerous Policys may fall to their share' would make London underwriters reluctant to insure his risks.[31] Robert Plumsted constantly had to defend the insurances he had made in London against charges of excessive premiums. He told his cousin William that

> while you Continue doing Insurance amongst yourselves, at premiums very unequal to the Risques, you will think our price high, but a few losses, some of which have already happened may perhaps advance your prices, for they are not Calculated to hold long.[32]

and tersely informed another correspondent that

> as to thy saving money by doing this Busyness with you, I believe your Underwriters will soon have enough, for give me leave to say, they don't know what they are about.[33]

To the extent that the London underwriters' caution was reflected in higher premiums, this reinforced American merchants' incentives to insure at home, particularly on West Indies and coastal risks, for which the London underwriters' disadvantage was particularly acute. Merchant Thomas Clifford, for example, continued to instruct correspondents

sending him goods from England to obtain insurance there, but arranged insurance in Philadelphia on his ventures to the West Indies.[34]

Overall, therefore, it seems that by disrupting channels of communication with Britain, the Seven Years' War gave a substantial impetus to the development of the nascent American marine insurance industry. By 1759 three insurance brokerages were operating in Philadelphia, four in New York, and perhaps four in Boston.[35] Merchants in smaller ports also insured each other's risks locally, while writing to the larger American ports and to Britain for insurance on larger risks. Obadiah Brown of Providence, Rhode Island, for example, underwrote 161 risks between 1753 and 1762, while also purchasing insurance in Philadelphia.[36] There was also active cooperation and competition between underwriting centres. Merchants in Philadelphia, for example, occasionally wrote to New York for insurance on large risks, or when they felt the terms there might be more favourable than in Philadelphia.

Although the capacity of the American market was still very modest in comparison with London, which had about 40 marine insurance brokers in 1759,[37] the American brokerages increasingly attracted orders for insurance from throughout North America and the West Indies. A substantial and growing fraction of the policies insured through Thomas Wharton's Philadelphia brokerage were ordered by local merchants on behalf of correspondents elsewhere. This was simply one aspect of the agency system that was the universal basis for trade in the eighteenth century. Merchants acted as agents in the sale, purchase and handling of each others' goods, with customary rates of commission for each service agreed between the parties, as well as a constant flow of information about prices, political developments, the reputation of other merchants, accounts of vessels lost, and so on. Access to a reputable insurance market provided local merchants with an opportunity to earn commissions, usually 5 per cent of the amount of the premium, or 0.5 per cent of the sum insured.[38] James & Drinker embraced this opportunity, assuring a correspondent that

> Our Underwriters we think are in general men of fortune, & we believe pay their losses with great Punctuality, for which they have the Preference of any on the continent.[39]

When making insurance, as in all other aspects of trade, merchants constantly reassured their correspondents that they would handle the business as if it were their own. This meant having policies underwritten

at low premiums by secure and reputable underwriters, keeping correspondents informed about local customs regarding required documentation and policy conditions, and handling payment of premiums and collection of losses. Sometimes it entailed taking part of the risk themselves. For example, James & Drinker informed one correspondent that they had found it difficult to find underwriters to cover a voyage to Hamburg, but

> as we had a good Opinion of the Vessels (Especially of the Sloop) and the Masters we ordered the Policies out and a Friend of Ours with Ourselves began them which Led others to follow till they were Completed.[40]

In what was a highly competitive and unregulated market, underwriters made some efforts at collective action to exert control over the conduct of business and the actions of brokers. In March 1761 a group of 14 Boston underwriters associated with Boston's two main brokerages made an agreement regulating various matters such as the use of 'notes of hand' in lieu of cash for payment of premiums, mandating quarterly settlement of accounts between brokers and underwriters, and agreeing to exclude anyone who failed to accept the agreement from underwriting in either office. They also attempted to institute price controls, agreeing not to charge premiums below periodically adjusted, mutually agreed rates.[41] A similar agreement made among 18 Philadelphia underwriters in 1766 appears to have foundered, as most of the signatures were subsequently crossed off.[42]

The Revolutionary War

The end of the French and Indian War reduced premiums to near peacetime rates, and renewed ease of access to the British insurance market, but the American brokerages and underwriting networks established during the war survived. Ezekiel Price's brokerage in Boston, which had opened in 1759, lasted until 1781. Joseph Saunders' Philadelphia brokerage endured until 1775, while Thomas Wharton's eventually passed into the hands of his younger brother Isaac, who carried it on until 1803, when it was reconstituted as a joint-stock corporation.[43]

Following the war, the British government attempted to increase the regulation and taxation of colonial trade. The colonists responded with boycotts of English goods in the late 1760s: 'no taxation without representation'. These boycotts briefly collapsed in 1770 – the year of the

Boston Massacre – but the Tea Act of 1773, and the Boston Tea Party in December of that year, followed by Britain's so-called 'Intolerable Acts' of 1774, paved the way for the meeting of the First Continental Congress later that year, as the colonies edged towards revolution. The Congress's major achievement was an agreement against importation or consumption of British goods, to which the British retaliated with 'Restraining Acts' forbidding the American colonies to trade with non-British ports.

At the outset of the American Revolution, naturally, trade with Britain and British colonies collapsed, and trade with France and her colonies was also severely disrupted as the British Navy used its overwhelming superiority to blockade American ports and capture American merchantmen at sea. British, loyalist, revolutionary and (after 1778) French privateers were all active. American merchants adapted by making use of smaller, faster, and more heavily armed trading vessels.[44] During the French and Indian War, the colonies had traded actively with the enemy through the neutral Dutch entrepôt of St Eustatius, and, later, the Spanish port of Monte Cristo. During the revolution, St Eustatius again emerged as a busy hub for American shipping, until the British declared war on Holland and took the island early in 1781.[45]

The risks for those vessels that did sail were truly frightening. A book of insurance policies from New York in 1779 (when the city was held by the British) shows premiums of anywhere between 12 and 30 per cent on voyages to the Caribbean islands, and 25 per cent on risks between New York and European ports, compared to peacetime (1773) rates of 2.5 to 3 per cent.[46] In rebel-held Boston rates were even higher (with, as always, substantial variations depending on the particular vessel and the timing of the voyage). Merchants insuring through Ezekiel Price's brokerage commonly paid 35–50 per cent on single voyages from Boston to the West Indies, and 60–70 per cent, even occasionally 80 per cent, on round-trip voyages in 1777–79, before rates fell slightly during 1780–81.[47] Only an immensely profitable trade could have borne such astronomical risks.

Faced with these risks, and cut off from their usual sources of insurance, merchants in smaller ports banded together to insure each other. In Newburyport, Massachusetts, Joseph Ingersoll established a brokerage in 1778. The first risk underwritten, on the Brigantine *Sally* from Newburyport to Martinique or Guadeloupe and back, was covered by nine underwriters, including Ingersoll himself, at 70 per cent. In 1779, one-way voyages between Newburyport and the West Indies were commonly being covered in Ingersoll's office at 45 to 50 per cent, while return voyages were covered at 65 to 70 per cent, falling to 30 to

40 per cent by late 1780. Curiously, perhaps reflecting the uncertain value of currency as the continental currency depreciated rapidly during 1777–80, in some cases both the value of the sum assured and the premium on these policies was payable in gallons of molasses, or gold 'or the value thereof in paper money'. Ingersoll's co-partnership was dissolved in September 1781.[48] In Salem, a similar office for private underwriting operated for a few months during the winter of 1779–80, issuing 78 policies beginning with the *John and Sally* from Guadeloupe to Marblehead at 30 per cent in November 1779, and ending with the *Two Brothers*, insured from Salem to the West Indies and back at 50 per cent, in February 1780.[49]

The early republic

American independence in 1783 afforded new opportunities for trade with continental Europe and the non-British West Indies,[50] but it also restricted American merchants' access to the British West Indies. Further restrictions on transatlantic trade, and a British Order in Council (1783) forbidding the purchase of American-built vessels, created a depression in the American shipping industry in the 1780s. Insurance rates fell to peacetime levels with, as always, some idiosyncratic variation.[51] Once again, American merchants purchased some of their insurance in London, particularly on transatlantic risks, but they were now also purchasing much of their insurance from American insurance brokerages, several of which were well-established in each of the major ports.

Although the traditional method of private underwriting provided a competitive, flexible means of spreading risk, it also had some drawbacks, in particular, the transaction costs of finding a new group of underwriters for each policy. A natural solution was to form a stable syndicate of underwriters, and indeed syndicates had earlier emerged in Venice, France, and Holland.[52] The details varied, particularly in whether the syndicates allowed for joint or several liability, and whether they raised a capital fund as security for the payment of losses, but the essential cost-saving innovation was the delegation of the underwriting function. The broker, or some subset of the underwriters, could subscribe policies on behalf of other members of the syndicate, obviating the need for each underwriter individually to evaluate each policy proposal.

During the French and Indian War, six merchants led by Thomas Willing had formed such a syndicate in Philadelphia, each agreeing to underwrite one-sixth of the risks underwritten by Willing on policies offered by private brokers. The agreement did not entail joint liability,

and did not raise a capital fund, but may nevertheless have violated Britain's 'Bubble Act' of 1720, which forbade underwriting by any firm or partnership except the two London corporations chartered by the Act. In any case, Willing's insurance 'company' lasted only a short time.

Independence, however, freed American underwriters from the Bubble Act's restrictions, and they began to experiment with new organisational forms. In Newport, Rhode Island, Samuel Sanford opened an insurance office in 1784, with 16 underwriters who were named in the printed policy, each of whom accepted several, but not joint, liability for one-sixteenth of any risk underwritten by any three of their number (or by two underwriters and the 'office-keeper', Sanford). The rates were generally peacetime rates, and included some policies on slave vessels such as the *Betsey*, insured in December 1784 at 11 per cent from Newport to Africa and thence to her point of sale in the West Indies and back. The underwriters generally accepted the risk of losses due to an insurrection of slaves only if losses exceeded 10 per cent of the cargo, but slave voyages were still unusually risky, and commanded high premiums (in contrast, for example, a whaling voyage to Africa, the West Indies and back was insured at 7 per cent).[53] Alongside this syndicate, Sanford also broked policies using the usual method of finding individual underwriters for each policy.[54] In 1793 a Boston broker organised an association of 13 underwriters, each of whom agreed to take £100 lines on the risks presented to the broker in turn, with each risk starting with the next underwriter in alphabetical rotation.[55]

The Napoleonic Era

With the advent of the European war in 1793, the prospects for American trade brightened considerably. Britain's naval superiority effectively closed off direct communications between France and its colonies, so at the outbreak of the war the French opened their colonies to trade with American vessels, and began to rely heavily on neutral vessels to carry their produce. Britain, however, asserted its 'Rule of 1756', whereby neutral vessels could not in wartime enter into a trade which had been closed to them in peacetime (which, in the American case, meant refusing to recognise the neutrality of American vessels trading directly between France and her colonies). However, American vessels *were* allowed to import large quantities of produce from French, Spanish, and Dutch colonies to the United States, whence they were re-exported to Europe, while manufactured goods flowed, indirectly, in the opposite direction. Britain also loosened its mercantilist restrictions on trade with

her West Indian colonies. As a result of these new opportunities, and of protective tariffs and regulations that had been introduced by Congress in 1789, American trade boomed.

At the same time there was always a risk that America would be dragged into the war (as it eventually was in 1812) while the belligerents each attempted to curtail Americans' trade with their adversary. In 1793–4, war with Britain for a time seemed imminent as a result of a British Order in Council issued on 6 November 1793 amounting to a total blockade of the French West Indies (to coincide with a military campaign to conquer French colonies). By the time news of the order reached the US, the British had already captured hundreds of American merchantmen in the Caribbean. War was forestalled, however, by Jay's Treaty of 1795, which put an end to British captures, and normalised trade relations between the United States and Britain. However, the treaty also made several concessions to Britain that were unfavourable to France. In particular, it adopted a broad definition of contraband (goods which neutrals could not legally trade with belligerents), accepted the British right to seize non-contraband goods as long as they were paid for, and accepted the 'Rule of 1756'. These concessions angered the French, who had hoped to circumvent Britain's naval superiority by employing the Americans as neutral carriers.

The explosion of trade volumes, together with the increased risks to American shipping, created the conditions for rapid expansion of the American marine insurance industry. However, while the existing system of private underwriting through brokers provided a flexible, market-based mechanism for risk-sharing that had many advantages, it was also clear that in the event of a war, the private underwriters might be hard-pressed to cope satisfactorily with the increased demand for insurance. American merchants were perfectly familiar with the two marine insurance corporations that had existed in London since 1720, and would also have been aware of similar corporations in France, Holland, and elsewhere.[56] The corporate form increased the security of the policy by raising a large capital fund as a bulwark against losses, and enabled a much wider spreading of risk by enabling those with no knowledge of mercantile affairs to participate by buying shares, while entrusting their underwriting decisions to experts.

In the 1790s, freed from the constraint of Britain's Bubble Act, American merchants began to petition their state governments to grant corporate charters for marine insurance. The first such company, the Insurance Company of North America, was formed in 1792 in Philadelphia, and chartered in 1794. The innovation spread rapidly, and

over the ensuing two decades numerous corporations were chartered in ports throughout the eastern United States.[57]

Once again, therefore, it was the increased risks during wartime that spurred institutional innovation. The new corporations came onto the scene at a highly turbulent time. The French retaliated for the passage of Jay's Treaty by issuing a series of increasingly restrictive decrees during 1796–7 that led to the capture by French privateers of hundreds of American vessels in the Caribbean.[58] This marked the beginning of a period of conflict between America and France which became known as the 'Quasi-War', because the war was limited to naval actions, and was never formally declared. However, it led to a prolonged period of heightened risk for American merchants, just at the moment when corporations had entered the market. Premiums for insuring one-way voyages to the West Indies rose from a range of 3–6 per cent in the autumn of 1796 to as much as 15–20 per cent in the summer of 1797, and reached 25 per cent in 1798, before American naval victories in 1799 and 1800 brought rates back down.

Comparing archival records from a private underwriter and a corporation during the Quasi-War reveals that the conflict provided a crucial impetus that hastened the growth and spread of corporate underwriting in America around the turn of the century.[59] During the war the potential for large numbers of simultaneous captures made it more difficult for private underwriters to diversify their risks, while also threatening their financial security, and thereby highlighting one of the companies' major advantages. Prudent private underwriters raised their rates, and business gravitated to corporations.

The nature of the information required to assess risks also changed. What mattered most for assessing the risks of particular voyages in peacetime was idiosyncratic, voyage-specific information, such as the experience of the captain and crew, and the condition and sailing qualities of the vessel. Private underwriters were, for the most part, merchants intimately familiar with the various branches of trade and with each other, and therefore were well placed to gather and interpret this kind of information. To assess risks in wartime, however, what mattered most was information about systematic risks, such as the activities of enemy privateers, the disposition of the prize courts, and other political and military developments that could increase the risks to all ships simultaneously. Thus, the advantages of corporations were heightened by the temporary increase in risks caused by French privateering in the Caribbean during this period, catalysing a shift from private to corporate underwriters.

The nineteenth century

Although corporations rapidly took over a large share of the American marine insurance business, records of private underwriting persist well into the early nineteenth century. In New York, Benjamin Mumford ran a very active brokerage that insured hundreds of policies during the period 1800–5. A January 1803 agreement between Mumford and his underwriters was signed by seventy underwriters.[60] In August 1804, in an effort to drum up business, Mumford proposed a reciprocal arrangement with brokers Charles Ghequire and H. Kunckel of Baltimore, whereby each would send the other orders for insurance, with a promise that 'We are both to endeavour to undertake business for none but fair characters'. Ghequire and Kunckel accepted the proposal, but noted that 'As we have 5 Insurance Compys here, We fear it will be Seldom we shall be able to procure any Orders from here, but we will use our best Endeavours.'[61] Mumford also corresponded with Robert Hobart of Philadelphia, who insured vessels using both private and corporate underwriters. In 1805 French, British, and Spanish captures led to premium increases, and uncertainty persisted in the run-up to the Embargo Act of 1807. In these challenging circumstances, Mumford found it increasingly difficult to place risks, and ultimately ceased broking policies, preferring to write to New York and Baltimore for insurance.[62] Hobart was still procuring insurance on Mumford's behalf from both private and corporate underwriters in 1804–6, but faced increasing difficulty due to the growing crisis.

In one substantial record of several hundred policies insured in Philadelphia from 1803 to 1815, most of the policies are underwritten by corporations, but several private brokerage firms appear, the most prominent being that of Nalbro Frazier. Privately underwritten policies become progressively less common, and none appear following Frazier's death in 1811.[63] But in Salem, Massachusetts, Archalaus Rea operated a busy brokerage for private underwriting in 1817–18, and Peter Lander ran an active office in the early 1820s.[64] Overall, while it is not possible to measure relative market share with any precision, it seems safe to assert that corporations displaced private underwriting relatively rapidly, and had come to dominate the American marine insurance industry well before the end of the Napoleonic wars.

Beyond their important role in protecting against calamity and spreading risk, corporate insurers were crucial financial intermediaries through their investments, and became tightly woven into the political fabric of the new republic.[65] Corporations held a large capital stock as

a bulwark against losses, and this stock was held in the form of shares, private and government bonds, mortgages, property, and other assets, funnelling funds from savers (their shareholders) to borrowers. Wright and Kingston present data on the number and capitalisations of corporate insurers in antebellum America.[66] During the mid-nineteenth century, an increasing proportion of insurance companies were organised as mutuals, rather than joint-stock corporations. This was particularly so in fire and life insurance, but included some marine companies, and some that wrote both marine and other risks.

War: the engine of institutional change

The eighteenth century was punctuated by a series of wars that disrupted the American marine insurance industry, raising premiums, exacerbating agency problems, and spurring innovation. The French and Indian War boosted the fledgling industry by disrupting channels of communication with London. Following independence, it became possible for corporations to enter the market, and just as these companies were finding their feet, the Quasi-War highlighted their advantages, accelerating a transition from the traditional system of private individual underwriting to a market dominated by chartered corporations.

The eventual dominance of corporations in the American marine insurance industry was not necessarily inevitable, however. As Guinnane et al. emphasise,[67] the advantages of the corporate form are in many circumstances offset by a variety of internal and external agency problems. In Britain, although marine insurance corporations were present, and although the Napoleonic Wars battered the informal institutions for private underwriting at Lloyd's just as they did in America, private underwriting survived – and indeed thrived. Sheltered by the Bubble Act, and stimulated by the challenges of wartime underwriting, Lloyd's was driven to strengthen its mechanisms for information-gathering and self-regulation, and to develop further its formal governance and membership structures. The flexible and sophisticated market for private underwriting and the formal structure developed at Lloyd's during the Revolutionary and Napoleonic wars provided the framework for further reforms and institutional development in later years, and conferred on Lloyd's a resilience that enabled it to survive even after it was exposed to competition from new waves of corporations by the subsequent repeal of the Bubble Act.

Thus, although the merchants and underwriters in Britain and America employed similar technology, and were very familiar with

the modes of doing business in the others, by the early nineteenth century two distinctly different institutional structures had developed. Either structure, once established, could persist as a stable equilibrium.[68] In Britain the mechanisms that the network of merchants and underwriters at Lloyd's developed to share and interpret constantly changing flows of information ultimately created a 'lemons' problem for London's marine insurance corporations. Because of their inferior access to information, the corporations were at a disadvantage in evaluating risks, and their resulting wariness led them to charge higher premiums and to confine themselves whenever possible to the 'best' risks (good ships, about which there was little doubt, and therefore little asymmetric information), frequently turning down business out of a concern that insurances were not being 'tendered fairly'.[69] In America, although private underwriting had become well-established during the eighteenth century, it never reached the level of sophistication achieved at Lloyd's, and corporations therefore suffered no such disadvantage.

Marine insurance was vital to the vigorous overseas trade that played such a central role in America's early economic and political history. Rooted in European mercantile tradition, but shaped to local needs by American merchants and brokers as they navigated the turbulent and formative eighteenth century, by the early nineteenth century the industry had developed a mature and robust set of institutions with a distinctively American character.

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11. HSP Ms 660, William Till Letters 1735–1745, William Till to Lawrence Williams, 5 Aug. 1743.
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13. See, for example, Wharton's and Saunders' advertisements, *Pennsylvania Gazette* no. 1320, 11 Apr. 1754.
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17. James & Drinker letterbook, 28 Oct. 1756.
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19. James & Drinker letterbook, 11 Aug. and 26 Aug. 1757 to J. Parkinson.
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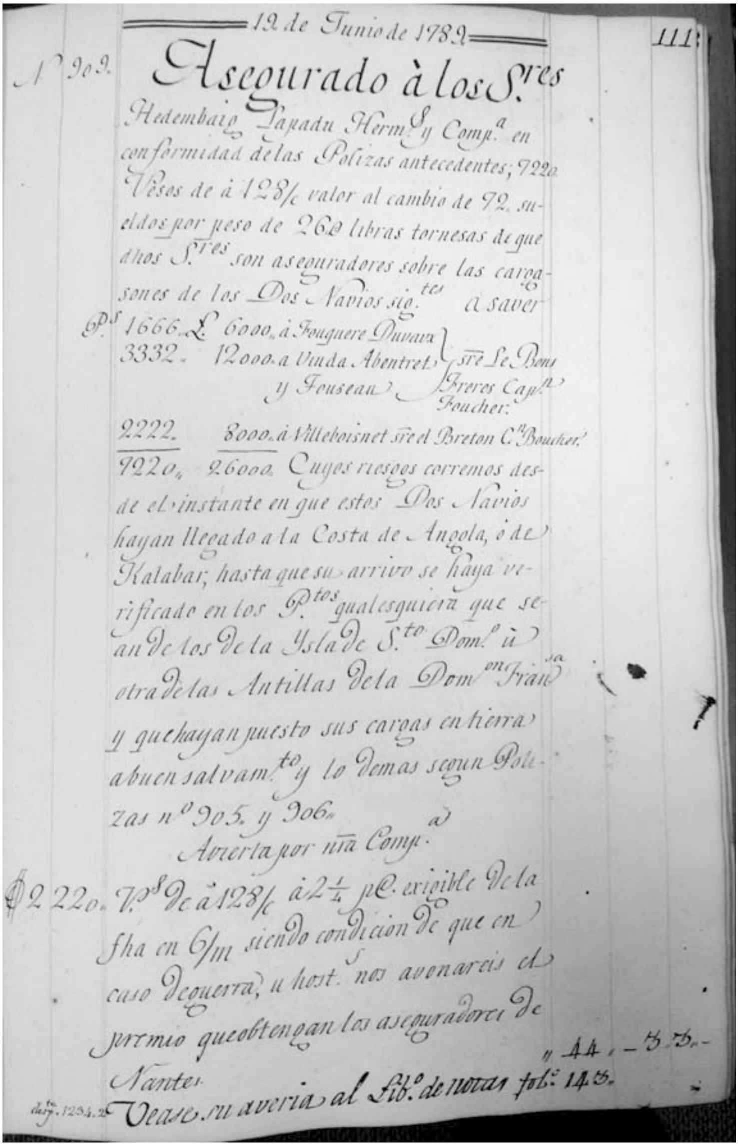
19 de Junio de 1789 — 111

Nº 909. Asegurado à los S.res

Hedembaig Papadu Herm.s y Comp.a en conformidad delas Polizas antecedentes; 7220 Pesos de à 128/c valor al cambio de 72 sueldos por peso de 260 libras tornesas de que d.hos S.res son aseguradores sobre las cargasones de los Dos Navios sig.tes a saver

P.s 1666. £ 6000. à Fouquere Duvaux
3332. 12000. a Viuda Abentret y Fouseau — s.re Le Bon, Freres Cap.n Foucher.
2222. 8000. à Villeboisnet s.re el Breton C.n Boucher.
7220. 26000. Cuyos riesgos corremos desde el instante en que estos Dos Navios hayan llegado a la Costa de Angola, ó de Kalabar; hasta que su arrivo se haya verificado en los P.tos qualesquiera que sean de los de la Ysla de S.to Dom.o ù otra de las Antillas de la Dom.on Fran.sa y que hayan puesto sus cargas en tierra a buen salvam.to y lo demas segun Polizas nº 905. y 906.

Avierta por n.ra Comp.a

P 2220. P.s de à 128/c à 2 1/4 p.C. exigible de la fha en 6/m siendo condicion de que en caso de guerra, u host.s nos avonareis el premio que obtengan los aseguradores de Nantes. — 44. – 3 5. –

daÿ. 1234. 2 Vease su averia al Lib.o de notas fol.: 145.

Underwriter's copy of a policy dated 19 June 1789, covering cargo travelling aboard two ships from the West Coast of Africa to the French Indies. *Copiador de los asegurados de la Compañia de Seguros Nuestra Señora del Carmen*, folio 111. From the author's private collection

10

Cadiz 1780–1808: A Corporate Experiment

Jeremy Baskes

Spain's colonial trade had long been centred on Andalusian Seville and Cadiz, yet the cities' insurance markets remained undeveloped until the final decades of the eighteenth century. This chapter focuses on the rapid rise and equally sudden demise of the insurance business in Cadiz, from 1780 to 1808. A flurry of mercantile partnerships was established to underwrite the commercial ventures of Spanish traders in the 1780s and 1790s. The escalating insurance losses brought about by the Wars of the French Revolution and Napoleon, however, caused the bankruptcy of most of these fledgling companies. By the early years of the nineteenth century this new financial sector had largely disappeared.

Spanish insurance before 1750

The voyage of Columbus and the subsequent colonisation of the Americas greatly expanded the involvement of Spanish merchants in long-distance trade. In 1503 the Spanish monarchs established the *Casa de Contratación* in Seville to oversee commerce with the newly encountered territories. Trade with the colonies was initially intended to be a crown monopoly, but its enormous growth quickly dashed this royal aspiration, and encouraged private merchants to enter the trade with Spain's American possessions. The wealthy southern city of Seville was selected as the only legal port to trade with the colonies, a reflection of its wealth, and of the Crown's desire to regulate commerce closely.[1]

From its inception Spain's colonial commerce attracted the attention of pirates, who quickly learned of the great treasures involved. In the early decades of the sixteenth century the Crown implemented a series of decrees designed to safeguard Spanish shipping, culminating in the permanent establishment, in 1543, of an annual merchant

fleet to be escorted by warships of the Royal Armada.[2] Although convoys did provide substantial security from predation, overseas traders nonetheless increasingly came to depend on marine insurance.

As the chapters of this volume make clear, insurance was widely used in Europe long before the advent of American exploration. Indeed, the city of Burgos in northern Castile was already an important financial centre before 1492, largely due to its relative proximity to the important trade fair of Medina del Campo. The existence in Burgos of wealthy merchants with commercial contacts throughout Europe, coupled with its well-developed legal institutions, most importantly its *Consulado*, helped to establish the town as an early source of insurance for the transatlantic trade. As early as 1507 the merchants of Seville had begun to acquire insurance for their overseas ventures in Burgos. Underwriting two thousand insurance policies annually, the merchants of the city likely remained the most important providers of insurance in the *Carrera de Indias* until the last two decades of the century, when Burgos was supplanted by Seville, Amsterdam, Madrid, Lisbon, and Bilbao.[3] Perhaps in contradiction, Ruth Pike claims that most 'of the Sevillian business community . . . made large investments in marine insurance during the years around mid-century', though she does not indicate the quantities of insurance being underwritten.[4]

Historians' knowledge of the Spanish insurance industry during most of the seventeenth century is sparse, but by its end policies were being issued directly in Cadiz. Though based on quite limited evidence, Manuel Ravina Martin has discovered the prominence of foreigners in the Cadiz underwriting business. A list dating from 1691 identifies 37 merchants who were underwriting, all of them foreign residents in the port. The largest group was Genoese, comprising 17 in total, followed by seven English, four from Hamburg, and three each from Florence and the Netherlands. Apparently the industry was not well developed: during the year these foreign underwriters, most of whom were members of small companies (some numbering only a handful of individuals), 'decided to organise themselves into a type of spontaneous chamber of commerce, with some widely accepted norms, in order put an end to all of the irregularities that had been committed prior to that date'.[5]

Spanish insurance in the eighteenth century

Two financial instruments were used in late medieval and early modern Europe to enable merchants to reduce their exposure to the risks of the voyage: sea loans and premium insurance. Under the former, known in

the Spanish world as *préstamos a la gruesa ventura* or *préstamos a riesgo marítimo*, merchants took money on credit to finance their overseas business dealings with the stipulation that the loans would be repaid only if the ship or cargo arrived safely at its destination. If lost, the loan was forgiven, and the lender lost his principal. Merchants thus received both financing and marine insurance together. Premium insurance, in contrast, entailed the simple payment of a premium to an insurer who agreed to take on a share of the risks of the voyage. The insured acquired trade capital elsewhere. This latter, more 'modern' financial instrument emerged in Italy in the fourteenth century, and became widespread throughout Europe in the following century.[6]

Despite the declining importance of the sea loan in much of Europe, it remained prominent in the Spanish empire well into the eighteenth century. Indeed, in the years 1760 to 1778, an average of 1,176.4 *escrituras* (sea loan contracts) were registered annually. Over the next quarter of a century, however, the instrument largely disappeared from Spanish colonial trade. Predictably, demand for loans *a la gruesa ventura* decreased sharply during the years of Spain's involvement in the War of American Independence. After a brief resurgence following the restoration of peace in 1783, however, sea loans entered into disfavour. By the outbreak of the French Revolutionary Wars, the instrument had virtually disappeared.[7]

The decline of the *préstamo a la gruesa ventura* coincided with the rapid formation of partnerships established to sell premium insurance in the market of Cadiz. According to Bernal, just two insurance companies were underwriting risk in Spain in 1763. Thirty-two years later there were 75 insurance companies in Cadiz alone.[8] The wide use of sea loans and the paucity of insurance companies before the 1780s, however, does not mean that premium insurance was absent from Spain's colonial trade. Spanish merchants often times obtained their insurance in northern European markets. In his 1722 treatise on business in Amsterdam, Jean-Pierre Ricard noted that Spanish merchants frequently contracted their insurance coverage in the Dutch city.[9] In 1753 an observer noted that Spain 'pays in insurance a considerable and regular tribute to France and England'.[10] Reducing the outflow of capital in the form of insurance premiums was, according to *Consulado* lawyer don Juan de Mora y Morales, one benefit of the emerging insurance industry in Cadiz. In his 1786 celebratory tribute to the Cadiz-based insurance market, Mora y Morales pointed to the previous practice of many Spanish merchants of obtaining their insurance coverage in foreign markets. Not only had this been inconvenient, he noted, but it had also harmfully led

to the outflow of significant funds that would now remain in Cadiz.[11] A 1798 letter from the officers of the Cadiz *Consulado*, the merchant guild, estimated the annual export of insurance premiums prior to the industry's development to have been approximately 1.5 million pesos, a considerable amount.[12]

Mora y Morales wrote at a very heady time for the Cadiz insurance market, when premium insurance in the hands of Spaniards was developing rapidly. Over the course of the next decade, dozens of new partnerships were established, each with the goal of profiting from underwriting Spain's booming colonial trade. By 1796, the height of the industry, insurance partnerships had capital commitments of 24 million pesos.[13]

Market structure after 1780

The Cadiz-based insurance companies were partnerships. Upon its establshment, a partnership would begin subscribing members, each of whom would acquire one or more company shares. No funds were actualy deposited into the company; instead subscribers merely signed *escrituras*, contracts pledging their obligation to indemnify losses that might be incurred. Between 1790 and 1803 at least 83 separate Cadiz insurance partnerships were formed. Shares usually entailed pledges of 10,000 pesos, although a few companies sold cheaper shares. Most of the companies consisted of 30 to 40 shares of 10,000 pesos each; the average total was 331,226 pesos committed. Only one company's shareholders committed more than 500,000 pesos.[14] More typical was the company founded under the directorship of Francisco Antonio Guerra y hijo in October 1792 with a subscription of forty shares of 10,000 pesos each.[15]

The total value of the shares committed entailed the theoretical absolute amount that the firm's shareholders placed at risk of loss. Most shareholders, however, hoped never to have to pay anything into the company at all. The goal, of course, was to make money, and ideally the revenues collected in payment of premiums would be more than ample to cover any losses sustained by shareholders. Indeed, one of the obvious attractions of inurance company shares was the ability to earn income without tying up any capital, since shareholders were not required to deposit any funds.

The total value of a partnership's shares was by no means the absolute limit that a firm could underwrite. Firms could and did underwrite much more coverage than their shareholders were pledged to indemnify. A firm directed by Juan Esteban Tellechea, for example, underwrote

949,576 pesos in the year 1795, despite comprising just 30 shares at 10,000 pesos apiece. Tellechea's decision to underwrite so much coverage indicated his faith that little of the insurance would result in losses. The probability that nearly a third of the coverage would require indemnification must have been extremely low.[16]

Upon the establishment of an insurance partnership, shareholders convened to produce a charter stipulating the general terms of the company's operation. These company charters, filed with the merchant guild, provide a unique and valuable window into the industry's operation. Invariably partnerships operated for a fixed period of time, after which they were disbanded. Most companies' charters stipulated that they would operate for five to six years before dissolving and distributing profits.[17] Formed in November 1791, for example, a firm directed by Ruperto Lopez Garcia intended to underwrite insurance for five years.[18] Just three weeks later, a firm established under the directorship of Antonio Lasqueti proposed to operate for seven years.[19]

Dozens of new insurance firms were established in Cadiz in the 1790s. Table 10.1 shows the number of partnerships that filed their charters with the *Consulado* for each year between 1790 and 1804. Between 1791 and 1796 at least 73 partnerships were created to underwrite insurance in the Cadiz market.

These boom years are especially interesting because they straddle the years before and after Spain's January 1793 entry into the Wars of the French Revolution. Insurance partnerships were already perceived as an appealing investment opportunity, but the wars contributed to a flurry of new launches, since merchants were undoubtedly attracted to the high premium rates being charged. Two firms founded in mid-1793 explicitly noted their interest in the wartime rates, one of them stating its intention to operate 'for the time that the present war lasts between this Monarch and the French nation'.[20] Treating the whole of 1793 as a war year, 54 partnerships were established to underwrite insurance during the hostilities, through 1796.

1797 marks a clear change. The launch of new firms nearly stopped. In August 1796 Spain had signed the Treaty of San Ildefonso with

Table 10.1 Number of companies established annually in Cadiz, 1790–1803

1790	1791	1792	1793	1794	1795	1796	1797	1798	1799	1800	1801	1802	1803
1	7	12	14	16	12	12	2	0	0	0	2	6	1

Source: AGI, *Consulados* 78.

Revolutionary France, allying herself against Britain. As the greatest naval power of the era, Britain posed a much more profound risk to Spanish merchantmen. Not only did new firms stop forming, but several existing partnerships chose to disband, as losses to British privateers mounted. One early nineteenth-century source estimated that insurance losses between 1793 and 1798 reached 15 million pesos, an extraordinary sum given that in 1796 the industry had shareholders committed to only 24 million pesos.[21]

Before the losses mounted, though, insuring during wartime must have seemed a fabulous business opportunity. In February 1793, just one month into the war, the merchant Juan Josef de Puch paid a premium of 6.75 per cent on goods shipped from Cadiz to Veracruz, a rate for that route about quadruple what it had been only several months earlier.[22] Juan Baptista de Larrain paid 12 per cent in June to ship his cargo to La Guaira (Venezuela) from Cadiz,[23] and Puch contracted in October to ship 109 *fanegas* of cacao from La Guaira to Santander for a premium of 25 per cent.[24] Skyrocketing premiums encouraged many Spanish merchants to acquire shares in the fledgling companies. Rates later rose much higher still.

In contrast to these investors' apparent ebullience, some companies' charters expressed wariness of underwriting during wartime. Augustin de Valverde Hijos y Compañia, founded in 1791 before the wars erupted, expressed its intention not to underwrite the risks of war. If hostilities or even the fear of them were to erupt, the charter stipulated that the director should immediately cease extending coverage, and convene a meeting of the shareholders to decide how to proceed.[25] Another firm vowed to call a meeting of shareholders in the event of the outbreak of war, but stopped short of demanding the cessation of underwriting 'due to the harm that experience has taught comes from the suspension of operations'.[26] Despite its founding after Spain's entry into the Wars of the French Revolution, the charter of a company formed in 1794 under the directorship of Tómas Martínez de Junquera nonetheless included the clause 'we order the director not to sign any policy whatsoever on ships coming or going to America and Asia without exempting risks of war and hostilities and related events'.[27]

One is inclined to imagine that exempting war during wartime would have repelled most clients, but given the high rates that prevailed during hostilities, perhaps some traders preferred to risk capture by privateers while still enjoying the relatively inexpensive coverage of the risks of the seas. A compromise practice was the assessment of an increased premium only in the event of the outbeak of war during the duration of

the policy. The company directed by don Miguel Merino y Zaldo, for example, underwrote cargo in 1789 on several French ships traveling from the African Coast (either Angola or Calabar, Nigeria) to the French colony of Saint-Domingue, charging the premium rate of just 2.25 per cent, but with the condition that if hostilities were to erupt, a surplus would be charged in an amount to be determined by insurers in Nantes (see picture p. 228).[28]

A partnership established in 1791 embraced a very different strategy. According to its charter, 'experience has demonstrated that it does not make sense to suspend this business in wartime because underwriting during [war] indemnifies many of the losses which are inevitable at the start of the conflict'.[29] Indeed, the loss of ships always spiked at the start of aggressions, before shipowners could respond to the heightened dangers. Given the great number of companies that formed only after the wars began, it is clear that elevated wartime rates encouraged many of Cadiz's traders to become shareholders in the booming young business.

Corporate structures

Each partnership selected a director (or several directors) whose job was to assess risks and decide what to underwrite. Mora y Morales stressed the critical role of the director, who had to pay close attention to the many risk-related factors. He had to consider the weather, the season, the condition of ocean vessels, the navigability of different ports, the skills of ship captains, as well as any political changes that might lead to 'discord or rupture' between Spain and another European monarch.[30] Predicatably, directors were selected from the mercantile community; nearly half of the directors were matriculated members of the *Consulado*, while a number of others shared surnames of guild members, likely relatives. Most of the directors selected were also shareholders in the partnership with which they were charged. Of 38 firms examined, 32 were directed by individuals who held shares. In the remaining six companies, the director shared a surname with a shareholder, again suggesting a familial relationship. The selection of a director from the group of shareholders had the obvious benefit that the director was equally interested in the performance of the company. He shared with the other partners an economic incentive to make good decisions.[31]

Many of the company charters stipulated that their directors receive a commission of 0.5 per cent of the total risk underwritten.[32] One can imagine that this might have encouraged directors to assume unwarranted risks had they not also been liable for indemnifying losses as

shareholders. One company partially reduced this potential moral hazard by awarding the 0.5per cent commission only 'on the risks that expire safely' without claims.[33] It is probably significant that this particular firm was established in 1803, and thus was shaped by the great sums that partnerships had lost over the previous decade.

Oversight of the insurance industry was placed under the jurisdiction of the *Consulados*.[34] In theory the actual writing of policies occurred within the *Consulado* itself. A merchant or shipowner seeking coverage approached an insurance broker employed by the guild, called a *corredor* (literally, 'runner'), who attempted to place the policy with an underwriter. Ideally, the *corredor* knew which companies were insuring which types of coverage at any given moment, allowing for the smooth operation of the business.[35]

The legal responsibilities of the *corredor* were originally spelled out in the sixteenth-century *Ordenanzas de Bilbao*, which later were revised and updated, especially in 1737. In 1782 the crown issued *New Ordinances on Brokers*, which largely reiterated the previous guidelines of Bilbao. Article 32 ordered that the broker ensure that policies were clearly written 'due to disagreements ocurring between insurers and insured with greater frequency than the nature of such a contract should allow, originating undoubtedly from ambiguity of the terms when the insurance policies are opened'. Before affixing his signature, the *corredor* was 'to review the said policies in detail and with such attention to the pacts reached that no interpretation nor other understanding than the intended meaning is possible'. Failure to follow this procedure made the policy 'null and void'.[36]

Insurance partnership charters most often provided extensive guidelines to help govern the directors' underwriting decisions, for example by stipulating how much coverage to offer under different conditions. An understandable guidline was to prevent too much risk exposure on any single vessel, but insurers also took into account the type of ship, with more secure vessels meriting greater risk-taking. A firm established in 1791 allowed its director, Ruperto Lopez Garcia, to extend up to 1,000 pesos per share on any warship (*navio* or *fragata de guerra*) sailing to America, and 1,200 pesos per share on the return voyage. The partnership consisted of 35 shares, so Lopez Garcia was limited to providing outbound coverage of 35,000 pesos on such a vessel, whether on the ship or its cargo. On a merchant ship (*fragata* or *navio*) the charter placed a lower limit of 800 pesos per share outbound, and 1,000 pesos per share returning. Coverage permitted on smaller ships was even lower.[37] The logic was simple: a better-armed ship was safer from attack. The greater

limits for return voyages might have reflected the high portion of precious metals, an item not as vulnerable to perils such as water damage and fire.

Charters sometimes distinguished between destinations, allowing greater exposure to vessels sailing to certain ports. The charter of the company directed by Augustin de Valverde allowed coverage of up to 1,000 pesos per share on ships sailing to Veracruz, Cartagena, Buenos Aires, Lima, and Honduras. In contrast, coverage of ships destined to Caracas, New England, and the Islas de Barlovento (literally the Windward Islands, but likely referring to other Caribbean islands as well) was not to exceed 500 pesos per share.[38] The precise rationale for distinguishing between destinations is not immediately clear. Distance from Cadiz does not seem to have been a factor at all. Instead, there must have been a perception that the latter destinations were less safe, perhaps because they were more difficult to navigate, but more likely because they were smaller, less protected ports, or not Spanish.

Directors were presumably selected due to their knowledge and experience in transatlantic trade, and so perhaps the charters' attempts to govern their actions so closely were unnecessary. This was seemingly the position of the insurance partnership directed by Antonio Lasqueti. His firm's 1791 charter largely omitted any discussion of limits, indicating instead that the partners left all decisions regarding 'boats, seasons and everything else' to the 'prudent discretion' of the director.[39]

In his classic work on the Amsterdam insurance industry, Frank Spooner demonstrated the importance of the season when setting rates. In certain months of the year, premiums rose to extremely high levels due to the heightened dangers of inclement weather.[40] Rates in the Spanish insurance industry, in contrast, were not much influenced by season, at least for routes between Spain and its American possessions. The charter of a company founded in 1791 under the directorship of Manuel Josef de Armas reduced by one-third the allowed exposures per share on ships travelling to 'Europe' between 1 October and 31 March, but also noted that there were no seasonal limitations for American routes.[41] A firm directed by Tomás Martínez de Junquera had inserted into its charter proposed rates for a number of European ports, and specified reductions ranging from 0.5 to two percentage points during the summer.[42] Most of Spain's colonies were located in quite temperate climates, so winter was not the same danger as it was in the North Sea, except perhaps for Pacific destinations which required travel through the Straits of Magellan. In any event, neither charters nor policies made reference to the season as a risk factor.

The greatest natural hazard in the Spanish Caribbean was hurricanes, but no charters addressed them. By the eighteenth century, however, the hurricane season was well known to Europeans, and shipowners simply avoided this region during the peak months of August to October, when 96 per cent of 'intense hurricane activity' takes place.[43] Indeed, early in the colonial period a regular schedule was devised for the sailing of the *flotas* and *galleons*. A 1582 Royal *Cedula* demanded that the *flota* to Havana and Veracruz depart Spain by May, so that it would arrive in July, before the heightened risk of hurricane. After wintering in Veracruz, the return voyage was to begin in February.[44] While the *flotas* did not always abide by this schedule, shipowners certainly were aware of the hurricane season.

For most of Spain's imperial history, trade was conducted by means of annual (or less frequent) convoys, the *flota* to Mexico and the *galleon* to Peru. Convoys had been mandated by the Spanish Crown in 1543, after the loss of numerous vessels to piracy. For the next two-and-a-half centuries, the Spanish fleet system carried the majority of cargo to and from its colonies. In 1778 the Spanish Crown declared *comerio libre* (free trade), ending the convoy system to Mexico (it had terminated to Peru in 1739). It was replaced with *registros*, individually licensed ships.

Convoys were not unique to the Spanish empire; most nations periodically promoted the use of merchant convoys.[45] The greater security of convoys stemmed from their ability to fight off enemies in unison. The Spanish corsair Captain Pablo Amorós expressed this nicely in a letter to his financial backers in November 1806. Cruising in search of prizes near the coast of Tarifa, Amorós and his shipmates encountered a convoy of British merchantmen. As Captain Amorós explained, however, 'they were convoyed by warships, so we have been unable to attack them'. The convoy successfully discouraged the attack, protecting the British vessels from the Spanish privateer.[46] For the most part, the Spanish fleet system was effective in protecting Spanish merchantmen, with a glaring exception in 1628, when the Dutch privateer Piet Heyn managed to seized 16 ships sailing in the fleet under the command of Juan de Benavides y Bazan, who lost his head for his incompetence.[47]

That convoys were perceived to provide real security is clear from the fact that insurers charged substantially lower premium rates to ships sailing in convoys than to those travelling alone.[48] During the War of American Independence, trader Francisco de Sierra received a two percentage point reduction, to 10.25 per cent, on the insurance of a shipment from Cadiz to Montevideo if the vessel, *La Sacra Familia alias La Angélica*, travelled in convoy from Cadiz to the Canary Islands,

the most dangerous portion of the excursion. Throughout the spring 1780, insurers were discounting rates from Cadiz to America from 22–23 per cent to 17 per cent for convoyed sailings. By the time of the wars, discounts of 50 per cent were most regular for Spanish ships travelling with armed escorts.[49] Discounted rates were widespread by the second half of the eighteenth century in Atlantic world insurance markets. The discounts varied from just a few percentage points to as high as 66 per cent, recorded in 1778 when insuring unescorted voyages from London to the Caribbean cost triple the convoyed rate.[50]

The capacity of insurance companies to underwrite in Cadiz grew substantially in the 1780s and 1790s. This sudden growth was likely connected to commerical reforms being implemented in the 1770s. As part of their efforts to expand trade following the 1778 promulgation of free trade in the Spanish empire, Bourbon reformers began rapidly expanding the number of licenses granted to ship goods to the colonies, which encouraged the entry of many new merchants.[51] One result was the tremendous oversupply of markets, once the War of American Independence had ended, leading to a rise in commercial bankruptcies.[52] The regulated Spanish commercial system that existed before 1778 had always worked to balance supply and demand on both sides of the Spanish Atlantic, which reduced uncertainty to a tolerable level. The increasing unpredictabilty of commerce following 1778 drove many experienced merchants to withdraw their funds from transatlantic commerce. As the veteran Mexico City *Consulado* trader Lorenzo de Angulo Guardamino explained, 'a merchant does not have a firm idea of how to cast his lines due to the freedom that open commerce allows'.[53] His fellow *Consulado* member Antonio Bassoco explained that he and other veteran traders had divested following the reforms 'so as not to risk losing in three years what they have acquired over the cost of many'.[54]

As wealthy merchants divested partly or fully from transatlantic trade, some turned to the growing insurance industry as an alternative source of income, one they perceived to be less erratic and more predictable. Insurance guards against measurable risks. Insureds pay premiums so that insurers will assume risks which, while potentially catostrophic to individual insureds, are predictable to insurers. In the modern world actuaries calculate the probability of risk events, then set rates accordingly, to maximise the likelihood that revenues exceed indemnities. While insurance deals with predictable and measurable risks, trade entails far too many unknowable and unpredictable factors to measure, pool, and insure.[55] Perceiving that trade with the colonies after 1778 had grown increasingly unpredictable and volatile, many merchants turned

instead to the insurance industry, one whose riskiness was, in theory, more knowable.

Merchants of the *Consulado* were prominent among those who obtained shares in the newly established insurance partnerships. As well-known members of the Cadiz mercantile community, their entry into the underwriting industry probably instilled trust in this new financial sector. There is little indication that the *Consulado* paid much attention to the formation of these firms, despite the fact that it was within its jurisdiction to do so. With no deposit of funds required to secure shares in partnerships, merchants may have seen little reason not to acquire one or many. Indeed, some individuals subscribed heavily in the new underwriting firms.

Crisis and decline

Until the mid-1790s the Cadiz insurance market seemed a tremendous success. In 1786 *Consulado* lawyer Juan de Mora y Morales could boast that the sector had earned the respect of foreign merchants 'because to the present time there has never been an occurrence or catastrophe which has made any (company) suspend its payments, or fail to cover its obligations'.[56] But fortunes began to turn in the middle of the 1790s. As war losses mounted, some underwriters proved insolvent. Writing a decade later, the Count of Maule, Nicolás de la Cruz y Bahamonde, estimated losses sustained by the insurance firms in the second half of the decade to have been around 15 million pesos, and noted that 54 insurance firms 'were ruined'.[57]

Directors clearly underestimated the risks of oceanic travel during in wartime. Company charters had optimistically proposed paying losses out of premiums collected, but this proved impossible. Instead, directors began demanding that shareholders deposit monies to cover rising claims, but many shareholders were unable to meet their obligations. The merchant Juan Vicente de Marticorena owed amounts totalling nearly 33,000 pesos to at least 14 separate partnerships, a sum which he could not produce, partly because his wealth was illiquid, but also because he was approaching insolvency.[58] Between February and July 1798 the *Consulado* received at least three petitions from insurance firms asking that the guild grant them moratoria on their claims owing until the financial position of their shareholders improved. Initially sympathetic, the *Consulado* ultimately refused, fearful that such an act would produce 'a scandal in all of Europe, and a general distrust in [Spain's] national and international commerce'.[59]

As the crisis intensified and the financial stability of the Cadiz indurance industry declined, directors found themselves in unenviable positions. Insureds with outstanding claims clamoured for their payments, but the number of shareholders claiming that they were incapable of meeting their obligations rose. Most of them had probably never believed that they would be called upon to indemnify losses. As the number of bankrupt shareholders increased, the reputations of the companies declined, casting a shadow on the Cadiz financial market. In 1799 de Marticorena was instructed by his assistant to seek insurance 'in one of the foreign marketplaces, because here it cannot be considered because there are not more than two companies that can be counted on to pay . . . because the rest that underwrite are in bankruptcy'.[60]

The failures prompted a number of legal questions. In August 1796, before the worst of the crisis had really begun, the royal government in Madrid issued an order that the *Consulado* require shareholders to pay-up their capital by depositing into company coffers money equal to the value of their shares, a proposal that the *Consulado* considered impractical. At the best of times, the guild explained, a shareholder could hope to earn only 400 to 500 pesos per share of 10,000 pesos over the entire five-year existence of a partnership. Given such a 'disproportionate return . . . one can imagine how few would want to be shareholders if they were required to deposit the referenced 10,000 pesos . . . depriving themselves of its use, which can produce returns exceedingly greater than that which one can expect from the most successful insurance company'.

Exacerbating the problem, the *Consulado* further argued that such a requirement would remove from circulation 24 million pesos, the amount of the notional capital backing the sector. The guild proposed that deposits be demanded only of newly created firms, but the practice appears never to have been implemented. In the end, the guild apparently persuaded the Crown to desist; no reforms were introduced. The decision might ultimately have contributed to the devastating financial collapse of Cadiz.[61] Given that many shareholders held membership in the merchant guild, one is inclined to see bias in the guild's reluctance to endorse reserve requirements. On the other hand, *Consulado* members were also significantly represented among the insureds demanding indemnification.

The bankruptcy of individual shareholders also led to the question of whether or not the remaining shareholders in a company held any liability for their insolvent partners' losses. Insurance 'companies' were, legally, partnerships, but few of the charters adequately addressed the

question of shareholders' joint or several liability. In the same *Consulado* letter regarding reserve requirements, the authors noted that some Cadiz companies were organised such that partners would be required to cover the losses of bankrupts, but in others specfied that each shareholder was responsible only for his own share of liabillites.[62] The charter of a partnership established in 1793 stated firmly that 'shareholders are not responsible for one another'.[63] Another, formed in 1791, left the matter ambiguous, but suggested that the directors would convene in the event of a bankruptcy to decide whether or not to increase the demands on solvent shareholders so as to 'sustain the honour and credit of this society'.[64] Perhaps the clearest clause appeared in the charter of a firm founded in 1797, by which time shareholders certainly should have understood that the possibility of insolvent partners was very real:

> It is the condition that if one or more of the shareholders during the term of this company come to be in bankruptcy, arrears, or similar circumstances, [then] on the same day that the directors and counsellors learn this, they will cancel their share or shares and will reduce any future amounts underwritten proportional to the member's [holdings]. And if it results that the past and pending operations to that date produce profits, these will remain for the benefit of the other partners, and if by the same reckoning losses are sustained, the remaining partners will cover them, prorated among themselves, the honour of the company [depending] on the fulfilment of what is due for its solvency.[65]

Failure to stipulate the extent of shareholders' liability meant that the issue was passionately contested during financially trying years. Juan Manuel de Arzubialde, director of one of the many companies that experienced steep losses, was rebuffed in 1799 when he called a meeting to persuade solvent shareholders in his firm to cover the losses of their bankrupt ex-partners. As Arzubialde argued emotionally, if not persuasively, the solvent should cover the losses of their insolvent partners because this is 'as it precisely should be, since insurance companies without such reciprocal responsibility should not exist'. The partners who attended the gathering, however, 'grew angry and stormed out'.[66]

The bankruptcy of so many shareholders underscored a weakness in Cadiz's financial and commercial markets: excessive risk concentration. Conscientious insurance directors made efforts to diversify risk, but the possibilities were limited. While they might have been prohibited from

underwriting too much risk on one ship, all ships faced similar risks, which were magnified during wartime. Too many ships were lost, and most companies were deeply exposed. Insurance rates during wartime reached as high as 60 per cent, but even such exorbitant rates were inadequate to compensate for the profound losses.[67] Perhaps even more problematic, shares in the insurance companies were concentrated in too few hands. As noted, Juan Vicente de Marticorena held shares in at least 14 firms, all of which suffered losses, and he was far from the largest shareholder in the Cadiz insurance business. The Basque merchant Miguel de Iribarren held 55 shares.[68] Many others had acquired ten shares or more.[69] In short, too few people were underwriting too many similar risks.

Added to these structural weaknesses was the fact that many of the underwriters were also merchants engaged in commerce, often the same individuals seeking indemnification for their insured losses. De Marticorena balked when, in June 1796, he was pressured to pay his share of the losses sustained by the Compañia de Seguros de Europa, reminding the director that the company owed him indemnification for a loss he had sustained on his *paquebot* called *el Guatemala*.[70] The *Consulado*, whose job was to oversee the insurance industry, seems not to have expressed concern about concentration of risk.

The catastrophic war years destroyed Cadiz's fledgling insurance industry. Developed in the last quarter of the eighteenth century, following the commercial reforms of the modernising Bourbon monarch, the industry had largely collapsed by the end of the Napoleonic Wars. The insurance companies' destruction was accompanied by the overall devastation of the Cadiz commercial economy, which is estimated to have lost, by 1800, more than 60 million pesos during the wars, with well over a decade of conflict ahead. To put this amount into perspective, the average annual value of Spain's exports during the decade preceding 1793 was just 17 million pesos. The 60 million lost, then, equalled about 3.5 years' worth of imports, a staggering loss.

The collapse of the Cadiz economy was followed by an even greater loss to Spain. In 1808 the Spanish throne was seized by Napoleon's forces, sparking the major challenges that culminated in the end of Spain's great overseas empire. Adleman hypothesised that Spanish American independence resulted more from the collapse of Spain than the actions of the colonists.[71] One cannot help but wonder if the empire would have proved more resilient had the Cadiz financial markets not imploded.

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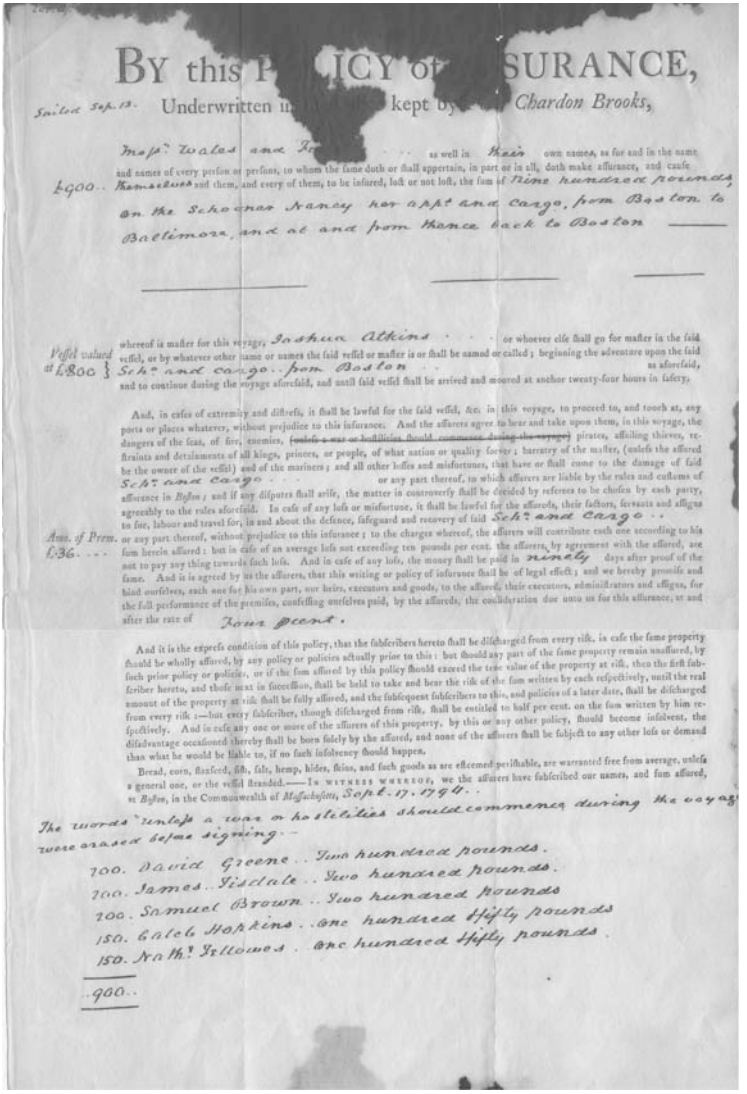
71. Adelman, Jeremy: *Sovereignty and revolution in the iberian atlantic,* Princeton, NJ: Princeton University Press, 1986.



BY this P[illegible]ICY o[illegible]SURANCE,

Sailed Sep. 13. Underwritten in [illegible] kept by [illegible] Chardon Brooks,

Mess[rs] Wales and Jo[illegible] as well in their own names, as for and in the name and names of every perſon or perſons, to whom the ſame doth or ſhall appertain, in part or in all, doth make aſſurance, and cauſe themſelves and them, and every of them, to be inſured, loſt or not loſt, the ſum of Nine hundred pounds, £900.. on the Schoonar Nancy her apptd and Cargo, from Boston to Baltimore, and at and from thence back to Boston

Veſſel valued at £800 } whereof is maſter for this voyage, Joshua Atkins or whoever elſe ſhall go for maſter in the ſaid veſſel, or by whatever other name or names the ſaid veſſel or maſter is or ſhall be named or called; beginning the adventure upon the ſaid Sch[r] and cargo from Boston as aforeſaid, and to continue during the voyage aforeſaid, and until ſaid veſſel ſhall be arrived and moored at anchor twenty-four hours in ſafety.

And, in caſes of extremity and diſtreſs, it ſhall be lawful for the ſaid veſſel, &c. in this voyage, to proceed to, and touch at, any ports or places whatever, without prejudice to this inſurance. And the aſſurers agree to bear and take upon them, in this voyage, the dangers of the ſeas, of fire, enemies, ~~pirates & war or hoſtilities ſhould commence during the voyage~~ pirates, aſſailing thieves, reſtraints and detainments of all kings, princes, or people, of what nation or quality ſoever; barratry of the maſter, (unleſs the aſſured be the owner of the veſſel) and of the mariners; and all other loſſes and miſfortunes, that have or ſhall come to the damage of ſaid Sch[r] and Cargo or any part thereof, to which aſſurers are liable by the rules and cuſtoms of aſſurance in Boſton; and if any diſputes ſhall ariſe, the matter in controverſy ſhall be decided by referees to be choſen by each party, agreeably to the rules aforeſaid. In caſe of any loſs or miſfortune, it ſhall be lawful for the aſſureds, their factors, ſervants and aſſigns to ſue, labour and travel for, in and about the defence, ſafeguard and recovery of ſaid Sch[r] and Cargo ..

Amo. of Prem. £36. ... or any part thereof, without prejudice to this inſurance; to the charges whereof, the aſſurers will contribute each one according to his ſum herein aſſured: but in caſe of an average loſs not exceeding ten pounds per cent. the aſſurers, by agreement with the aſſured, are not to pay any thing towards ſuch loſs. And in caſe of any loſs, the money ſhall be paid in ninety days after proof of the ſame. And it is agreed by us the aſſurers, that this writing or policy of inſurance ſhall be of legal effect; and we hereby promiſe and bind ourſelves, each one for his own part, our heirs, executors and goods, to the aſſured, their executors, adminiſtrators and aſſigns, for the full performance of the premiſes, conſeſſing ourſelves paid, by the aſſureds, the conſideration due unto us for this aſſurance, at and after the rate of Four pcent.

And it is the expreſs condition of this policy, that the ſubſcribers hereto ſhall be diſcharged from every riſk, in caſe the ſame property ſhould be wholly aſſured, by any policy or policies actually prior to this: but ſhould any part of the ſame property remain unaſſured, by ſuch prior policy or policies, or if the ſum aſſured by this policy ſhould exceed the true value of the property at riſk, then the firſt ſubſcriber hereto, and thoſe next in ſucceſſion, ſhall be held to take and bear the riſk of the ſum written by each reſpectively, until the real amount of the property at riſk ſhall be fully aſſured, and the ſubſequent ſubſcribers to this, and policies of a later date, ſhall be diſcharged from every riſk:—but every ſubſcriber, though diſcharged from riſk, ſhall be entitled to half per cent. on the ſum written by him reſpectively. And in caſe any one or more of the aſſurers of this property, by this or any other policy, ſhould become inſolvent, the diſadvantage occaſioned thereby ſhall be born ſolely by the aſſured, and none of the aſſurers ſhall be ſubject to any other loſs or demand than what he would be liable to, if no ſuch inſolvency ſhould happen.

Bread, corn, ſtaxfeed, fiſh, ſalt, hemp, hides, ſkins, and ſuch goods as are eſteemed periſhable, are warranted free from average, unleſs a general one, or the veſſel ſtranded.—In WITNESS WHEREOF, we the aſſurers have ſubſcribed our names, and ſum aſſured, at Boſton, in the Commonwealth of Maſſachuſets, Sept. 17. 1794..

The words "unleſs a war or hoſtilities ſhould commence during the voyage" were erased before ſigning.—

700. David Greene .. Two hundred pounds.
700. James Fiſdale .. Two hundred pounds.
700. Samuel Brown .. Two hundred pounds
150. Caleb Hopkins .. One hundred fifty pounds
150. Nath[l] Fellowes . One hundred fifty pounds.

..900..

Policy dated 17 September 1794, underwritten in the Boston office of broker Chardon Brooks on the schooner *Nancy* by five private underwriters, covering a return voyage from Boston to Baltimore for the rate of 4%. The printed clause which would void the policy in case of war has been struck out. ALC, uncatalogued

11

Britain and America 1650–1850: Harmonising Government and Commerce

Guy Chet

Claims that merchants were enemies of commerce raiding (piracy, privateering, and wrecking) are based on assumptions that such activity was harmful to trade, and that the victims of maritime predation would take the lead in advocating and lobbying for its suppression. Historians indeed point to convoys – groups of merchant ships travelling with protective naval escorts – as an early example of successful lobbying by commercial interest groups for government action to protect merchant vessels from maritime predation, indicating a shift in public and mercantile attitudes and beliefs about piracy. However, the practice of insuring ships and cargoes against risks at sea insulated merchants and investors from much of the damage caused by armed commerce, while allowing them to continue to reap the benefits such activities offered.[1]

The fact that merchants sought security from risk in the form of both naval protection and indemnification by insurers is not an indication that they were advocates of state regulation of maritime trade. Merchants, broadly considered, were not enemies of freebooting. While seeking protection they nevertheless remained committed to retaining their traditional freedoms to engage in armed commerce as they had done in the past, both at sea and in port. Freebooting remained a profitable enterprise which financiers, merchants, sailors, and labourers were eager to exploit. British and American communities in the eighteenth and early nineteenth centuries continued to engage and invest in commerce raiding at sea, as they did in smuggling in coastal waters. Moreover, they resisted the presumption of state governments to legitimise or delegitimise certain commercial behaviours at sea.

The mechanism of marine insurance allowed financiers and merchants to yield profits from maritime predation while protecting themselves against losses due to attacks at sea. Since insurance underwriters were the primary victims of piracy, then, it was the marine insurance sector, rather than the merchant class as a whole, that lobbied national governments to mount public relations and naval campaigns against commerce raiding. In doing so, insurers endorsed metropolitan governments' ideology of state, and specifically state jurisdiction at sea.

The evolution of the insurance backstop

As late as the late seventeenth century, much commercial shipping went uninsured. Merchants protected their investments by arming their ships, but protecting one's capital investments was accomplished mostly by reducing risk: buying small shares in ships or cargoes, dividing a cargo into small consignments on different ships, and entering into agreements with other merchants to share in one another's losses at sea. The risks of privateering, too, were addressed in this fashion. Privateers were often owned and financed by associations of investors owning shares in a number of privateering partnerships, in order to diversify their investments and further diminish the risk of loss. Another form of risk-sharing involved granting sailors permission to transport their own commercial cargo on board the ships they served. This attracted motivated men to serve for reduced wages, while giving them a stake in voyages' success. Fishing vessels and privateers often operated similarly, granting officers and men shares of the catch (or the prizes), rather than wages.[2]

As long-distance trade expanded and the habit of purchasing insurance for commercial vessels began to take hold, the insurance market grew, both in the Netherlands and across the English Channel in London. Despite the growing intensity and scope of maritime predation in the so-called golden age of piracy, marine insurance pricing actually dropped steadily, and by as much as half, between 1650 and 1750.[3] This consistent price-cutting was primarily the result of greater competition among insurance underwriters. It certainly did not coincide with, and did not reflect, greater peace or security at sea.

In the 1710s and 1720s, when London began to overtake Amsterdam as the leader in the field, insurance underwriting became big business. In 1720 two insurance companies, the Royal Exchange Assurance and the London Assurance, were granted royal charters, which increased competition, especially for insuring long-distance trade.[4] Concerned that joint-stock public offerings would allow large insurance firms to

decrease premium rates further, independent underwriters cut their prices to remain in the market. Beyond this clear reduction in actual rates brought about by the expansion of the insurance market, there was also a hidden rate reduction, as underwriters switched in the 1720s – incidentally, a high-water mark for piratical activity in the Atlantic – from insurance contracts that compensated clients for 75–90 per cent of losses, to contracts promising 98–99 per cent compensation. This increase in coverage, along with a decline in the number of underwriter defaults and bankruptcies, was tantamount to reducing premiums by a further 15–20 per cent.[5] The increase in coverage might itself have been a function of lower premiums, with cheap rates inducing buyers to reduce their risk by insuring up to 99 per cent of cargoes' values.

Competition within the marine insurance industry continued to drive down rates throughout the eighteenth century, with peacetime prices remaining at roughly 50 per cent of wartime highs.[6] This indicates that competition reduced premium levels for both wartime and peacetime insurance from the early eighteenth century. Insurance rates continued to decline over the decades, despite increased predation at sea in wartime. Increases in the overall cost of wartime shipping were due primarily not to the higher rates of commerce raiding and marine insurance, but to other features of wartime economies, such as high wages, high freight rates, and supply shortages.[7]

The lower cost of insurance allowed English and European merchants to insure ships and cargoes as a matter of course. The wholesale reliance on insurance encouraged continued price-cutting on the part of underwriters. This is evidenced, among other things, by the decline of other, older, forms of risk-sharing. For example, the early eighteenth century saw a fall in the average number of co-owners of single ships.[8] The insurance market expanded further, leading to increased competition and lower rates, with the emergence of an American marine insurance industry between the 1720s and 1740s.[9] The market expanded in Britain as well during the eighteenth century, with local brokers, independent underwriters, and mutual insurance clubs offering their services in most port cities.

In America, however, independence removed the restrictions of the 1720 Bubble Act, which had prevented the formation of insurance companies, while economic conditions and a lack of regulation encouraged them. The American companies boasted greater reserves of capital and access to credit than private underwriters, which enabled them to assume greater risks. For example, a single company could cover a large cargo that would otherwise have been insured in portions by a collection

of individual underwriters.[10] The War of American Independence and the French Revolutionary Wars gave a tremendous boost to this sector, and almost immediately British underwriters began to feel the impact of competition from American insurance companies for North American risks.[11]

Reduced rates and increased coverage cut into underwriters' profits. Early on, underwriters' profit margins were quite high, but the expansion of the insurance market and increased competition came primarily at the expense of these profits.[12] Technological improvements relating to the sailing qualities of vessels, better techniques for packing cargoes to avoid average losses, and better maps played a role in reducing expected losses, and thus premiums, but these improvements would have reduced claims, and therefore cannot entirely explain the decline in underwriters' profit margins. Another factor that allowed premium reduction was improved information gathering (that is, risk assessment) by local underwriters and agents about vessels' seaworthiness, cargoes, and conditions at sea. It is apparent, however, that insuring cargoes became cheaper primarily because of increased competition among insurers, rather than any diminishment of the threat posed by maritime marauders to ships at sea. Indeed, the downward trend in insurance rates began and continued consistently during the height of the golden age of piracy in the late seventeenth and early eighteenth centuries.

Insurance and commerce raiding

Although the cheap cost and widespread adoption of premium insurance contributed to the persistence of commerce raiding, the legitimacy and popularity of freebooting were indicative of pre-existing beliefs about maritime commerce and the limits of governmental jurisdiction. During the long eighteenth century, Atlantic trade was conducted mostly against a backdrop of globalised European wars, which justified armed commerce, but even in peacetime the Atlantic was a place of chronic violence, where no single power could expect others to accept its jurisdiction, its territorial claims, and its understanding of the law. Maritime predation was therefore a feature of peacetime commerce, just as it was of war; so much so, that long-distance trade was often regarded as a 'mild form of war'.[13] The Atlantic was thus considered an extra-legal region in which mariners were free to engage in forms of violence that were unacceptable in Europe's law-bound state system.[14] Governor William Beeston of Jamaica, for example, informed the Board of Trade in 1700 that he could not rely on officers of the Royal Navy to tackle the

scourge of piracy, since they themselves engaged in armed commerce: 'The ships of war, when they get so far from England, believe themselves lawless'.[15]

Merchants and others in maritime communities resisted and undermined governmental efforts to suppress commerce raiding and illegal trade. They viewed such regulation as illegitimate and injurious.[16] As the scope of privateering increased, owing to relentless warfare, and as the legal distinction between privateering and piracy dissolved in practice into nonexistence, commerce raiding offered tremendous opportunities for riches to wealthy merchants and financiers, as well as sailors and other labourers and service providers.[17] Moreover, analysis of Dutch and British wartime maritime trade in the seventeenth and eighteenth centuries indicates that piracy and privateering did not cut that deeply into merchants' profits. The data suggest that despite the costs associated with risks to shipping in times of war – losses from hijacked or damaged cargoes and higher costs of freight and insurance – wartime profits were greater, if less predictable, than in times of peace.[18] It is quite likely that the harmful effects of war and commerce raiding on overall trade are overstated, as losses suffered by merchants were mitigated by marine insurance, and offset both by heightened demand and by the profits they drew from engaging or investing in freebooting ventures. This explains why British, French, Dutch, Spanish, and other merchants lobbied governments to maintain and expand the scope of privateering. Commerce raiding held the prospect of instant wealth for enterprising captains and their crews, for their employers, for their employers' backers, and for trading partners at port and beyond. Merchants gained more by it than they lost.[19]

Cargoes captured by marauders at sea were not consumed on board ship or otherwise eliminated from the marketplace. Pirates made their living on shore, by selling stolen goods through intricate networks of merchants, smugglers, fences, silversmiths, government officials, innkeepers, and the like. Maritime predation, therefore, was not a hindrance to trade, but an adrenalin shot for local economies. It was a central and integral part of a vast and burgeoning black market for stolen goods. It provided cheap merchandise to consumers, merchants, and governments.[20] It is inaccurate, therefore, to portray pirates as the enemies of commerce or of merchants, consumers, and governors.[21] At times they could be the trading partners or clients of governors and merchants, and at all times they stimulated trade by providing local governments, merchants, and consumers with a wide variety of cheap, tax-free goods, from foodstuffs, spices, tea, and spirits, to textiles,

slaves, military stores, and tools. As Jack Greene points out, merchants, financiers, smugglers, freebooters, as well as the general public that supported them and benefited from their trade, were part of a social continuum in the British Empire. They all shared in and shaped the materialistic, commercial, and exploitative mentality that characterised British consumer culture.[22]

The dramatic diversification of Atlantic trade during the late seventeenth and eighteenth centuries was, to a significant degree, facilitated by the vast quantities of cheap contraband brought to British and new world markets by freebooters and smugglers. The cheap cost of raw and manufactured imports explains the widening distribution of such goods. Studies of early modern Anglo-American consumer culture speak to the insatiable appetite of British consumers for imports, and illustrate how a wide variety of imported goods from all over the world found its way not only into the homes of the wealthy, but also to the backcountry homes and shops of North America.[23]

Commerce raiding offered highly lucrative jobs for sailors and other labourers in coastal towns and villages. While a common sailor earned roughly £16 per year if fully employed, a sailor on a privateer or pirate ship could earn hundreds of pounds per voyage.[24] Freebooting infused vast amounts of hard currency into local economies, bestowed political and pecuniary benefits on cooperative local officials, and provided captains and investors with handsome windfall profits. The occasional declaration of peace, with the resultant dwindling of new privateering commissions, did not change these incentives. Moreover, since peacetime commerce was understood as an aspect of international competition in this mercantilist era, those private agents who engaged in undermining rival states' commercial and economic growth could expect tacit approval and lax law enforcement from their own governments.[25] British merchants saw commerce raiding as a fantastic financial opportunity, and, rather than working to challenge the legality, legitimacy, and prevalence of freebooting, they routinely traded in pirated goods, and outfitted and invested in piratical ventures such as the pirate colony in Madagascar, which targeted maritime trade in the Indian Ocean.[26]

Insurers and trade protection

If the scale of piracy in the 1710s, immediately after the War of Spanish Succession, led to increased pressure from commercial interest groups on Parliament to protect British shipping, the Hobbesian state of war in the

Atlantic throughout most of the eighteenth century actually alleviated merchants' concerns over financial losses due to piracy. For although marine insurance rates and sailors' wages rose during times of war to meet the increased risks to life and property at sea, these expenses were offset by the benefits presented by a wartime economy: government contracts, rising retail prices caused by increased demand (especially in blockaded enemy ports), and profitable commerce raiding.[27]

Thus by the mid-eighteenth century, Parliament's legislative campaign against piracy waned owing to a combination of governments' increased need for freebooters' services, and the commercial sector's decreased anxiety over losses from commerce raiding. The outbreaks, in rapid succession, of the War of Austrian Succession, the Seven Years' War, and the War of American Independence intensified these dynamics, as these global wars made Britain's need for privateers even more acute than before, while presenting British merchants with more opportunities for profits.[28] Moreover, financing Britain's bloated national debt, which nearly doubled from one war to the next due to massive military and naval spending, offered more opportunities for men of wealth to profit from the wartime economy.[29]

Maritime predation offered merchants, financiers, and shipowners opportunities to recoup losses incurred by piratical attacks, but they also sought to shield themselves from such risks with marine insurance and protective convoys. Naval vessels in the eighteenth century were utilised defensively, for the most part, as armed escorts for merchant vessels, rather than being sent on search-and-destroy missions, since, as Admiral Edward Vernon pointed out, sending a warship to capture a pirate vessel was like sending a cow to capture a hare.[30]

Yet although protected convoys were effective in reducing the risk of losses at sea,[31] they did not engender much enthusiasm on the part of merchants. Ships often remained at port waiting for a convoy to materialise and naval escorts to arrive. It was not uncommon for naval escorts to delay because they themselves were engaged in trade in foreign ports. Meanwhile, merchantmen's costs for provisions and wages mounted, while profits from beating other vessels to market diminished. Perishable cargoes created further disincentives for convoying, as did various fees that were sometimes charged for the service.[32] Merchants regularly chose to risk the loss of their cargoes to freebooters rather than take advantage of the protection offered by naval escorts and the lower premiums or premium rebates offered by insurance underwriters when covering convoyed shipping.[33] That they did so substantiates claims regarding the profitability of trade despite high levels of maritime

predation. While losses to pirates and privateers were merely possible, convoying represented losses that were certain and predictable.

Convoying was a well-established practice by the early eighteenth century, offered to merchants in both wartime and peace,[34] but convoys worked more smoothly in trades that were monopolised. The large sums paid in import duties by commercial giants like the Dutch and English East India Companies and the merchants of the Levant Company gave national governments a strong incentive to protect company ships.[35] In trades that were more competitive and less centralised, especially in wartime economies that routinely featured sharp spikes in demand, profits depended in part on arriving to market first, before convoyed vessels arrived at port simultaneously, thus flooding local markets and lowering retail prices. In this context convoys represented considerable disincentives for merchants, which is why both underwriters and the central government attempted, respectively, to coax and coerce merchants into convoying. Insurers did so by offering lower premiums to merchants who chose to partake, while governments attempted coercion through legislation and the imposition of a tax to fund naval convoys.[36]

Marine insurance was certainly the more effective and common measure adopted by merchants to insulate themselves from the impacts of piracy and other perils of the sea. By the 1720s insuring cargoes and ships had become the norm. By the mid-eighteenth century, London had eclipsed Amsterdam as the centre of the global marine insurance market.[37] Britain's marine insurance industry, offering several million pounds in insurance annually, consisted of private underwriters and the two chartered companies. The spectacular growth of this market, declining rates, and the resultant widespread practice of insuring ships and cargoes allowed British, Dutch, French, and American merchants to make money from piracy and privateering (by investing in commerce raiding as owners, shareholders, and trading partners, if not also by actually being freebooters), while limiting their own piracy-related losses.

Underwriters understood that merchants, shipowners, and captains were routinely reckless. They broke convoy when they neared destination ports, or travelled without the benefit of convoy altogether, precisely because they insured up to 99 per cent of the value of their ships and cargoes.[38] Moreover, ransoming – the increasingly common practice of freebooters charging their victims a fee on the spot, rather than taking possession of the ship or cargo – further undermined

merchants' incentive for caution and self-preservation, while increasing underwriters' liability. Ransom could be paid in coin or given in the form of a ransom bill, accompanied by a hostage or two, to be released when the ransom bill was paid.[39] A per-diem fee for hostages' food and lodging was added to the sum specified on the ransom bill. A rare court case involved a suit brought by a French privateer against a British ship that refused to pay the ransom bill and redeem its hostage from his imprisonment in France, where the captor had to provide for the sustenance of his prisoner from his own pocket.[40]

While freebooters gained less by ransoming than by confiscating a prize, it allowed them to remain at sea, taking an unlimited number of prizes in a single voyage, rather than hauling their plunder to market or a prize court. Similarly, ransoming was preferable to merchants and shipowners, who could pay the ransom, bring their goods to market, avoid lengthy and risky court proceedings, and even collect a portion of their loss from their insurers. It wascommon, therefore, for merchants to instruct shipmasters to pay ransom up to a certain amount if captured. Insurance underwriters, under the conventions of the market, were liable to cover the ransom.[41]

Thus, insurance insulated merchants from the financial toll of commerce raiding and eliminated incentives to avoid dangerous waters, sail in convoy, or invest in other defensive measures (for example, by increasing a ship's number of guns and crew members, at the expense of cargo). The habit of insuring ships, therefore, actually increased the prevalence of seizures at sea, and even provided incentives for collusion between merchants and pirates for the purpose of collecting insurance on 'lost' ships and cargoes.[42] An 1822 report from Havana, for example, pointed to American merchants setting to sea with insured goods, while also outfitting piratical vessels themselves. Once robbed by these pirates (to which crew members, who were left in the dark regarding the deceit, offered sincere and sworn accounts), the owners were able to bring the cargo to market and also collect the full insurance payment.[43]

The rise of risk management

Since underwriters assumed the lion's share of the risks of shipping cargoes across the Atlantic, they came to bear the financial brunt of losses at sea. Just as risks at sea drove merchants to embrace marine insurance, these same risks similarly drew insurers to inventive techniques of their own to motivate crews, captains, merchants, shipowners, and governments to reduce the incidence of insurance claims. Insurers

in both the Netherlands and Britain used a variety of counterincentives to motivate owners, masters, and crews to exert their own efforts to reduce losses at sea. Underwriters offered lower premiums for cargoes travelling under convoy protection, or refunded a portion of the premium to owners whose ships arrived safely at their destinations. They also bestowed honours (such as toasts and public addresses of celebration and gratitude), awards (plaques, cups, or free admission to Lloyd's Rooms), and financial rewards on captains and crews who evaded freebooters or defended their ships when attacked. These tributes were offered even when crews were eventually unsuccessful in preventing the capture of their ships.[44]

Such countermeasures were deemed necessary because merchants often offered ship captains financial incentives to break free of the convoy and travel without escort. Naval officers and Admiralty officials repeatedly defended against criticism in the press about the Royal Navy's inability to protect the merchant marine, explaining that ship captains breaking convoy, rather than the Navy, were to blame for violent seizures at sea.[45] In rare cases underwriters even resorted to taking matters into their own hands. In 1745 a group of Dutch insurers from Curaçao sent a delegation to New York to initiate legal proceedings against British privateers, and in 1819 several insurance companies in Malta outfitted, at their joint expense, a vessel to hunt down a British pirate operating in the Mediterranean.[46]

The primary effort made by underwriters and insurance companies to minimise losses, however, was lobbying power brokers in royal courts and national legislatures both to fund and mandate convoy protection, but also to spur strong naval action against pirates, including renegade privateers and coastal wreckers. The increasing severity of punishments stipulated by law for such offences indicates that these endeavours were successful in producing legislation, if not in actually changing commercial practices at sea and in coastal towns. Under the late Stuarts, at the turn of the eighteenth century, England saw the emergence of energised, innovative, and increasingly large lobbying enterprises. Policy-related lobbying became more common as it became more effective in the eighteenth and nineteenth centuries. Since the central government appeared to be more attentive and responsive to public pressure, it paid to invest more in lobbying.[47] Because marine insurance was a rich trade, one that required large amounts of liquid capital, underwriters were well positioned and equipped to bring influence to bear on government officials.

In 1780 and again at the outbreak of the French Revolutionary Wars, lobbying efforts by Lloyd's led to parliamentary legislation requiring all British vessels conducting foreign trade to sail in convoys protected by British men of war, unless granted an explicit exemption by the Admiralty. To this end, underwriters at Lloyd's and the London Assurance provided Parliament with statistics relating the undeniable effectiveness of convoys in protecting merchantmen from attack, and reducing the number of insurance claims.[48] At different times in the eighteenth century, the Dutch and French governments also required all merchant vessels to travel with naval convoy, and imposed severe penalties on noncompliant shipmasters and owners.

In the early stages of the growth of the marine insurance industry, in both the Netherlands and England, interest groups and entrepreneurial merchants within the industry had sought the passage of laws compelling all merchants engaged in overseas trade to purchase insurance.[49] Such efforts were energetically resisted and defeated by merchants, but nevertheless highlight the divergent interests of insurers and merchants with regard to maritime trade. It is important to note that most insurance underwriters were also merchants. Selling insurance to other merchants was an ancillary financial activity, among various other commercial and financial ventures. Indeed, merchants used their credit and reputation among their peers, as well as contacts and agents in foreign ports, as assets in this opportunity. Nevertheless, merchant-insurers absorbed the risks associated with shipping when selling insurance, whereas merchants relieved themselves of these risks when buying insurance. The distinction between insurers and insured merchants became clearer with the emergence of insurance companies, which represented the transition of underwriting into a business in its own right. This development shaped the American corporate insurance market from its inception in the early eighteenth century, but was significant in the British market as well.

The divergence between insurers and their customers was evident also in attitudes toward commerce raiding. While merchants and others continued to draw profits enthusiastically from freebooting and its attendant trades in the eighteenth and nineteenth centuries, insurance companies and individual underwriters lobbied for government action against commerce raiders, advocating pursuit at sea, pre-emptive patrols, protective convoys, energetic prosecution, and harsh punishments. Such action had become a more pressing need for insurers from the early eighteenth century, as growing competition led to consistently

reduced rates, thus cutting deep into underwriters' profits. Insurers hoped to reverse this trend and improve profit margins by reducing the incidence of attacks at sea. Particularly appealing in this respect was the fact that efforts to curb maritime predation, and therefore reduce underwriters' losses, would be taken at the government's expense. By the early nineteenth century insurance underwriters were accustomed to pressing Parliament for action, and Lloyd's reports on piracies were routinely passed on to the Admiralty.[50]

The same dynamic can be observed in the US in the nineteenth century. An examination of petitions from the business community requesting federal action against pirates in the Gulf of Mexico and the Atlantic reveals that they originated from the insurance community. An 1819 petition by six presidents of Boston insurance firms to President James Monroe, published in the *National Intelligencer* on 1 January 1820, informed Monroe of numerous 'piracies and unlawful acts of armed vessels, committed, in many instances near our coast, or in the W. India seas, and some of them . . . by vessels out of our own ports'. In 1824 and 1829 insurers, both companies and private underwriters, contacted federal and naval authorities to report on continued piratical attacks, to complain about weak law enforcement enabling such attacks, and to request governmental remedy.[51]

Truly consequential in this regard was the establishment of the New York Board, a body representing the city's marine insurance underwriters and dedicated to regulating premiums and standardising underwriting procedures. First, it led to the formation of similar collective associations in other large port cities, including Boston and Philadelphia. These boards used their resources and clout in the early and mid-nineteenth century to further the interests of underwriters; specifically, they aimed to reduce insurance losses.[52] To combat losses from fraudulent claims and criminal wrecking, they pressed for the appointment of honest (that is, sympathetic) federal judges and prosecutors, sponsored and subsidised a coastal telegraph line (the New York Board helped launch the American Telegraph Company), and backed coastal lifesaving stations, which were also responsible for protecting shipwrecked cargoes and crews from wreckers and looters.

These boards, at times independently, at times in concert, actively lobbied state and federal legislatures for regulations to improve piloting standards, helped finance improvements to piloting services, petitioned and otherwise pressured local and federal authorities for navigation aids such as coastal lighting or lighting ships, helped fund the Federal Revenue Cutters Service (a precursor to the US Coast Guard),

petitioned Congress to conduct updated surveys of dangerous coastal waters, printed and distributed updated navigation charts, and promoted the adoption of 'rules of the road' to help captains avoid collisions. They also sought US naval protection for merchant shipping against commerce raiding.[53]

Like Dutch and English insurers in the previous two centuries, American insurance providers understood that underwriters' profit margins were shrinking because of lower premiums on the one hand, and continued losses at sea on the other. Like their European counterparts, American boards focused on measures designed to reduce the latter. Such efforts reflected a recognition that marine insurance relieved shipowners, merchants, and captains of the responsibility and expense of defending their own cargoes at sea. Since insurers now bore the cost of losses at sea, they attempted to limit their liability by having cargoes protected by naval patrols and convoys. In Britain, underwriter associations, most prominently Lloyd's, continued to use their influence to obtain from the Admiralty protective convoys for British shipping, and to urge the Admiralty, the Foreign Office, and the courts to respond more vigorously to piratical depredations in the Atlantic.[54]

Underwriters at Lloyd's also took the lead in orchestrating well-publicised charitable collections on behalf of British naval officers, sailors, and their families, which contributed to a more amiable and cooperative relationship between the Admiralty and commercial interest groups. The Admiralty's commitment to protect British shipping received positive press coverage in commercial centres such as London, Bristol, and Hull, which had a similar effect, bolstering the popularity of supportive Admiralty officials, and the public standing of those merchants and members of Parliament who had petitioned the government for convoy escorts. These port towns repeatedly voted to fund the recruitment of seamen for the Royal Navy by offering bounties for volunteers, and setting up schools to train 'vagrant boys' for service in the Navy. These patriotic measures helped to meet the Navy's manpower needs, and thus enabled merchants both to protect their own ships' crews from impressments, and to curb the upsurge in sailors' wages. Such fundraising drives (as well as sponsorship for monuments and memorials, and conspicuous contributions to naval charities such as widows-and-orphans funds) also allowed merchants to establish genteel credentials as benefactors of the Navy.[55]

During the course of the War of Austrian Succession, the Seven Years' War, and the American War, the working relationship forged between the Admiralty and merchants' associations in England and the West

Indies succeeded in establishing personal bonds between merchants and naval officers. Thus in 1778, when Admiral Augustus Keppel faced a court-martial for his failure to attack the French fleet with sufficient vigour, he was supported by a group of London merchants whose captured cargoes Keppel had tried to recover from Mediterranean pirates 27 years prior, during the War of Austrian Succession.[56]

The cooperative relationship promoted and sponsored by the insurance industry between the Admiralty and commercial interest groups was certainly economically and politically beneficial for the financial and mercantile sectors, as merchants and manufacturers grew increasingly dependent on long-distance trade. Between 1700 and 1770 English manufacturing for the English market increased by 14 per cent, while production for export increased by 156 per cent.[57] Yet royal administrations supported commerce protection not only because of organised lobbying by the marine insurance industry and large trading firms through Parliament and in the press. Self-interest was also a motivating factor, given that secure trade generated tax revenues for the Treasury in the form of customs duties.

Trends in Britain's tax policies, and in particular the absolute and relative growth in revenues from indirect taxation, indicate that the Treasury's ability to manage state debt rested upon the compliance of a relatively small circle of merchants and manufacturers who paid excise and customs duties, then recovered these costs by raising retail prices. The Admiralty's willingness to expend its resources on commerce protection, then, represented an investment by the government in its own customs revenues, and reflected the credit-hungry Treasury's growing dependence on the merchant class. The fact that it was these same merchants, manufacturers, and financiers, including insurance companies and underwriters, who extended credit to the government and received lucrative state contracts to supply the Army and Navy, explains the growing willingness of this commercial and financial elite to acquiesce, in time, to increased rates of taxation.

Securing the seas

The economic and commercial culture of the sea conflicted with the objectives and the bureaucratic logic of the emerging nation-state. Commerce raiding and illegal trade represented international networks that clashed with central governments' mercantilist attempts to constrain, regulate, and tax commercial activity at sea. British mariners, merchants, and consumers viewed such efforts as both politically

illegitimate and economically harmful. Factoring in piracy-related losses against profits from freebooting and legal and illegal trade, long-distance commerce remained a popular and lucrative enterprise, especially in wartime, when maritime predation was at its highest. Merchants therefore invested in both commerce-raiding ventures and methods to cope with risk, such as loss-sharing agreements, naval escorts, and marine insurance. The growth of a robust marine insurance market which offered relatively low rates enabled British and American merchants to draw profits from commerce raiding and contraband while reducing piracy-related losses by insuring their cargoes and ships.

Since insurance underwriters, more than merchants and shipowners, were the ones absorbing piracy-related losses, they actively lobbied the governments of both Britain, and later the US, for anti-piracy activism at sea and in court, and for a naval policy of commerce protection. They also offered merchants and crews various incentives to avail themselves of convoy protection, or to otherwise protect their cargoes. Finally, they underwrote other initiatives, both privately and in cooperation with state coastal services, to improve and secure maritime navigation. A policy of commerce protection, coupled with patriotic public relations efforts by the Admiralty, the merchant elite, and the marine insurance industry, strengthened financial and social ties between the merchant and manufacturing community, the Admiralty, and the Treasury.[58] This two-pronged approach in time served to generate a confluence of interests and ideology, and thus a sense of partnership, between merchants, the state, and underwriters. While many in the eighteenth and nineteenth centuries remained committed to armed commerce as a legitimate trade, one beyond the jurisdiction of landed governments, modern attitudes toward commerce raiding, smuggling, and state jurisdiction at port and sea indicate just how successful this effort was in the long run.

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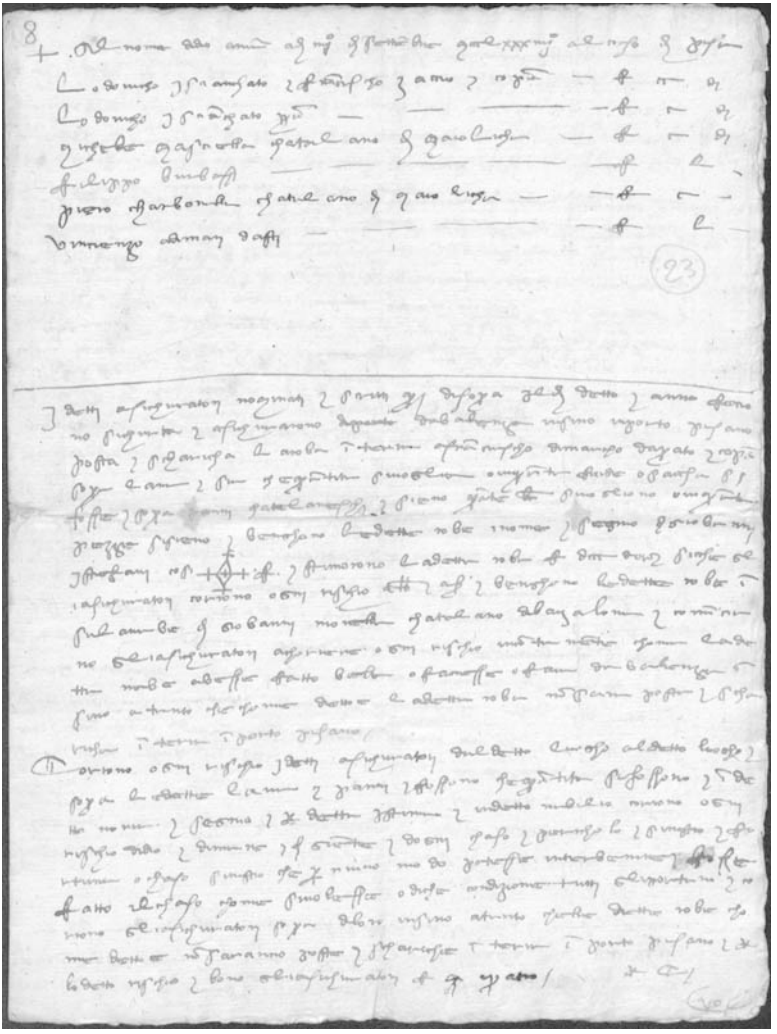

Policy dated 4 September 1383, underwritten in Pisa, and one of the oldest extant. The six insurers are covering wool and cloth Catalans worth 600 florins, owned by the firm Datini, to be shipped from Valencia to Pisa on the ship of Master Giovanni Morella, for a premium of 4%. Only the first page of three is shown. State Archives of Prato, Datini 1158 cod. 8

12

From Genoa to London: the Places of Insurance in Europe

Peter Spufford

Two sequences of commercial centres existed in late medieval Europe. One comprised international financial centres such as Venice, to which people came from many places to transact financial business. The other included places such as Florence, from which merchants and bankers spread out and transacted business in many other places, but where most commerce was local, and most of the participants were natives.[1]

Venice developed from its commercial and industrial base to become the most important financial centre in Europe, the key city for arranging bills of exchange, marine insurance, commercial and governmental loans, and for dealing in precious and base metals. The centre of this activity was in front of the *loggia dei mercanti*, at the south end of the Rialto Bridge. The 'Island of Rialto' was fifteenth-century Europe's most concentrated financial quarter. An example of the cosmopolitan range of the financial community at Venice is revealed by an entry that Girolamo Priuli made in his diary in 1499. The bank of Alvise Pisani, the only large private bank still open in Venice, was in danger, because Pisani had too little cash in hand, and too much invested abroad. He was rescued by a 100,000 ducat guarantee fund put together by his relatives, friends, and 'almost all the Rialto. When the foreigners saw this, to win good will, they all and of every country, Catalans, Spaniards, Marranos, Florentines, Pisans, Milanese, Lucchese, Sienese, Bolognese, Genoese and Romans and of every other people that is on the Rialto made pledges.'[2] Across the Grand Canal, the increasingly important German merchants were based in the *Fondaco dei Tedeschi*, including the Stromers and the Kress, and later the Welser and the Fugger, with their supplies of central European gold and silver. They and Priuli's 'foreigners' make a rough list of Europe's financial centres.

But Venice was also a centre from which merchants came. Venetians travelled in large numbers to the world by sea (although rarely by land).

The commercial revolution

As Luisa Piccinno points out (Chapter 2), the so-called 'Commercial Revolution' of the long thirteenth century provided the backdrop to the development of marine insurance. The process of trading was transformed, as merchants who travelled with their goods were replaced by merchants who remained in a head office, with agents or subordinates permanently resident in the principal places where they did business. Professional carriers transported goods by both land and sea.[3] The final evolution of the bill of exchange and premium-based marine insurance came relatively late.

Notarial documents from Genoa at the very end of the twelfth century provide the first evidence of local banking, which began in many other cities during the thirteenth century. Banks in Venice were the first to differentiate current and deposit accounts. The latter paid interest, while bankers lent the capital for medium-term investment. Meanwhile Venetian documents from 1197 show that state finance – primarily for war – began to depend on loans from leading citizens, which were repaid as rapidly as possible from indirect taxes. By the mid-thirteenth century companies were being set up for terms of years, replacing *commenda* contracts for single voyages. Large numbers of individual shares in such companies (including for mines, mills, and ships) could be sold during the term without breaking up the companies. Commercial financiers could acquire initial shares (the *corpo*), gaining rights to the profits at the end of the term, or to provide additional finance (the *sopracorpo*), which attracted fixed rates of interest.[4] By the mid-thirteenth century some northern Italian companies established permanent branches scattered around the Mediterranean and the Black Sea, then permanent agents at the Champagne fairs. By the second half of the century some opened branches in Bruges, and later in London and Paris. Merchants used ad hoc arrangements to send messages and documents from place to place.

Marine insurance fitted very neatly into this evolving commercial world. Various experiments in spreading risks at sea had been made, alongside those in making payments over distance without having to ship physical money or bullion. Piccinno shows how these experiments evolved into premium insurance, at the same time, more or less, as the standardised four-party bill of exchange emerged.

Other evolutions happened in the fourteenth century. The single multi-branched international company was replaced by a group structure, with a holding company in the home city and subsidiary companies elsewhere. The best-documented business of the middle ages, the Datini group, had this structure, as did the Medici and the Fugger groups later. The Alberti group of Florence, formed in the middle of the fourteenth century, may have come first. Meanwhile ad hoc fourteenth-century communications arrangements were gradually replaced by regular courier services across Europe. They were organised initially by cities such as Florence and Lucca, with their many merchants residing abroad. The efficacy of bills of exchange depended on such regular postal services, and so, I believe, did marine insurance.

Notaries disappeared from exchange records when bills of exchange became routine. In parallel, notarised deeds of insurance were replaced by brokers' routine forms. This means that the huge number of insurance contracts drawn up by the Genoese notary Branca Bagnara in the five years between 1427 and 1431 – more than one a day – represents only a portion of the marine insurance underwritten in Genoa then, as Piccino shows. In dispute is whether this was a large or a small portion, but what seems significant is that his deeds so frequently reveal active merchants insuring each other. Of 432 underwriters, no fewer than 206 were also among those insured.

A generation earlier, Francesco Datini was both an underwriter and an insured. He shared in underwriting more than a thousand policies, but on principle never bore more than 150 florins of risk on any one.[5] Many were underwritten by the Pisan firm in his group of companies on cargoes being shipped from Porto Pisano, but the firm also assumed cross risks. For example, in 1396 it was one of fourteen underwriters of 1,250 florins worth of leather shipped from Majorca to Venice. Datini insisted that all his own goods were insured, including even a Tartar slave girl sent from Porto Pisano to Barcelona (covered in 1401 for 50 florins).[6] The policy reproduced on p. 270 is of one of the oldest covering his own goods, underwritten in 1383 in Pisa by a syndicate of six. It covered Spanish wool and Catalan cloths worth 600 florins shipped from Valencia to Porto Pisano for the unexceptional premium rate of 4 per cent. The following year Datini noted that premiums of 4 per cent were general on cargoes shipped to and from Porto Pisano to Naples, Palermo, Tunis, and Barcelona.

A generation later than Bagnara, the Medici too were both underwriters and insureds. Like Datini, they insisted that the managers of their Bruges and London firms had all their goods in transit covered,

unless shipped aboard armed Florentine or Venetian galleys. The Medici firms also engaged in underwriting. For example Bernardo Portinari, the manager of the Bruges business, shared in underwriting a mixed cargo including tapestries, linens, furs, and mercury from Sluys, the port of Bruges, to Porto Pisano. The firms also procured cover for each other. In 1455 the Venice branch arranged for the London office a syndicate of fifteen Venetian underwriters to cover 1,600 ducats worth of cloth, wool, and lead from London to Porto Pisano aboard a carrack, for a premium of 7 per cent. However, only 3 per cent was charged later in the year to cover 1,200 ducats worth of wool from Southampton to Porto Pisano, since it was in a galley. The risks both of accident and piracy were felt to be much less in such armed vessels.

Andrea Addobbati (Chapter 3) emphasises the close correspondence in fifteenth century Venice, as in Genoa, between the inner circle of underwriters and those insured, and that they were members of the cities' aristocracies. The network element is clear in the insurance of cross risks – voyages which do not touch at the port where the underwriters reside. Venice was at the centre of the Medici network, and in the mid-fifteenth century looks to have become the principal centre for underwriting, as it did for international exchange.[7]

For insurance to be practicable, underwriters needed to know of the departure and arrival of insured vessels, particularly for cross risks. They depended on a network of couriers to carry information. After the bankruptcy in the mid fourteenth century of some major Florentine merchant houses that had run their own couriers, seventeen of the survivors agreed in 1357 to launch a common courier service to Barcelona and Bruges. Shortly afterwards, regular services were run out of Barcelona, Milan, Genoa, and Lucca. By the end of the century services around the western Mediterranean were already sufficiently developed for Datini to require the managers of his subsidiaries to write to him weekly. They often wrote to each other as well.

Although financial centres to which people went, like Venice and Bruges, grew up from a foundation of industry and commerce, they tended to survive as financial centres for some time after industry and trade had moved elsewhere. This was a normal pattern for six centuries in different cities.[8] Amongst the centres from which merchants came, Genoa, Florence, and other Tuscan cities were the most important at the earliest stage, and it was in this milieu that premium insurance developed, along with the other novelties of the commercial revolution. Barcelona was not far behind. At the end of the fourteenth century merchants in Augsburg and Nuremberg started imitating these Italian

innovations, as did merchants from Burgos in the fifteenth, although neither marine insurance nor land trade insurance emerged in the German cities, while Burgos, although inland, became a key centre for marine insurance.

Amongst the centres to which merchants went, Venice and Bruges were the most important in the fourteenth century. Venice held its position into the seventeenth century, but was not alone in southern Europe. During the fifteenth and sixteenth centuries, Lyons, Lisbon, Seville, and Leghorn were less important, but still significant financial centres to which people went.[9] Bruges did not last as a key financial centre into the seventeenth century. Its decline was at the beginning of a northern European sequence.

Bruges, 1300–1480s

The fourteenth-century financial importance of Bruges arose from its industrial base and commercial role. Its industry, exports, and trans-shipments proved a greater attraction to merchants from the Mediterranean than the great consumption centre of Paris. Bruges lay at the coastal end of an industrial belt that stretched across the southern Netherlands to Cologne, and became the focal point for the export of woollens produced there, and for its linens and metal goods. At the same time it became the key marketplace for English wool, and grain, furs, and wax brought by Baltic merchants. When Italian merchants, occasionally at the end of the thirteenth century, and more regularly in the early fourteenth, began bringing goods by galley and carrack straight from the Mediterranean, Bruges was the natural place from which to distribute such luxury goods to the rulers and courts of Flanders, Brabant, Hainault, and the principalities of west Germany. It was the point at which Mediterranean merchants met Baltic traders, so its outports became key places for trans-shipment of goods (arranged, of course, in Bruges).

As a consequence, a great many communities of foreign merchants, or *nations*, were established there by the fifteenth century: Florentines, Genoese, Milanese, Venetians, Lucchese, Catalans, and two groups of northern Castilians, from Burgos and the coastal cities. The Hansards and English came from the north. Fifteenth-century Bruges was as cosmopolitan as contemporary Venice. Business meetings took place in the open air of the Place de la Bourse. Florentine and Genoese consular houses opened onto this square.[10] The business transacted was a smaller version of that done in the Piazza di Rialto.[11]

London, Hamburg, and Burgos, 1300–1480s

People also went to subsidiary financial centres in Paris and London. The Italian communities there were in many ways dependent on those of Bruges, which thus became the key place for financing the business of northern Europe. At first sight it is surprising that Paris was dependent on Bruges and not vice-versa, since Paris had the largest concentration of customers for Italian goods. However, when Venetian galleys and Genoese carracks rounded Spain, they made for the Zwin, not the Seine, because they were looking to purchase goods, as well as sell them, and Paris largely ceased to be a major consumption centre when the a French royal court decamped in the 1420s.

Although a much smaller consumption centre than Paris in the fourteenth century, London was in many ways already more important. It was not merely the gateway to the royal capital at Westminster, but also an industrial and commercial centre in its own right. Venetian and Genoese vessels called at London's outports, Southampton and Sandwich, and in the fifteenth century increasingly at London itself, by which time an extraordinary concentration of England's foreign trade passed through its port.

Just as in the Piazza di Rialto and the Place de la Bourse, London had an open-air meeting place for business, in Lombard Street. The earliest Italian merchants coming there had arrived by the end of the thirteenth century, and by the 1330s the Bardi of Florence had one of the largest establishments, on the north side of the street. It was later the King's Great Wardrobe, where the royal household made its purchases. By 1378 the King's exchange had also moved to Lombard Street, and in the fifteenth century it became the place where, in the late morning and early evening, merchants congregated, with licensed brokers, for a whole range of commercial and financial business, including shipbroking and the drawing and acceptance of bills. Gradually the way business was carried on there became known as the 'customs of Lombard Street'.[12] Adrian Leonard (Chapter 7) shows how marine insurance policies were written in Lombard Street in 1547, and probably more than one hundred years earlier. In 1426–7, in an insurance dispute, Alexander Ferrantyn used the Florentine interpretation of the Law Merchant, which suggests that Florentines were the dominant marine insurers in London, as they were in exchange dealing. Florentines had been important there since the first half of the fourteenth century; in the 1470s Castilian merchants in Andalusia and London trading Spanish wine for English cloth took it for granted that the cargo in both

directions should be insured in London.[13] However, London was at a relatively early stage in becoming a major European financial centre.

Trade in the North Sea and Baltic was organised very differently from trade in the Mediterranean. Division of labour was less, and in the fifteenth century many merchants still travelled with their goods. Although much smaller in scale, this trade has been studied in enormous detail.[14] Of the key Hanseatic league cities, Lübeck on the Trave, leading into the Baltic, and Hamburg on the Elbe, leading into the North Sea, Lübeck was the more important for much of the middle ages, but Hamburg was gradually overtaking it.

Hamburg was built at the confluence of the Alster and the Elbe. Its centre was split into halves, the Count's Neustadt and the Bishop's Altstadt, divided by a small stretch of water, the Nikolaifleet. The halves were joined by the Trostbrücke, which as early as 1266 was known as *pons campsorum*. Like the Piazza del Rialto, the Place de la Bourse, and Lombard Street, this bridge became the general open-air meeting place for business dealings. By the late fourteenth century Hamburg had three great merchant corporations: the *Schonenfahrern* trading to Schonen (now Skåne); the *Englandfahrer*, trading mainly to London's Steelyard; and the largest group, the *Flandernfahrer*, trading to the Hanseatic *Contor* in Bruges. However, from the late fourteenth century the financial centres developing in south Germany were more important than Hamburg or Lübeck, and were able directly to imitate many Italian methods of doing business.

Burgos, the original capital of Castile, had long been a substantial city. Fourteenth-century plagues reduced its population to around 27,000 inhabitants by 1400, but it remained the largest city in Germany after Cologne.[15] Burgos merchants may have begun as suppliers to the court, but by the thirteenth century they were engaged in international trade. Like Genoa, Florence, Lucca, and Barcelona, it was a city from which merchants came, not one to which they went. Colonies of Burgaléses, especially members of its thirty key families, were found in all Europe's important commercial cities, but Burgos itself had only native inhabitants, including a large Jewish community so long established that it was no longer 'foreign'. Like those of Augsburg, Burgos merchants learned from Italians in Seville and Bruges how to organise business in companies with shares, and to bring together commercial capital, bills of exchange, premium insurance, and courier networks.

Burgos merchants had privileges and a large colony in Bruges by 1280, formalised by the creation of a consulate in 1428. Over the course of the fifteenth century they established other consulates in Rouen, Nantes,

and Florence.[16] They came to finance the shippers of Bilbao and other ports along the north coast of Castile and Navarre; some owned ships there, organising and carrying to Flanders Cantabrian iron, Gascon and Castilian wines, and Toulouse woad. From the early years of the fifteenth century, Burgaléses came to dominate the Castilian wool trade, buying Mesta wool from as far south as Cordoba, but most heavily at the new fairs created in the 1420s in the Douro valley, the most famous of which were at Medina del Campo. They exported much of the wool that they acquired through Bilbao to Bruges, Rouen, and Nantes. Spanish wool reached Brabant in the Low Countries by at latest 1407, and rapidly took over from English wool for the region's cloth manufacture.

It is not surprising that the merchants of Burgos, particularly working through Medina del Campo, were heavily involved in exchange dealings between all the places where they traded, and in marine insurance on all the routes they plied or financed. This growing trade was insured at Burgos by 1468 at latest, helped by the city's place at the centre of an information network. Burgalés merchants were thus ready to finance and insure the larger sixteenth-century colonial trade of Lisbon and Seville.

From Bruges to Antwerp, 1420s–1560s

The fifteenth-century strength of Flanders, southern Brabant, Namur, Liège, and Cologne rested on woollen and linen cloth and metalware manufacturing, which provided an industrial hinterland for Antwerp. This base was reinforced by new industries that sprang up in the first decades of the sixteenth century, such as silk manufacture and crystal glassmaking. The need to transport goods to and from the city provoked road improvement and the digging of canals with locks, as had been done earlier around Bruges. Antwerp's commerce began at intermittent fairs, which were gradually extended to a complete annual cycle, and came to be the key places where Bruges-based merchants of many nations met those coming overland from western Germany, particularly from and through Cologne. Foreign businessmen naturally responded. In the 1430s the Borromei of Venice, although still nominally based in Bruges, kept a presence in Antwerp for eight months of the year. The Hanse, still dominated by Lübeck, moved their corporate factory from Bruges to Antwerp in 1436–8, and settled permanently in 1467.

Londoners too had an early permanent base in Antwerp. English cloth exporters, the 'Merchant Adventurers', were not allowed to sell English woollens in Flanders, but could in Brabant. They began to keep agents

in Antwerp between fairs, and had rented warehouses year-round in the Bullinckstraat (which acquired the nickname *Engelandstraat*) for some decades before 1474, when the Antwerp magistrates gave them the spacious mansion in that street owned by the aristocratic Van der Werve family. Since much English cloth was exported unfinished, a considerable finishing industry, particularly dyeing, grew up in and around Antwerp, preparing cloth for sale to north and west Germany.[17]

The Portuguese also established an early, permanent Antwerp base. They had not been particularly significant until, in the fifteenth century, Portuguese merchants began importing sugar from the Madeiras. Just as cloth-finishing sprang up around Antwerp, sugar refineries were built to process Madeira and later Canaries sugar. Antwerp refining expand further with the early sixteenth-century arrival of Brazilian and Caribbean sugar. The industry had been concentrated around Venice, and Italian entrepreneurs, seeing the new opportunity, moved with their capital to Antwerp. Gold and ivory from the African mainland soon followed. Much of this Portuguese trade was financed and insured from Burgos and Genoa.

Burgos merchants in the Low Countries retained their consulate in the city, but increasingly functioned in Antwerp. Genoese merchants similarly moved there. Although eclipsed in the eastern Mediterranean in the fifteenth century by the Venetians, the Genoese maintained a very strong presence in the southern Iberian peninsula, at Malaga, Seville, and Lisbon, the latter cities proving to be the great growth centres in the second half of the fifteenth century, and in the sixteenth, when Seville developed an enormous trade with the New World. It began with the exploitation, particularly by the Genoese, of the Caribbean for sugar. In the second half of the century this large trade expanded yet further after the discoveries of silver in large quantities at Potosi and Zacatecas, and the Genoese again became far more important than the Venetians in trade, and surpassed the Florentines in finance.

In the north, too, change was taking place. Shippers at Antwerp from Zealand and Holland took over the Baltic trade of the Hanseatic merchants at Bruges. Initially Cologne merchants dominated the overland trade from the Antwerp fairs eastward to the Elbe and southwards to the Frankfurt fairs, where they traded with Nuremberg and Augsburg merchants like the Kress and the Stromer, who themselves dominated trade between Frankfurt and northern Italy, particularly Venice and Milan. By the end of the fifteenth century a new generation of south German merchants, Fuggers and Welsers, came to dominate the entire land trade between Antwerp and Venice, as well as controlling mining from

Thuringia to Slovakia. Their access to central Europe's silver production from the 1460s gave them enormous commercial clout.

Under these changing circumstances Antwerp gradually took on the commercial mantle of Bruges. It exported local products, imported for the local nobility, and acted as a trans-shipment point between Italy, Spain, and Portugal in the south, and the countries of the North and Baltic Seas. In the 1460s tolls on seaborne goods going into or out of Bruges on the Zwin began to decline, just when the proceeds from the Great Water Toll of Antwerp were increasing rapidly.[18] Yet finance and insurance remained securely in Bruges, where exchange rates were fixed daily under the wooden loggia of the Florentine consular house. Goods were increasingly delivered in Antwerp, but payment continued to be arranged in Bruges.

The gradual commercial shift to Antwerp was accelerated by the political shock of the civil war of the 1480s between supporters of Austrian Archduke Maximilian, as regent for his young son, Philip the Fair, and those who backed an indigenous noble 'Council of Regency'. Bruges lay in the area controlled by the nobility, and Antwerp in Maximilian's territory. Large numbers from the Italian communities moved from Bruges to Antwerp for the duration of the war. When peace was restored and Philip declared of age, to rule from Brussels and Mechelen with the advice of an indigenous noble council, many foreign merchants returned to their consulates and property in Bruges, but many more remained in Antwerp, and the commercial dominance of Bruges came to an end.

In ensuing years the commercial pull of Antwerp's rapid growth meant that, little by little, those who had returned to Bruges went back again to Antwerp, which only then replaced Bruges as the financial, as well as the commercial and industrial, focal point of northern and western Europe. A lag of about four decades separated the decisive shifts between the cities of commercial activities (in the 1480s) and the money market. Dave De ruysscher (Chapter 4) shows how a similar lag applied to marine insurance. The first evidence of insurance contracted in Antwerp dates from 1531. Until then, insurance remained in Bruges, or in centres happy to cover cross risks, like Burgos and Florence.

In 1485 a wooden loggia called the *Buers,* after the *Place de la Bourse* in Bruges, was erected in Antwerp. Brokers could be found there to bring together merchants who wished to deal in commodities.[19] In 1515 the bourse was replaced in stone by a northern gothic version of the *loggia dei mercanti* in Venice. In 1531 the cramped *Beurs* was replaced by a much grander arcaded courtyard, paid for by the city. It became the model for bourse and exchange buildings elsewhere in northern Europe.

The famous cartographer Ortelius was born in Antwerp in 1527. It was already the commercial metropolis of northern Europe, and was becoming its dominant financial centre. As a young man he saw its greatest prosperity. He died in 1598, when Antwerp had been reduced from the great metropolis of the west to a place of only regional commercial importance for the Spanish-occupied Netherlands. Nevertheless, it retained its financial leadership for a little longer. The boom went on into the early 1560s, when the key financiers were no longer Florentines, but south Germans, who had learned from the Italians and overtaken them. The commercial houses of Augsburg and Nuremberg had dealt with Tuscan businessmen, particularly Florentines, at Venice and Bruges, and had adopted their systems of commercial finance.[20] By the early sixteenth century the Fugger group surpassed in scale the previous largest business in Europe, the Bardi company of early fourteenth-century Florence.

Antwerp in August 1540 was the earliest place after Venice in which lists of prices and exchange rates were printed for distribution. They continued only for a generation, after succumbing to the calamities of 1570s and 1580s, but were succeeded by similar lists in Amsterdam, Hamburg and London.[21]

London, Cologne, and Hamburg, 1450–1550

At this time England became a trading nation in the Mediterranean, but London remained primarily a centre to which merchants went, rather than a place from which they came. Limited amounts of marine insurance had been contracted in London for a long time, but in the 1520s London merchants generally insured their Mediterranean trade in Florence. Yet it had long been the case that insurance could be underwritten at any place in a network. Unlike other commercial centres, London still had no regular postal service, and relied on foreign postal systems, so the information necessary to build an insurance market may not have been available in a timely fashion.

Guido Rossi (Chapter 6) shows the English marine insurance changeover point in the 1540s, which fits neatly with the effects of the debasements of 1542–51 on English trade. Exports expanded enormously, imports shrank, and import substitution began. London ceased to be such a good place for foreign merchants to come, while local merchants profited from increased opportunities abroad, principally in the Netherlands.[22] Although England returned to a strong coinage in the 1550s and English exports shrank back, it was still a turning point, when

London began to become a centre from which finance came, rather than one to which it went. Rossi points out that up to the 1540s policies underwritten in London were still written in Italian, as in Florence. From the 1550s they were more often, and then entirely, written in English. In these debasement years we can see a transition from Italians underwriting in London to English underwriting in London, but still along the lines of the Florentine statute of 1524.

Cologne had been in the middle ages one of the most notable commercial centres of north-western Europe. Cologne merchants had dominated the overland trade from Bruges eastwards to the Elbe and southwards to the Frankfurt fairs, with a great deal of shipping downstream to the Rhine mouths. In the fifteenth and sixteenth centuries their trade was increasingly challenged by merchants from south German cities who were no longer content to trade only as far northwards as Frankfurt, but sent goods all the way to Bruges, and then Antwerp. In the mid-sixteenth century the Cologne city council felt that it could consolidate the trade in goods, money and exchange if it was to erect a *Börse*. So by a decision of 1553, merchants were to be permitted to gather in the open air in the Bolzengasse between 11:00 and 13:00. This gathering *zum Bolze* functioned as a general commodity exchange. After 1553, those who gathered in the *Börse* also dominated exchange business.

When Antwerp was flourishing, Hamburg was too, and began to become independent of Hanseatic control. In 1517 Hamburg's city council approved the consolidation of the three older merchant corporations in the city into a single new, powerful, self-governing institution, the Honourable Merchants of Hamburg (*Ehrbaren Kaufmanns zu Hamburg*), which strove to advance the city in all directions. Meanwhile some old plans came to fruition. For example, the Alster-Beste canal, planned in 1448 to join Hamburg and Lubeck, was actually completed in 1526–9, boosting Hamburg's trade.

Burgos and Rouen were not really subordinate to Antwerp, although both depended greatly on what happened in the Low Countries. We have seen how Burgaléses, having built up finance and trade in Lisbon and Seville in the fifteenth century, were ready for the new opportunities presented in the early years of the sixteenth century in India, Brazil, and Spanish America. The quantity of new colonial goods meant a change to the scale of the insurance needed, much of which was provided either in Burgos, or by Burgaléses in Antwerp.

For the first three quarters of the sixteenth century Burgos continued as one of the principal European markets for marine insurance.

Since it lay far inland, all the risks insured were cross risks, and it relied on an active network of informants. The Burgos account book of Juan de Castro gives details of 207 policies underwritten between 1481 and 1511, insuring the transport of wool, cloth, dyestuffs, and coin from Castile and Portugal to and from Flanders, England, Normandy, Brittany, Portugal, and Italy.

Insurance at Burgos was given security by the standardisation of policies in 1509 and 1514, the Ordinance of 1538, and the registration of all policies. It is possible to see the scale and detail of insurance at Burgos from the few surviving registers of insurance. Each registered policy gives the name of the insured and his residence, the name of the ship and its master, the route to be taken and the current safety of the route, the dates of departure and expected arrival, the goods to be insured, and at whose valuation. Some 8,195 policies were registered in the eight years 1565–73, an average of over a thousand policies a year. The detail allows for a great deal of analysis, which Hilario Casado Alonso has proceeded to do in a series of articles.[23] Much of the trade insured was from the Cantabrian coast to Seville, the Low Countries, England, France, north Germany, and even the Baltic. Insurance was made on ships fishing off the coasts of Newfoundland, and along the Mediterranean coasts of Spain and Italy as far as Ragusa and Venice. Alonso looked at 1,610 policies that insured Portuguese trade. The largest number were for journeys from Lisbon to and from Antwerp, using Middelburg/Arnemuiden for trans-shipping into Antwerp. Large numbers were also for Lisbon-Rouen or Viana-Antwerp, and outside Europe, from Porto, Lisbon, and Viana to and from San Salvador de Bahia and São Tomé-Lisbon, and also India-Lisbon. By far the largest numbers of those insured came from Lisbon and Porto.

We are able to compare the scale of marine insurance in Antwerp and Burgos at a single moment. Antwerp looks only slightly more important. Dave De ruysscher tells us that Juan Henriquez, a member of the Portuguese colony in Antwerp and probably a new Christian, as an insurance broker, wrote 1,621 policies in 1562 and 1563. At the rate of three policies a day, he equalled, by himself, the average daily rate of those registered in Burgos in the eight years between 1565 and 1573. More policies were of course written in Antwerp by other brokers. However, De ruysscher points out that he was by far the most important insurance broker there at the time. A large part of Henriquez's policies were written for Italian, Castilian, and Portuguese merchants, particularly those bringing sugar and precious metals to Antwerp from Lisbon. Other policies concerned trade from Antwerp into the Baltic or

the Mediterranean, but very few of his policies concerned trade with America, unlike the equally numerous policies being written in Burgos at the same time.

The Consulate of Burgos from time to time put out lists of standard premiums to be charged for different routes, and when a new route was envisaged, it calculated a new premium. To accomplish this, frequent letters were needed by the consulate from its own subsidiary consuls in Antwerp (nominally Bruges), Rouen, Nantes, and Florence. Since such an extensive marine insurance network depended on an enormous circulation of information, the *Universidad de Mercaderes* of Burgos regarded the maintenance of its own postal network as very important, without needing to rely entirely on postal networks run by other people. It ran regular courier services not only to its subsidiary consulates, but also to some other cities where Burgos merchants were active, including Toulouse, Bilbao, and Seville. Five per cent of the expenses of the sixteenth century Consulate of Burgos was devoted to running its own postal network.[24] When in 1505 Francesco de Tassis was made *Correo Mayor de Castilla* by Philip the Handsome, the Consulate of Burgos fought his attempt to monopolise postal services in the courts, and won a continuation of its own service. Unfortunately, the Tassis post was much quicker. In 1509 the Burgos couriers took 22 days to reach Bruges in summer, and 24 in winter. But the Brussels-based Tassis couriers alleged in 1519 that they could reach Burgos in seven days in summer and eight days in winter. Tassis could do this because he employed relays of couriers and horses, and had his own relay stations. Nevertheless, Burgos kept its own, much slower service until 1570.

Simon Ruiz's career extended from 1547 to 1605, beyond the collapse of Antwerp, and through the decline of Burgos. His papers in Medina del Campo are the most voluminous of any early modern merchant, and are exceeded in quantity only by those of Francesco Datini two centuries earlier. As well as 165 registers of accounts, his papers include 21,000 bills of exchange, 54,000 letters received, and 20,000 assorted commercial documents. Henri Lapeyre did a great deal of analysis of these papers, and Alonso did more. Ruiz depended on postal services linking him to a network of factors, partners, and commission agents. His letters show that the price of post halved between 1554 and 1598, both for destinations within Spain and abroad.[25] Ruiz gave up underwriting in 1568, but he went on insuring his own goods, generally, but not always, in Burgos or Rouen. Lapeyre pointed out that he also had some goods insured at Lyons. A letter to Ruiz in 1563 explains that there was a great deal of insurance at Lyons '*por la mar de levante*'.

Rouen was a considerable commercial centre in its own right. A colony of Burgos merchants settled there almost as soon as was possible, and the first large contingent of Spanish wool that we know about was shipped there in 1458 for Normandy. Burgos merchants were also bringing in dyestuffs and Tolfa alum, all of which they thought important enough to have a consulate in the city. By the end of the fifteenth century Burgaléses living in Rouen were both underwriting policies on Norman shipping, and selling bills of exchange. Members of leading families settled there permanently, were naturalised, and married into the local elite, acquiring seigneuries, fiefs, and noble titles. As well as Burgos shipping, chiefly out of Bilbao, Genoese carracks also called there, but not Venetian galleys. Portuguese shipping from Lisbon also came to Rouen and its outports. The city was becoming, like Antwerp or London, a cosmopolitan place to which people came.

Centres for insurance continued to be the same as centres for exchange and other financial services. Addobbati points out that until the late sixteenth century, Florence, Genoa, and Venice maintained prominent positions as centres for marine insurance. For much of the sixteenth century, so did Burgos, Rouen, and Antwerp itself.

The decline of Antwerp

The long-running expansion of Antwerp's trade came to an end in 1563, when Philip II foolishly banned English trade to the Low Countries, ruining the city and the linen manufacture and cloth finishing trades in its hinterland.[26] English merchants simply moved their principal cloth outlet, and other merchants began to leave. In 1567 the situation became appreciably worse, when Alva's newly arrived Spanish army inspired terror, accelerating the flight of entrepreneurs, their capital, and their work force.[27] By 1568 French shipping had halved, but worse was to come. The Netherlands revolt encouraged English sympathy, and after Alva seized 120 English ships, the English left Antwerp permanently. The Hanseatics too left Antwerp, never to return. Many Portuguese moved from Antwerp to Cologne in 1577/8, and the Sephardic Jews among them also left, scattering to Bordeaux, Rouen, Lyons, Paris, Middelburg, Flushing, Rotterdam, Amsterdam, London, Emden, and Hamburg.

Some people pulled out of insurance altogether at this time, given the increased risks at sea. Simon Ruiz wrote to Antonio de Quintanadueñas in April 1569 that for more than six months he had stopped underwriting at Burgos.[28] Others did the same; from August 1568, letters from

Nantes informed Ruiz that shippers were doing without insurance, each man bearing his own risk.

The decline of Burgos

Burgos too gradually ceased to be an important financial centre in the last quarter of the sixteenth century and the early years of the seventeenth. Alonso puts the end of the golden age of Burgos finance at 1577. The amount of insurance arranged dropped markedly the following year. The royal 'bankruptcy' in 1575–6 and the collapse of the Douro valley fairs in 1577 greatly afflicted the city. Events in the Low Countries added to the decline. In February 1574 the Netherlanders in revolt seized the island of Walcheren, and with it the entire fleet of Castile, which was at Arnemuiden, the port of Middelburg. The 59 richest ships of 147 taken were owned by men of Burgos. Since most underwriting in Burgos was by merchants for each other, there was no way that they could meet the losses. Prominent non-merchant citizens of Burgos had also underwritten policies, and were equally devastated.[29] Although trade with Rouen and Hamburg continued, Burgaléses pulled out of Antwerp, more gradually perhaps than other nationalities. They continued to underwrite Portuguese shipping in Burgos and elsewhere, but with more risk and fewer underwriters, premium rates doubled after 1577. In 1565, six per cent was charged at Rouen for goods between Rouen and Lisbon, but by 1579, goods between Lisbon and Rouen attracted a rate of 12 per cent at Burgos.[30]

The growth of Madrid contributed to the decline of Burgos. When Philip II made the city his capital in 1560, it suddenly became a great consumption centre. Merchants moved there from Burgos, and Madrid inherited part of its role in underwriting. Simon Ruiz's papers first mention underwriting by Madrid merchants in 1577. From 1586, his papers include policies written entirely in Madrid.[31]

The decline of Burgos is also seen in Seville and Cadiz. In 1503 Queen Isabella gave prosperous Seville a monopoly over trade with the Indies, and established the *Casa de Contratación* to administer it. Burgaléses expanded their presence, and played a large part in insuring the *Carrera de Indias*. A fifth of the policies in the surviving Burgos registers, from 1565 and 1598, covered destinations in the Americas, rather more from Seville to Mexico or Colombia than from Lisbon to Brazil. Although the underwriters were in Burgos, the vast majority of the Seville policies were drawn up for merchants and shipowners resident in Seville.[32]

In the sixteenth century, merchants of Seville set up a C*onsulado de Commercio,* which authorised brokers. It established and ran the *Lonja*, the Seville Exchange, where brokers introduced merchants, including underwriters and insurance buyers. Until the end of the century their meeting place was out of doors, on the steps of the Cathedral. The chapter appealed to the King when merchants put up posts with chains. Philip II responded in 1584 by erecting a building for the *Lonja* next to the Cathedral. The *Casa Lonja de Mercaderes de Sevilla* finally opened in 1598.

Seville later shared the Americas trade with Cadiz, whose merchants were allowed by the Tribunal for the Indies (*Juzgado de Indias*) to breach its monopoly as early as 1535. When the Guadalquivir silted up in the seventeenth century, Cadiz took over more and more of Seville's trade. In 1680 it became the official point of entry for the Indies trade, and in 1717 the administrative centre too. Naturally merchants engaged in the transatlantic trade moved to Cadiz, but there do not seem to have been Burgalés merchants among them. Jeremy Baskes (chapter 10) states that 37 merchants were underwriting the Indies trade in Cadiz in 1691, most important among them Genoese. Florentines were reduced to three, but Burgos underwriters had vanished. In their place, the London-Hamburg-Amsterdam triangle provided 14 underwriters.

The successor to Antwerp, 1550–1620

When the trade of Bruges collapsed, Antwerp was the obvious successor. When the commerce of Antwerp was collapsing, no obvious successor existed. The old commercial centres of Hamburg, London, and Cologne had the potential to take over, alongside all the other places to which merchants had moved. The scattering of commerce was very considerable. Since the 1560s, traders had been moving from Antwerp to Seville, Rouen, Liège, Aachen, Frankfurt, Middelburg, Amsterdam, and Emden, as well as Hamburg, London, and Cologne. It was by no means clear which if any of these places might be heir to Antwerp. With the dispersion of merchants was the spreading of financial know-how, bills of exchange were becoming much more widely used, and companies with shareholders were established in places where they had been unknown. By 1610 it was as possible to buy and sell shares in Rouen, Cologne, Middelburg, Amsterdam, and Hamburg as it had been earlier in Antwerp and Frankfurt.

Although Rouen in 1556 was first to garner permission to build an Exchange, Hamburg was the first to do so. It built a *Börse* in 1558 which

imitated the Antwerp *Beurs,* even while Antwerp's commercial boom reached its climax. It was ready to receive Antwerp merchants from the 1560s. During the first wave of Antwerp's difficulties, in 1564, Thomas Gresham planned an *Exchange* in London, also following the *Beurs*, making London attractive to those in flight long before the sack of the city in 1577.

Cologne was ready to receive Italian merchants from that year onwards, along with Portuguese and Spanish. Numerous firms from the Netherlands also moved their base of operations to Cologne, and a dedicated Börse was erected in 1580 on the Heumarkt, at the end of the Bolzengasse, where merchants had been meeting in the open air for the previous 27 years. However, as Philippe Dollinger pointed out, Cologne missed its opportunity. The most numerous émigrés came from the northern Italian *nations* between 1578 and 1585. In the 1590s Italians were responsible for about 30 per cent of Cologne's trade, and a great deal of shipping. The Portuguese *nation* formally moved it s headquarters from Antwerp to Cologne in 1577/78, and although not as numerous as the Italians, they were particularly successful in trading through Portugal to Africa, India, and Brazil.

The success of the newcomers aroused the envy and animosity of the local merchants. They came to feel increasingly unwelcome, and many returned to Antwerp as soon as possible. The Portuguese and Spanish lasted barely ten years, and the Italians gradually drifted back. Most of these men from Portugal, Spain, and Italy were also shipowners as well as merchants, but no evidence showing where they insured their ships and cargoes has come to light. Many Dutch merchants also came to Cologne from Antwerp, but most of them returned to the Low Countries when it was safe to do so, although not necessarily to Antwerp. One exception was Nicolas de Groote, who arrived in 1584, stayed, and prospered by dealing in cloth, and spices from Venice and Lisbon.[33]

When they saw the new Beurs in Antwerp, the Honourable Merchants of Hamburg petitioned the Senate for a similar Börse to replace the open-air meeting on the Trostbrücke. In 1558 the Senate gave them a plot of land on the Nikolaifleet, between the city weigh house and the bridge, near the Great Crane for unloading goods from the river. A new city hall was then built next to it, and Hamburg was ready to take over from Antwerp. The city's earliest surviving list of prices and exchange rates is from 1592, only seven years later than Amsterdam's. London's earliest extant list dates from 1608, but earlier versions may have existed.[34]

Hamburg's Senate had made a ten-year agreement to receive the English Merchant Adventurers in 1567, so after Alva, they went there.

They did not stay continuously until 1611, when the city, which very much wanted to regain the distribution trade in English cloth, lured the Merchant Adventurers back with freedom from some tolls, permission to trade on equal terms with Hamburg burgesses, and, as earlier in Antwerp, the gift of a building. The concessions were worthwhile. English cloth made up about 20 per cent of all imports into Hamburg, and about 100 English merchants were resident from 1620. The Merchant Adventurers stayed until the French occupation in 1806. Cloth finishers from Brabant followed the cloth to Emden, Stade, and eventually to around Hamburg. In the seventeenth and eighteenth centuries finished English cloth reached the fairs at Frankfurt and Leipzig by way of Hamburg instead of Antwerp, and through them to Nuremberg, Silesia, Austria, and Hungary. Many other foreign merchants and shipowners followed the English to Hamburg, which welcomed the migrants, authorising them to trade freely with each other, and to enter into partnership with locals.

As well as becoming the main centre for the distribution of English cloth and Swedish copper, Hamburg remained a key producer and exporter of hopped beer. The Portuguese, arrived from Antwerp directly or via Cologne, imported Portuguese salt, Indian spices, and Brazilian sugar, the latter making Hamburg a refining centre.[35] Some Burgos merchants and south Germans also came, the latter trading principally in Slovak copper.[36] Italians were less numerous and less welcome, because many were practising Catholics. The city had a large merchant fleet before the arrival of merchants, and shipowners from the southern Netherlands doubled its tonnage in the first half of the seventeenth century. It was they who contributed most to the city's rapid growth, and Hamburg became as cosmopolitan as Venice and Bruges had ever been. By the end of century it formed part of the north European triangle of cities that dominated insurance and exchange.

London

London, like Antwerp, for long relied on unwritten custom. Adrian Leonard (Chapter 7) quotes a legal opinion of 1562 that takes for granted the use and custom of drawing bills of assurance in both Lombard Street and the Antwerp Bourse. Although not previously written down in either city, or in Bruges earlier, it was this 'use and custom' that lay behind Antwerp's series of printed proclamations, *placcaten,* of 1563, 1570, and 1571, and the draft 'Booke of Orders of Assurances'

compiled in London in the 1570s. The marine insurance code promulgated in 1569 by the Burgos' Consulate in Bruges (effectively, the Burgos community of Antwerp) fits with developments in Antwerp and London.

In the 1560s London followed the examples of Antwerp and Hamburg by erecting the *Royal Exchange*. It was very near the previous outdoor meeting place for merchants in Lombard Street, on a plot provided by the city. Communities of Italian merchants had resided in London since the late thirteenth century, and were reinforced by the flight from Antwerp of people like Bartolomeo Corsini (1545–1613), who with his brother Filippo at home in Florence built up a considerable business in London. Leonard quotes from insurance policies underwritten for him. Others from Antwerp included 'New Christians' like Manoel Rodrigues Vega, who came first to London, then moved on to Amsterdam.

At the beginning of the seventeenth century English letters abroad were carried in a casual way. It was only in 1619 that England's Royal Mail began a service to continental capitals, but it did not carry private post. The French royal mails had been doing so since at least 1572–3. It was only when Thomas Witherings reorganised the English post abroad in 1635 that private correspondence could be taken, and the availability of information for exchange and insurance in London began to be transformed.[37] Witherings was able to maintain the post through the civil wars, and it was continued during the Commonwealth. After the Restoration in 1660 the General Post Office was set up in Threadneedle Street on the north side of the Exchange. It was destroyed in London's Great Fire of 1666, and rebuilt in Lombard Street opposite Pope's Head Alley, which led from Lombard Street to the Exchange. It ran packet boats to Spain, the West Indies, and elsewhere, and in the 1680s arranged for the collection and delivery of letters to the numerous new coffee houses established between Lombard Street and the Exchange. Edward Lloyd moved his coffee-house from near the Custom House to Lombard Street next to the Post Office itself,[38] and only then did London shipowners, merchants, underwriters, and bankers have easy access to the information they needed to give England superiority in these fields.

Rouen

Burgos was importing Rouen linen by the end of the fifteenth century, and in the sixteenth Normandy came to be famous for producing the finest linens. In 1547 Simon Ruiz was importing linens to sell at the

Medina del Campo fairs, initially from Brittany via Nantes, then increasingly the finer linens of Normandy, bought at Rouen. At the opening of the seventeenth century the Rouen city council asserted: 'Linens are the true mines of gold and silver in this kingdom because they are only carried away to be shipped to the countries from which one brings the gold and the silver.'[39] They were carried to Lisbon and Seville, and gold and silver were brought back, along with 'spices', which included sugar and dyestuffs. The Lisbon-Rouen shipping was largely insured in Burgos.

From Lapeyre's work on Ruiz it is apparent that in the second half of the sixteenth century Rouen was the second most important financial centre in France after Lyons, and that marine insurance played a very considerable part, and was more important there than in Lyons. Writing from the biased perspective of the Ruiz papers, Lapeyre reckoned that Burgos and Rouen were then the most important places in Europe for underwriting, and in discussing the Rouen *Guidon de la Mer* of the 1580s, he suggested Spanish merchant influence in its composition, rather than putting it in succession to the Antwerp and London regulations of the 1560s and 1570s.

Amsterdam, 1590–1690

Although Antwerp's commercial elements, particularly the foreign *nations*, had scattered widely, the native industrial craftsmen moved in a much more coherent pattern from Flanders and Brabant into Zeeland and south Holland, where they could speak the same language, and look to Antwerp as their principal market. This industrial base, and the commerce that went with it, ensured Europe's financial centre moved from Antwerp to Amsterdam. While Antwerp shrunk from around 100,000 people in 1560 to around 40,000 in 1590, growing Amsterdam surpassed 100,000 by 1622.

Amsterdam, too, competed to attract merchant migrants in the 1580s. In 1588 the States General gave the Portuguese permission to trade freely in the United Provinces, including by 1592 some New Christians. By 1610, 350 of the scattered Portuguese Jews of Antwerp had made Amsterdam their capital. They shared in the great growth of the city's overseas commerce during the Twelve-Year Truce, from 1609 to 1621, specialising in trade with the remaining New Christians in Lisbon and Porto, and in importing Portuguese colonial wares, ranging from Brazilian sugar, for which they set up refineries in Amsterdam, to uncut

diamonds from Goa, which they proceeded to have cut in Amsterdam (as they had earlier done in Antwerp).

The temporary feel of the exile from Antwerp can be seen in the way that, for two decades, brokers there, well over three hundred, carried on their business of bringing merchants together in the open air on the Nieuwe Brug, or in the Warmoesstraat, or, in bad weather, inside the adjacent Oude Kerk.[40] Only the Truce made clear that the old Burgundian Netherlands had been permanently transformed into two separate states, with no general return to Antwerp. Seen in this light, the eventual building in 1611 of a *Beurs* self-consciously modelled on that of Antwerp was a profoundly symbolic statement that the Low Countries' economic community, and indeed that of western Europe, was now definitively centred on Amsterdam. It was worthwhile for great merchants to take root, and the great Amsterdam building boom took off.

In the second half of the seventeenth century brokers distinguished themselves, including those dedicated to marine insurance. A sketch map of the Amsterdam Beurs shows different sorts of brokers clustering in different parts of the building. By the early eighteenth century merchants in London's Exchange had recognised places, or 'walks', where they gathered according to the commodities or countries with which they dealt.[41] It is probably right to assume that this clustering had gradually come about in all the financial centres since the developments on the Island of the Rialto in Venice, where local banks, the *banchi di scritta,* were grouped the Campo S. Giacomo. Underwriters were nearby in what became known as the *Calle del Sicurta*.

Amsterdam adopted a modified version of Antwerp's insurance regulations as early as 1598. The key difference was the abolition of registration, as in Venice, where it had never happened. However, Sabine Go (Chapter 5) points out that the *Kamer van Assurantie*, a specialist insurance tribunal like those in Florence and London, was set up to deal with contested cases. No such tribunal had existed in Antwerp or Bruges. Within a very few years it was clear that Amsterdam had become the foremost player in marine insurance in northern Europe, in succession to Antwerp, and later for the whole of Europe.

The printed *Cours der Koopmanschappen*, which by 1585 was regularly produced by the Amsterdam Brokers Guild,[42] included not only commodity prices and exchange rates, but also, from early in the seventeenth century, standard insurance premiums. That for 1626 gives some indication of the range of Amsterdam-dominated trade, from the Mediterranean to the Baltic, from Alexandria to Riga. The Burgos Consulate had done something similar in the sixteenth century.

Holland was already heavily urbanised before 1580, with both trade and industry. Merchants' key trade was the mother-trade, *moedernegotie*, with the Baltic, control of which, along with the North Sea bulk trades, they had wrested from the Hanseatic merchants. By 1565, 700 ships a year were being sent to the Baltic, many owned by companies, with individual shareholders owning only a small fraction of a vessel. The most spectacular of the many new ventures launched was the promotion of trade with west Africa and the East Indies, breaking into what had been Portuguese monopolies. The precursors of the VOC were set up in the 1590s, and one, the New Brabant Company, proclaimed in its name its roots in the south. It had been established by entrepreneurs relocated from Antwerp, and was heavily financed by capital from there. When the united company was formed in 1602, more than 300 of the initial 1,143 shareholders in the Amsterdam chamber were men from the southern Netherlands, mostly Antwerp, and they contributed about 40 per cent of the capital. Initially conceived as a temporary venture, it ultimately became a permanent company, the largest the world had ever known.

A long-term or permanent company was a much better structure for underwriting marine insurance than one erected for a period of a few years. However, the idea of corporate underwriting was resisted. In 1628 a *Ghenerale Compagnie van Assurantie* was proposed in Amsterdam, but, after several years of discussions, was eventually rejected, partly because it proposed a monopoly. In 1720, as discussions about insurance companies were under way in London, fresh proposals were made in Amsterdam, but they too were turned down by the Burgomasters. One set of projectors went to Rotterdam, where they were received with enthusiasm, and in 1720 set up the *Maatschappij van Assurantie der Stad Rotterdam*.

Other merchants came to Amsterdam, like the young Scots merchant Henry Hope, who founded an increasingly prosperous merchant-banking dynasty. Throughout the seventeenth century, more and more entrepreneurs, with their capital, were drawn into the city. Manuel Teixeira, of Portuguese Jewish descent, moved his centre of operations there from Hamburg in 1698.[43] As in Venice, Bruges, and Antwerp before, the financial community of Amsterdam became extremely cosmopolitan. However, it was only the most important corner of a triangle of financial centres including Hamburg and London.

Decline of Amsterdam, 1690–1790

The long-running expansion of Dutch trade slowed appreciably, but debate remains over when. Gradually overtaken by England, the northern Netherlands ceased to form the most industrialised and technologically advanced area of Europe. Dutch industry shifted from peat to coal, as its second most important source of energy after wind, but suffered a comparative price disadvantage, since coal is expensive to transport, and was largely imported from England. In 1670 the total capacity of Dutch shipping reached around 394,000 tons. It was no greater in 1780, and by then much capacity was used for carrying goods for foreigners. Only a small share was destined for Asia: tonnage from the Republic to the East reached 16,680 by 1675, and grew to 19,700 in 1715. The scale of Dutch Asiatic trade remained static until 1765,[44] then collapsed. Meanwhile from the second half of the seventeenth century, English shipping enjoyed rapid growth. With 323,000 tons in 1702, it was not far behind the Dutch. It overtook it them during the first half of the eighteenth century, reached 421,000 tons in 1751, and went on growing.

Amsterdam remained the foremost place for arranging marine insurance for part of the eighteenth century, but the city's insurance market was not immune to decline. Later both London and Hamburg provided a great deal of competition.[45] Sabine Go suggests that, like Dutch technology, the market lost its ability to adapt and innovate, and to raise sufficient capital to cover the increasing scale of enterprises. Having considered, early on, authorising insurance companies, Amsterdam underwriters did not now countenance them.

Even though technology, industry, trade, and insurance were stagnating, Amsterdam remained the financial centre of Europe until the second half of the eighteenth century. Its importance as a capital market grew even in the midst of commercial decline. The vast government debt accrued during the French wars was a splendid source of unearned income for owners of government securities, but was invested abroad in plantation loans, foreign government bonds, and in English companies, especially the Bank of England and the English East India Company. By 1763, Dutch foreign investments totalled 200 million guilders, of which over half was invested in England.

Although Amsterdam eventually succeeded Antwerp and Venice as the leading financial centre in Europe, Hamburg and London were not far behind. In the late seventeenth and early eighteenth centuries, they formed a triangle of financial centres. In writing about the evidence before England's Hungerford Committee in 1720, Anastasia Bogotyreva

(Chapter 8) shows that Amsterdam, Hamburg and London were seen as alternative insurance markets. One group of witnesses said that one could buy insurance faster and cheaper in Amsterdam than in London, and another testified that 'many English insured at Hamborough, as judging it more secure'. The places of insurance in Europe were to move again, following, as always, merchants and their trade.

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14. A exceptional summary of these numerous studies up to the 1960s was made by Dollinger, Philippe: *La Hanse (XIIe–XVIIe siècles)*, Paris: Aubier-Montaigne, 1964, but a very great deal has been written since, including Spufford, Peter: 'The Relative Scale of Medieval Hanseatic Trade', in Hammel-Kiesow, Rolf (ed.): *Vergleichende Ansätze in der hansischen Geschichtsforschung*, Trier: Hansische Studien, xiii, 2002, pp. 153–61.
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19. In 1485 a group of Antwerp citizens, wholesale merchants engaged in foreign trade, were permitted by the magistrates to form a 'common college' and to set up a 'common exchange'. It seems to have consisted of a wooden gallery in which brokers could meet. Voet, Leon: *Antwerp, the Golden Age: the Rise and Glory of the Metropolis in the Sixteenth Century*, Antwerp: Mercatorfonds, 1973, p. 275.
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the deindustrialisation of the southern Low Countries, with a synthesis, pp. 307–81, by Herman van der Wee himself.

28. Lapeyre, *Une famille des marchands*.
29. Casado Alonso, *El Triunfo de Mercurio*, pp. 178–9.
30. Lapeyre, *Une famille des marchands*, p. 236.
31. Ibid., pp. 230–40.
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38. Keene, Derek: 'The Setting of the Royal Exchange: Continuity and Change in the Financial District of the City of London, 1300–1871', in Ann Saunders (ed.), *The Royal Exchange,* London Topographical Society, 1997, p. 261.
39. 'Les toiles sont les vrayes mines de l'or et argent en ce royaume parce qu'elles ne s'enlèvent que pour estre transportées au pays d'ou l'on apporte de l'or et de l'argent.' Lapeyre, *Une famille des marchands: les Ruiz*, p. 502, quoting from *Inventaire des délibérations de la ville de Rouen* for 10 May 1601.
40. Sabine Go points out that as well as the 290 accredited brokers there were an unknown number of *bijloopers*, unauthorised brokers, perhaps as many as six hundred of them.
41. Keene, 'The Setting of the Royal Exchange', p. 257.
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