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**English 'Backwardness' and Financial Innovations in Commerce
with the Low Countries, 14th to 16th centuries**

by

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ABSTRACT:

Inspired by Gerschenkron's thesis, this paper contends that conditions of institutional 'backwardness' in late-medieval England stimulated legal innovations to provide the foundations for negotiability in international financial instruments. Though late-medieval England was not 'backward' in the senses expounded by so many earlier historians, her financial institutions, in comparison with those found on the continent, were far less developed. More retrograde were English fiscal and monetary policies, which played a major role in the fall of England's wool trade, once her most lucrative source of revenue, and thus indirectly in the expansion of her cloth export trade, which came to be canalized on the Antwerp market, where the major financial innovations did take place. Medieval English bullionist legislation was particularly regressive, by contemporary standards, in attempting to prevent the use of credit in foreign trade, in order to force exporters to repatriate receipts in bullion, even if such policies had a seemingly noble purpose: to protect the integrity of the coinage, while eschewing continental practices of debasement. In their application, however, they not only hindered the use of credit but also prevented the development of deposit banking, with domestic transfer instruments, on the continental model. English Common Law, furthermore, was generally hostile to any developments that would make bonds, especially registered *recognizances*, fully transferable and negotiable. But, from the late thirteenth century, the crown proved to be progressive in permitting mercantile courts to utilize the practices of an international *lex mercatoria*. From the 1360s, English merchants in the wool and cloth trades sought to reduce their transaction costs, to avoid costly *recognizances* and litigation in Common Law courts, by resorting to informal holograph bills payable to bearer. But these lacked legal protection in transfer payments, until 1436, when the London Mayor's law-merchant court specifically awarded the bearer of a dishonoured bill-of-exchange rights equal to those of the designated payee: the first recorded in Europe, serving as the vital precedent for a similar Antwerp court ruling in 1506 and for national Habsburg legislation in the 1530s to establish full negotiability of commercial bills, including discounting, with revocation of the usury laws.

JEL classifications: N1, N2, N4, N7, E5

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I. Introduction

As the late Harvard economist Alexander Gerschenkron contended, in a much more modern context, that of nineteenth-century Russia, some negative conditions of 'economic backwardness' may promote economic advancement.¹ The same may have been true of late-medieval England. For several features of her reputed 'backwardness' in the financial and monetary spheres certainly did promote important contributions to the development of fully negotiable credit instruments that were vital for both the international commerce and banking of the later-medieval and early-modern European international economy. At the same time the very regressive aspects of English fiscal and monetary policies were also partly responsible for England's ultimate victory in the European woollen cloth trade, which provided a powerful force for the rise of Antwerp to commercial and financial supremacy in early-modern Europe, and also a conduit for transmitting some of those financial developments to the Antwerp market, where they achieved their ultimate fruition.²

Thus England cannot itself claim the credit for having established the legal institutions for fully transferable and negotiable transferable credit instruments, those that were necessarily grounded in national laws and national courts. The credit for that achievement, as Herman Van der Wee has decisively proven, must

¹ Alexander Gerschenkron, *Economic Backwardness in Historical Experience: A Book of Essays* (New York, 1962).

² See in particular Herman Van der Wee, *Growth of the Antwerp Market and the European Economy, 14th to 16th Centuries*, 3 vols. (The Hague, 1963), esp. II: *Interpretation*; Herman Van der Wee, 'Structural Changes and Specialization in the Industry of the Southern Netherlands, 1100-1600', *Economic History Review*, 2nd ser. 28 (1975), pp. 203-21, reissued with other important essays in Herman Van der Wee, *The Low Countries in the Early Modern World*, Variorum Collected Studies (Aldershot, 1993), pp. 201-22; Herman Van der Wee, 'Industrial Dynamics and the Process of Urbanization and De-Urbanization in the Low Countries from the Late Middle Ages to the Eighteenth Century: A Synthesis', in Herman Van der Wee, ed., *The Rise and Decline of Urban Industries in Italy and in the Low Countries: Late Middle Ages - Early Modern Time* (Leuven, 1988), pp. 307-81; John Munro, *Textiles, Towns, and Trade: Essays in the Economic History of Late-Medieval England and the Low Countries*, Variorum Collected Studies (Aldershot, 1994).

lie with the Estates General of the sixteenth-century Habsburg Netherlands, just as the final steps to establish the mechanisms for discounting via endorsements must lie with the Antwerp money market in the very late sixteenth- or early seventeenth-century.³ The later-medieval English contributions were, in my view, two-fold: (1) in developing commercial, financial, and institutional connections with markets in the cross-Channel Low Countries that ultimately required more fully transferable and negotiable credit instruments; and (2) in establishing vital legal precedents for subsequent full-fledged negotiability in the Low Countries, through the London civic Law-Merchant court, in accordance with a slowly evolving international mercantile juridical procedures. Such views, I must note immediately, are strictly at variance with those in a recent monograph by the American legal scholar, James Steven Rogers, who seeks to refute any such notions about the contributions of Law Merchant to the establishment of true negotiability; for he sees such financial developments instead as the much later, indeed early-modern, product of indigenous developments within English Common Law courts.⁴

In order to follow Gerschenkron and place this subject into its proper historical perspective, we must ask what status or level the English economy had attained by the later Middle Ages. According to William Cunningham, one of the earliest contributors to the study of English economic history (in the 1890s), ‘dealing for credit was little developed, and dealing in credit was unknown’, in the medieval English economy, ‘except

³ Herman Van der Wee, ‘Monetary, Credit, and Banking Systems’, in E.E. Rich and Charles Wilson, eds., *The Cambridge Economic History of Europe, V: The Economic Organization of Early Modern Europe* (Cambridge, 1977), pp. 290-393; Herman Van der Wee, ‘Anvers et les innovations de la technique financière aux XVI^e et XVII^e siècles’, *Annales: E.S.C.*, 22 (1967), pp.1067-89, republished as ‘Antwerp and the New Financial Methods of the 16th and 17th Centuries’, in Herman Van der Wee, *The Low Countries in the Early Modern World*, pp. 145-66; Van der Wee, *Antwerp Market*, II, pp. 333-67.

⁴ James Steven Rogers, *The Early History of the Law of Bills and Notes: A Study of the Origins of Anglo-American Commercial Law* (Cambridge, 1995), p. 2: ‘The general thesis of this book is that the traditional incorporation theory [that the common law incorporated the Law Merchant] is inaccurate, at least with respect to the law of bills and notes. The judges of the English common law courts did not borrow the rules of the law of bills from sources external to the common law system. Rather the English law of bills developed within the common law system itself, in response to developments in commercial and financial practice.’ My essay does not pose a direct challenge to Rogers’ provocative and stimulating monograph, nor does it carry this subject on negotiability beyond the sixteenth century. Nevertheless, it does disagree with some of his premises and necessarily must provide a critical response to his brief remarks on late-medieval economic, legal, and institutional history, particularly those concerning the international Law-Merchant and English Common Law courts. See below, pp.

perhaps a few foreign bills'; and even as late as 1955, the highly respected English legal historian James Holden stated as an obvious axiom that 'it was not until about the middle of the fifteenth century that commercial paper was much used by the native English merchants'. In even stronger terms, in numerous publications, Raymond De Roover, the distinguished Belgian-American economic historian and the acknowledged *grand-maître* of medieval financial history, emphasized 'the backwardness of England in trade, finance, and business organization before Elizabeth [I]'. Furthermore, the equally distinguished Harvard historian Abbott Payton Usher was even less charitable, going De Roover one better, in asserting that England did not succeed in catching up to continental Europe in credit and banking institutions until the mid-seventeenth century.⁵ Were such views correct, not even a modern Gerschenkron could argue that English 'backwardness' in any way promoted the evolution of modern financial techniques.

Of course those negative views were challenged long ago in the numerous writings of the late Michael Postan, which demonstrate a fairly sophisticated use of financial instruments in its medieval economy; but, in writing in reaction to Cunningham, Ashley, and many others, Postan was wont to ascribe a modernity and sophistication that was not truly present in medieval England.⁶ One must therefore strive for a more judicious and equitable balance in analysing the development of England's commercial-financial sector during the later Middle Ages, and its impact upon the economy of the Low Countries.

II. Elements of 'backwardness' in the English medieval economy: the wool-based agrarian economy

In some crucial respects, however, the later-medieval English economy may appear to have been truly underdeveloped or 'backward', in the classic sense. It was still overwhelmingly agrarian, with an urban

⁵ William Cunningham, *The Growth of English Industry and Commerce*, I: *During the Early and Middle Ages*, 2nd edn. (Cambridge, 1890), pp. 326-7; James Holden, *The History of Negotiable Instruments in English Law* (London, 1955), p. 21; Raymond De Roover, *Gresham on Foreign Exchange: An Essay on Early English Mercantilism* (Cambridge, Mass., 1949), p. 177, n. 14; A.P. Usher, *The Early History of Deposit Banking in the Mediterranean*, I: *Structure and Functions of the Early Credit System: and Banking in Catalonia, 1240-1723* (Cambridge, Mass., 1943), p. 108.

⁶ Michael Postan, 'Credit in Medieval Trade', *Economic History Review*, 1st series, 1 (1928), and his 'Private Financial Instruments in Medieval England', *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, 23 (1930), both republished in Michael Postan, *Medieval Trade and Finance* (Cambridge, 1973), pp. 1 - 27, 28-64.

population that was probably still under 5 per cent of the total; and London, if indisputably England's major city, then housed, according to one recent estimate, only 1 in 66 of the nation's inhabitants: i.e. about 60,000, or 1.5 per cent of the nation's total of about 4 million.⁷ Its agricultural sector boasted both a mixed husbandry (sheep and corn), especially in the densely populated Midlands, and also a pastoral economy, especially in the west and north, devoted to both sheep and cattle, though predominantly the former, in vast numbers, producing England's most valuable export. Thus in the decade 1300-09, England exported an annual average of 35,352 sacks of wool, the product of at least 8,500,000 sheep (and possibly as many as 10,600,000); since we can hardly presume that all English sheep contributed to this export trade, we must assume that England then had at least two and probably three times as many sheep as people⁸. Much if not all of this English wool would remain unrivalled in fineness until the mid-sixteenth century, when they finally encountered a significant challenge from Spain's now fully evolved *merino* sheep; and they were deemed to be absolutely essential for the production of the finer grades of the true, heavily-felted, luxury-oriented woollen broadcloths, particularly in the urban draperies of the Low Countries, northern France, and (subsequently) Italy as well.⁹ England in this era, during the later thirteenth and early fourteenth centuries, was not yet a serious rival for any of these continental draperies, and thus exported only a pitifully small amount of woollens, though possibly a greater

⁷ Pamela Nightingale, 'The Growth of London in the Medieval English Economy', in Richard Britnell and John Hatcher, eds., *Progress and Problems in Medieval England* (Cambridge, 1996), pp. 89-106. She provides very cogent arguments for reducing the currently favoured estimates for England's total population c.1300, of 6 to 7 million, to about 4 million. In 1523, the population of England and Wales was about 2.3 million; in 1540, 2.97 million. See E.A. Wrigley and R.S. Schofield, *The Population History of England, 1541-1871: A Reconstruction* (London, 1981; 2nd edn. with new introduction, Cambridge, 1989), pp. 528 - 29 (my data adjusted to include an estimate for Wales).

⁸ E.M. Carus-Wilson and Olive Coleman, *England's Export Trade, 1275 - 1547* (Oxford, 1963), pp. 36-45; John Munro, 'Wool-Price Schedules and the Qualities of English Wools in the Later Middle Ages, ca. 1270 - 1499', *Textile History*, 9 (1978), pp. 118-69; reprinted in Munro, *Textiles, Towns, and Trade* (1994). The official customs account reckoned 300 woolfells to one sack of wool, later reduced to 240 fells per sack.

⁹ John Munro, 'Wool-Price Schedules', pp.118-69; John Munro, 'The Origins of the English "New Draperies": The Resurrection of an Old Flemish Industry, 1270 - 1570', in Negley B. Harte, ed., *The New Draperies in the Low Countries and England, 1300 - 1800*, Pasold Studies in Textile History no. 10 (Oxford, 1997), pp. 35 - 53.

number of the much cheaper, coarser, and lighter worsteds.¹⁰

Late-medieval England thus appears to have been the classic case of a ‘backward’ or ‘developing’ agrarian nation whose export trade was almost totally devoted to shipments of its prime agricultural product, wool, to fuel the continued growth of the far more industrially developed and highly advanced economies of the Low Countries, northern France, and Italy. From the 1350s, however, England’s export sector began to undergo a very radical structural change that would, within a century, convert England from being principally a raw material to principally a manufacturing exporter. Many historians, and not just British scholars, still believe that this radical transformation was due principally to England’s own indigenous industrial efforts, based upon the interconnections of two key factors: (1) an ‘industrial revolution of the thirteenth-century’ (Carus-Wilson) based on mechanical fulling, employing the cheap and efficient water-power to be found principally in the swift-flowing streams of the rural uplands in England’s West Country and West Riding of Yorkshire; and (2) a concomitant shift in industrial location, by the mid fourteenth century, from the moribund archaic guild-ridden towns to the much freer countryside, offering in particular not only guild-free entrepreneurial liberty, cheap water power, but also a far lower-cost though evidently suitably skilled labour force, and one that grew its own food and provided its own housing.¹¹ For reasons that I have explored in depth elsewhere, these factors, in so far as they were true, were of only minimal importance and thus fail to provide a credible explanation for the subsequent growth of the English cloth industry from the mid-fourteenth century;

¹⁰ See John Munro, ‘Industrial Transformations in the North-West European Textile Trades, c. 1290 - c. 1340: Economic Progress or Economic Crisis?’ in Bruce Campbell, ed., *Before the Black Death: Studies in the ‘Crisis’ of the Early Fourteenth Century* (Manchester, 1991), pp. 110 - 48; reprinted in Munro, *Textiles, Towns, and Trade*; John Munro, ‘The “Industrial Crisis” of the English Textile Towns, c.1290 - c.1330’, in Michael Prestwich, R.H. Britnell, and Robin Frame, eds., *Thirteenth-Century England*, 7 (1998), pp. .

¹¹ Eleanora Carus-Wilson, ‘An Industrial Revolution of the Thirteenth Century’, *Economic History Review*, 1st ser. 11 (1941), reprinted in her *Medieval Merchant Venturers: Collected Studies* (London, 1954), pp. 183-211; E. M. Carus-Wilson, ‘The Woollen Industry’, in M.M. Postan and E.E. Rich, eds., *Cambridge Economic History of Europe*, II (1952), pp. 372-428; reissued with some revisions in M. M. Postan and Edward Miller, eds., *The Cambridge Economic History of Europe*, II: *Trade and Industry in the Middle Ages*, 2nd rev. edn. (Cambridge, 1987), pp. 614-90.

and in particular they fail to explain why the English ‘victory’ took another century to achieve.¹²

III. Regressive elements in medieval English fiscal policies: the wool and cloth trades

In my view, England’s later-medieval success in the international textile trades was due principally to another aspect of undoubted ‘backwardness’: her royal fiscal and monetary policies, principally the former, through the excessive taxation of wool exports to finance warfare. Obviously, sooner or later, England’s overwhelmingly lucrative wool-export trade would have been called upon to serve as the primary non-feudal source of royal revenues. Such taxation had begun modestly enough in 1275, with Edward I, who inaugurated the Old Custom of 6s 8d sterling per sack of wool, a tax-levy of about 5.0 per cent of the current mean wool prices; and by the Carta Mercatoria of 1303 that rate was raised to 10s 0d for alien exporters (New Custom). Apart from some occasional, temporary war-induced *maltôtes*, these very modest export taxes remained unchanged until 1336-7, when his overly ambitious grandson Edward III, believing himself to be the true claimant to the crown of France as well, launched the infamous Hundred Years’ War (to 1453).¹³ In order to finance this enterprise, which was to prove so disastrous to the economies of England, France, and the Low Countries, Edward organized a royal export-monopoly and imposed an additional subsidy on 20s 0d per woosack exported. In March 1338, he increased it to 33s 4d per sack in March 1338 and to 40s 0d in November 1341, for a total tax burden of 46s 8d per sack (50s 0d a sack for aliens). Subsequent Parliaments re-confirmed these rates, though not the royal monopoly, up to 1362-3, when Parliament made the recently-

¹² Even less credible, and indeed absurd, is the view that England owed her subsequent industrial and commercial success to a supposed influx of refugee Flemish textile artisans (i.e. in the 1330s and 1340s). See the sources cited in nn. 2, 10; and see also John Munro, ‘Anglo-Flemish Competition in the International Cloth Trade, 1340 - 1520’, *Centre européen d’études bourguignonnes*, 35 (1995), 37-60 [Jean- Marie Cauchies, ed., *Rencontres d'Oxford (septembre 1994): L'Angleterre et les pays bas bourguignonnes: relations et comparaisons, XVe - XVIe siècle* (Neuchâtel, 1995).]

¹³ See N.S.B. Gras, *The Early English Customs System: A Documentary Study of the Institutional and Economic History of the Customs from the Thirteenth to the Sixteenth Century*, Harvard Economic Studies XVIII (Cambridge, Mass., 1918), pp. 59-65; T.H. Lloyd, *The Movement of Wool Prices in Medieval England* (*Economic History Review* supplement no. 6, 1973), pp. 39-40; See T. H. Lloyd, *The English Wool Trade in the Middle Ages* (Cambridge, 1977), pp. 193-224; Carus-Wilson and Coleman, *England’s Export Trade*, pp. 194-7. The worst example was Edward I’s *maltôte* of 1295-97, with an export duty of 46s 8d per woosack; thereafter, the crown temporarily set the export tax at 20s 0d per sack in 1323, and 1328-9, and briefly in 1334 to 16s 8d per sack.

conquered port of Calais the official wool staple for all wool exports to northern Europe. In the same year, the crown established a mercantile cartel in order to pass this tax incidence more fully on to the foreign buyers, principally those in the nearby Low Countries, rather than on to the domestic woolgrowers, in the form of lower prices; and by 1370 the wool-export taxes for denizen merchants had risen to 50s 0d a sack.¹⁴ Since the wool-export duties were fixed and *specific* rather than *ad valorem*, the real burden of these duties rose with the severe deflation, involving a fall in nominal wool prices, that afflicted north-western Europe from the 1370s. By the 1390s, these export taxes represented almost 50 per cent of the wholesale wool prices (Table 2); and for the the Low Countries' urban draperies, these tax-burdened English wools accounted for about 65 - 70 per cent of their pre-finishing cloth-manufacturing costs. In 1398-9, Parliament raised the alien export duty to 60s 0d a sack; and these taxes, along with Staple's more effective cartel organization, effectively excluded from the now sharply contracting wool trade almost all aliens, except for some privileged Italian merchants, who collectively accounted for less than 10 percent of the total by the dawn of the fifteenth century.¹⁵

¹⁴ See sources cited in n. 13; and John Munro, 'Industrial Entrepreneurship in the Late-Medieval Low Countries: Urban Draperies, Fullers, and the Art of Survival', in Paul Klep and Eddy Van Cauwenberghe, eds., *Entrepreneurship and the Transformation of the Economy (10th - 20th Centuries): Essays in Honour of Herman Van der Wee* (Leuven, 1994), pp. 377-88. The Parliament of 1362-3 had reduced the denizen export tax to 26s 8d per sack; restored it to 46s 8d in 1365; and briefly reduced it to 43 4d in 1369, before raising it to 50s 0d a sack in 1370. Apart from very temporary changes in 1379 (56s 8d per sack), 1387-88 (49s 0d), 1390 (40s 0d), 1405 (56s 8d), this 50s 0d rate was retained until 1423, when it was reduced to 40s 0d, the normal rate for the rest of the century (apart from an increase to 50s 0d per sack in 1454-64, and to 45s 0d in 1471). Note from Table 2 that domestic wool prices fall, in relation to the consumer price index, from the late 1330s to the 1360s, and then rise in relation to that price index generally thereafter, as the tax incidence is shifted abroad.

¹⁵ In 1378, Parliament had granted the Italian and Spanish merchants a special exemption from the Calais Staple if they exported wools directly by sea via the Straits of Marroch (Gibraltar); but they still had to pay the far higher alien export duty. *Statutes of the Realm*, II, p. 8 (2 Ricard II c. 3). The alien export duty (customs of 10s 0d plus variable subsidies) had varied from 50s to 70s per sack from 1338 to 1351, and was thereafter generally 50s per sack until 1369 when it was raised to 53 4d per sack and then to 60s 0d per sack in May 1398. In the 15th century, rates varied from 60s to a high of 110s (1454-59, 1470-71), but was fixed at 76s 8d a sack from 1471. For evidence on taxes, costs, and prices, see John Munro, 'Industrial Protectionism in Medieval Flanders: Urban or National?', in David Herlihy, H.A. Miskimin, and A. Udovitch, eds., *The Medieval City* (London and New Haven, 1977), Tables 13.1-5, pp. 254-67; reprinted in Munro, *Textiles, Towns, and Trade* (1994); Lloyd, *Movement of Wool Prices*, Table 1: cols. 2-5, 10-12, pp. 41-3; Lloyd, *The English Wool Trade in the Middle Ages*, pp. 144-256; Carus-Wilson and Coleman, *England's Export Trade*, pp. 194-6; Gras, *English Customs System*, pp. 66-102; John Munro, 'Mint Outputs, Money, and Prices in Late-Medieval England and the Low Countries', in Eddy Van Cauwenberghe and Franz Irsigler, eds., *Münzprägung, Geldumlauf und Wechselkurse/ Minting, Monetary Circulation and Exchange Rates*, Trierer Historische Forschungen, Vol. 7 (Trier, 1984), pp. 31-122.

Indeed, as the accompanying Table 1 demonstrates, English wool exports plummeted dramatically from the 1370s, after the establishment of the Calais Staple cartel and the onset of that deflation, though some of that decline in exports must also be attributed to consequences of drastic depopulations, war-torn and war disrupted markets, and cyclical depressions in late-medieval western Europe, a quite severe one during the 1370s and 1380s. As the same table also demonstrates, English cloth exports began to expand, or first achieve significant growth, only from this very same era, though clearly the growth in cloth exports did not offset the fall in wool exports, not before the late fifteenth century.

Certainly the English crown, in commencing the Hundred Years' War with these very short-sighted fiscal policies, had quite unintentionally provided England's own small and virtually moribund cloth industry a crucial cost advantage; for it permitted native clothiers to purchase these very same fine wools tax-free, and, from 1347, when it first subjected denizen cloth merchants to an export tax, imposed only a minimal duty of 1s 2d per cloth, representing just 2 - 3 per cent of the mean cloth export values during the later fourteenth century.¹⁶ Nevertheless, despite this very significant cost advantage, and despite the increase in the real tax burden that cloth manufacturers in the Low Countries and Italy were forced to bear by the 1390s, the English did not gain a decisive victory over their continental rivals until about the 1460s (as Table 2 also indicates).¹⁷

In fact many urban draperies in Flanders, Brabant, and Tuscany had managed to survive both the

¹⁶ See the evidence cited in Munro, 'Industrial Protectionism', pp. 229-67, especially tables 13.1-2; Munro, 'Industrial Entrepreneurship', pp. 377-88; Lloyd, *Wool Trade*, pp. 193-24. By Edward I's *Carta Mercatoria* of 1303, aliens were subjected to an export duty of 1s 0d per *pannus sine grano* (broadcloth not dyed in grain), 1s 6d per cloth partially dyed in grain; and 2s 0d per full-grained scarlet broadcloth. The 1347 Cloth Custom raised the duty for alien exports to 2s 9d per broadcloth (*sine grano*); 4s 4d for partially grain-dyed cloths, and 5s 6d for full-grained scarlets), but the Hanseatic merchants refused to pay anything beyond the 1s 0d of *Carta Mercatoria*, and thereby gained an export advantage, certainly over other aliens. These rates remained fixed until 1558, when they were raised to 6s 8d per broadcloth exported by denizens and 14s 6d per broadcloth exported by all aliens, now including the Hanse. From the 1370s an additional levy known as poundage, 6d per £ of value or 2.5 per cent was periodically levied, but only sporadically on denizens after the accession of Henry VI (1422), ceasing altogether for denizens in 1455. See Gras, *Early English Customs System*, pp. 72, 82-3, 91.

¹⁷ See Munro, 'Anglo-Flemish Competition', pp. 37-60; and the various essays in Munro, *Textiles, Towns, and Trade* (1994).

storms of the later-medieval economic contractions and the more recent threat of English competition by adjusting to those structural changes in international trade that favoured both the production and marketing of luxury products over relatively cheap mass-consumption goods and thus did so by specialising in the production of a very few lines of ultra-fine, very costly woollens and, as skilful entrepreneurs engaged in monopolistic competition, by using the panoply of urban-guild regulations and government inspections to convince aristocratic-oriented markets of their superior product quality. How else indeed could the Flemish and Florentines have succeeded, during the early fifteenth century, in selling woollens for three times the price of English broadcloths, though all were made from the same range of wools?¹⁸

IV. Other key factors in the expansion of the English cloth trade and the Antwerp market: political conflicts, the German Hanse, the South German mining boom, and the role of monetary policies

The final victory of the English cloth trade and thus the downfall of most of its continental rivals took place during the middle and later decades of the fifteenth-century through the interaction of three key factors, all of which also had a significant bearing, direct or indirect, on the evolution of credit instruments in England's commerce with the Low Countries. As the most chronic and longest-standing factor, but perhaps also the least important, one may commence with political and economic conflicts: and in particular, for this era, the Anglo-Burgundian War and the abortive siege of Calais in 1436-9, which, in wrecking havoc on the economies of both combatants, arguably did far more damage to the Flemish and Brabantine cloth trade than to the English. Certainly the English cloth export-trade -- but even more so, the Dutch -- benefited enormously from two combined disasters in the 1450s: the Ghent rebellion and civil war (1450-53) and the Hanseatic embargo imposed on the Bruges staple and Flemish-Brabantine woollens (1451-57).¹⁹

¹⁸ For evidence on comparative woollen cloth prices, see: Munro, 'Industrial Protectionism', Tables 13.2,3,5, pp. 256-68; Munro, 'Industrial Transformations', Table 4.1, p. 142; App. 4.1, pp. 143-8; John Munro, 'The Medieval Scarlet and the Economics of Sartorial Splendour', in Negley B. Harte and Kenneth G. Ponting, eds., *Cloth and Clothing in Medieval Europe: Essays in Memory of Professor E. M. Carus-Wilson*, Pasold Studies in Textile History No. 2 (London, 1983), pp. 13-70; all reprinted in Munro, *Textiles, Towns, and Trade*; and also Munro, 'The Origins of the English 'New Draperies'', pp. 35 - 127.

¹⁹ See Marc Boone, *Gent en de Bourgondische hertogen ca. 1384 - ca. 1453: een sociaal-politieke studie van een staatsvormingsproces* (Brussels, 1990), pp. 210-36; David Nicholas, *Medieval Flanders* (London, 1992), pp. 326-91; Philippe Dollinger, *The German Hanse*, trans. and ed. D.S. Ault and S.H. Steinberg (London, 1964), pp. 281-

At the same time, and indeed from as early as 1410, England had been engaged its own prolonged conflicts with the Hanseatic League, in particular the Baltic Wendish and Prussian Leagues, which, though they were no longer curtailing the sales of English woollens in the Baltic, had effectively excluded English ships and their merchants almost completely from this entire region, and had thereby diverted English merchants to what was in fact their only accessible access to continental European textile markets: the Brabant Fairs of Antwerp and Bergen-op-Zoom. The former, of course, was the one that came to flourish and gain so much prosperity; and it began to do so principally by welcoming the English cloth trade, for, unlike the other major Brabantine towns and Flemish towns, it had no local woollen industry to protect. Indeed, Bruges, with its then far more highly developed international staple or emporium of foreign merchants, dominated by the Germans and Italians, might have seemed the much more logical outlet through which to market English woollens, except for the unsurprising fact that the Flemish *drie steden*, the great clothmaking towns of Ghent, Bruges, and Ypres, had banned all English cloths from not only Bruges but the whole of Flanders, from the 1350s, to protect their own threatened draperies; and indeed, during the second half of the fourteenth century, that Flemish cloth-trade ban had been responsible for diverting English cloth merchants into the far less promising Baltic zone, now lost to the English until later Elizabethan times.²⁰

From as early as 1421, Antwerp became the permanent overseas base of the London Merchants Adventurers, soon to be England's principal cloth-exporters; and they participated actively in what became the second and far more powerful factor in propelling the English cloth trade to ultimate victory: the revival of the overland continental commerce between Italy, South Germany, and the Low Countries, which in turn promoted the subsequent and rapid development of Antwerp to become the commercial and financial capital of the

310; T.H. Lloyd, *England and the German Hanse, 1157-1611: A Study of Their Trade and Commercial Diplomacy* (Cambridge, 1991), pp. 173-234; John Munro, *Wool, Cloth and Gold: The Struggle for Bullion in Anglo-Burgundian Trade, ca. 1340-1478* (Brussels, 1973), pp. 127-54.

²⁰ See the evidence cited in nn. 2, 12-17, and others included in Munro, *Textiles, Towns, and Trade* (1994); and John Munro, 'Patterns of Trade, Money, and Credit', in James Tracy, Thomas Brady Jr., and Heiko Oberman, eds., *Handbook of European History in the Later Middle Ages, Renaissance and Reformation, 1400 - 1600*, I: *Structures and Assertions* (Leiden, 1994), pp. 147-95; and Lloyd, *England and the German Hanse*, pp. 173-291.

European economy in the century 1460 - 1560. Initially, English cloth merchants encountered Cologne and other Rhenish Hanse merchants, who just as eagerly sought English woollens as a return cargo, especially when they came to be dyed and finished with great skill in Antwerp and neighbouring towns. Subsequently, from the 1460s, South German merchants and merchant-bankers provide the most powerful catalyst for the rapid growth of the continental routes, thereby displacing the Rhenish Hanse, when the Central European mining boom produced a veritable flood of silver and copper, which they funnelled down the Rhine valley routes, along with a growing supply of their fustian textiles, woven with Venetian-supplied Syrian cotton, to the Brabant Fairs.²¹

Two contemporaneous and combined acts of English and Burgundian monetary policy proved to be decisive in determining whether more of that silver would flow to Antwerp rather than Venice, and thus in cementing the two twin pillars of Antwerp's commercial-financial supremacy in the later fifteenth century. In 1464-5, England's Edward IV undertook a drastic 25 per cent debasement of the silver coinage, i.e. a devaluation of the pound sterling, which -- in an economic climate of continuing monetary deflation -- made English woollens that much cheaper on the Antwerp market, and thus more attractive to the South Germans as their principal return cargo for distribution in German and Central European markets. The following year, in 1466, Duke Philip the Good of Burgundy responded with a much more modest defensive debasement, but one that radically altered the mint-ratio from pro-gold (as it had been since 1425) to one that was even more strongly pro-silver, and thus offered a much more attractive price for silver, in terms of both gold and other goods, than to be found elsewhere. Whether or not the Burgundian mint-officials devised this policy to attract the South German silver-bearing merchants and merchant-bankers, the Antwerp and Bruges mint accounts show that it did.²²

²¹ See nn. 2, 10, 12, 19-20, 22; E.M. Carus-Wilson, 'The Origins and Early Development of the Merchant Adventurers' Organization in London', *Economic History Review*, 1st ser., 4:2 (1933), reprinted in E.M. Carus-Wilson, *Medieval Merchant Venturers: Collected Studies* (London, 1954), pp. 143-82.

²² John Munro, 'The Central European Mining Boom, Mint Outputs, and Prices in the Low Countries and England, 1450 - 1550', in Eddy Van Cauwenberghe, ed., *Money, Coins, and Commerce: Essays in the Monetary History of Asia and Europe, From Antiquity to Modern Times* (Leuven, 1991), pp. 119 - 83; Munro, *Wool, Cloth, and Gold*, pp. 155-80, 187-211; see also nn. 2, 10, 19-20.

V. Regressive elements in English monetary policies: the Calais Staple Bullion laws

If Edward IV's aggressive and quite unprovoked debasement of 1464 may be viewed as yet another instance of fiscal and monetary 'backwardness', the English were regrettably not alone in resorting to such measures in this era. This debasement, however, also constituted a part, and the final stage, of a truly regressive monetary-fiscal policy that the crown had much earlier resumed, literally with a vengeance, in 1429, partly in reaction to earlier Burgundian debasements: the nefarious Calais Staple Bullion and Partition laws, designed to restore English mint outputs and more specifically to supply sufficient ready coinage to pay the vital Calais military garrison. In essence, these laws, re-enacted with enforcement measures in 1433, required the Calais Staplers to sell all their wools for ready money alone, permitting no credit; and more specifically to extract one third of that full payment in bullion and the rest in English coin alone. A supplementary statute attempted to prohibit all English merchants from selling their goods on credit, 'but oonley for redy money, or Merchandis for Merchandise'.²³ This very foolish and unrealistic statute proved impossible to enforce. After so many English merchants had complained that it was preventing them from selling their woollen cloths abroad, the next Parliament, of January 1431, grudgingly permitted denizen cloth merchants to sell their woollens 'upon Loan of Payment, to be made in Money or in Merchandise, from Six Months to Six Months next': i.e. in two or more bills over one year; but it re-affirmed the credit ban for merchandise sales to all other aliens.²⁴ Parliament, however, still retained higher hopes of enforcing the Calais Bullion Ordinances, because they involved a crown-regulated organisation with certain monopoly powers over selling the very wools that were still so vital to the industrial economy of the Burgundian Low Countries. Indeed, to enhance those monopoly powers the complementary Calais Partitions Laws on wool-sales effectively transferred complete control over the Staple to a small clique of leading and compliant Staplers.²⁵

²³ *Rotuli Parliamentorum*, IV, no. 66, pp. 360-61; *SR*, II, p. 257 (8 Henrici VI c.24).

²⁴ *Rot. Parl.*, IV, no. 31, p. 377; *SR*, II, 263-4 (9 Hen. VI c. 2).

²⁵ For the this and the following discussion, see Munro, *Wool, Cloth and Gold*, pp. 84-179; Munro, *Textiles, Towns, and Trade*; Lloyd, *The Wool Trade*, pp. 257-82.

Even from the vantage point of the fifteenth century, the enactment of such regressive and mutually destructive legislation seems incredible; for both the wool and cloth trades, along with the entire international economy of both countries, had long depended upon the extensive and very wide use of sales credit and complementary bills of exchange and/or bills obligatory, as the leading Staplers themselves so well knew. Traditionally English wool-growers, wool-brogers, wool-merchants, the Staplers, and their customers in the Low Countries had effected their serial transactions with a chain of credit, usually comprising a down payment of about one-quarter or one-third in cash, with the remainder in a series of bills of one sort or another, usually payable over six months to a year (or sometimes longer). Merchants often used such bills in payment to offset claims against each other, without necessarily resorting to cash, or certainly not to full cash payments. The Staplers themselves collected or redeemed their bills at various fairs in Flanders and Brabant, on which they were drawn, and of course in Flemish currency. Rather than shipping those moneys in specie or bullion to England, they much more frequently, and certainly by the early fifteenth century, remitted those payments to their London agents by bills of exchange; and to effect such transactions, the Staplers frequently used their Flemish funds to 'buy' bills of exchange from Merchants Adventurers stationed in Antwerp or other London-based Mercers trading in and importing various goods from the Low Countries: bills that would be drawn for payment in English funds on their London financial correspondents. Thus, in effect international trade was chiefly conducted in goods alone, without the transference of much bullion across the Channel. Merchants made and received their payments in the local currency, Flemish or English; furthermore, in the Low Countries, English merchants often had their bills drawn for payment upon a Bruges or Antwerp *wisselaer*-- a combined money-changer, deposit-banker and bills-broker --who would redeem them in book-credits in the payee's deposit accounts.²⁶

²⁶ For extensive evidence drawn from the Cely accounts, see Alison Hanham, *The Celys and Their World: An English Merchant Family of the Fifteenth Century* (Cambridge, 1985), pp. 187-202: with bills or drafts drawn on the Bruges *wisselaers* Collard De May and John Newenton, in 1477-79. See also the evidence in Alison Hanham, ed., *The Cely Letters, 1472 - 1488*, The Early English Text Society (London, 1975), passim; and Alison Hanham, 'Foreign Exchange and the English Wool Merchant in the Late Fifteenth Century', *Bulletin of the Institute of Historical Research of the University of London*, 46 (1973), pp. 160 - 75.

Flemish, Brabantine, and Dutch drapers undertook similar (if less well-documented) financial transactions in purchasing their wools and dyestuffs and in selling the finished woollens to Italian, Hanseatic, and various other foreign merchants trading in the Low Countries. The vast majority of the Flemish and Brabantine drapers were petty industrial entrepreneurs, many of them former weavers and cloth-finishers (or *upzetters*), with very small profit margins and capital resources, and restricted access to credit beyond the standard transactions in sales credit just outlined. To obtain the necessary cash to make full payments for their wool purchases at Calais, and indeed to do so in the form of English coin and bullion, would evidently have meant a ruinous resort to money-changers, other bankers, and wealthier foreign merchants -- collectively an almost impossible task, especially in the current era of monetary contraction and coin shortages, which themselves further exacerbated the scarcity of credit, as Pamela Nightingale has recently demonstrated for fifteenth-century England.²⁷ Furthermore, Duke Philip the Good retaliated by imposing his own rigorously enforced ban on bullion exports, especially to Calais, and then a general Burgundian-wide ban on English woollens, thus inflaming a conflict that was partly responsible for the aforementioned Anglo-Burgundian War of 1436-39 (with the abortive siege of Calais), ending in a truce that restored the English-cloth trade to all the Burgundian domains, except Flanders, from which as noted before, it had long been banned.²⁸

To what extent the Calais Staple Bullion and Partition Ordinances were ever enforced cannot be ascertained. In 1442, rebel Staplers 'of their owne auctorite' revoked the mutually harmful Calais anti-credit payment regulations; but twice thereafter, the English crown again sought to reimpose or enforce them more rigorously: in 1445 and again in 1463 (combined with the 1464 debasement). In reflexive retaliation, the

²⁷ Pamela Nightingale, 'Monetary Contraction and Mercantile Credit in Later Medieval England', *Economic History Review*, 2nd ser., 42 (November 1990), 560 - 75. See also Munro, *Wool, Cloth, and Gold*, pp. 93-179 (though interpreting it as a regional monetary scarcity); and the various studies published in John Munro, *Bullion Flows and Monetary Policies in England and the Low Countries, 1350 - 1500*, Variorum Collected Studies (Aldershot, 1992); Peter Spufford, *Money and Its Use in Medieval Europe* (Cambridge, 1988), pp. 339-62.

²⁸ See John Munro, 'Bruges and the Abortive Staple in English Cloth: An Incident in the Shift of Commerce from Bruges to Antwerp in the Late Fifteenth Century', *Belgisch tijdschrift voor filologie en geschiedenis/ Revue belge de philologie et d'histoire*, 44 (1966), 1137-59; and Munro, 'Industrial Protectionism', pp. 229-68; both reprinted in John Munro, *Textiles, Towns, and Trade: Essays in the Economic History of Late-Medieval England and the Low Countries* (1994).

Burgundian government again banned all English cloth imports into the Burgundian Netherlands: in 1447-52 and 1464-67. During the 1467 negotiations to end the trade war and cloth bans, the Burgundian ambassadors bluntly informed the English delegates that if the Calais Ordinances were maintained their draperies 'would have to bear such costs for each sarpler of wool... that they would be forced to give up cloth-making, or else obtain their wool from elsewhere'.²⁹ Indeed, a number of the lesser draperies, those known as the *nouvelles draperies*, who had long produced somewhat inferior imitations of *drie steden*'s fine woollens, were doing precisely that: in switching to Spanish *merino* wools, which, however did not then equal even the medium-quality English Midlands wools in quality. The *drie steden* and major Brabantine towns (Brussels, Leuven, Mechelen) elected not to make that choice, not at least for their fine sealed woollens, lest they impair their well-honed reputation for luxury quality, and so lose their export markets.³⁰ The impact of the Calais Bullion upon these major urban draperies, to be seen also in the context of their other current afflictions, may be deduced from the accompanying Table 2 based on their various production indices.³¹ Leiden, however, then enjoying the active support of those fellow-Dutch merchants aggressively expanding in the Baltic, clearly fared much

²⁹ Marie-Rose Thielemans, *Bourgogne et Angleterre: relations politiques et économiques entre les Pays-Bas bourguignonne et l'Angleterre, 1435-1467* (Brussels, 1966), doc. no. 8, pp. 473-4.

³⁰ Brussels, however, had established a *nieuwe draperie* in 1443, to produce sealed *bellaerts* from Spanish, Scottish, and local wools; but this drapery was to be kept strictly segregated from the traditional woollens industry. Stadsarchief Brussel, no. XVI, for 183r.; Felicien Favresse, 'Note et documents sur l'apparition de la 'nouvelle draperie' à Bruxelles, 1441-1443', *Bulletin de la Commission Royale d'Histoire*, 112 (1947), pp. 143-67; and Felicien Favresse, 'Les débuts de la nouvelle draperie bruxelloise, appelée aussi draperie légère', *Revue belge de philologie et d'histoire*, 28 (1950), reprinted in his *Études sur les métiers bruxellois au moyen âge* (Brussels, 1961), pp. 59-74. Even earlier, in 1415, Leuven had permitted the establishment of a *nieuwe draperie* utilizing French, Scottish, and domestic wools (Spanish wools are not mentioned). Stadsarchief Leuven, no. 1524, fos. 287r-9v; Raymond Van Uytven, *Stadsfinanciën en stadseconomie te Leuven van de XIIe tot het einde der XVIe eeuw* (Brussels, 1961), pp. 361-9. Mechelen was technically a Flemish seigneurie but was integrally part of the Brabantine economy.

³¹ For the statistical evidence, see Munro, *Wool, Cloth, and Gold*, pp. 127-85; Munro, 'Industrial Protectionism', pp. 229-68; Munro, 'Anglo-Flemish Competition', pp. 37-60; John Munro, 'Monetary Contraction and Industrial Change in the Late-Medieval Low Countries, 1335 - 1500', in Nicholas Mayhew, ed., *Coinage in the Low Countries, 880 - 1500*, British Archeological Reports, International Series No. 54 (Oxford, 1979), pp. 95-161; and John Munro, 'Economic Depression and the Arts in the Fifteenth-Century Low Countries', *Renaissance and Reformation*, 19 (1983), pp. 235-50; reprinted in Munro, *Textiles, Towns, and Trade* (1994).

better for that reason.³²

Not until 1473, and only after Edward IV had regained his throne in battle (Battle of Tewkesbury, 1471) with financial and indirect military support from the next duke, Charles the Rash, did the English government finally relent, in February 1473, by having Parliament formally revoke the Calais Bullion Ordinances, explicitly permitting the Staplers to engage in credit sales, including bills of exchange. Indeed, in granting this specific exemption, the statute had to concede that, because wools were sold for foreign coins, ‘which hath no cours within this Reame’, the Staplers could not receive their payment ‘without eschaunge made in the Landes beyond the See, which eschaunge, if they any should make, shuld be unto theym by dyvers other Statutes to[o] excessively grevous and penall.’³³

VI. The roots of English bullionism: bans on bills of exchange, foreign coins and bullion exports

Certainly, long before the enactment of the pernicious Calais Bullion laws in 1429, indeed from the later thirteenth century, the English crown had vigorously and rigorously sought to prohibit the use of any bills of exchange in English commerce; and thus in October 1283 -- in the very infancy of this remarkable Italian financial institution -- Edward I had issued a proclamation that forbade anyone ‘to make exchange of the King’s money in places beyond the sea by receiving there money or silver on condition that they by themselves, their friends or fellows, shall pay in England the sum of such money, whereby the money or silver that ought to come to the real may not come as it was wont to do’.³⁴ Subsequently, in 1307, Parliament explicitly

³² That Holland’s major drapery, at Leiden, fared so much better in this era may perhaps be attributed to its better ability to secure credit from fellow Dutch merchants and also gain markets from their aggressive expansion in the Baltic, at the direct expense of the Hanse in this era. See Table 1, and John Munro, ‘Patterns of Trade, Money, and Credit’, in Thomas A. Brady, jr., Heiko O. Oberman, and James D. Tracy, eds., *Handbook of European History, 1400-1600: Late Middle Ages, Renaissance and Reformation*, Vol. I: *Structures and Assertions* (Leiden/New York/Cologne: E.J. Brill, 1994), pp. 147-95; Hanno Brand, ‘A Medieval Industry in Decline: The Leiden Drapery in the First Half of the Sixteenth Century’, in Marc Boone and Walter Prevenier, eds., *La draperie ancienne des Pays Bas: débouchés et stratégies de survie (14e - 16e siècles)/ Drapery Production in the Late Medieval Low Countries: Markets and Strategies for Survival, 14th-16th Centuries* (Leuven/Appeldorn: Garant, 1993), pp. 121-49.

³³ *Rot. Parl.*, VI, no. 59, p. 60 (Act of Retainer, Feb. 1473). In July 1478, during the Anglo-Burgundian treaty negotiations at Lille, the Staplers formally repudiated the Calais laws, article by article, in return for a Burgundian promise (never fulfilled) to ban all foreign wools not acquired at Calais. See Thomas Rymer, ed., *Foedera, conventiones, literae, et acta publica* (London, 1709-12), XII, 77-86; *Rot. Parl.*, VI, no. 14, 395-97; 515.

³⁴ *Calendar of Close Rolls 1279-88*, p. 244.

prohibited all English religious houses from engaging in any bills-of-exchange transactions with Rome, a prohibition repeated several times by later Parliaments.³⁵ Nothing more explicit need be said in explanation of these royal and Parliamentary bans; for we have already seen how fifteenth century bills-of-exchange transactions between the Staplers and the Mercers or Adventurers obviated bullion shipments from the Low Countries to England in payment for wools. That of course was also a prime reason for the total ban on credit in the Calais Bullion laws. If, however, rightly or wrongly, one were to interpret the fifteenth-century legislation in the light of an undisputed contemporary coin scarcity and bullion shortages, reflected in the rather stark price-deflation of this era, the same can hardly be said for the later thirteenth and early fourteenth centuries.³⁶

Despite the lack of any evidence for monetary scarcity in the late thirteenth century (indeed an era of continuing inflation), the English bans on bills of exchange are indeed clearly linked to even firmer royal bans on bullion exports, the earliest record of which is a royal proclamation of December 1278 (Edward I).³⁷ That and Parliament's subsequent ban of May 1299, the *Statutum de Falsa Moneta* (Statute of Stepney), were clearly linked to corollary bans on imports of counterfeit, clipped, or otherwise fraudulent coins (deemed to be bullion for recoinage at the Royal Mint), as indeed were almost all subsequent bullion-export bans. Certainly the influx of such coins, especially the counterfeit sterlings minted in the Low Countries known as 'Crockards and Pollards', became such a serious problem by 1299 that Edward I was forced to undertake total recoinage of all English and foreign moneys. Whether or not Gresham's Law was fully understood at this time, certainly

³⁵ *Rot. Parl.*, I, p. 217 (Carlisle Parliament of March 1307); John Munro, 'Bullionism and the Bill of Exchange in England, 1272-1663: A Study in Monetary Management and Popular Prejudice', in The Center for Medieval and Renaissance Studies of the University of California, ed., *The Dawn of Modern Banking* (New Haven, 1979), p. 200. But Parliament soon did permit them to secure royal licences to do so, for 'reasonable amounts' *per viam cambii*.

³⁶ See the evidence presented in John Munro, 'Bullion Flows and Monetary Contraction in Late-Medieval England and the Low Countries', in John F. Richards, ed., *Precious Metals in the Later Medieval and Early Modern Worlds* (Durham, 1983), pp. 97-158; reprinted in Munro, *Bullion Flows and Monetary Policies* (1992); and Munro, 'Mint Outputs, Money, and Prices', pp. 31-122. More recently, see John Hatcher, 'The Great Slump of the Mid-Fifteenth Century', in Richard Britnell and John Hatcher, eds., *Progress and Problems in Medieval England* (Cambridge, 1996), pp. 237-72; Pamela Nightingale, 'England and the European Depression of the Mid-Fifteenth Century', *The Journal of European Economic History*, 26:3 (Winter 1997), pp. 631-56.

³⁷ Rymer, *Foedera*, I.ii, 564; *Calendar of Close Rolls 1272-79*, p. 518.

many saw that a circulation of foreign counterfeit or other underweight and debased coins at tale, i.e. for the same nominal exchange value as full-bodied good coins, would produce the following adverse set of consequences: the loss of the premium or *agio* that coins normally commanded over bullion, the outflow of good coins and bullion to those foreign mints offering a higher premium, and thus consequently the virtual cessation of domestic minting.³⁸ For western Europe, this monetary problem became truly serious only with the commencement of drastic debasements under Philip IV the Fair, from 1296, inaugurating two full centuries of *guerres monétaires*, in western Europe, in the form of both aggressive and defensive debasements.

From the 1299 Statute of Stepney -- enacted, as noted, in direct response to continental debasements, England's continuously enforced ban on precious metal exports applied to both silver bullion and silver coin, in any form; and from 1307 it included gold bullion but not gold coin because none was minted before 1344. Initially, and somewhat surprisingly, the English crown did permit the export of the new gold *nobles*; but from January 1364 the export of precious metals in all forms, including the new English gold *nobles*, was strictly forbidden; and Parliament continually re-affirmed and firmly enforced that ban up to May 1663.³⁹

No other medieval European nation was so all-inclusive in its bullion export bans; and most, like Flanders and the subsequent Burgundian Low Countries, always permitted the export of all legal-tender coins, foreign as well as domestic, specifically defining *billon* or *billoen* as those demonetized coins and uncoined metals, excepting unbroken plate and jewelry, that were legally required to be surrendered to the mints as bullion. That difference in attitudes can be detected in a sharp retort, in deed a rebuke, that Burgundian-

³⁸ For contemporary evidence, see Michael Prestwich, ed., *York Civic Ordinances, 1301*, Borthwick Papers no. 49 (London, 1976), pp. 14-15. As Feavearyear, Mayhew, and others have demonstrated the same situation would occur if the mints did not continue issuing new coins and the circulation of older domestic coins was allowed to deteriorate through clipping, wear and tear, etc. The most accurate renditions of this famous principle come only from the later fourteenth century, particularly in Nicholas Oresme's famous tract on *De moneta*. See Charles Johnson, ed., *The 'De Moneta' of Nicholas Oresme and English Medieval Mint Documents* (London, 1956); Sir Albert Feavearyear, *The Pound Sterling: A History of English Money*, 2nd rev. edn. by E.V. Morgan (Oxford, 1963), pp. 16-64; Nicholas Mayhew, 'Numismatic Evidence and Falling Prices in the Fourteenth Century', *Economic History Review*, 2nd ser. 27 (1974), pp. 1-15.

³⁹ 15 Carolus II c. 7 (May 1663), in *SR*, V, p. 452, sec. 9. See also Munro, 'Bullionism', pp. 187-205, 216-39.

Habsburg ambassadors delivered to the English delegates during the 1499 trade-treaty negotiations:⁴⁰

They [the Archduke's councillors] thynk that theye do very moche for your subjectes to graunt them to conveigh oute of the archdukis landis all money current in thoos parties and also all manere of plate wrought and brought to eny man certen forme and fasshion [unbroken]. For the archdukis subjectes may not have like pryvyllage to convey money nether plate oute of your realme of England into the archdukis parties, nor all manere of cune [coins]...

VII. The English coinage obsession and other bullionist policies in the later 14th and 15th centuries

One key reason why English monetary attitudes differed from not only those that prevailed in the Burgundian-Habsburg Low Countries but also those in most other European countries was England's unique stance on the role of the mints. For most other European princes, the most effective response to any inundation of fraudulent foreign coins and to a consequently underweight coinage circulation, to any ensuing bullion outflows, and thus to reductions in mint outputs was at least a defensive debasement to reduce the current standard to that of the inferior circulation. But medieval England, or more particularly its Parliament, was far more hostile to coinage debasements than any other medieval West European state. Indeed, in January 1352, in reaction to an inflation that evidently resulted from the consequences of both the Black Death (1348) and a mild, defensive debasement in 1351, Parliament enacted a statute that forbade the king from ever again 'impairing' the gold or silver coinages without its consent. The next coinage alteration, a purely defensive reduction in the silver weight, took place only 60 years later, in 1411-12, with Parliament's consent. The next alteration, over 50 years later, by the aforementioned debasement of 1464, might also have been justified as a purely defensive measure, had Edward IV not reduced the weight of the silver coinage so drastically, by 25 per cent; but the next coinage alteration, which took place 60 years later, under Henry VIII, in 1526, was also arguably defensive, unlike his 'Great Debasements' of 1542-52 (i.e. carried on by his successor).⁴¹ Thus

⁴⁰ Georg Schanz, ed., *Englische Handelspolitik gegen Ende des Mittelalters*, II: *Zoll-und Handelsstatistik, Urkunden, Beilagen* (Leipzig, 1881), doc. no. 8, p. 196. See John Munro, 'Billon - Billoen - Billio: From Bullion to Base Coinage', *Belgisch tijdschrift voor filologie en geschiedenis/Revue belge de philologie et d'histoire*, 52 (1974), 293-305; reprinted in Munro, *Bullion Flows and Monetary Policies* (1992).

⁴¹ See Feaveryear, *Pound Sterling*, pp. 30-75, 435-36; Christopher Challis, *the Tudor Coinage* (Manchester, 1978), pp. 81-112; 248-99; C.E. Challis, *A New History of the Royal Mint* (Cambridge, 1992), pp. 143-244 (with chapters by Mayhew and Challis).

medieval England stood virtually alone in eschewing coinage debasements as a regular fiscal policy. Instead the crown resorted to other and perhaps ultimately more harmful foreign-trade measures, in striving to prevent any outflow of specie and bullion and to seek their continuous inflow, in order to replenish mint outputs and provide seigniorage revenues.

Even as early as 1340, the crown and Parliament began to impose one of the most persistent and pernicious such measures on the wool export trade, by requiring merchants to supply the Tower Mint with two marks (13s 4d) of silver for each woolsack exported, a measure that had to be revoked in 1348 in the face of strong Flemish and domestic opposition.⁴² With the establishment of the Calais Staple in 1363, Edward III also stipulated that only English coin and bullion be received in payment for wools, contending that Flemish and other foreign coins ‘estoient si febles’; and when merchants sought to bypass these payment regulations by resorting to bills obligatory and similar credit instruments, the crown sought to ban credit sales, while requiring Stapler merchants to supply the Calais mint with three ounces of fine gold per woolsack sold. That such measures could not be enforced did not prevent his successor, Richard II, from re-imposing them, though at the reduced level of just one ounce of fine gold per woolsack (in response to Flemish counterfeits of the prized English gold noble), in 1391-92 and again in 1397-99, after which they were allowed to lapse in the face of extremely hostile Flemish and Stapler opposition.⁴³ Thus the fifteenth-century Calais bullion laws were nothing new, with almost a century-old tradition behind them; and they had their direct antecedents as Staple ordinances with the re-opening of the Calais mint in 1421.⁴⁴ Furthermore, from 1390, the crown pursued an allied

⁴² *Rot. Parl.*, II, no. 14, p. 105; no. 16, pp. 137-8; no. 15, p. 202; *SR*, I, 289 (14 Ed III stat. 1 c. 21); 291 (14 Ed. III. stat. 2, c.4); Lloyd, *Wool Trade*, pp. 183-4, 196-7.

⁴³ Richard II's latter bullion law was in response to Flemish counterfeiting of his gold nobles. See Munro, *Wool, Cloth, and Gold*, chapter 2: ‘The War of the Gold Nobles’, pp. 11-42, with some corrections of the data in John Munro, ‘Mint Policies, Ratios, and Outputs in England and the Low Countries, 1335-1420: Some Reflections on New Data’, *The Numismatic Chronicle*, 141 (1981), 71-116. [formerly listed as: 8th series, Vol. I]; reprinted in Munro, *Bullion Flows and Monetary Policies* (1992).

⁴⁴ In 1420 a Parliamentary petition had proposed a new Employment or Hosting Act (see n. 45) by which all merchants trading at Calais would have been required to surrender their gold bullion and foreign coins to a resident ‘host’, who would have delivered this metal to the Calais mint for recoinage, at the merchants’ expense; he also recommended, as in the 1429 statutes, that the Staplers sell their wools for cash at high fixed prices, remitting all their

bullionist policy on the import/export trades with somewhat greater persistence and success: the so-called Employment Laws, which required alien importers to ‘employ’ at first half and subsequently all of their sales receipts on the export of English merchandise, and thus to prevent them from exporting any specie.⁴⁵

VIII. Medieval English bullionist philosophy and the roots of Mercantilism

In sum, later-medieval England was far more determined than any other European principality to ban all foreign coin imports (except as bullion) and all exports of precious metals in any form, while seeking to extract as much bullion as possible from foreign trade. Though concerns about maintaining adequate mint outputs and thus a circulation of full-bodied coins that would command public confidence, and thus to do so without any coinage debasements, may provide some rationale for these English monetary policies, they did verge on the extreme in their execution, reflecting one might say a degree of paranoia. Indeed, more so than most other medieval European nations, England developed a ‘bullionist’ mentality that wrongly equated national wealth and power with a country’s stock of precious metals: ideas that are the very foundation of later Mercantilism, best known indeed in its English guise.

The most pungent medieval expression of such bullionist views may be found in the 1436 London-based tract known as the *Libelle* [Little Book] *of Englyshe Polycye*, and thus written in the very era of the Calais Bullion laws, which admittedly was also an era of growing monetary contraction. In spewing xenophobic hatred against Italian merchants in particular, the author contended that they ‘bere the golde oute of thys londe, and souke the thryfte away oute of our honde [hand]; as the waffore [wasp] soukethe honye fro

proceeds directly to England in specie. The 1420 Parliament enacted, however, only a new version of the 1397 bullion laws imposed on Italian and Spanish merchants exporting wools to the Mediterranean. *Rot. Parl.*, IV, pp. 125-6, no 14; p. 126, no. 15 and 21; *SR*, II, p. 203 (8 Henrici V c. 2): one ounce of gold per woolsack. See also Munro, *Wool, Cloth, and Gold*, pp. 70-92.

⁴⁵ For the employment laws and the various statutes for their enforcement, in 1390, 1401, 1402, 1404, 1411, 1416, 1420, 1421, 1425, 1439, 1448, 1449, 1465, 1478, 1484, 1485, and 1487, see John Munro, ‘Bullionism and the Bill of Exchange in England, 1272-1663: A Study in Monetary Management and Popular Prejudice’, in Center for Medieval and Renaissance Studies of the University of California, ed., *The Dawn of Modern Banking* (New Haven, 1979), pp. 196-8; and Appendix D, pp. 228-30; reprinted in Munro, *Bullion Flows and Monetary Policies* (1992). The final statute of November 1487 made these provisions ‘perpetual’: 3 Hen. VII c. 9, in *SR*, II, pp. 517-18.

the bee, so mynuceth oure commodite [diminishes our wealth]'.⁴⁶ Such views certainly had not changed a century later, in 1530, when Clement Armstrong stated in his *Treatise Concerninge the Staple* [of Calais] that:⁴⁷

The holl welthe of the reame [kingdom] is for all our riche commodities [exports] to gete owt of all other reamys therefore redy money; and after the money is brought into the holl reame, so shall all the peple in the reame be made riche therwith; and after it is in the reame, better it were to pay 6*d.* for any thyng made in the reame than to pay but 4*d.* for a thyng made owt of the reame, for that 6*d.* is owres so spent in the reame and the 4*d.* spent owt of the reame is lost and not ours. It is better to have plentie of gold and silver in the reame than plentie of merchauntes and merchandizes.

In similar fashion, after lamenting the forced revocation of the Calais Bullion laws sixty years earlier, Clement Armstrong condemned the Staplers' subsequent use of bills of exchange to rob England of bullion, with the now age-old accusation that they: ⁴⁸

covauntyd with the Adventurers in London to delyver ther money that rose of ther wolfe sales to theym by exchange. So begane the Staplers and the Adventurers for ther own singler profite to make ther exchange to geders in keypyng owt of the reame all such money as yerly shuld be brought into the reame for our riche comodities. Which money the Adventurers of London, receyvyng it at the marte of the Staplers [in Brabant], bestowith it ther upon all straunge merchaundise and bryngith it over into England, wher before that tyme the staplers for ther wolfe broughte ther money into England.

That was indeed fully in the spirit of the Parliamentary petitions that secured enactment of the Calais Bullion Laws in 1429, one of which contended that foreign merchants, 'thorowe the grete apprestes [loans, credit sales] that has been made them in this Roiaume, have ful gretley encreased and avaunced ther Merchandises, and broght doune to noght the pris of the commodite of this Roiaume, makying them riche and us pouere, that is shame and abusion'.⁴⁹ Shortly after, the *Libelle's* author similarly charged that Italian

⁴⁶ George F. Warner, ed., *The Libelle of Englyshe Polycye: A Poem on the Use of Sea-Power* (Oxford, 1926), pp. 21-2. See also G.A. Holmes, 'The "Libel" of English Policy', *The English Historical Review*, 76 (1961), pp. 193-216.

⁴⁷ Richard Tawney and Eileen Power, eds., *Tudor Economic Documents*, 3 vols. (London 1924), III, no. 124, p. 105.

⁴⁸ Tawney and Power, *TED*, III, p. 94.

⁴⁹ *Rot. Parl.*, IV, no. 66, p. 361.

merchants customarily bought English wool on long-term credit, and then sold that wool in Bruges or Venice for ready money, which they then lent to English merchants, by giving 'it oute by eschaunge to be paide ageyne here in Englonde'. If that bill was redeemed 'at sighte' the English merchant would 'lose' 12d on the pound, and if redeemed after one month's *usance* [i.e. from the date that it was drawn in Bruges], his loss would rise to 24d on the pound. These wicked Italian merchants were in fact engaging in a dual sin: for they 'gayne ageyn in exchaunge makyng, full lyke usurie', and then, after redeeming their bills, they 'bere there golde sone overe the see into Flaundres', while letting the English wool growers wait a long time for their money.

That hostility against the Italians for their financial dealings, along with a gross misconception of their banking activities remained deeply ingrained, certainly within the English Parliaments; and, despite the concessions on bills of exchange that the 1473 Act of Retainer had accorded the Staplers, Richard III's Parliament of January 1484 responded to yet another condemnation of the Italians for 'empoverysyng' the realm by forbidding them 'to make any money over the See by exchange'.⁵⁰ Although the Italian merchant community exerted enough pressure to have Richard's victorious successor Henry VII repeal this statute in November 1485, Henry's next Parliament, in November 1487, also sought to restrict the use of bills-of-exchange through the 'Acte Agaynst Exchaunge and Rechaunge without the Kynges Lycence'.⁵¹

IX. The usury question and bills of exchange

A second reason for the widespread English hostility to bills-of-exchange can be readily detected in the *Libelle*'s elaborate condemnation of Italian financial dealings: the firm conviction of both ecclesiastical and secular authorities that such bills were used to disguise the mortal sin of usury, i.e. the payment of any predetermined interest on loan contracts, or any sum above the principal lent. For bills of exchange were indeed investment contracts, and furthermore the most effective means by which merchants could secure the necessary funds from other merchants or bankers to finance their trading operations. In Raymond De Roover's

⁵⁰ *Rot. Parl.*, VI, no. 27, p. 263; *SR*, II, 489-93 (1 Ric. III c. 9).

⁵¹ *Rot. Parl.*, VI, no. 20, pp. 289-90; *SR*, II, 507-08 (1 Hen. VII c. 10); 515 (3 Hen VII c. 7).

firm opinion, the facility by which a bill of exchange contract could disguise interest payments through the differential exchange rates provided the primary reason for the widespread mercantile popularity of the medieval bill of exchange: in that funds advanced in one country's currency were to be repaid in the currency of another country and at a somewhat higher exchange rate than the one currently prevailing.⁵²

Such views may be disputed on the grounds that the contemporary and well-informed canon-law lawyers quite reasonably did not consider the bill-of-exchange to a genuine loan-contact within the context of the Roman-law *mutuum*, since the exchange rates on the second return bill (*recambium*) to remit the funds in order to reimburse the original 'lender' (*datore*) or, more properly speaking, investor in the first bill (*cambium*), were uncertain. Hence the bill-of-exchange was not *ipso facto* usurious, unless the contract was a 'dry exchange' (*cambio secco*) by which the two parties simultaneously fixed and predetermined the exchange rates on both the *cambium* and the *recambium*. Unfortunately, most medieval English government officials and Parliaments suspected that almost all bills of exchange were in reality 'drye eschaunge' and other 'dampnable bargaynes groundyt in usurye,' to use the language of statute 3 Henrici VII. c. 6 of 1489; and they rigorously applied the full force of the secular arm to uphold the universal ecclesiastical ban on usury.⁵³ In doing so, late-medieval England was not necessarily more 'backward' than other medieval nations, Muslim as well as Christian, the latter most especially after the Church succeeding in reinvigorating its campaign against usury from the early thirteenth century.⁵⁴ For reasons to be discussed later, the usury doctrine did indeed play a very

⁵² See in particular Raymond De Roover, 'New Interpretations of the History of Banking', *Journal of World History*, 2 (1954), pp. 38-76; and various other studies reprinted in Julius Kirshner, ed., *Business, Banking, and Economic Thought in Late Medieval and Early Modern Europe: Selected Studies of Raymond de Roover* (University of Chicago Press, 1974), pp. 200 - 38; and also Raymond De Roover, *L'evolution de la lettre de change, XIVe-XVIIIe siècles* (Paris, 1953).

⁵³ *SR*, II, p. 514. Though genuine 'merchant's exchange' escaped this renewed ban, another statute of this same 1489 Parliament, in reconfirming the long-standing ban on any precious-metal exports (without royal licence), also forbade anyone 'to paye or delyver wytyngly be way of exchaunge' any moneys to any aliens for merchandise, on pain of double forfeiture. *SR*, II, 546: 4 Hen. VII. c. 23.

⁵⁴ See J.W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols. (Princeton, 1970), esp. I, pp. 296-311; II, pp. 191-203; and Jacques le Goff, 'The Usurer and Purgatory', in Center for Medieval and Renaissance Studies, ed., *The Dawn of Modern Banking* (New Haven, 1979), pp. 27-31.

major role in the origins and evolution of negotiable credit instruments.⁵⁵

Nevertheless, the primary function of the bill of exchange contract was not to evade the usury laws, for there were simpler ways of doing so with lower transaction costs. Rather it was to provide the most efficient mechanism for both investing in trade and in transmitting or remitting the proceeds of such commercial transactions without having to incur the considerable costs of shipping specie and bullion, and more to the point, without risking their complete loss in doing so. A merchant who ‘bought’ a bill of exchange as this dual investment-transfer instrument avoiding shipping specie abroad by purchasing a claim to a foreign bank balance.⁵⁶ Certainly for English merchants one of the greatest risks in shipping specie and bullion was not so much brigandage as royal confiscations at any of the well-policed ports if they sought to ship such metals abroad, given that ubiquitous Royal Customers inspected and taxed all exports accordingly. Thus one of Elizabeth I’s councillors was not too far off the mark in contending that ‘marchauntes naturall exchange was first divided and used by the trewe dealing marchauntes immediately after that princes did inhibit the cariage of gould and silver out of their Realmes’.⁵⁷

X. Bills of exchange and bills obligatory in late-medieval English commerce

In this clear respect, therefore, ‘backwardness’ did promote the use of unquestionably the single most important financial innovation in later-medieval Europe; and, although the Italians created and predominated in the use of the medieval bill of exchange, the English provided the first or initial legal foundations in its evolution to become a negotiable credit instrument, as early as the 1430s -- the very era of the Calais Bullion Laws. That they did so is all the more surprising when so many historians have accused the English of ‘backwardness’ in their seeming preference for ‘bills obligatory’ over true bills of exchange. They contend that

⁵⁵ See below, pp.

⁵⁶ The distinction made between ‘investment’ and ‘transfer’ bills, and their exchange rates, in Peter Spufford, *Handbook of Medieval Exchange* (London, 1986), pp. xix - lxiv, is fallacious. See Reinhold Mueller, ‘The Spufford Thesis on Foreign Exchange: the Evidence of Exchange Rates’, *The Journal of European Economic History*, 24:1 (Spring 1995), pp. 121-29.

⁵⁷ Taverner to Elizabeth I, in 1570: Tawney and Power, *TED*, III, no. iii.5, p. 362.

the English bill obligatory resembled in all respects the predecessor of the bill-of-exchange, the so-called ‘fair letter’, or more accurately the *instrumentum ex causa cambii*, which the Italians used for both commercial and financial transactions at the Champagne Fairs during the later twelfth and thirteenth centuries. While the later bill of exchange was simply an informal command by which one merchant instructed another to make a specific payment abroad on his behalf, both the earlier Italian and the English documents were formal bills or loan contracts. The Italian *instrumentum ex causa cambii* was actually the more formal, as a notarized contract of indebtedness; and while medieval England also utilized a fully formal, notarized, and legally registered loan contract, known as the *recognizance*, it was not used or did not continue to be used all that much in foreign-trade and foreign-exchange transactions.

Secondly, both the Italian *instrumentum ex causa cambii* and the medieval English bill obligatory were three-party contracts involving merchants engaged in itinerant, fair-oriented trade; and normally the merchant who borrowed or received the funds also personally made or arranged the stipulated repayment at the foreign fair. The common thread for the *instrumentum ex causa cambii*, the later bill of exchange, and the English bill obligatory was, of course, the stipulation that the repayment be effected in a foreign currency, i.e. the domestic currency of the foreign town or fair where the merchandise (if any) was sold and/or the bill was redeemed.⁵⁸

As Michael Postan correctly observed, there is, in fact, no substantial difference between the English bill obligatory and the Italian bill of exchange in financing trade and in effecting payments or making remittances abroad, in a different currency.⁵⁹ Raymond De Roover, however, certainly provided the strong impression that the Italian development of the bill-of-exchange was a core feature of the late-thirteenth-century ‘Commercial Revolution’, closely associated with its other core feature, the shift from itinerant, fair-based trade to a more advanced ‘sedentary’ trade, by which the Italians utilized permanently established branch offices in

⁵⁸ See John Munro, ‘Inhaber-Klausel’ [Order Clause], ‘Inhaber-Schuldschein’ [Bill Obligatory], ‘*Instrumentum ex Causa Cambii*’, ‘Wechsel’ [Bill of Exchange], in Michael North, ed., *Von Aktie bis Zoll: Ein historisches Lexikon des Geldes* (Munich, 1995); and also De Roover, *Lettre de change*.

⁵⁹ Postan, ‘Credit in Medieval Trade’, pp. 1-27; Postan, ‘Private Financial Instruments’, pp. 28-64.

foreign towns, such as Barcelona, Bruges, and London. Thus the bill-of-exchange was a four-party financial instrument involving two principals in one city and their two financial agents in another, foreign city, who might indeed be the principal's factors or branch-office employees or other merchant-bankers.⁶⁰ Indeed, in De Roover's view, this financial development, and the ancillary establishment of a direct sea route between Italy and Flanders, were seen to be the primary causes of the 'decline and fall' of the Champagne Fairs in the early fourteenth century.⁶¹ But a much stronger case can be made that both the rapid decline of the Fairs and the establishment of the direct sea route were the consequences of the chronic European and Mediterranean warfare and insecurity from the 1290s that made the overland continental trade routes via the Champagne Fairs to Italy prohibitively expensive, especially for the chief commerce of those Fairs, in the wide variety of cheap woollen-worsted and linen textiles produced by hundreds of town and village draperies in northern France and the Low Countries; and their virtual disappearance parallels the collapse of the Champagne Fairs. De Roover's thesis is fact unhistorical because it ignores the subsequent revival and flourishing of similar international fairs, especially the aforesaid Brabant Fairs of Antwerp and Bergen-op-Zoom, but also the Frankfurt, Geneva, Besançon, and many other fairs, whose growth can be directly linked to the mid-fifteenth-century revival of continental overland trade, via South Germany and the Rhine, discussed earlier, along with the more general revival and expansion of the European economy as a whole.⁶² Such international fairs, necessarily involving

⁶⁰ For example, in Florence, the 'deliverer' (*datore* or *rimettente*) provides funds in florins to another merchant, the 'taker' or 'drawer' (*prenditore* or *traente*), who in effect sells the *datore* a bill-of-exchange that he draws upon his agent-banker in Bruges, who in turn serves as his acceptor/payor (*pagatore*), making payment at the stipulated rate of exchange on the stipulated redemption date (at *usance*) to the merchant-banker payee (*beneficiario*), who serves as the Bruges financial agent for the original 'deliverer'. The 'taker' meanwhile uses these funds to purchase silks and spices, which he ships to Bruges, instructing his agent to sell them there on his behalf, and deposit the funds in his bank account, i.e. with the aforesaid *pagatore*. Before that commercial transaction has been effected, the *beneficiario* in Bruges has received from his principal, the *datore* in Florence, the bill-of-exchange, which he then presents to the *pagatore* for 'acceptance'; and once the *pagatore* has accepted the bill (writing *acettata*, the date, and his signature on the back) he is honour-bound to make payment on the redemption date, whether or not there are sufficient funds in the bank-account of the Florentine *prenditore*. See n. 100 below.

⁶¹ Raymond De Roover, 'The Commercial Revolution of the Thirteenth Century', *Bulletin of the Business Historical Society*, 16 (1942), pp. 34-39, reprinted in F.C. Lane and J.C. Riemersma, eds., *Enterprise and Secular Change: Readings in Economic History* (London, 1953), pp. 80-5.

⁶² See above, pp. ; and Van der Wee, *Growth of the Antwerp Market*, II; Herman Van der Wee and Theo Peeters, 'Un modèle dynamique de croissance interseculaire du commerce mondiale, XIIe-XVIIIe siècles', *Annales*:

itinerant merchants, remained important in European commerce well into modern times; and for such fair-commerce, the three-party English bill obligatory was eminently suitable. The English in fact used both bills obligatory and bills of exchange and continued to use them into modern times according to the structures and forms of their trade, and whether or not they had permanently employed factors stationed abroad.

De Roover may have been on somewhat firmer grounds in asserting that the medieval Italian bill of exchange, along with the earlier *instrumentum ex causa cambii*, differed from modern finance bills in that the former were necessarily held for payment until the stipulated date of maturity, and thus 'medieval bills were not negotiable credit instruments'. For obviously if, in the medieval era, the designated *payee*, the creditor who held the bill, were to sell his claim for cash or goods before its maturity, he would necessarily have had to do so at discount: i.e. for an amount or value of goods that was less than the stipulated redemption payment, thereby revealing through this differential payment the presence of interest, in blatant violation of the usury prohibition. It would be difficult indeed to imagine that anyone would willingly purchase a financial document, with all the attendant risks, for the same sum of money that he would be entitled and expect to receive some time in the future (i.e. on the stipulated redemption date), and thereby forgo the opportunity to earn any money on his investment during that interim period. Furthermore, the original creditor or *payee* presumably would not have sold his bill, i.e. liquidated his asset, unless he was in need of ready money; and thus he would have been in no position to demand the full payment as stipulated in the bill for the redemption date.

If the medieval Italian bill of exchange had been so negotiable it would have contained some indications of transferability of payment: a phrase such as 'payable to bearer' or an endorsement with instructions to make the bill payable to a third party. For medieval and early-modern Italy itself, De Roover has asserted, without any subsequent contradiction, that endorsed or bearer bills were extremely rare exceptions -- one in a thousand -- before the seventeenth century; and that most were used to settle debts with third parties on the stipulated

redemption date.⁶³ Nor do recent studies of banking in South Germany suggest that any transferable bearer bills or endorsed bills were used there before modern times.⁶⁴

XI. Legal protection for creditors in transferable commercial bills and the problem of transaction costs

Thus, before bills of exchange or other commercial bills could have become negotiable credit instruments two fundamental legal conditions had to be met, and, furthermore, at reasonably low transaction costs: (1) guaranteed and thus enforceable rights of those third parties to whom payment of the bill had been assigned by the original creditor or his successors; and (2) protection against prosecution for the violation of usury laws by discounting bills before their redemption date, and preferably express legal sanction or

⁶³ Raymond De Roover, *Money, Banking and Credit in Mediaeval Bruges: Italian Merchant-Bankers, Lombards, and Money Changers: A Study in the Origins of Banking* (Cambridge, Mass., 1948), pp. 54-55, and nn. 36-7 (pp. 70-1); Raymond De Roover, *The Rise and Decline of the Medici Bank, 1397 - 1494* (Cambridge, Mass., 1963), pp. 137-40. He cites some examples of bills of exchange made payable to a beneficiary 'o chi lui ordinassi', in particular one drawn in 1438 by a Barcelona bank on Pierozzi and Co. in Florence, designating the Medici bank as payee. That bill was endorsed as follows: 'We, Cosimo and Lorenzo de' Medici and Co. order you [the payer, Pierozzi and Co.], at maturity, to pay for us to Adoardo Giachinotti and Co'. This endorsement evidently stipulated a payment 'in bank' (as a deposit-account entry). Usher, *Deposit Banking*, p. 102, contended that even after 1600 'extant specimens [of assignable or endorsed bills of exchange] are rare and the Italian documents cited are not typical bills'. He further noted that in 1607 Naples had banned successive endorsements of bills of exchange, citing similar restrictions for Florence, Venice, Bologna: 'one must conclude that the practice of endorsement was very insecurely established in the various jurisdictions of [seventeenth-century] Italy'. See also Marco Spallanzani, 'A Note on Florentine Banking in the Renaissance: Orders of Payment and Cheques', *Journal of European Economic History*, 7 (Spring 1978), pp. 145 - 68. But for assignable and negotiable public credit in the *Monte Comune* of later-medieval Florence, see Julius Kirshner and Jacob Klerman, 'The Seven Percent Fund of Renaissance Florence', in Dino Puncuh and Giuseppe Felloni, eds., *Banchi pubblici, banchi privati e monti di pietà nell'Europa preindustriale: Amministrazione, tecniche operative e ruoli economici*, Atti della Società Ligure di Storia Patria, new series, vol. 31, 2 vols. (Genoa, 1991), I, pp. 367 - 98.

⁶⁴ For South Germany, see Richard Ehrenberg, *Capital and Finance in the Age of the Renaissance: A Study of the Fuggers* (New York, 1928; reissued 1963); and Jean-François Bergier, 'From the Fifteenth Century in Italy to the Sixteenth Century in Germany: A New Banking Concept?', in Center for Medieval and Renaissance Studies, ed., *The Dawn of Modern Banking* (New Haven, 1979), pp. 105-29: 'We know that German companies clearly lagged behind their Italian predecessors in accounting and banking techniques' (p. 124). For the North German Hanse towns, see below note 105; and also Pierre Jeannin, 'De l'arithmétique commerciale à la pratique bancaire: l'escompte aux XVIe - XVIIe siècles,' and Michael North, 'Banking and Credit in Northern Germany in the Fifteenth and Sixteenth Centuries', both in Puncuh and Felloni, *Banchi pubblici, banchi privati*, I, pp. 95 - 116; II, 809 - 26; the latter reprinted in Michael North, *From the North Sea to the Baltic: Essays in Commercial, Monetary and Agrarian History, 1500 - 1800*, Variorum Collected Studies Series (Aldershot, 1996). Usher, *Deposit Banking*, pp. 97-8, has suggested that one possible origin of the initial Flemish innovation concerning transferable bearer bills may have been the late-fourteenth century French tract *La Somme Rurale*, by Jean Boutillier, who contended that the holder of a bearer bill was entitled to bring suit against a debtor, though the bearer was still seen as an agent of the principal. That connection -- well over a century apart -- seems rather tenuous; and the Franco-Flemish commercial relations had been rather too weak to be the likely source or instigator of these innovations.

permission to charge interest in a loan contract or any similar bill. In so far as the first condition is concerned, it may seem surprising, at least at first glance, to find what are evidently transferable bearer bills during the thirteenth century in not only Flanders but also England.⁶⁵ The presence of a clause ‘payable to X or to bearer’, or more commonly, payable to the payee’s attorney by an ‘order’ clause, usually with the words *vel suo certo nuncio*, does not, however, indicate that these bills were truly transferable; and even if they had been assignable, that would not have made them truly negotiable. Such clauses usually meant that the principal, as creditor-payee, had merely inserted a legal provision to allow his servant, factor, or some agent -- as in ‘the bearer of my ring’ -- to collect payment on his behalf, especially in some distant town, in his unavoidable absence; and thus such clauses would be found more often in a bill obligatory or formal bond than in a true bill of exchange, for reasons indicated above.

Nevertheless, as Michael Postan and other historians have now amply demonstrated for later-medieval England, many merchants customarily did assign their bills, bonds, and other debt-claims as assets to other merchants to whom they owed money, either in repayments of debts to them or in payment for goods and/or

⁶⁵ Some of the earliest examples of the bearer clause can be found in Flanders, as in a letter obligatory dated March 1250 (ns): ‘que Johan Haccars, borgois de Ypre, doit 48 marcs d’art[ois] a Simon de Trezele, borgois de Aras, u a son commandement u a cheli qui cheste presente chartre partie aportera, et ches deniers doit on paier en la fore de Thoroud [Thorout fair]...’. See Guillaume Des Marez, *La lettre de foire à Ypres au XIIIe siècle: contribution à l’étude des papiers de crédit*, Académie royale des sciences, des lettres, et des beaux-arts de Belgique: mémoires couronnés et autres mémoires, Vol. 60 (Brussels, 1900-01), doc. no. 7, p. 108; see also docs. nos. 9-10 (May and Aug. 1251), pp. 109-10 (and others for 1267, 1272, 1281, 1286, 1291, in the following documents); and also Des Marez’s analyses, on pp. 34-39, 63-7. In England, the earliest recorded example of a bond with a bearer clause, though a limited one, is found at the Fair of St. Ives, in 1275, by which Robert and John Dunwich of Norwich promised to pay £8 10s 0d sterling ‘eidem Bruno [de St. Michel of Bordeaux] vel cuicumque de suis scriptum [obligatorium] inter ipsos confectum portanti solvisse debuereunt ad Nat. S. Joh. Bapt. anno gracie m°.cc°.lxx°.quarto [24 June 1274]’, for wines, which the said Brun had sold to Robert and John at the Boston fair of 1273. In F.W. Maitland, ed., *Select Pleas in Manorial and Other Seignorial Courts, I: Reigns of Henry III and Edward I*, Selden Society Publications Vol. 2 (London, 1889), p. 152. The text indicates, however, that the bearer had to be associated (*de suis*) with Brun de St. Michel. See also Holden, *Negotiable Instruments*, p. 6 (not noting this limitation). For another, clearer example of a bearer clause, see Hubert Hall, ed., *Select Cases Concerning the Law Merchant*, Vol. 2: *Central Courts, A.D. 1239 - 1633*, Selden Society Publications Vol. 46 (London, 1930), p. 79, for the London court of 1309. Richard le Feytur of Chipping Norton had promised to pay £55 sterling for 22 striped Ghent cloths purchased at the Boston Fair to Betinus de Frescobaldi, or other members of the Frescobaldi firm, or anyone bearing the letter: ‘solvendis eidem Betino, aut sociis suis, aut cuicumque hanc litteram deferenti, apud Londoniam, in vigili Natalis Domini, anno gracie m.ccc°.quarto [24 December 1304]’.

services.⁶⁶ Thus, for example, merchant A might satisfy merchant B for a debt of £100 by ‘setting over’ or assigning him bills or debt-claims owing to merchant A by others (merchants C, D, and E), and redeemable in six months time for the sum of £105; or merchant A might buy goods worth £90 from merchant B by assigning him debts redeemable for £100 in six months.⁶⁷ If the sum of such assigned debts proved to be insufficient, merchant A might settle the balance, with implicit interest, by a residual cash payment.

The legal protection that such an assignee in transferred debts enjoyed was extremely limited under later-medieval English Common Law, unlike those of the designated payee or creditor in a formal bond or bill obligatory. The rights of the principal creditor were in turn conditional upon his having adhered to the provisions of the Statute Merchant of Acton Burnell (1283): in formally registering the debt as a sealed *recognizance* and entering it on the required Roll of Recognizance (*reconisaunce enroulee*) before the mayor of a major English town.⁶⁸ In a Common Law court, an attorney, in the absence of the creditor, could sue a

⁶⁶ Thus merchant A might satisfy merchant B for a debt of £100 by assigning him his own bills or debt-claims amounting to £105, redeemable in six months time; or merchant A might buy goods worth £90 from merchant B by assigning him debts redeemable for £100 in six months.

⁶⁷ For a continental and specifically Provençal example, involving two Jewish merchants in 1327, see John Drendel, ‘Economy and Society in a Small Provençal Country Town in the Later Middle Ages: Trets, 1296-1347’, unpublished PhD dissertation, University of Toronto, 1990, p. 118: Crescon Mayneri paid £8 11s 0d *tournois* owing to Mayron le Juif with six of his own debt claims.

⁶⁸ *SR*, I, pp. 53-4 (11 Edward I: 12 Oct. 1283). The Statute of Acton Burnell (or *Statutum de Mercatoribus*), amended in 1285 by the *Statutum Mercatorum*, gave creditors the power to compel debtors to register their loans as bonds before the mayors of London, York, Bristol, other ‘good towns’, and fair courts. Their clerks were required to enter the debt on a Roll of Recognizance (*reconisaunce enroulee*), to produce a corresponding bill obligatory (*escrit de obligacion*) for the creditor, and to fix the seals of both debtor and the king to that bill. In particular, ‘qe Marchaunt qi veut estre seur de sa dette, face venir sun dettur devaunt le Meire de Lundres, ou de Everwyk [York], ou de Bristowe, e devaunt le Meire, e devaunt un Clerk, qi le Rey a ceo atornera, conoise la dette, e le jor de la pae; e seit la reconisaunce enroulee de la main le avauntidit Clerk qe serra conue. E estre ceo lavauntidit Clerk face de sa main le escrit de obligacion [bill obligatory], al quel escrit seit mis le seal del dettur, od le seal le Rei, qe a ceo est purveu, le quel seal demorra en sauve garde le Meire, e del Clerk avauntidit; Et si le dettur ne rende al jor qe lui est asis, si veigne le Creaunzur al Meire, e al Clerk, od sa lettre de obligaciun; E si trove seit par roule [recognizance roll], e par lettre, qe la dette fu conue, et qe le jor asis seit passe, Le Meire par vewe de prudeshomes, meintenaunt face vendre les moebles [chattels] al dettur cum atteint de la dette, si com chatels e burgages devisables, desques a la somme de la dette, e les deniers saunz delai paez as Creaunzurs’. The most significant feature of this Statutory Recognizance, an important advance over earlier forms, was the recourse given to creditors when debtors defaulted: in obligating mayors or sheriffs to imprison debtors and seize their lands and chattels without any further legal action. Other legal disputes over recognizances could be adjudicated by Common Law courts, which, in Postan’s words, regarded the sealed bond as ‘the highest form of documentary evidence’ (Postan, ‘Financial Instruments’, pp. 40-54). Subsequently, in June 1285, the Statute of Merchants (*Statutum Mercatorum*, 13 Edwardi I, stat. 3, in *SR*, I, pp. 98-100) permitted recognizances to be registered before the mayors of any ‘good town’ or before fair courts, expanded provisions for debt

defaulting debtor and make a claim upon his assets to recover that debt only by proving that he was the legal agent of the absent payee designated in the *recognizance*, usually by presenting an unrevoked letter of attorney attesting to his current status. According to Michael Postan, Common Law courts became ‘increasingly hostile’ to the assignment of debts during the later Middle Ages, granting recognition only to debt transfers that involved ‘a common interest’ between assignor and assignee, usually just those assignments undertaken ‘to satisfy a pre-existing debt’ between them.⁶⁹ Furthermore, such an assignment necessarily meant that an entirely new *recognizance* had to be drawn up, sealed and officially enrolled, at some considerable cost in legal and notary fees.

By the later fourteenth century, in Postan’s view, the increasingly complex legal requirements and their attendant rising transaction costs, to use more modern terminology, had impelled more and more merchants to resort to the much simpler holograph bills, at least for smaller-value commercial transactions; and if they did not forsake the more cumbersome and costly *recognizances*, they tended to reserve them for much higher-value

registrations, and increased the creditor's powers of execution over the debtor's assets -- lands as well as goods -- with immediate imprisonment. Many of these provisions were nullified by the Ordinances of 1311, but were restored with the overthrow of the Lords Ordainers and repeal of their Ordinances in 1322. Finally, in 1353, the Statute or Ordinance of the Staples (27 Edwardi III stat 2.) empowered the mayors of all English Staple towns to take recognizances and further extended the powers of creditors.

⁶⁹ See Postan, ‘Financial Instruments’, pp. 40-54, especially p. 43: ‘the courts made use of the doctrine of the chose in action, i.e. the doctrine of the unassignable nature of mere legal claims, to confine valid assignments to those cases only in which the assignor and the assignee could prove a ‘common interest’.’ The assignor's debt to the assignee was considered a ‘common interest’ so that the transfer of an obligation in settlement of a debt could be enforced in Common Law’. See also A.H. Thomas, ed., *Calendar of Select Pleas and Memoranda of the City of London Preserved Among the Archives of the Corporation of the City of London at the Guildhall*, Vol. 3: A.D. 1381 - 1412 (Cambridge, 1932), pp. xxxvi-vii: ‘a common interest could not be proved if it appeared that the assignee had merely purchased the deed [bond] from the assignor without any particular reason for doing so’. According to Holden, *Negotiable Instruments*, pp. 13-14: ‘the fifteenth century saw the advent of maintenance as an objection to the assignment of funds if the assignee sued for the debt in the assignor's name. The rule developed that it was maintenance to purchase a bond and sue upon it.... There was an exception, however, if the bond was transferred to satisfy a pre-existing debt’, according to the ‘common interest’ test. All cite William Holdsworth, *A History of English Law* (London, 1909 - 66), V, pp. 534-45, on this issue. Postan (pp. 44-6), however, dismisses Holdsworth's view that Common Law and Chancery courts would recognize only those debt transfers for which the original debtor provided his consent; and he cites many examples of debt assignments without the debtor's consent. If the assignee had sufficient guarantees from the assignor, ‘he would accept the bond without troubling about the debtor's consent’. Finally, see Eric Kerridge, *Trade and Banking in Early Modern England* (Manchester University Press, 1988), pp. 39-44 and pp. 70-71: ‘At common law *choses in action* like debts were not in general assignable even when the parties contracted expressly for themselves and assigns’.

transactions, especially for longer-term debts involving collateral pledges of property.⁷⁰ The bill-of-exchange was, of course, by its very nature, a holograph document. The use of such informal holograph bills involved, obviously, far lower legal and other transaction costs, indeed virtually no such costs, but seemingly at the expense of much higher risks, from defaulting debtors, because, in the view of many if not all historians, Common Law courts refused to grant holograph documents any legal standing.⁷¹ Michael Postan has thus argued that Common Law courts and Parliament ‘made the emergence of fully negotiable paper impossible’, so that ‘the transfer of obligations was fraught with cumbersome formalities’. Nevertheless, he also concluded that, when the Court of Chancery came to adjudicate appeals of commercial disputes involving transferable debts and payments, increasingly so by the fifteenth century, it generally chose not to ‘impede what must have been a common commercial practice’, chiefly because it had not yet formulated a clear legal view on these issues; and thus, since ‘legal and diplomatic formulae were of secondary importance’, the conditions by which a bond or other commercial document would pass from hand to hand ‘were very largely a matter between the

⁷⁰ On this see in particular, Postan, ‘Financial Instruments’, pp. 40-54. Some support for Postan’s views can be found in Alice Beardwood, trans. and ed., *The Statute Merchant Roll of Coventry, 1392-1416*, the Dugdale Society (Oxford University Press, 1939), pp. xx-xxi, contending that, of 288 recognizances on this roll from 1392 to 1416, only 15 seem to concern mercantile transactions. But in ‘Monetary Contraction and Mercantile Credit’, pp. 564-7, Nightingale’s own analyses of the Coventry roles indicate that most did indeed involve commercial contracts; and she strongly contends that recognizances continued to play a fairly important, even if relatively diminishing role, in later medieval English commercial and financial transactions. Stuart Jenks, furthermore, has pointed out that a third form of debt was also quite widely used in transacting English foreign trade during the fifteenth century: unenrolled *sealed bonds*, which were not statutory recognizances, but which still enjoyed some of the remaining Common Law protection for recognizances. See Stuart Jenks, ‘Das Schreiberbuch des John Thorpe und der hansische Handel in London, 1457/59’, *Hansische Geschichtsblätter*, 101 (1983), pp. 67-112 (documents in pp. 92-105), and ‘Kredit im Londoner Aussenhandel um die Mitte des 15. Jahrhunderts’, in Michael North, ed., *Kredit im spätmittelalterlichen und frühneuzeitlichen Europa (Quellen und Darstellungen zur Hansischen Geschichte*, no. 37, Cologne-Vienna, 1991), pp. 71-102: referring in particular to London debt registers that contain such bonds obligatory involving London and Hanse merchants. Jenks disagrees with Postan’s view that the act of registration transformed the bond into a recognizance. He states that the voluminous London civic records provide no evidence that any legal action against defaulting debtors was ever undertaken on the basis of these registrations; that legal action was undertaken only on the basis of formal recognizances enrolled according to Acton Burnell. As will be noted subsequently (see nn. 85, 91-102), many disputes concerning such sealed bonds were handled by Law Merchant rather than Common Law courts. On sealed bonds, see also Kerridge, *Trade and Banking*, pp. 39-42.

⁷¹ Postan, ‘Financial Instruments’, pp. 33-5, 38-40, 43, 47-9.

assignor and the assignee'.⁷²

XII. The role of the international Law-Merchant and English civic courts

Later-medieval England, however, did possess another set of legal institutions, largely ignored in Postan's writings, in the form of Law-Merchant courts, including the London Mayor's court, which ruled on the basis of a slowly evolving international code of mercantile legal procedures and customs. In a cogently argued article, the British legal historian J.H. Baker has argued that in medieval England the so-called Law Merchant was 'not so much a corpus of mercantile practice or commercial law as an expeditious procedure especially adapted for the needs of men who could not tarry for the common law'.⁷³ According to Baker's interpretation of the treatise *Lex Mercatoria*, written about 1280, the law merchant of that day differed from the Common Law in its far speedier process, the 'liability of pledges to answer', and denial of the time-consuming Common Law practice of 'wager of law' in the negative, i.e. a compurgation with eleven witnesses swearing a formal oath to deny a specific debt obligation.⁷⁴ In this very era, in 1285, Edward I had established a Law-Merchant court in London to be composed of foreign merchants specifically enjoined to adjudicate their own commercial disputes. Subsequently, Edward I's famous *Carta Mercatoria* of 1303, in regulating English relations with the Hanse and other foreign merchants (and their taxes), stipulated that all merchants were to

⁷² Postan, 'Financial Instruments', pp. 42-3, 49, 54: what can be said 'about the legal attitude to assignments in the fourteenth and fifteenth centuries is that, while it was far removed from the modern view of negotiable instruments, the recognition it afforded to these transfers of obligations was sufficient to make them legally secure' (p. 42); 'medieval law and practice piled up formalities and limitations which must have impeded the free circulation of the instruments. But it is equally clear that these limitations were not determined by a legal or diplomatic principle and did not develop into hard and fast rules'. (p. 49).

⁷³ J.H. Baker, 'The Law Merchant and the Common Law Before 1700,' *Cambridge Law Journal*, 38 (1979), pp. 295-322, reprinted in J.H. Baker, *The Legal Profession and the Common Law: Historical Essays* (London, 1986), pp. 341-68.

⁷⁴ *Lex Mercatoria*, in F.B. Bickley, ed., *The Little Red Book of Bristol* (Bristol, 1900), I, pp. 57-8, as cited by Baker, 'Law Merchant', pp. 346-7. For 'wager of law', see also Rogers, *Law of Bills and Notes*, pp. 21-4, and n. 43. Rogers cites Paul Teetor, 'England's Earliest Treatise on the Law Merchant', *American Journal of Legal History*, 6 (1962), pp. 182-31 for the following translation: 'The law of the market [place] differs from the common law of the realm in three ways. In the first place it reaches decisions more quickly. Secondly, whoever pledges for anyone to answer to a [plea of] trespass, covenant, debt, or detinue of chattels pledges for the whole debt, damages and expenses sought. And in the third place, it differs in that it does not admit anyone to [wage] law on the negative side; but always in that law it is for the plaintiff and not the defendant to make proof, whether by suit or by deed or otherwise'.

receive ‘speedy justice’ by the Law-Merchant (*secundum legem mercatoriam*), and that foreign merchants must compose half of the jury called upon to settle any dispute between them and domestic merchants.⁷⁵ Finally, in 1353, through the Statute or Ordinance of the Staples, his grandson Edward III bestowed even greater powers, indeed full royal powers, upon the international Law-Merchant, through official Staple Courts, which he established in fifteen English towns, to settle all disputes among merchants trading there.⁷⁶ Constituting each court was the town’s Staple Mayor, ‘having Knowledge of the Law-Merchant to govern the Staple’, two constables, and a jury selected from domestic or foreign merchants, or both, depending on the case;⁷⁷ and all merchants and their agents trading in each Staple port ‘shall be ruled by the Law Merchant (*lei marchant*), of all Things touching the Staple, and not by the Common Law of the Land’ (c. 8), without any interference from royal justices or other legal officers.⁷⁸ Finally, the Staple courts were empowered to seize

⁷⁵ Also known as the *Statutum de Nova Custuma*: Clause 8: ‘Item, volumus quod omnes ballivi et ministri feriarum, civitatum, burgorum, et villarum mercatoriarum, mercatoribus antedictis, conquerentibus coram eis, celerem justiciam faciant de die in diem, sine dilatione, secundum legem mercatoriam, de universis et singulis quae per eandem legem poterunt terminari;’ Clause 10: ‘Item quod in omnibus generibus placitorum salvo casu criminis .ubi mercator implacitatus fuerit .idem implacitatus extiterit extraneus vel privatus in nundinis civitatibus sive burgis ubi fuerit sufficiens copia mercatorum predictarum terrarum et inquisicio fieri debeat sit medietas inquisitionis de eisdem mercatoribus et medietas altera de aliis probis et legalibus hominibus loci illius ubi placitum illud esse contigerit...’ Clause 5 also stipulated that all merchant contracts were to be binding after ‘God’s penny’ had been paid. Texts in Gras, *The Early English Customs System*, pp. 260-1; H. Thomas Riley, ed., *Munimenta Gildhallae Londoniensis: Liber Albus, Liber Custumarum et Liber Horn* (London, 1859-62), II.i: *Liber Custumarum*, pp. 207-08. The text in Rymer, *Foedera*, II.ii, pp. 747-48, is a reconfirmation by Edward II, issued on 8 August 1328. Clause 10 on the composition of Law-Merchant juries was subsequently reconfirmed in the Ordinance of the Staples of 1353, in *SR*, II, 336 (27 Edwardi III, stat. 2, c. 8).

⁷⁶ 27 Edwardi III stat. 2, in *SR*, I, pp. 332-43. The primary purpose of this statute was to return from abroad the official staples for the sale of English wools and other stapled goods (lead, tin, hides) and to re-establish them instead in ten English, four Welsh, and one Irish towns (‘home staples’). Subsequently, in March 1363, the official wool staple was removed to Calais, recently conquered from the French; but the other provisions of the Statute of the Staples remained in force.

⁷⁷ 27 Edwardi III stat. 2, c. 8, 21, in *SR*, I, pp. 332-43. See A. H. Thomas, ed., *Calendar of Plea and Memoranda Rolls Preserved Among the Archives of the Corporation of the City of London at the Guildhall*, I: AD. 1323 - 1364 (Cambridge, 1926), p. 258; A. H. Thomas, ed., *Calendar of Plea and Memoranda Rolls Preserved Among the Archives of the Corporation of the City of London at the Guildhall*, II: AD. 1364 - 1381 (Cambridge, 1929), pp. 248-9; A. H. Thomas, ed., *Calendar of Select Pleas and Memoranda of the City of London Preserved Among the Archives of the Corporation of the City of London at the Guildhall*, III: AD. 1381 - 1412 (Cambridge, 1932), pp. vii-xli; and Hubert Hall, ed., *Select Cases Concerning the Law Merchant*, III: *Central Courts, Supplementary*, AD. 1251 - 1779, Selden Society Publications Vol. 49, 1932 (London, 1932), pp. xi - xxxii.

⁷⁸ 27 Edwardi III stat. 2, c. 8, 5, respectively, in *SR*, I, pp. 332-43. It explicitly enjoined the King’s justices or other legal officers from interfering with anything ‘which pertaineth to the Cognisance of the Mayor and Ministers

the goods and chattels of defaulting debtors'.⁷⁹

As we have already seen, Edward III's regressive tax and other fiscal measures of this very same era had the largely unintended consequence of placing almost the entire wool trade in English mercantile hands, certainly by the 1390s, while spurring the growth of the nascent cloth-export trade, though in the latter English merchants had to vie with the German Hanse for commercial supremacy. As English participation in overseas trade grew rapidly, at least in relative terms, from the 1360s, they increasingly resorted to the use of holograph bills (bills obligatory and bills of exchange) and thus to the Staple and other Law-Merchant courts, evidently to take advantage of the much lower legal and transaction costs.⁸⁰ Obviously Law-Merchant courts with exclusively mercantile juries were better trained and better cognizant of the intricacies of financial affairs and could thus deliver much speedier decisions than did typical Common Law courts, which frequently involved lengthy delays and prorogations. Indeed royal edicts from the time of Edward I had required Law-Merchant courts, as suggested earlier, to pursue 'speedy justice', *sine dilatione* and without any 'discontinuance,' as a

of the Staple' (c. 5). In February 1355, Edward III ordered the London sheriffs to release a debtor from Newgate prison: 'We willing the Ordinance aforesaid to be firmly observed in all its articles order you...to cause him, John of Wendover,...to be brought back to the Staple aforesaid...' Hall, *Law Merchant*, III, no. 38, p. 64.

⁷⁹ Plaintiffs holding bonds as Statutory Recognizances were also allowed to sue at Common Law (27 Ed III, stat. 2, c. 8). See also Thomas, *CPRML 1381-1412*, pp. xxiii-iv. A defendant debtor was summoned to appear on the next court day, or risk having his house 'sequestered by way of distress'. After four such defaults, the court would have the goods and chattels of the debtor delivered to the creditor, who was obliged to return them or provide compensation for the appraised value only if the defendant could disprove his debt within 366 days. If the plaintiff's witnesses could assert that the defendant was likely to abscond, the court could order the latter's arrest and imprisonment. (For an example, see *Ibid.*, pp. 187-88, for Nov. 1391). A summons was not necessarily issued to a foreign defendant, who was subject to confiscation of goods or arrest, if he had no goods, after the plaintiff had supported his suit by witnesses. See *Ibid.*, pp. 113 (1385), 249-50 (1397).

⁸⁰ By no means all transactions in the cloth trade were based on holograph bills; and, as stressed earlier, recognizances certainly were still utilized for large-scale high-value sales. Thus, on 15 August 1384, Robert Harengeye, a London Mercer, purchased various woolen cloths for £178 16s 0d sterling, an amount equivalent to 6,130 days' wages for a London mason, 'payable by certain portions, the first being due on 24 June [1385]. He entered into a recognizance for payment, and for greater security John Fressh became surety for him in all his goods and chattels'. Thomas, *CPRML 1381-1412*, pp. 99-100. See also Nightingale, 'Monetary Contraction and Mercantile Credit', pp. 564-7; Pamela Nightingale, *A Medieval Mercantile Community: the Grocers' Company and the Politics and Trade of London, 1000 - 1485* (New Haven, 1995), pp. 297-300, for examples of such credit transactions.

later legal document stipulated.⁸¹

As London became increasingly England's predominant port, from the 1370s, and then overwhelmingly so in the fifteenth century,⁸² so its two chief Law-Merchant courts, the Mayor's Court and the Westminster Staple court (occasionally with the same Mayor presiding over both courts), came to deal with an increasing volume of law suits that concerned disputed recognizances, bills obligatory, both as formal sealed bonds and informal holographs, and even bills of exchange or 'letters of payment'.⁸³ As Pamela Nightingale has correctly noted, Edward III's 1353 Ordinance did permit merchants to register and enrol formal sealed bonds as recognizances with the new Staple courts, and to do so at somewhat lower cost than with the civic or borough courts under the provisions of the 1283 Statute Merchant (Acton Burnell); and she thus contends that commercial recognizances continued to have a greater importance in this era than Postan would have admitted. Not all merchants, however, had ready access to the fifteen official Staple courts; and London merchants, for example, had to go to Westminster for their nearest Staple court.⁸⁴ They could, however, use the London Mayor's court as a fully-functioning Law-Merchant court, which, furthermore would (like any other Mayoralty

⁸¹ For the 1436 Burton vs. Davy case, see below pp. . It must be admitted that Law Merchant court decisions could be appealed to Chancery, though this document indicates that the London court overrode a royal writ to prevent such an appeal in this particular case.

⁸² See Nightingale, 'The Growth of London', pp. 89-106.

⁸³ The 1353 Ordinance of the Staples had made Westminster and not London the staple town for that port (in 27 Edwardi III. stat. 2 c. 1), as noted above in n. 68. On a rare occasion, however, the London Mayor was also the Mayor of the Westminster Staple court; but even when this was usually not so, a mercantile dispute involving Law Merchant could be heard by either the London Mayor's court or the Westminster Staple court. See the London Mayor's statement of 6 Nov 1380 in Thomas, *CPMR*, 1364-81, pp. 276-77: 'As it seemed clear to the Court that the action concerned the Law-Merchant and should be terminated according to the same by the custom of the City, the Mayor, after informing the parties that he was Mayor of the Staple of Westminster as well as Mayor of the City of London, and that the Law-Merchant was pleadable before him in both the Staple and the Chamber of the Guildhall, asked them if they were willing to have judgement by the Law-Merchant. Both parties consented'. For the London court's adjudication by Law-Merchant, see the London Letter Books and the Plea and Memoranda Rolls of the Corporation of London Record Office, some of which have been published and edited in calendar form by Sharpe (1899-1912) and Thomas (1924-43), succeeded by Jones (1954): cited as *CLLB*, *CEMCRL*, and *CPMRL*, respectively. See also the compilations of Law-Merchant documents for London in Hall, *Law Merchant*, II - III. For Postan's brief reference to these City courts, see 'Financial Instruments', p. 44.

⁸⁴ See nn. 68-70, and 75-9, 83. Nightingale, 'Mercantile Credit', pp. 560-75; see also Nightingale, *Grocers' Company*, pp. 292-372, for studies in credit transactions in overseas trade; and Jenks, 'Schreiberbuch', pp. 67-91.

or Staple court) adjudicate cases involving simple, informal holograph bills obligatory and similar credit instruments, evidently with a considerable savings in time, legal fees, and transaction costs compared with transactions involving formal sealed bonds.

Indeed, during the later fourteenth century, as English and especially London-based merchants became relatively far more actively engaged in foreign trade, all these Law-Merchant courts came to deal with an increasing number of transferable bills obligatory, bills of exchange, and various other bonds, and thus with the rights of those to whom such financial instruments had been transferred. Law-Merchant courts, furthermore, were much more willing than Common Law courts to adjudicate disputes specifically involving bills of exchange or 'letters of payment'; for such bills were not formal debt contracts, i.e. legally enforceable obligations to pay, as were bills obligatory, but rather a mere informal *command to pay*. Certainly in a Common Law court a plaintiff would have to prove that a disputed bill of exchange involved some underlying exchange contract and legal obligation to pay. Furthermore, during this same era, transfers of payment through both bills of exchange (i.e. letters of payment) and bills obligatory were increasingly effected by the simple use of the bearer clause, whose very simplicity was its prime virtue.⁸⁵ Thus Law-Merchant courts usually did not require the same type of proof of assignability as did the Common Law courts: i.e. the order clause in a sealed *recognizance* or other formal bond, with accompanying and unrevoked letters of attorney. Nevertheless English Law-Merchant courts of the late fourteenth and early fifteenth centuries were evidently not yet prepared to protect the full rights of the bearer in such bills; and thus those merchants who received transferable holograph bills with bearer clauses were making a perhaps dangerous tradeoff: incurring very low transaction costs while accepting a high risk of default.

⁸⁵ Indeed, such debt assignments were far from being a novelty in the mid fourteenth century. Thus in 1305 the London Mayor's Court had adjudicated a case concerning the assignment of two letters obligatory 'which the plaintiff [Reginald de Thonderle had] bought from William Foundepe, merchant' [27 March 1305: London Mayor's Court: Thonderle vs. St. Clement]. In this case, Reymund de St. Clement had to answer the plaintiff Reginald de Thonderle, who demands that St. Clement restore to him two bills of £70 15s 11d, 'which the plaintiff bought from William Foundepe, merchant and which the said William entrusted to the custody of the defendant for delivery to the plaintiff'. A. H. Thomas, ed., *Calendar of Early Mayor's Court Rolls Preserved Among the Archives of the Corporation of the City of London at the Guildhall, AD 1298 - 1307* (Cambridge, 1924), p. 172.

XIII. English financial backwardness revisited: the absence of deposit banking and financial networks

Why so many merchants in late-medieval England came to use these risky bearer bills, and why, evidently, so many more than on the continent, and especially in Italy, may seem puzzling. But two other features of England's current financial 'backwardness' may provide a possible answer. The first may be related to England's virtual absence of deposit-banking, now so widespread in Italy, and, to a somewhat lesser extent, in Flanders, certainly from the mid-fourteenth century. As Raymond De Roover, Reinhold Mueller, Richard Goldthwaite, James Murray, and other historians have noted, the deposit-institutions of later-medieval Italy and Flanders provided a more efficient coin-free method of making payments between merchants 'in the extensive use of book transfers both in foreign and in local trade': effectively transferring payment from one mercantile account to another by verbal or written orders to the banker.⁸⁶ As these historians have amply demonstrated, such deposit-banking had developed out of money-changing; and indeed most deposit bankers in Italy and the Low Countries remained money-changers, who, though licenced by the prince, were nevertheless private entrepreneurs. In England, however, money-changing was a strict and strictly-enforced crown monopoly, from at least 1222, with control exercised by the Royal Exchanger, who employed licenced, salaried officials to purchase or confiscate all foreign coins and to turn them over to the Tower Mint for recoinage.⁸⁷ As noted earlier, the circulation of foreign coins remained strictly forbidden in medieval England, until May 1522, when Henry VIII permitted the circulation of Italian ducats, florins, and French écus as legal

⁸⁶ De Roover, *Mediaeval Bruges*, especially p. 54: 'The lack of negotiability, of course, was not as great an obstacle to the assignability of debts as it might seem because of the extensive use of book transfers both in foreign and in local trade'. See also his *Medici Bank*, passim; Spallanzani, 'Florentine Banking', pp. 145-68; and especially Reinhold Mueller, 'The Role of Bank Money in Venice, 1300-1500', *Studi Veneziani*, new series, 3 (1979), pp. 47-96; Richard Goldthwaite, 'Local Banking in Renaissance Florence', *Journal of European Economic History*, 14 (Spring 1985), pp. 5-55; Richard Goldthwaite, 'The Medici Bank and the World of Florentine Capitalism', *Past and Present*, no. 114 (Feb. 1987), pp. 3-31; James Murray, 'Cloth, Banking, and Finance in Medieval Bruges', in Erik Aerts and John H. Munro, eds., *Textiles of the Low Countries in European Economic History* (Leuven, 1990), pp. 24-31.

⁸⁷ The earliest extant ordinance is a royal proclamation of Henry III, dated 1222, forbidding anyone to make exchange except at the Royal Exchanges of London and Canterbury, through royal officials. Rogers Ruding, ed., *Annals of the Coinage of Great Britain and Its Dependencies* (London, 1840), II, pp. 138-39. A subsequent proclamation of September 1232 similarly forbade anyone to 'exchange new coins for old or make exchanges except at the King's Exchanger'. Rymer, *Foedera*, I.i, 207.

tender (and then only temporarily).⁸⁸ As a consequence of this royal monopoly on exchange, deposit-and transfer banking did not develop in England before the 1640s, when mercantile members of the Goldsmiths guild, having earlier functioned as illicit bullion-dealers and money changers, took advantage of royal governmental weakness during the Civil War era to begin developing it as an organized financial institution.⁸⁹ Thus the virtual absence of deposit-banking in medieval England had made the use of informal transferable bills all the more necessary in effecting payments, despite the attendant risks.

The other significant and relevant feature of English commercial ‘backwardness’, compared to the Italians certainly, was the lack of a sufficiently widespread, well-established and efficient overseas networks of financial correspondents, in the context of the classic ‘principal-agent’ model in economics. One major reason why the Italians dominated later-medieval commerce and banking was their formation of these financial networks, in the major cities of Italy, France, Catalonia, Flanders, and England, as a veritable international community of merchants who generally knew and trusted each other fairly well: well enough indeed to use on a regular basis financial correspondents or agents with whom the mercantile principals in bills-of-exchange transaction could deal with complete confidence. Indeed, as suggested earlier, in so many instances, an Italian bill-of-exchange transaction simply meant, by commanding an agent abroad to make a payment, the purchase of a claim to funds in a deposit account held in a well established corresponding foreign bank. Without such an established network of corresponding overseas banks and the requisite bank accounts, many English merchants, especially those necessarily using three-party bills obligatory, would have had to seek out less well known and less trusted ad hoc financial agents abroad, chiefly in the Low Countries during the later fourteenth and fifteenth centuries, while utilizing the formula ‘payble to X or to bearer’.

Often this purely informal system worked well, so long as all the parties were honest; and, to cite just

⁸⁸ Robert Steele, ed., *A Bibliography of Royal Proclamations of the Tudor and Stuart Sovereigns, 1485-1714*, 4 vols. (London, 1910), I, nos. 82, 88, p. 9 (May and November 1522); see also *ibid.*, no. 105, p. 20 (Nov. 1526); no. 1792 (Mar 1539).

⁸⁹ Munro, ‘Bullionism and the Bill of Exchange’, pp. 198-205; Eric Kerridge, *Trade and Banking*; R.D. Richards, *The Early History of Banking in England* (London, 1929; reissued 1958), pp. 1-22; J.K. Horsefield, *British Monetary Experiments, 1650-1710* (London, 1960).

one example, one that Postan used to substantiate his view that transferable bills ‘almost deserve the name of currency’: in the 1440s, a Stapler named John Felde sold wool to a Dutch merchant from whom he received a bill obligatory, which his attorney Lowes Fyncham then used to redeem a debt by assigning it to one John Petite, who used the same bill to buy goods from Jacob Flemming.⁹⁰ But the inherent dangers involved in such transferable bills can be found, for this same era, in a Chancery court document, concerning the misuse of so-called ‘mint-bills’: formal receipts issued for bullion deposited with the Calais mint, which circulated amongst wool-merchants as a transferable means of payment. One unscrupulous Stapler, Richard Whitecroft, was accused of inserting the letter *c* into mint-bills for £2 and £3, thereby converting them into bills ostensibly worth £200 and £300, and then using them to pay for some goods from some hapless Leiden merchants, who discovered the fraud only in subsequently presenting them for redemption into coin at the Calais mint.⁹¹ The outcome of this case is not known.

XIV. The vital legal precedent: the London Mayor’s Court and ‘Burton v. Davy’, 1436

That relative lack of confidence, trust, and security in overseas financial agents thus heightened the need and demand on the part of English merchants to seek greater legal protections for their transferable bills, from Law-Merchant courts if not from Common Law and Chancery courts. The first English court to confirm and bestow such full protection of the legal rights of the bearer in a transferable bill, allowing him as the bearer

⁹⁰ See Postan, ‘Financial Instruments’, p. 49.

⁹¹ Even worse, ‘the saide Holanders at sundry tymes deliverede to the saide Richarde [Whitecroft, at Antwerp] 30,000 li. and more, and toke lettres of paiement of him therefore...to be paide and answered to theym for byeing of wolle and wollefelle at Caleys’; but at Calais, Whitecroft had maliciously advised them to hold off buying wools ‘seying that the ordenanunce made atte Staple [i.e. the bullionist payment ordinances] shulde be brokene and that thei shulde withynne short tyme have better chepe wolle...’ In a Leiden petition to Henry VI, dated 20 January 1445, in Joseph Stevenson, ed., *Letters and Papers Illustrative of the Wars of the English in France During the Reign of Henry VI of England* (London, 1861-4), I, pp. 464-69; with précis of the Dutch version in H.J. Smit, ed., *Bronnen tot de geschiedenis van den handel met Engeland, Schotland, en Ierland, 1150 - 1485*, Rijksgeschiedenkundige Publicatiën nos. 65-6, 2 vols. (The Hague, 1928), II, nos. 1293 and 1308, pp. 831-32, 846-7: ‘een valsche bille van der munte van Calays vercoft ende geleverd hadde’, before 11 Nov. 1444; also cited in Postan, ‘Financial Instruments’, p. 51 and n. 52. See also, in Hall, *Law Merchant*, II, Appendix VI, p. 157, the account of factors for John Bolton, 1443-45, no. 10: ‘And Brandesby, as Bolton’s factor, not having bills or money ready to comply with the [Staple] ordinance, namely for one third of the true value of the wool, became indebted to men of Flanders for certain exchanges amounting to 32l. 17s. 1d., which the Bolton’s auditors have disallowed’. Some mint bills may have been mercantile acknowledgements of obligations for the future delivery of bullion.

to claim full compensation from a defaulting debtor, was the London Mayor's court, in the case known as *Burton v Davy*, adjudicated at the Guildhall on 29 November 1436. Of considerable significance, the dishonoured bill in this case was not a bill obligatory, but a bill of exchange, for which all five parties, including the bearer as the *de facto* plaintiff, were all English merchants engaged in Anglo-Flemish trade.⁹² The *deliverer* of the bill was Thomas Hanworth, who was the resident Bruges 'factor and attorney' for the Norwich merchant John Burton, who was designated as the *payee* in the bill. On 10 December 1435, Thomas Hanworth had sold some Flemish linens and other goods to John Audley, who served as the resident Bruges factor for the London-based Mercer Elias Davy. In effect, Hanworth had lent Audley the necessary funds in Flemish currency ('taken up by exchange') to buy the linen, by 'purchasing' a bill-of-exchange from Audley, who, as the *taker* or *drawer*, drew the bill for payment upon his master Elias Davy in London, instructing Davy as the *drawee/acceptor/payer* of the bill, to pay the aforesaid 'John Burton or the bearer of this letter of payment' the sum of £30 sterling in London, on the following 14 March 1436. On that redemption date, another London merchant named John Walden presented this bill for payment, as the bearer; but Elias Davy refused to honour the bill.⁹³

Then, on 10 August 1436, after several further rebuffs, Walden presented this dishonoured bill to the London Mayor's court, along with 'a bill or supplication made in the name of the aforementioned John Burton, according to the Law Merchant and custom of the city of London'. Just three weeks later, on 1 September --

⁹² Full text in Hall, *Law Merchant*, III, 117-19 (Latin and French, with English translations). Précis and incomplete, somewhat misleading analyses in Beutel, 'Negotiable Instruments', pp. 830-1, and Holden, *Negotiable Instruments*, pp. 23-4. The entire document is in the form of a reply by the London Mayor, John Mitchell, to a Chancery writ of Henry VI, dated 14 February 15 Hen. VI, or 1437, the year erroneously given by Beutel, Holden, and many others for the London case itself. These legal historians do not consider the significance of this document for international trade and finance. Postan (in 'Financial Instruments', p. 60, n. 72) knew of this case only from a précis of a related (and misleading) document in the Guildhall's Letter Book K, cited below in n. 95.

⁹³ *Ibid.*, p. 117: 'To my very honoured master, Elias Davy, mercer, at London, let this be given. Very honoured sir, please it you to know that I have received here [in Bruges] of John Burton [by the hands of Thomas Hanworth] by exchange, 30[. [sterling] payable at London to the aforesaid John [Burton] or to the bearer of this letter of payment on the 14th day of March next coming, by this my first and second letter of payment. And I pray you that it may be well paid at the day. Written at Bruges, the 10th day of December [1435], by your attorney, JOHN AUDELEY, etc.'

speedy justice, indeed -- Mayor Henry Frowyk rendered the court's decision: namely that the petitioner 'John Walden, the bearer of the letter aforesaid ... is held, reputed, and admitted in place of the said supplicant in this case [Burton], according to the Law Merchant and custom before said, [and] that he is to keep his day here then'.⁹⁴ Elias Davy, who had been compelled to appear before this court and give testimony on the case, after Walden had given his testimony, 'craved a day to advise himself as to an answer'. Mayor Frowyk then responded that, 'because no discontinuance, according to the Law-Merchant and custom aforesaid, is permitted in any mercantile causes of a court of this nature', the two parties (Walden and Davy) were ordered to appear before the court at its next session, on 3 November 1436. Davy immediately responded by seeking to have the case transferred to the Common Law Court of King's Bench at Westminster, in which he could 'wage his law', and in which the bearer John Walden clearly would have had no legal standing. Indeed Davy did obtain a crown writ to effect such a transfer⁹⁵.

But on that designated court date of 3 November, the new London Mayor, John Mitchell, firmly rejected Henry VI's royal writ, asserting that his court had sole jurisdiction, 'according to the Law-Merchant ... and by divers statutes and Parliaments' to hear this case, and any other such case involving 'all manner of loans, barratries, exchanges and letters of payment and other things, and mercantile contracts made or entered into between merchants themselves or their factors'.⁹⁶ The crown's lawyers were forced to agree, so that Henry

⁹⁴ *Ibid.*, p. 118: 'Et dictum est predicto Johanni Walden, portitori litere predictae, qui loco dicti supplicantis tenetur, habetur et admittitur in hoc casu, juxta legem mercatoriam et consuetudinem antedictas, quod custodiat tunc hic diem suum, etc.'

⁹⁵ *Ibid.*, p. 118: '...in the meantime, the lord King ordered the mayor etc. that they should have the cause of the aforesaid debt before his justices at Westminster on Friday then next following'. See also Reginald Sharpe, ed., *Calendar of Letter-Books Preserved among the Archives of the Corporation of the City of London at the Guildhall: Letter Book K. Temp. Henry VI* (London, 1911), pp. 208-09: Writ, dated 3 November 1436, to 'the Mayor and Aldermen to return particulars of an alleged debt of £30 sued for in the King's Court in the City by John Burton of the City of Norwich against Elias Davy, mercer of London, to the intent that the said Elias might be prevented from prosecuting an action in the King's Bench at Westminster'. See n. 81, 92 above.

⁹⁶ The text in translation: 'According to the Law-Merchant and the ancient liberties and free customs of the city itself, as by divers statutes and Parliaments...the mayor, etc. have the power and use of hearing and considering causes and actions of all and singular merchants, as to all manner of loans, barratries [vexatious litigations], exchanges and letters of payment and other things, and mercantile contracts made or entered into between merchants themselves or their factors making complaints at whatsoever ordinary fairs ... or merchant towns outside the realm of England... and of trying those causes and actions by juries of merchants passing between a foreign place'. *Ibid.*, pp. 118-19. Cf.

VI then ‘remitted here the cause aforesaid’, to the London Mayor’s court, recommending that the Mayor and his court to proceed ‘with such speed as they were able by the Law Merchant and custom of the city’. When the court next met, on 19 November, it heard sworn testimony from both ‘Thomas Hanworth who delivered, as of the aforesaid John Audeley, who received the moneys aforesaid by exchange’; Elias Davy himself was forced to admit that Audley was his factor and attorney ‘in taking up’ the £30 as payment for goods bought for Davy’s own commercial use. The court almost immediately rendered its decision in favour of John Walden. Elias Davy was ordered to pay the stipulated amount of £30 sterling, ‘according to the Law Merchant and the custom aforesaid in such like cases,’ and according to ‘the force, form and effect of the said letter [to] the supplicant or to John Walden, the bearer of the same letter, who is held and reputed in [Burton’s] place’. The court, furthermore, ordered Davy to pay an additional 20s as the fine for damages incurred.⁹⁷

Such an important law case has, of course, elicited considerable comment from many other historians. At one extreme, the legal historian Frederick Beutel contended that it demonstrated the ‘complete development of the negotiable bill of exchange’; but there is no evidence from the documents that this case did anything of the kind, or more precisely did nothing more than begin to establish the basic legal foundations of the bearer’s

Sharpe, *Letter Book K*, pp. 208-09: ‘by the Law-Merchant and the ancient liberties and customs of the City the Mayor and Aldermen, from time immemorial, had exercised jurisdiction over mercantile disputes arising between merchants of the City; and that Elias Davy, mentioned in the writ, was for many years and is a merchant and citizen of London, and was warned by order of Henry Frowyk, the Mayor, and the Aldermen to appear before them in the Chamber of the Guildhall...’

⁹⁷ *Ibid.*, p. 119: ‘ideo consideratum est per eandem curiam mercatoriam juxta legem mercatoriam et consuetudinem predictam in hujusmodi casibus etc. usitatas et approbatas, quod idem Elias juxta vim, formam et effectum dicte litere solvat easdem xxxl. prefato supplicanti vel Johanni Walden portitori ejusdem litere, qui loco suo tenetur et habetur in hoc casu, etc., juxta legem mercatoriam et consuetudinem antedictam, etc. et xxs. ultra pro dampnis in hac parte habitis et sustentatis, etc.’ Obdurately, Elias Davy tried to appeal this decision to Chancery; and on 14 February 1437 Henry VI issued a royal writ to London’s mayor ‘that you do send the tenor of the record and process of the plea aforesaid to us into our Chancery ... or signify to us the cause wherefore’ this writ should not be observed. Mayor Mitchell immediately responded by reiterating all the arguments made in rejecting the king’s previous writ of 3 November; and he was evidently successful in preventing this appeal to Chancery. See Hall, *Law Merchant*, III, 117-19; and also Postan, ‘Financial Instruments’, pp. 43-4 on Chancery, quoting both Blackstone and Holdsworth (*History of English Law*, I, 154): ‘no regular judicial system at that time [fifteenth century] prevailed at the court; but the suitor when he thought himself aggrieved found a desultory and uncertain remedy according to the private opinion of the Chancellor’.

rights in a transferable bill;⁹⁸ and the further developments that led to true negotiability took place instead in the cross-Channel Low Countries.

At the other extreme, and most recently James Steven Rogers, determined to prove that negotiability ‘was developed within the [English] common law system itself, in response to changing economic and business practices’, denied that this London court decision had any real significance.⁹⁹ In making his two major points, Rogers first and foremost contends that in modern commercial law ‘the drawee incurs no liability to anyone on the instrument unless he accepts it’; and then notes that the court records ‘make no mention of acceptance of the bill by Davy’. But this is an illogical cavil; for under the mercantile custom of the day, neither the designated *payee* nor the bearer/holder of the note could possibly have presented a bill for redemption unless it had already been ‘accepted’, with those words customarily written on the bill’s dorso; and it is those words of acceptance -- in the Italian of this era, *acettata* -- that provided the legal liability to pay under Law Merchant procedures.¹⁰⁰ Furthermore it is inconceivable that Walden would have accepted the note, in exchange for some goods or services, as the ‘bearer’, unless it had been so ‘accepted’. A ‘dishonoured’ bill is one by definition that had been accepted but not redeemed because of the designated acceptor/payer’s refusal to make the full stipulated payment. Finally, no medieval Law Merchant court would have agreed to hear any case involving a disputed bill of exchange that did not contain the words ‘accepted’ on the dorso, to provide concrete evidence of financial liability.

Second, in denying that the case conferred any substantial rights on the bearer as a principal, Roger

⁹⁸ Frederick Beutel, ‘The Development of Negotiable Instruments in Early English Law’, *Harvard Law Review*, 51 (1938), pp. 813 - 45, esp. p. 831. See also, for a more modest view, but still one contending that *Burton v Davy* provides the essential foundations for negotiability, see Holden, *Negotiable Instruments*, pp. 22-26. See below nn. 99-102.

⁹⁹ Rogers, *Law of Bills and Notes*, pp. xi-xiv, 1-11, 44-68.

¹⁰⁰ See the example in De Roover, *Money, Banking and Credit in Mediaeval Bruges*, pp. 56, 72; from the Datini Archives of Prato, pp. 1146, of a bill drawn in Bruges upon a Barcelona merchant-banker on 12 December 1399: ‘Pagate per questa prima al usanza a Domenicho Sancio schudi seicento a s.10 d.5 per ▼ i quali ▼ 600 a s.10 d.5 per ▼ sono per la valuta da Jachopo Ghoscio, e ponente a nostro chonto chosti. Idio vi guardi. [Signed] Giovanni Orlandini e Piero Benizi e chonpagni in Bruggia’. On the dorso are the words: *Acettata a di 11 di gennaio 1399* [11 January 1400 n.s.], *Francescho da Prata e chonpagni in Barzalona*’.

contends instead that ‘it is far more likely that Walden was acting only as a collection agent for Burton’. While it is true that Walden did ask Burton to put his name on the original suit before the court as the plaintiff, Burton alone of the five parties played no further role in the proceedings, unlike similar *payee*-plaintiffs in earlier English cases involving dishonoured bills.¹⁰¹ Because there were not yet any legal precedents to establish the independent rights of the bearer in such a bill, and because all the previous cases that were heard in their entirety did involve the principals, especially the *taker-drawer* and the *payee*, the court thus first had to rule whether or not Walden had any legal standing in the suit, and whether his was to be an equal standing. As noted, the court did precisely that in ruling that Walden was ‘held, reputed, and admitted in place of’ the plaintiff Burton; and, of much greater importance, the court ordered Davy to pay the stipulated sum to ‘the supplicant [not specifically named] or to John Walden, the bearer of the same letter, who is held and reputed in his place’. Surely that meets virtually every aspect of the key test for negotiability that Rogers cites, in quoting W.S. Holdsworth, *A History of English Law*: ‘Negotiable instruments are transferable by delivery if made payable to bearer, or by indorsement and delivery if made payable to order; and the transferee to whom they have been thus delivered can sue upon them in his own name’; and that ‘consideration is presumed’.¹⁰²

¹⁰¹ See the case of Luke Bragadyn: heard before the London Mayor's court in 1382. In the previous January 1381, the Venetian merchant Luke Bragadyn had arranged the purchase of 130 sacks of Cotswold wool at Calais from Richard Morell and Henry Pensehurst, two London merchants, authorizing his son Nicholas to make payment with two bonds for £566 15s 0d and £341 9s 0d sterling, payable respectively on 7 March 1381 and 12 January 1382. When Bragadyn failed to honour his debts, after selling the wool in Bruges, Morell and Pensehurst sued him, ‘according to the Law Merchant’, on behalf of the London merchant Sir Nicholas Brembre (a merchant-grocer, elected Lord Mayor of London in Oct. 1384), ‘to whom [these bills] had been assigned by the plaintiffs in satisfaction for debts owed by them to Nicholas’. Bragadyn readily agreed to make full payment to Nicholas Brembre, provided that another merchant, Peter Gracian of Lucca, paid Bragadyn certain debts owing to him. On 1 April 1385, Luke Bragadyn signed a covenant not to sue Sir Nicholas Brembre or Peter Gracian for debt for seven years, ‘unless the said Nicholas acknowledged that he had received satisfaction of his own claims against the said Peter [Gracian]’. On 10 July 1385, Nicholas Brembre, Luke Bragadyn, and Peter Gracian appeared in the London court ‘and announced that they had come to an agreement’, on the complicated interlocking debts. Bragadyn acknowledged by a bond his debt of £500 to Brembre; and, on 29 July, Peter Gracian signed a bond for £410 payable to James Dyne of Florence, due 1 April 1386, ‘to pay that sum in the manner and form contained in an indenture enrolled in the Guildhall between Nicholas Brembre, knight, and the said Peter and Luke Bragadyn’. It is important to note that the designated payees in this Law Merchant case, and not the assignee (Brembre), had launched and conducted the suit. See Thomas, *CPMRL 1381 - 1412*, pp. 27-28, 83-89, 100-01. For these London wool-merchants, see Lloyd, *Wool Trade*, pp. 250-2; Nightingale, *Grocers' Company*, pp. 228-62, 292-17 (on Brembre).

¹⁰² Rogers, *Notes and Bills*, pp. 3, 45-7; Holdsworth, *History of English Law*, VIII, pp. 113-14. The only cavil again is that Walden, in undertaking his suit before the Mayor's Court, without legal precedent, necessarily

Thereafter, the rights of the bearer appear to be well established in English Law-Merchant Courts; and no subsequent Law-Merchant case can be cited to indicate that such rights had been undermined, except, of course, when the bearer had illegally obtained the bill.¹⁰³ Furthermore, the abundant records of those prominent late-fifteenth-century Staplers, the Cely family, certainly indicate that merchants of this era had no qualms about the legal rights of the bearer, in either bills of exchange or bills obligatory.¹⁰⁴

XV. The Development of Negotiability in Antwerp and the Habsburg Low Countries, 1507 - 1541

In any event, the issue here is not the subsequent evolution of negotiability within England but the impact of *Burton v Davy* in providing a precedent for other international Law-Merchant courts, especially those in the Low Countries, where genuine negotiability was first established; and in this respect Rogers and other Anglo-American historians commenting on *Burton v Davy* have ignored those international developments. In continental Europe, the next recorded Law-Merchant case involving similar bearer bills was heard in May 1499 by Lübeck's civic court, which rendered a decision on the rights of the bearer almost identical to those involved in *Burton v Davy*; and it reconfirmed that decision in March 1502.¹⁰⁵ Just five years later, as Herman Van

therefore did require *Burton*'s assistance, and indeed his primary name on the suit. Some legal scholars have thus also cavilled, as did Rogers, that *Burton v Davy* did not give the bearer a superior claim to that of the payee; and that it did not allow the bearer to sue the drawer or assignor in the event of the payer's inability to make payment. But, for this era, the first point is nitpicking, and could not have arisen in this particular suit; and the second is irrelevant, since the drawer (Audeley) was merely the payer's factor. Holden, *Negotiable Instruments*, pp. 24-5, also basing his views on Holdsworth, similarly agrees that this judgement met two of the major legal criteria for negotiability, without referring to the third: (1) that the instrument must be transferable by delivery; (2) that the person holding it *pro tempore* must be able to sue upon it; and (3) that the property contained in it [the bill] must be capable of transfer to a bona fide transferee for value, even if the transfer may not occur in an actual market. Usher, *Deposit Banking*, pp. 94-5, was, however, misguided in so harshly rejecting both the significance of this decision and categorically rejecting Beutel's interpretation, extreme though the latter was. Cf. Kerridge, *Trade and Banking*, p. 71: 'Assignability is not negotiability... To be fully negotiable a credit instrument must, first, be transferable as by the custom of merchants...; and secondly, it must be capable of being sued upon by the holder for the time being'.

¹⁰³ See below nn. 116-17.

¹⁰⁴ Hanham, *The Celys and Their World*, pp. 187-9: with bills or drafts drawn on the Bruges *wisselaers* Collard De May and John Newenton, in 1477-79. See also evidence in Hanham, ed., *The Cely Letters, 1472 - 1488*; and Hanham, 'Foreign Exchange and the English Wool Merchant', pp. 160 - 75.

¹⁰⁵ For this case, see Jeannin, 'De l'arithmétique commerciale à la pratique bancaire', pp. 95-116: citing Wilhelm Ebel, *Forschungen zur Geschichte des lübischen Rechts*, I: *Dreizehn Stücke zum Prozess-und Privatrecht* (Lübeck, 1950), p. 135: Zyderdissen vs. Cleytze, 4 May 1499. See also North, 'Banking and Credit in Northern Germany', pp. 809-26: for this and a subsequent case of 2 March 1502 in his [documents from Wilhelm Ebel, ed.,

der Wee has rightly noted, a Law-Merchant civic court in Antwerp issued a *turba* in a dispute involving some contested English bills obligatory in which it ‘granted the bearer of writings obligatory the same rights as the original creditor [payee] with regard to the prosecution of an insolvent debtor’. Van der Wee stresses that, in the Low Countries, before this crucial legal *turba* was issued, merchants had been able to secure legal enforcement of debt assignments, but only by very rigid, cumbersome, and legally costly procedures, in seeking to prosecute a defaulting debtor. Such a suit had required the plaintiff-bearer ‘to obtain an explicit authority from the original creditor [revocable at any time]’, or ‘an official transfer made by means of a formal *cessio*’.¹⁰⁶

By the early sixteenth century, of course, Antwerp had decisively become the predominant commercial and financial centre in all of Europe.¹⁰⁷ Undoubtedly its court rulings had been influenced by the evolving procedures of the international *Lex Mercatoria*, and quite possibly by the Lübecker court ruling, which is the most immediate precedent that can be cited. But in this era, the Lübeckers, still more loyal to Bruges, did not yet really play an important role in Antwerp’s commerce, certainly not as important a role as the English cloth merchants were then providing. Thus it is more likely that the Antwerp Law-Merchant court, especially in dealing with an English bill obligatory, had been more deeply influenced by the London court decisions, and possibly indeed by those Flemish, Brabantine, and Dutch merchants who had often served as jury members in London Law-Merchant courts.¹⁰⁸ Subsequently, in 1527, the Bruges municipal court issued a virtually

Lübecker Ratsurteile, Vols. I and II (Göttingen, 1955-56)]. North states, furthermore, that ‘there is no evidence what so ever that the decision of 1499 ... encouraged significantly the informal assignment of bills obligatory in Northern Germany’. See also Wilhelm Ebel, *Bürgerliches Rechtsleben zur Hansezeit in lübecker Ratsurteilen* (Göttingen, 1954).

¹⁰⁶ Van der Wee, ‘Monetary, Credit, and Banking Systems’, p. 325. This court consisted of aldermanic magistrates from the civic *schepenbank*. See also Van der Wee, ‘Anvers et les innovations de la technique financière’, pp. 1067-89; and Van der Wee, ‘The Medieval and Early-Modern Origins of European Banking’, in Puncuh and Felloni, *Banchi pubblici*, pp. 1157 - 73.

¹⁰⁷ See above, nn. 2, 20-2.

¹⁰⁸ See Van der Wee, ‘Monetary, Credit, and Banking Systems’, pp. 322-23; Van der Wee, ‘Anvers’, pp. 1067-89; and nn. above. For the most famous compilation of Law-Merchant by a merchant of Flemish origin with wide commercial and legal experience in both the Low Countries and England, see Gerard de Malynes, *Consuetudo vel Lex Mercatoria or the Ancient Law Merchant* (London: Adam Islip, 1622).

identical legal decision, in determining that ‘the bearer had all the rights of a principal’ in claiming payment on a commercial bill and in suing defaulting debtors.¹⁰⁹ But far more important, in completing the true legal foundations for modern European negotiability, were the official ordinances enacted by the Estates General of the Habsburg Netherlands in March 1537 and October 1541. For they permitted the bearer to sue any and all prior assignors of the note for the full payment, and established these principles of financial assignment, with full legal guarantees and protection for the bearer, on a fully national basis.¹¹⁰

XVI. The Development of Discounting and Endorsement in the Low Countries: 1536-1608

Prof. Van der Wee also found an equally important though non-legal document, dated 1536, that has a great bearing upon the evolution of true negotiability: the first fully documented example of true discounting anywhere in Europe, which again involved an English merchant's bill obligatory on the Antwerp market. Nevertheless, he found this to be a very ‘exceptional occurrence’, for almost all bills, including transferable bearer bills, were not converted into cash until redeemed on the stipulated date of maturity.¹¹¹

Obviously one further legal step was necessary before true discounting could be openly and licitly practised; and that was the amendment of the usury legislation from the same Estates General of 1541 to permit

¹⁰⁹ A. P. Usher, *Deposit Banking*, pp. 98-9, citing a document in Louis Gilliodts-Van Severen, ed., *Coutume de la ville de Bruges*, Commission Royale d'Histoire (Brussels, 1875), II, no. 127, p. 318. See also Raymond De Roover, *Gresham on Foreign Exchange*, pp. 117-52, citing the text of the ordinance of the 1537 Estates General discussed below in n. 110.

¹¹⁰ Van der Wee, ‘Credit and Banking Systems’, p. 326: ‘...in this way, the various transferring creditors remained jointly responsible for payment’. For the text of the March 1537 ordinance, concerning bills of obligatory only, see C. Laurent, M. J. Lameere, and H. Simont, eds., *Recueil des ordonnances des Pays Bas, deuxième série, 1506 - 1700*, Commission Royale d'Histoire (Brussels, 1907), Vol. 4, pp. 15-17, and 34-5. For the text of the 31 October 1541 decree (including bills of exchange), see Van der Wee, *Growth of the Antwerp Market*, II, p. 344: ‘Ordonnons que doresnavant tous ceulx qui aueront accepté ... quelque lettre de change seront tenus de payer la somme contenue en ycelle en deniers évaluez ... sans que pour lesdits changes ou aultres obligations contractez entre marchans on puist donner en paiement aultres obligations par forme d'assignacions, lesquelles le créditeur ne sera tenu d'accepter sil ne veult, et en acceptant l'assignacion demeurera neantmoins le premier débiteur obligé tant que le marchand sera réalement payé ou effectivement contente de son due’. See also Usher, *Deposit Banking*, pp. 98-9; and De Roover, *Gresham*, pp. 117-52, who noted that the 1537 ordinance applied only to letters obligatory and not to bills of exchange, which ‘rarely if ever have bearer clauses in them’ (evidently unaware of the English examples).

¹¹¹ Van der Wee, ‘Credit and Banking Systems’, pp. 329-31 (from the Kitson papers at Cambridge). He contends that, before the formal acceptance of discounting, those merchants requiring ready cash would have asked some debtor to pay in advance, offering him a *rabat* (rebate) -- in effect, a discount for prior payment.

interest payments up to 12 per cent per annum on all debts and commercial bills -- so that 'usury' now came to mean interest payments in excess of that limit.¹¹² The Habsburg Netherlands were, of course, still Catholic, despite the spread of Calvinism; and, although Protestant England, under Henry VIII, enacted similar legislation a few years later, in 1547, but with a 10 per cent limit, this statute was repealed in 1552 (under Edward VI), and it was not restored until 1571, by Elizabeth I's Parliament.¹¹³ Meanwhile, In the Habsburg Low Countries, an evidently residual hostility to usury prevented any widespread acceptance of and rapid diffusion of discounting in commercial bills, before the later sixteenth century. According to Van der Wee, discounting became fully established in the Antwerp market only after the formal endorsement of bills had also become customary, by the early seventeenth century. By that time, an ever increasing flow of bearer bills, passing from hand to hand, made financial transfers all the more risky, since they involved agents not known to the original principals in the bill; and thus merchants came to insist on some form of written documentation of successive assignments, i.e. by endorsement on the back of the bill, by which each successive assignor not only surrendered his financial claim to the bill but also acknowledged through his signature his full liability for reimbursement in the event of default (i.e. by virtue of the Estate ordinances of 1541). Many of these legal provisions were encoded in the Antwerp *Costumyn* of 1608.¹¹⁴

XVII. Contrasts: the slow and painful evolution of negotiability in early-modern England, 1525-1703

With that legal and institutional perspective, we may return to England in order to appreciate the

¹¹² For the legal acceptance of interest in the Low Countries, see Van der Wee, 'Credit and Banking', p. 302.

¹¹³ For England, see: statutes 37 Henrici VIII, c. 9 of 1545, permitting interest up to 10 per cent; repealed by 5-6 Edwardi VI, c. 20 in 1552, which was in turn repealed in 1571 by 13 Elizabeth I, c. 8, which thus restored 37 Hen. VIII, c. 9, in *SR*, III, 996; and IV.i, 155, 542, respectively. It is worth noting that the usury ceiling was progressively lowered, with the gradual fall in the real rate of interest: from 10 to 8 per cent in 1623, to 6 per cent in 1660, and finally to 5 per cent in 1713. Not until 1854 (17-18 Victoria c. 90), however, were the usury laws finally abolished. See Richards, *Early History of Banking in England*, pp. 19-20.

¹¹⁴ For reasons why endorsement spread so slowly, see Van der Wee, 'Credit and Banking', pp. 327-29. The Antwerp *Costuymen* of 1608 also required a variant of endorsement, by which all assigning creditors were listed *within* the bill, obligating all who accepted transfers of payment 'from hand to hand to four or five persons or more' to make payment in case of default by the debtor: *indijen hij bij den lesten niet en wort betaelt, heeft tot sijne voldoeninge verbonden alle degene daerop hij bewesen is*. But this was rather too clumsy, in contrast to written endorsement and assignment on the back of the bill.

significant differences between the two countries. First of all, *Burton v Davy* provided only the basic foundations required for the future establishment of true negotiability; and nothing in these 1436 court records indicates that this disputed bill of exchange involved any form of discounting. Indeed, it is inconceivable, under England's current usury legislation, that any discounting could have been openly practised there. In fact, nothing is known about the circumstances under which Walden acquired the bill. Perhaps Burton had transferred it to him to acquit some debt owed to Walden for some sum, possibly less than the £30 stipulated in the bill. Although Richard Tawney had contended that fifteenth-century English wool merchants frequently engaged in discounting, the supposed 'discount' in the only document that he cited is in fact just a currency conversion on a bill of exchange that was held to maturity.¹¹⁵

Second, a decision rendered by the London Law-Merchant court had no valid national standing; and it is also quite inconceivable that fifteenth- or even sixteenth-century English Parliaments, with their deeply imbedded bullionist and anti-usury mentalities, so hostile to credit, would have countenanced any such generous provisions concerning the acceptance and transferability of bills of exchange at discount. Yet perhaps so long as the crown permitted Law Merchants courts to have jurisdiction, if not by any means exclusive jurisdiction, over purely mercantile affairs, with the very considerable powers that they enjoyed by the 1353 Staple Ordinance, there was no pressing need for national legislation.

Thanks to the crown's subsequent expansion of its legal domain, there would be none for another 265 years. In 1525, Henry VIII transferred most of the jurisdiction over commercial affairs from civic Law-Merchant courts to the crown-dominated Court of Admiralty, though records from that court indicate that it

¹¹⁵ Richard Tawney, in his 'Introduction' to Thomas Wilson's *A Discourse Upon Usury* [1572] (London, 1925), p. 77, citing a Cely bill of exchange published in Henry Malden, ed., *The Cely Papers: Selections from the Correspondence and Memoranda of the Cely Family, Merchants of the Staple, AD 1475 - 1488*, Camden Third Series, Vol. 1 (London, 1900), p. 39, doc. no. 38. He confused the conversion of £91 *groot* Flemish into £75 16s 8d *sterling*, as the amount paid after this supposed 'discounting'. The document further makes clear that this bill was indeed held until the stipulated maturity. Alison Hanham also misread currency conversions in these Cely bills as a form of discounting; in *The Celys and Their World*, pp. 190-91. Needless to say, no bill, when originally drawn, would or could have made any reference to a discount, since the holder wishing to sell it before maturity chose the time to do so (thus determining the rate and amount of discount).

continued to respect the already established Law-Merchant conventions for commercial bills.¹¹⁶ A more concerted assault took place in the early seventeenth century, when Chief Justice Edward Coke and his successors sought to give Common Law courts much more complete and exclusive jurisdiction over commercial cases, especially in 1632, by limiting the Admiralty Court to contracts made abroad; and finally, in 1648, by removing all commercial contracts from the Admiralty Court to Common Law courts.¹¹⁷ Subsequently, in 1666, the Common Law courts did agree that, because ‘the law of merchants is the law of the land’, endorsed bills of exchange were fully ‘transferable within the custom of merchants’.¹¹⁸ But only in 1702-03, following an adverse decision from Chief Justice Holt, denying the bearer or endorsee any rights in a promissory note (i.e. the modern name of the bill obligatory), did Parliament finally pass the necessary legislation to establish modern negotiability within England: in the Promissory Notes Act to make all promissory notes fully transferable, whether to order by endorsement or to bearer, ‘according to the custom of merchants ... as is now

¹¹⁶ On this court in this era, see Reginald Marsden, ed., *Select Pleas in the Court of Admiralty*, I: *The Court of the Admiralty of the West (R.D. 1390 - 1404) and The High Court of Admiralty (R.D. 1527 - 1545)*, Selden Society Publications Vol. 6 (London, 1894): introduction, p. lvii; Beutel, ‘Negotiable Instruments’, p. 834; and Holden, *Negotiable Instruments*, p. 17. See for example (1) the bill of exchange for £60, dated 3 March 1534 (ns), in the suit Fuller vs. Thorne: ‘...the whiche sum of thre skore pounds sterling to be payd to the said Thomas Fuller or to the brynger of thys byll in manner and forme foloyng...;’ and (2) a letter obligatory for £13, dated March 1537, in Harrison vs. Stubbarde: ‘solvendis eidem Johanni [Harryson de Roos, naute de Slusa] aut suo certo attornato heredibus executoribus et assignatis suis sive hoc presens scriptum ostendenti seu deferenti in festo sancti Michaelis Archangelis promixe futuro [29 September 1534]...’: in Marsden, *Admiralty*, Vol. 1, docs. no. 8, pp. 38-41 (translation pp. 179-84); and no. 26, pp. 62-3 (translation, pp. 196-97). In 1563, the Admiralty Court did rule, in a case involving a bearer bill, for £50 payable ‘unto John Denaker or to the brynger hereof’, that the designated payee (Denaker) rather than the bearer, John Mason, was the rightful claimant, ‘according to the admission of the said John Mason judicially made before Us’. The bearer's rights were not protected if he had obtained the bill and payment by fraud. Marsden, *Select Pleas in the Court of Admiralty*, II, pp. 73, 127.

¹¹⁷ In 1628, Coke stated that the Law Merchant ‘is part of the lawes of this realme’, but in essence repeating Chief Justice Hobart's statement of 1622 that ‘the custome of merchants is part of the common law of this kingdome of which the judges ought to take notice’. See Kerridge, *Trade and Banking*, p. 72.

¹¹⁸ Holden, *Negotiable Instruments*, pp. 33-6; Beutel, ‘Negotiable Instruments’, pp. 833-34; Kerridge, *Trade and Banking*, pp. 71-2. In Woodward vs. Rowe (1666) the Common Law court declared that ‘the law of merchants is the law of the land, and the custome is good enough generally for any man, without naming him merchant’; and in Williams vs. Williams (1693) it ruled that the customs of Law Merchant did not have to be detailed, for ‘tis sufficient to say that such a person *secundum usam et consuetudinem mercatorum* drew the bill’.

used upon Bills of Exchange'.¹¹⁹

On the European scene, therefore, the Habsburg Netherlands rightfully enjoys the claim to primacy in establishing on a national basis the full legal conditions for true negotiability of commercial bills. To be sure, the London Law-Merchant court decision of 1436 may have provided the vital precedent, directly or indirectly, for the Antwerp court's *turba* of 1507, which in turn was the foundation for the national legislation of 1537 and 1541. But even so the circumstances involving true negotiability were indeed very different in the Low Countries, so that one cannot claim to make a Flemish silk purse out of an English sow's ear, so to speak.

¹¹⁹ 'An Act for Giving Like Remedy Upon Promissory Notes as is Now Used Upon Bills of Exchange...' 3 & 4 Anne c. 8 (1704), in *SR*, VIII, pp. 355-56. It further stipulated that when an inland bill was dishonored by non-acceptance, the holder (bearer) may and shall cause it to be protested for non-acceptance; that no protest would be necessary for either non-acceptance or non-payment unless the bill was for £20 or more; and that the holder of an inland bill or promissory note could sue and recover the same damages as the holder of a foreign bill, whenever dishonor took place. See also Holden, *Negotiable Instruments*, pp. 55, 73-80; Van der Wee, 'Credit and Banking Systems', pp. 347-49; Richards, *Banking*, pp. 44-6; Kerridge, *Trade and Banking*, pp. 71-5; and Rogers, *Bills and Notes*, pp. 183-5. Rogers comments that this statute was not just 'a reaction to Holt's decision in the promissory notes case. Throughout the seventeenth century, economic writers had been advocating that English merchants adopt the Dutch practice of using transferable bills of debt in their trade and proposing that Parliament enact legislation to encourage or require the practice. The dispute over Holt's decisions may simply have provided the occasion for enactment of measures that had long been urged for other reasons'. See also John Munro, 'The International Law Merchant and the Evolution of Negotiable Credit in Late-Medieval England and the Low Countries', in Dino Puncuh, ed., *Banchi pubblici, banchi privati e monti di pietà nell'Europa preindustriale* (Genoa, 1991), pp. 49 - 80, reprinted in Munro, *Textiles, Towns, and Trade*; many of the views expressed in that essay have been revised or corrected in this current essay.

Table 1. **English Wool and Cloth Exports and Indices of Cloth Production in the Low Countries,**
in quinquennial means, 1285-9 to 1545-9

Years	English Wool sack	English Broadcloth	Total as Equivalent	English Cloth	London Exports	Ghent: Drapery	Ypres Seals	Ypres Seals	Ypres Seals	Ypre Drap
	Exports	Exports	Broadcloths	Exports	as Per	Tax Farms	Dyed Cloths	Medley	Dyed Cloths	Farm
	364 lb. sack	24 x 1.75	4.333 cloths	London	Cent of	in shillings	at the Ramen	Cloths	Lakenhalle	in sh
		yards	per woolsack	to Antwerp	Total	groot Flemish				groot
1285-9	25,646.8		111,136.0							
1290-4	30,058.4		130,253.0							
1295-9	20,062.6		86,937.9							
1300-4	29,391.8		127,364.4							
1305-9	41,313.0		179,022.9							
1310-4	36,050.2		156,217.4							
1315-9	26,048.0		112,874.6							
1320-4	26,579.0		115,175.6							
1325-9	24,160.2		104,694.1							
1330-4	32,687.2		141,644.4							
1335-9	22,850.4		99,018.3			2,286.60	47,400		14,300	
1340-4	19,731.8		85,504.4			2,417.40	33,710		11,800	
1345-9	24,967.7	3,196	111,388.6			2,141.80	33,000		12,379	
1350-4	30,203.5	1,621	132,502.5			2,249.60	37,610	7,090	7,470	
1355-9	32,543.6	7,231	148,253.0			2,213.20	43,575	23,125	4,750	
1360-4	30,183.4	11,035	141,829.4			1,999.00	53,662	26,963	4,256	
1365-9	29,602.8	14,684	142,962.3			1,355.60	47,374	26,550	4,728	
1370-4	24,081.2	12,723	117,075.0			987.20	33,826	37,550	3,347	
1375-9	21,658.8	13,154	107,008.3			772.80	23,675	46,200	104	
1380-4	18,611.8	18,978	99,629.3			476.80	12,082	27,993	24	
1385-9	17,412.4	25,351	100,804.3			385.18				

1390-4	19,542.8	36,842	121,527.4			293.55				
1395-9	17,546.4	40,096	116,130.4			201.93				
1400-4	13,737.6	37,810	97,339.4			110.30				
1405-9	14,629.0	29,216	92,608.7	11,992	41.05%	146.10				
1410-4	13,540.0	27,522	86,195.5	14,168	51.48%	137.50				
1415-9	14,704.6	28,855	92,574.9	13,981	48.45%	177.80				
1420-4	14,278.2	36,449	98,321.6	15,174	41.63%	156.90				
1425-9	14,179.4	41,446	102,890.2	18,223	43.97%	195.10				
1430-4	8,135.6	40,861	76,115.6	17,351	42.46%	153.10				
1435-9	4,569.8	42,904	62,706.5	16,768	39.08%	88.70				
1440-4	11,078.6	57,056	105,063.4	24,166	42.36%	82.60				
1445-9	7,487.4	49,506	81,951.6	16,489	33.31%	103.60				
1450-4	8,655.2	37,140	74,646.2	14,864	40.02%	75.10				
1455-9	8,566.4	37,604	74,724.6	17,689	47.04%	36.10				
1460-4	5,775.6	31,161	56,189.0	16,752	53.76%	25.00				
1465-9	8,771.6	35,446	73,456.0	18,682	52.70%	37.00				
1470-4	8,614.2	36,253	73,581.2	22,593	62.32%	54.00				
1475-9	8,792.2	45,397	83,496.7	30,820	67.89%	49.40				
1480-4	8,104.0	55,108	90,225.7	36,883	66.93%	34.40				
1485-9	8,916.9	48,753	87,393.3	34,183	70.11%	9.50				
1490-4	6,618.4	56,802	85,481.5	36,995	65.13%	3.00				
1495-9	9,747.2	59,210	101,448.0	40,542	68.47%	7.40				
1500-4	7,712.2	78,790	112,209.1	47,993	60.91%	12.60				
1505-9	7,166.2	83,203	114,256.7	50,501	60.70%					
1510-4	7,378.6	83,415	115,388.7	59,305	71.10%					
1515-9	7,670.8	88,881	122,121.3	62,766	70.62%					
1520-4	6,356.2	82,677	110,220.9	59,452	71.91%					
1525-9	4,627.8	94,656	114,709.4	73,895	78.07%					
1530-4	3,166.4	93,893	107,613.7	74,094	78.91%					
1535-9	3,736.4	104,103	120,293.9	87,377	83.93%					
1540-4	4,616.0	117,345	137,347.9	99,580	84.86%					
1545-9				120,690						

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1415-19	113.9	4.652	50.000	53.74	2.000	0.9353	138.56	108.61	5.935	6.34
1420-24	99.3	5.136	46.000	44.78	2.402	1.0427	135.96	106.57	6.082	5.83
1425-29	105.4	4.859	40.000	41.16	2.001	1.0981	149.43	117.13	6.063	5.52
1430-34	113.7	5.546	40.000	36.06	2.464	1.1504	163.72	128.33	6.835	5.94
1435-39	113.5	5.550	40.000	36.04	2.729	1.1040	175.70	137.72	7.281	6.59
1440-44	102.0	5.204	40.000	38.43	2.295	1.1040	153.82	120.57	7.765	7.03
1445-49	96.7	5.578	40.000	35.85	2.731	1.1040	137.57	107.83	7.925	7.17
1450-54	100.6	4.514	41.000	45.41	2.037	1.1040	129.21	101.28	6.950	6.29
1455-59	95.1	4.132	50.000	60.51	2.062	1.1040	145.26	113.86	7.702	6.97
1460-64	99.3	4.394	50.000	56.90	2.215	1.0514	119.82	93.92	8.000	7.60
1465-69	106.2	5.906	40.000	33.86	1.866	1.0009	121.16	94.97	8.100	8.09
1470-74	98.9	5.285	41.000	38.79	2.096	1.0646	122.42	95.96	8.642	8.11
1475-79	87.2	6.143	40.000	32.56	2.382	1.2658	142.65	111.82	8.875	7.01
1480-84	128.9	8.013	40.000	24.96	2.723	1.3542	200.57	157.22	10.348	7.64
1485-89	100.0	8.671	40.000	23.07	2.905	2.1827	209.23	164.00	14.893	6.82
1490-94	105.4	5.742	40.000	34.83	2.494	1.1745	232.12	181.95	16.233	13.82
1495-99	94.5	5.298	40.000	37.75	2.802	1.4523	130.60	102.37	14.667	10.09

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