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## The Struggle for Voluntary Bankruptcy and Debt Adjustment in Antwerp (c. 1520–c. 1550)

Legal history concerning early modern insolvency and bankruptcy has often focused on the proverbial “stick”. Much attention has been paid to rules that allowed for a swift liquidation of a bankrupt’s estate and to penalties for fraud. Solutions that were based on cooperation of the debtor and which facilitated postponements, or a fresh start after the bankruptcy, have unfortunately received less attention. This disparity in the scholarly literature has to do with a focus on normative texts and with a relative neglect of the forensic and mercantile practices surrounding phenomena of indebtedness and insolvency. Legislation tended to be harsh, whereas its implementation was usually less rigid and straightforward. Quite recently economic historians in particular have started analysing statistical data concerning insolvency practices in France in the nineteenth century, which clearly demonstrate many efforts towards negotiation.<sup>2</sup> As a result of their findings, these historians have come to react against the views conventionally proposed in the ‘law-and-finance’ literature, inclined as these interpretations are to consider liquidation as the most efficient means of tackling persistent payment problems.<sup>3</sup>

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  - 2 Hautcœur, Pierre-Cyrille / Levratto, Nadine: “Bankruptcy law and practice in XIX<sup>th</sup>-century France”. Working paper 2007; Hautcœur, Pierre-Cyrille / Levratto, Nadine: “Petites et grandes entreprises face à la faillite au XIX<sup>e</sup> siècle en France: du droit à la pratique”. Working paper 2007. For Belgium in the first half of the 1800s, comparable data point to a high number of extra-judicial agreements. See De ruysscher, Dave. “Praktijkgerichtheid in de rechtbank van koophandel (19de–21ste eeuw): een uitgeholde traditie opnieuw ingevuld”. In: De ruysscher, Dave (ed.): *Rechtspreken en lekenparticipatie: noodzaak of traditie*. Maklu: Antwerp 2013, pp. 148–149.
  - 3 La Porta, Rafael, et al.: “Law and Finance”. *Journal of Political Economy* 106–6 (1998), pp. 1113–1155. Authors writing in this tradition commonly build on the assumption

Another reason for the afore-mentioned bias towards tough measures and the liquidation of businesses is a conceptual and even an ideological one, much related to the economic literature belonging to a Schumpeterian tradition. Along these lines legal historians have, for example, labelled the early modern French practice of royal letters (of *répit*, *cession*) as “laxist” remedies preventing creditors from recovering their debts.<sup>4</sup> As such it is a common assumption that firms that go bust are not healthy and that any measure aimed at their recovery is a matter of artificial lenience or inappropriate compassion. In contemporary law, rules regarding payment problems are often framed as being either debtor-friendly or creditor-friendly and, correspondingly, such labels are also quite frequently used for the history of bankruptcy.<sup>5</sup> In addition, it is often thought that judges are not relevant in bankruptcy or insolvency matters, and that an expeditious insolvency proceeding is one that is administered exclusively by creditors.<sup>6</sup>

As this contribution will argue, however, an assessment of insolvency and debt negotiation practices in sixteenth-century Antwerp makes it evident that in that period insolvency for a large part depended on the understanding of creditors. Their involvement did not always result in liquidation, as creditors could accept moratoria and favour a re-integration of a defaulting debtor into their networks. Without official support, though, liquidation remained the default proceeding.

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that an efficient bankruptcy law is creditor-friendly, which is defined in terms of swiftness (thus preferring liquidation) and a high recovery rate.

- 4 Hilaire, Jean: *Introduction historique au droit commercial*. PUF: Paris 1986, p. 321 and p. 323. For another perspective, see Deshusses, Frédéric: “Mesurer l’insolvabilité. Usages statistiques des dossiers de faillite (1673–1807)”. *Histoire & Mesure* 23/1 (2008), pp. 19–41; Reynard, Pierre Claude: “The Language of Failure: Bankruptcy in Eighteenth-Century France”. *The Journal of European Economic History* 30/1 (2001), pp. 355–390.
- 5 For appraisals of the precursor of contemporary Chapter 11 arrangements, namely, in the American bankruptcy law of 1898, as (too) “debtor friendly”, see: Baird, Douglas G. / Rasmussen, Robert K.: “The End of Bankruptcy”. *Stanford Law Review* 2002, pp. 751–797; Hotchkiss, Edith: “Postbankruptcy Performance and Management Turnover”. *Journal of Finance* 50 (1995), pp. 3–21; Skeel, David A.: “Creditors’ Ball: The ‘New’ New Corporate Governance in Chapter 11”. *University of Pennsylvania Law Review* 94 (2003), pp. 1357–1391.
- 6 At the end of the nineteenth century, this idea was put forward by Josef Kohler. See Kohler, Josef: *Lehrbuch des Konkursrechts*. Enke: Stuttgart 1891, pp. 11–45, and, for an interpretation, Falk, Ulrich: “Die Konkursübel. Forschungsfragen zur Geschichte des Konkursverfahrens in Deutschland”. *Zeitschrift der Savigny-Stiftung für europäische Rechtsgeschichte. Germanistische Abteilung* 131 (2014), pp. 277–278 and pp. 317–318.

In an effort to change that process, it became required that the debtor be able to pressure creditors into seeking a compromise. To that end, the authorities of the city of Antwerp and of the princely government cooperated in establishing an institutional framework that facilitated negotiations. By examining the extant material on these talks between debtors and creditors in Antwerp in the second quarter of the sixteenth century, the investigation at hand intends, moreover, to shed greater light on the Antwerp aldermen particularly involved in these proceedings at the local level. As will be demonstrated in what follows, their role was crucial in the diplomacy required to reach the agreements that resolved conflicts surrounding voluntary bankruptcy and debt adjustment.

### **1. Shifting policies of debt collection and bankruptcy in late fifteenth- and early sixteenth-century Antwerp**

Collective and voluntary bankruptcy or insolvency, which became used in Antwerp in the 1520s, grew out of experiences from the preceding decades. These collective features came after a period of generalized individuality in debt collection, and it was only after collectivization of bankruptcy that voluntary bankruptcy/insolvency and debt adjustment could emerge.

Before the later decades of the fifteenth century, namely, Antwerp law and merchant culture had generally labelled debtors with persistent payment problems as frauds. Creditors commonly sought to imprison and expropriate their defaulting debtors, and remedies supporting their recovery were not practised. This practice had to do with the weak status of mercantile debt during most of the 1400s: it was not possible to lay attachment on the basis of non-authenticated documents (i.e. documents other than “aldermen’s letters” and certificates) or informal promises and arrangements, except after obtaining a judgment, which was the outcome of a lengthy proceeding before the aldermen of the municipal court in Antwerp. Underlying these rules was the idea that rights of collateral, which were closely related to attachment in this period, had to be checked and approved by the municipal administrators, that is, the aldermen. Mercantile debts were not always put down in writing and if they were, they were usually inserted into private agreements that were not presented to the aldermen for registration. As a result, for most debts of merchants, it was only through a verdict of the municipal court that rights of collateral could be established.<sup>7</sup> Imprisoning a debtor was a swifter method for creditors to collateralize their debts, because detained

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7 On certificates and “aldermen’s letters”, see Asaert, Gustaaf: “De oudste certificatiën van de stad Antwerpen (1468–1482)”. *Bulletin de la commission royale d’histoire* 132

debtors could transfer their estate to their creditors in order to be released from prison.<sup>8</sup> In practice, members of chartered merchant organizations could also be arrested and brought to prison.<sup>9</sup> Debtors therefore aimed at avoiding application of the official rules. Compliance inevitably resulted in detention and the demise of their reputation, which would also prevent them from engaging in contracts after imprisonment.<sup>10</sup> Because the practice of re-negotiating debts did not exist, a debtor with permanent insolvency often felt induced to abscond rather than face the defamatory consequences of his creditors' actions.<sup>11</sup> Following payment problems, flight out of jurisdiction or asylum in churches were typical responses of merchants in financial distress for most of the fifteenth century.

Yet over the course of the later fifteenth century, an alternative slowly came to be accepted in Antwerp. Specifically, the new practice concerned private arrangements that had not received the status of official deed from the aldermen, either because the written contract had not been submitted for registration, or because it had not been written down. Such agreements were nonetheless held to encompass collateral rights on the debtor's movable property, even if this had not been expressly stipulated. Creditors could thus lay attachment on assets of a defaulter and start a proceeding before the municipal court in order to be granted

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(1966), pp. 261–263; Doehaerd, Renée: *Études anversoises. Documents sur le commerce international à Anvers, 1488–1514*. SEVPEN: Paris 1963, vol. 1, pp. 9–15.

- 8 Van der Tannerijen, Willem: *Boec van der loopender practijken der raidtcameren van Brabant*. Strubbe, Egied I. (ed.). CAD: Brussels 1952, vol. 1, pp. 262–263.
- 9 In spite of the charters of their *nations* (as these groups of foreign residents were designated) and the customary safe-conduct ('*saufconduit*') granted by the duke of Brabant for those visiting the fairs in Antwerp, Hanseatic and English merchants were occasionally arrested and detained, in which case the sections of the charters providing for protection were brought up only in the course of proceedings before the municipal court. Arrest and imprisonment were thus feasible methods of debt collection by compulsory means even against privileged traders. See, for example, Antwerp City Archives (Felix Archief) (hereinafter ACA), Vierschaar (hereinafter V), 1231, f. 105 (5 Feb. 1491 (ns)) and ACA, V, 1233, f. 13v (4 July 1503).
- 10 This compliance problem is inherent to bankruptcy systems that focus on punishment and imprisonment. For comparable remarks regarding the English bankruptcy system after 1543, see Kadens, Emily: "The Last Bankrupt Hanged: Balancing Incentives in the Development of Bankruptcy Law". *Duke Law Journal* 59 (2010), pp. 1233–1234.
- 11 For late medieval Italian cities and for sixteenth-century England respectively, see: Santarelli, Umberto: *Mercanti e società tra mercanti*. Giappichelli: Turin 1998, p. 70, and Kadens 2010, pp. 1246–1247.

the right to have that property auctioned.<sup>12</sup> Attachment served as an efficient compulsory instrument. Because seized movable goods could be secured in the city hall and attachments were made public, debtors had incentives to have the ban on their assets lifted as soon as possible. If sureties or additional credit could be offered, creditors commonly withdrew from a proceeding of public sale. During the time period after approximately 1470, attachment gradually became the prime method of debt collection in Antwerp, both during and after the fairs, and among merchants.

Even so, the new principles brought about new problems. An attachment by one creditor could alarm other creditors and result in generalized distrust and subsequent attachments. Furthermore, when many creditors seized assets of the same debtor, debts were then pooled, meaning that they had to be prioritized in one way or another. In this regard, older rules continued to be applied. Privileged debts (hypothecs, and later dowries, too) were compensated according to their date, and priority was given to the oldest debt.<sup>13</sup> For non-privileged debts, the date of the attachment determined the order of the debt. At the payment of proceeds from the debtor's auctioned assets, creditors that had laid attachment first were prioritized over those who had done so at a later stage.<sup>14</sup> This rule had some important negative consequences. Firstly, it resulted in "a run on the debtor". Creditors aimed at quick attachments because, if they hesitated to do so, they risked not receiving a share of their debtor's estate. Secondly, attachment required no preliminary public announcement, though once an attachment was laid, rumours soon spread within the city of Antwerp. All the same, it could take a while before the news reached other locations, thus creating information asymmetries, which put foreigners and others, who often were not aware of a local merchant's insolvency, in a weaker position than locals and resident merchants. When the latter heard of their debtor's situation, they could join in the collective

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12 These developments are evident in the transformation of "*marktvrijheid*" (freedom of the market) around 1500. Originally, it was a protection against debt enforcement of all sorts. Around 1500, though, this 'freedom' became restricted to debts that had been agreed outside a fair, whereas for "fair debts" swift attachment and expropriation became optional. See ACA, V, 2, section 141 and f. 35. This rule thus transformed meant that attachment became a popular method of debt recovery during the fairs as well.

13 "Oudt Register, mette berderen, 1336–1439". *Antwerpsch Archievenblad*, 1<sup>st</sup> series 29 (*s.d.*), pp. 144–146 (26 June 1437); Strubbe, Egied I. / Spillemaeckers, Edward: "De 'Antwerpse rechtsaantekeningen' van Willem de Moelnere". *Bulletin de la Commission royale pour la publication des anciennes lois et ordonnances* 18 (1954), p. 67.

14 ACA, V, 68, f. 12v (around 1508); ACA, V, 1233, f. 281v (20 Oct. 1509).

proceedings already commenced, but because of the municipal code their debts were paid only after those of the creditors that had laid attachments earlier. This situation engendered conflict and litigation with regard to the nature of debts and the date of attachment. In the first years of the 1500s, the exact timing of attachments was a customary point of contention in lawsuits between creditors going after the estate of a communal debtor.<sup>15</sup>

In January 1516, a procedure for collective bankruptcy was instituted by Antwerp's aldermen in an ordinance of the city council,<sup>16</sup> in response to growing credit relationships among resident merchants from different countries, in addition to mounting insolvency cases. According to the ordinance, in case of flight or concealment of assets, a public proclamation was issued notifying creditors to submit claims to the municipal court within forty days. After an audit of the debts was presented to the court, assets of the debtor were sold publicly. Except for privileged debts, which had priority, other debts were paid *pro rata* if all claims could not be compensated in full from the proceeds of the public sale. As a result of the 1516 reform, the rules regarding the collection of arrears became somewhat more equitable, at least for the creditors. The idea behind this mandatory collectivity among creditors was that bankruptcy was a risk that should be shared by all those having contracts with the "perpetrator", so that the market would absorb the shock as effectively as possible. It is evident that the Antwerp aldermen had issued the new law in order to adjust the earlier rules and procedures to suit the international business environment that the Antwerp market had become after 1490. This intention is also clear in a subsequent ordinance dating from 1518, which extended from six weeks to three months the period during which creditors residing outside the Low Countries could submit claims.<sup>17</sup> This measure attempted to facilitate those creditors not having a business agent on location, thereby keeping them well informed about what went on in Antwerp.

The 1516 ordinance thus regulated involuntary bankruptcy; yet it did not detail rules for when the debtor actually wanted to cooperate with his creditors. That is, the 1516 bankruptcy procedure applied only to so-called "fugitives" (*fugitivi*), i.e. those debtors who absconded or had hidden assets. According to the aforementioned ordinance, it was to be presumed that a debtor would attempt to circumvent his creditors' rights. As officer and representative of the duke of Brabant, the *amman* was legally required to seek and retrieve assets that had been brought

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15 For example, ACA, V, 1233, f. 67v (23 Jan. 1505 (ns)).

16 This ordinance was published in *Recueil des ordonnances des Pays-Bas*, 2<sup>nd</sup> series, vol. 1. Laurent, Charles (ed.). Goemaere: Brussels 1893, pp. 464–466.

17 ACA, V, 4, sections 7–8.

outside the reach of the creditors and stored with relatives, associates or agents. Together with the belongings that had been found with the debtor, they formed a so-called *massa creditorum*, which was the ‘mass’, or bulk, of all properties available for discharging the debt.<sup>18</sup> Because the 1516 ordinance only envisaged criminal acts, though, its rules still hinged on ideas that had been popular in the fifteenth century. Consequently, deterrence remained the general paradigm in insolvency, whereby the law did not provide for negotiations concerning the payment or postponement of debts. As had been the case before, these rules did not induce debtors to being open about their financial situation and, at the same time, did not make creditors any less impatient to start expropriation proceedings where doubts regarding repayment existed. This state of affairs would soon change.

## 2. Taking the debtor into consideration (c. 1510–c. 1520)

By the 1510s, more attention was gradually being paid to the honest insolvent who had not committed (criminal) bankruptcy, and whose insolvency was the result of misfortune rather than fraud. In the years before 1510, princely councils such as the Council of Brabant and the Great Council of Mechelen had occasionally granted *lettres de justice* to petitioning debtors. *Lettres de répit*, *de sauvegarde* and other such writs purported to give the debtor an argument in court in a lawsuit against his creditors, in order to have debts postponed or discharged; or they might similarly award protection from imprisonment and expropriation.<sup>19</sup> In the 1510s, central institutions issued such letters only to debtors that were deemed to have been unfortunate. At his “Joyous Entry” as lord of the Habsburg Netherlands in 1515, Charles (later Holy Roman Emperor Charles V) declared that princely letters were to be granted on the condition that applicants had not committed

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18 On these topics, see: De ruysscher, Dave: “Designing the limits of creditworthiness: Insolvency in Antwerp bankruptcy legislation and practice (16<sup>th</sup>–17<sup>th</sup> centuries)”. *The Legal History Review (Tijdschrift voor Rechtsgeschiedenis)* 76 (2008), pp. 309–313.

19 Debtors occasionally petitioned the Council of Brabant for *lettres de répit* (which granted postponement of payments). Other comparable, but (even) less popular remedies were the *lettres de sauvegarde* (protecting the beneficiary from arrest and seizure of his properties, usually without specification of a period of application) and *lettres de saufconduit* (which protected from arrest and attachment during a period of travel). In 1497–98, the Council of Brabant granted 22 *lettres de répit*. This was a maximum; between c. 1495 and c. 1520, on average between five and ten *lettres de répit* were handed out each year. See Archives of the Realm (Brussels), Account Rolls (*Rekenkamer*), 20784, 20785 and 20786. The earliest found reference to a *lettre de répit* mentioned by an Antwerp resident dates from 1504. See ACA, V, 1233, f. 38 (15 Jan. 1504 (ns)).

treacherous acts.<sup>20</sup> Furthermore, in the 1510s and thereafter, imprisoned debtors were released from prison upon ceding their estate to the creditors who had locked them away, as had been the case before; now, however, it was further required that the debtor have not attempted to hide assets from his creditors. Even though this “*cessie van goede*” (*cessio bonorum*) entailed that the released debtor lost his rights of citizenship, it was an efficient remedy that kept poor and *bona fide* debtors from a long incarceration.<sup>21</sup> Notably, such “*cessie van goede*” did not bring about a fresh start: if the freed debtor acquired new capital, he still had to repay debts that had not been settled already with the proceeds from the assets that he had transferred.

The ideas mentioned above gained ground properly in the 1520s. In those years, Antwerp insolvents could apply for princely letters that required drawing up negotiations between the debtor and his creditors, which aimed at the postponement of debts. A new focus on the debtor’s good faith, in combination with the recent idea of collectivity among creditors, had made talks of this type possible. With these moratoria becoming a real option, many more debtors brought their payment problems to light. Encouraging further cooperation and agreements between creditors and debtors, it consequently became normal practice in the 1530s for an insolvent to file a request with the Council of Brabant to charge the Antwerp aldermen with the task of mediating a compromise with his creditors.<sup>22</sup> Thereupon, the aldermen had to verify the applicant’s arguments and detect the causes of his financial problems. If it became clear that the debtor had been deceitful or dishonest in his statements, the request was denied.<sup>23</sup> If the aldermen corroborated the applicant’s story, the debtor’s properties were inventoried; thereafter the creditors declared the debts owed to them, while submitting evidence of those amounts claimed. In a next phase, negotiations began under the guidance of commissioned Antwerp aldermen and public officers. The case file was then

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20 *Placcaerten, ordonmantien, edicten ... in dese Nederlanden*, Anselmo, Antoon / *et al.* (eds). Vol. 8. Knobbaert: Brussels *s.d.*, p. 136 (26 April 1515, sections 4–5).

21 ACA, V, 1233, f. 85v (1 Oct. 1505), f. 89 (6 Nov. 1505) and f. 110v (9 July 1506); ACA, V, 1235, f. 51 (12 Nov. 1517); ACA, V, 68, f. 33 (1 June 1520). I would like to thank Jeroen Puttevels (University of Antwerp) for bringing the first two references to my attention. See also, in more detail, De ruysscher, Dave: “Reconciling old and new: imprisonment for debts and *cessio bonorum*, in Antwerp and Mechelen (c. 1500–c. 1530). In: Oosterhuis, Jan Willem / Van Dongen, Emanuel G.D. (eds.): *European Traditions: Integration or Disintegration?* Wolff: Oisterwijk 2012, pp. 35–48.

22 ACA, Privilegiekamer (hereinafter PK), 271, 299 and 312. These files contain many of such forwarded requests.

23 See for example, ACA, PK, 271, 63 and 66.



returned to the Council of Brabant, which confirmed and registered the contract, or took other measures if no compromise had been reached.<sup>24</sup>

This development towards a collective and voluntary debt adjustment was closely linked to the financial and economic crisis that was triggered by the Frisian War (from 1517 onwards) and the Italian Wars (resumed in 1521).<sup>25</sup> Rising prices and interest rates shook the economy of the Low Countries and of Antwerp in particular. In 1518 and 1523, two large Florentine banking firms with agents in Antwerp were wound up (the Frescobaldi and Gualterotti houses, respectively).<sup>26</sup> The Frescobaldi failure was the first international bankruptcy case that caused disturbance in the Antwerp market, and it left many traces in the archives of the Antwerp municipal government.<sup>27</sup> The general economic crisis brought about liquidity and credit problems for many, subsequently setting developments in motion that resulted in an adjustment of the “stick”-approach in Antwerp insolvency law. The sheer rise in numbers of petitions brought about a systematization of the previously “exceptional” procedure of acquiring *lettres de justice*. The earlier existing differences between types of *lettres de justice* were harmonized and all of them henceforth required the mandatory summoning of creditors.<sup>28</sup> The municipal and princely governments cooperated in dealing with the many more demands from debtors for exemptions and protection. The Council of Brabant did not want to pass over the Antwerp aldermen, who were considered to be the ordinary judges in the Antwerp market. The practice of negotiations in the case of petitions was thus municipal and princely

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24 This practice was formalized by means of a 1536 princely law. See *Recueil des ordonnances des Pays-Bas*. 2<sup>nd</sup> series vol. 4. Lameere, Jean (ed.). Goemaere: Brussels 1907, p. 328 (30 Aug. 1536).

25 Van der Wee, Herman: *The Growth of the Antwerp Market*. Nijhoff: The Hague 1963, vol. 2, pp. 141–153.

26 Ehrenberg, Richard: *Das Zeitalter der Fugger. Geldkapital und Creditverkehr im 16. Jahrhundert. Erster Band: die Geldmächte des 16. Jahrhunderts*. Fischer: Jena 1922, pp. 280–281.

27 For example ACA, V, 1235, f. 92 (23 June 1518), f. 99 (20 July 1518) and f. 106v (19 July 1518).

28 It seems that in the early decades of the sixteenth century, *inductie* or compulsory summoning of all creditors was systematically applied only for *lettres de répit*. For the first traces of mandatory summoning, see *Recueil des Ordonnances des Pays-Bas*. 2<sup>nd</sup> series, vol. 3. Lameere, Jean (ed.). Goemaere: Brussels 1902, pp. 134–135 (section 547 and section 552) (princely ordinance on the procedure in the Council of Brabant, 20 March 1531 ns).

at the same time.<sup>29</sup> The change in Antwerp and princely policies vis-à-vis insolvency, from an involuntary system to an attention for voluntary bankruptcy, followed from a new appreciation of moratoria as a means to overcome financial problems.

### 3. Negotiations in cases of insolvency: the aim for relief, protected by the Antwerp aldermen (c. 1530–c. 1550)

For the 1530s and 1540s, some hints of negotiations between a debtor and his creditors could still be found in the historical record. 59 files from the period between 1527 and 1549 have been preserved in the archives. They were drawn up by commissioned Antwerp officials following petitions to the princely Council of Brabant, from debtors applying for terms of payment and debt adjustment. Most of these 59 files are incomplete: the majority contain a copy of the request and of the commissioning letter from the Council of Brabant to the Antwerp aldermen. In thirteen of these files, there are also notes referring to the negotiations, and most of these files contain a draft letter from the commissioners to the Council of Brabant including a summary of the talks as well as advice on further measures.<sup>30</sup>

The materials mentioned provide a glimpse into the Antwerp practices of voluntary bankruptcy, and – even though one has to be cautious in this respect – into the profile of applicants. Three applicants were women (two widows and one wife in business with her husband); the other 56 were men. Not all of the 59 files mention what the profession of the debtor in distress was. In 24 of them, the petition refers to the type of trade or the occupation. From the descriptions of their activities, it seems that even though many applicants described themselves as “merchants” (“*coopman*”, “*marchant*”), most of them were in fact small-scale mercers, stallholders and craftsmen. This status is also suggested by the size and number of their debts, since compared to some liquidation cases of the period mentioned, the debts of applicants (which are detailed in eleven files) were indeed

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29 In this respect, my views differ from those of Oscar Gelderblom, who has emphasized that the Antwerp municipal government acted in the absence of princely policies. See Gelderblom, Oscar: *Cities of commerce: the institutional foundations of international trade in the Low Countries, 1250–1650*. Princeton University Press: Princeton, 2013. Yet even though in practice there was cooperation with the Council of Brabant, the Antwerp aldermen remained nostalgic for the times when they had autonomous jurisdiction in the matter of *cessie van goede*. See De ruyscher, Dave: “Lobbyen, vleien en herinneren: vergeefs onderhandelen om privileges bij de Blijde Inkomst van Filips in Antwerpen (1549)”. *Noord-Brabants Historisch Jaarboek* 29 (2012), p. 69 and p. 74.

30 ACA, PK, 271, 299 and 312. Unfortunately, to my knowledge, the files that were sent to the Council of Brabant have not survived.

modest.<sup>31</sup> Furthermore, from the documents mentioned, it appears that the practice of petitioning for postponements of payment as a measure of debt negotiation mostly concerned local and indigenous members of the urban community; foreign merchants, even resident ones, did not often seek a remedy of this sort.<sup>32</sup> It is probable that in the period of the 1530s and 1540s, high-flying businessmen more often resorted to informal talks with creditors, under the direction of arbiters, or that they opted for mediation within the framework of a debt recovery proceeding. In any case, it seems to have been a practice for prominent merchants not to apply for *lettres de justice* when soliciting debt adjustment from their creditors.<sup>33</sup>

Most of the debts in the afore-mentioned files were private or informal; annuities or other debts encompassed in deeds (i.e. aldermen's letters or certificates) were exceptional. This situation might explain the profile of applicants, as well as the rather limited size of debt that was involved in applications for debt negotiations. If formal and authenticated debts could not be paid, there was no use in notifying all creditors. Because these debts comprised outright collateral, the creditors for these debts were privileged to expropriations and they could easily seek compensation alone, without having to take into account the actions and views of colleagues having non-privileged debts. Their collateralized debt had priority in any case.<sup>34</sup> Therefore, debtors with persistent financial problems only used the remedy of applying for a negotiation if there was a chance that it would have effect, which occurred when debts were non-privileged.

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31 The highest debt, which was an exceptionally high amount, was some £ 2,500 groat Flemish (hereafter gr. Fl.). See ACA, PK, 271, 48 (request, ap. 15 Febr. 1545 ns). A total debt of over £ 1,000 gr. Fl. was not common (see for two examples, ACA, PK, 299, file of Denys Platynmakere (c. 1540) and ACA, PK, 312, 126–130 and 299, file of Jacob van Wijnrecht (1549)). See, for some liquidation cases in the 1520s and 1530s in which more than £ 1,500 gr. Fl. was claimed, Puttevels, Jeroen: *The Ascent of Merchants from the Southern Low Countries. From Antwerp to Europe, 1480–1585*. Unpublished doctoral dissertation, University of Antwerp 2012, p. 291.

32 Of the 59 files, only two were drawn up for foreign traders: ACA, PK, 271, 48, file of Arnoult del Plano (request, apostil of 15 Febr. 1545 ns) (this file concerned a total debt of some £ 2,500 gr. Fl., see also above in footnote 31) and ACA, PK, 299, file of Alberto Pinelli, “merchant of Genoa” (request, ap. of 7 June 1542).

33 See the examples in Puttevels 2012, pp. 292–297.

34 For *lettres de cession*, see *Recueil des ordonnances des Pays-Bas*. 2<sup>nd</sup> series, vol. 5. Lameere, Jean and Simont, Henri (eds.). Goemaere: Brussels 1910, p. 56 (section 37) (19 May 1544). For *lettres de répit*, this seems to have been the practice as well. See *Coutumes de la ville d'Anvers*. De Longé, Guillaume (ed.). Vol. 4, Gobbaerts: Antwerp 1874, p. 430 (part 4, chapter 17, section 14).

The requests of debtors contain many similar and even stereotypical arguments. They insist on their “falling into insolvency”, thus hinting at the exteriority of the event, and the applicants complained about economic conditions. Personal statements relate to the needs of children and wife, and to the applicant’s young age.<sup>35</sup> However, this depiction of a miserable state went hand in hand with references to the capability of the debtor and the size of his network. Many requests stress the fact that the insolvency had resulted from the defaulting of debtors and not from risk-taking or mistakes.<sup>36</sup> In fact, most requests underscored that debtors of the applicants themselves had gone “bankrupt” or had fled.<sup>37</sup> When describing their own financial situation, petitioning debtors used milder terms (“insolvency”, “poverty”, “bad fortune”). When *vis maior* was identified as the cause of the indebtedness (e.g., loss at sea,<sup>38</sup> war,<sup>39</sup> debtors residing in Protestant countries<sup>40</sup>), then the request commonly listed the actions that had been taken in response, even though they had failed.<sup>41</sup> Another frequent motive was that the creditors of the debtor were “rich and powerful” and that it was to be feared that they would destroy a viable business and/or the debtor’s reputation by means of attachments.<sup>42</sup> Some petitions referred to a liquidity problem, as the debtor made it clear that he possessed immovable property but that if his creditors pursued expropriation these assets would be sold at too low a price.<sup>43</sup> This argument could also refer to merchandise.<sup>44</sup>

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35 E.g. ACA, PK, 312, request, ap. of 21 Aug. 1536. One has to be cautious as to the veracity of such remarks. This need is evident from an example of a standardized request containing the formula “N [i.e. *nomen nescio*], a poor man, who became insolvent due to the hard times and having the responsibility for his wife and small children”. See ACA, PK, 228.

36 For example, ACA, PK, 312, 21–25 (request, ap. Febr. 1536).

37 E.g. ACA, PK, 312, 1–2 (request, ap. 16 Nov. 1534) and 312, 113–115 (request, ap. 28 Jan. 1546 ns).

38 E.g. ACA, PK, 271, 48 (request, ap. 15 Febr. 1545 ns) and ACA, 312, 5–6 (request, ap. 17 Febr. 1535 ns).

39 E.g. ACA, PK, 312, 9–17 (request, ap. 19 April 1536).

40 E.g. ACA, PK, 312, 3–4 (request, ap. 17 Febr. 1535 ns).

41 ACA, PK, 312, 28 (request, ap. Oct. 1540). Pieter Stevens had organized transport by ship of a precious belt, which had slipped into the river at Dordrecht. Stevens detailed how much he had paid for searches for the belt, which unfortunately remained lost.

42 ACA, PK, 312, 5–6 (request, ap. 15 Febr. 1535 (ns)) and 1–2 (request, ap. 16 Nov. 1534).

43 ACA, PK, 312, 9–17 (request, ap. 19 Apr. 1536) and 126.

44 ACA, PK, 312, 1–2 (request, ap. 16 Nov. 1534).

The measures that were requested varied. It was not uncommon to specify terms of payment, which was either for a few months or for a longer period (three or four years). A partial discharge was sometimes granted, but never explicitly petitioned.<sup>45</sup> Exceptionally, the request and compromise stated a five-year term.<sup>46</sup> Yet many requests were rather vague in what was demanded: often only an “*inductie*” (i.e. an invitation of all or some creditors) was requested or a “reasonable” compromise (“*appointement*”).<sup>47</sup> In every request, commissioners were solicited, and sometimes *nominatim*. In some cases, the request targeted “unwilling” creditors; asking for commissioners then served the purpose of pressuring such creditors into accepting an agreement that had been signed by a number of other creditors of the applicant.<sup>48</sup>

When receiving an invitation of the princely council to which a petition for a *lettre de justice* was attached, the Antwerp aldermen appointed one or two aldermen or another official (usually one of the two commissioners was the city secretary), who then supervised the negotiations and who represented the debtor in meetings of creditors. It was typical for sixteenth-century Antwerp that merchants were only appointed to become aldermen as an exception.<sup>49</sup> Because the supervision of debt negotiations in the case of a princely request was considered a privilege of aldermen in the city council, commissioners were members of this council or they worked for it as public officer. Merchants were thus not invited to preside over the talks. Upon their appointment, the commissioners either went to the homes of creditors or they could summon some of them to the city hall. It seems that there was no public announcement attached to these actions: no proclamations or public statements were made. Visits and invitations were discreet and also swift, even though this depended on the number of creditors and on their presence in the city. Even in complex cases, with multiple sessions of negotiations, it took no more than three weeks for the commissioners to inform the Council of Brabant of the results.<sup>50</sup> The debtor himself was usually not present at the talks,<sup>51</sup>

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45 See for some examples of modest discharges: Puttevils 2012, pp. 292–297.

46 ACA, PK, 271, 43 (*s.d.*, c. 1544).

47 E.g. ACA, PK, 312, 5–6 (request, ap. Oct. 1540).

48 E.g. ACA, PK, 312, 28 (request, ap. 12 Oct. 1540).

49 Marnef, Guido: *Antwerp in the Age of Reformation: Underground Protestantism in a Commercial Metropolis, 1550–1577*. Johns Hopkins University Press: Baltimore (MD), 1996, 17.

50 E.g. ACA, PK, 271, 5 (Oct. 1535).

51 Exceptions are ACA, PK, 271, 6 (12 Nov. 1535). However, in this case only one creditor was invited, because he was the only one being “unwilling” to grant postponements.

although he could give instructions to the commissioners.<sup>52</sup> In preparation for the meetings, a *bilan* (also called “*presentatie*”) was made, containing an overview of assets, debts and claims of the debtor, dividing the latter into good and bad debts.<sup>53</sup>

#### 4. Defamation and rent-seeking strategies

The tactics of creditors could differ. When being confronted with invitations regarding debt adjustment, creditors faced the dilemma of accepting postponements or executing their debt through individual actions. An initial constraint for preventing invited creditors from attempting to cash in on their debts individually could be the belief that an agreed-upon solution would in the end result in higher rewards than a quick liquidation. Peer pressure from creditors sharing this view could reinforce such ideas. All thirteen files containing evidence of negotiations refer to multiple creditors accepting the terms proposed by the debtor. In only one case did all invited creditors consent to an agreement of postponed payments.<sup>54</sup> Yet it seems that in most cases coalitions could be formed in favour of the debtor’s position.

However, not every creditor was easy-going or convinced of potential higher returns. In those cases, the authority of the Antwerp aldermen and their commissioners was a second constraint that resulted in a negotiated solution on many occasions. Commissioners made active use of their powers to persuade creditors. They could single out stubborn creditors, by calling them to the city hall for a private conversation.<sup>55</sup> Moreover, when creditors refused to comply with the proposals, the commissioners insisted that they submitted “reasons of refusal” in written form, to which the debtor was allowed to reply.<sup>56</sup> For a creditor who refused, this process brought about additional costs since it was common practice that such documents were drawn up by legal professionals. Also, this method resulted in protracted talks, thus increasing the pressure on all creditors. The involvement of the Antwerp aldermen often resulted in creditors being more or less obliged to comply with a proposed settlement.<sup>57</sup> If all invited creditors agreed, a contract was signed.<sup>58</sup>

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52 ACA, PK, 312, 9–17 (request, ap. 19 April 1536). One of the two brothers who applied for a compromise suggested to the commissioners what they could offer to the creditors.

53 E.g. ACA, PK, 312, request and file (1536).

54 ACA, PK, 312, 9–17 (see footnote 50).

55 ACA, PK, 312, 9–17 (1536).

56 ACA, PK, 271, 6 (letter of commissioners 24 Oct. 1535).

57 E.g. ACA, PK, 271, 19 (July 1535).

58 ACA, PK, 271, 43 (*s.d.*, c. 1544).

When efforts toward convincing did not bear fruit, the commissioners usually advised the Council of Brabant to grant the postponements petitioned for. In a letter, they then argued why dissident creditors should be ignored, because the majority of creditors had reached an agreement,<sup>59</sup> for example, because of the limited amount owed to the rejecting party, and/or in view of the modesty of what was solicited.<sup>60</sup> The conclusions of the commissioners were important: in no less than eleven of the above-mentioned thirteen files containing the advice of the commissioners, these aldermen argued in favour of granting what had been asked, even though in ten of these eleven files, not all creditors accepted the debtor's offer.

These actions, for a large part, resulted from the more or less realistic requests of applicants. When occasionally excessive demands were made, the commissioners could easily brush them aside. In 1545, Jan Matthijs filed for re-negotiation of his debts, which comprised several hundred pounds groat Flemish (the exact numbers are not mentioned in the documents). He asked for postponement for eight years. Given the amount of debt and the number of creditors (around forty), the commissioners did not put much effort into soliciting approval from the creditors. Instead, they simply mentioned the latter's refusal to accept the proposed terms, and then argued that the applicant was a man of good faith, but since it was unlikely that debts would be repaid, *cessie van goede* was advisable.<sup>61</sup>

The constraints mentioned here were not any guarantee of success. Creditors could leave the negotiating table and go to the municipal court on their own behalf. The exemptions that were associated with the (provisional) granting of *lettres de justice* were not absolute. Petitioners commonly demanded protection against arrest and attachment during the talks ("*sûreté de corps [et de biens]*"), but even if *lettres de justice* conferred such benefits, creditors could start a proceeding for recovery of their debt. This was a viable option if the *lettre de justice* had a limited scope, which meant that it did not apply to the creditor. In one case, English merchants proceeded against a debtor who had applied for a *lettre de justice*, stating that such a *lettre* did not correspond with the privileges of the English nation in Antwerp and that it thus had no effect with regard to their debt.<sup>62</sup> But even when *sûreté de corps et de biens* had been granted in an applicable princely letter, a regular debt proceeding remained an option. Lawsuits for debts could be filed since the protection of *sûreté de corps et de biens* only concerned attachments of assets and personal arrest and detention, and it did not rule out ordinary

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59 ACA, PK, 312, 126–130 (letter of commissioners Febr. 1549 ns).

60 ACA, PK, 271, 20 (letter of commissioners 13 Jan. 1545 ns).

61 ACA, PK, 271, 54 (letter of commissioners 15 Dec. 1545).

62 ACA, PK, 312, 9–17 (1536).

proceedings. There are examples of creditors bringing a lawsuit on their debts while deliberately attacking princely letters before the Antwerp aldermen, with arguments as to the fraudulent statements of the applicant.<sup>63</sup> Allegations that the debtor was “a bankrupt” were common.<sup>64</sup> This label encompassed connotations of fraud, and such defamatory practices could serve several purposes. Assertions could be directed against the granted *lettre de justice*, for which the condition was that the applicant could not be reproached for malicious acts. Another goal could be to push the decisions of negotiating creditors towards not accepting an agreement. A possible side-effect was that spectacular accusations could incite others who had claims against the debtor but had not been invited to the talks.<sup>65</sup> In lawsuits and negotiations, debtors could easily be branded as bankrupts, if their creditors choose to do so, and it seems that such labelling could be unfounded. A certain Peter van Leemputten, for example, who had applied for debt negotiations in 1537, was mentioned in a 1545 file as “a bankrupt” in reference to the 1537 facts, even though this label had never been used during the negotiations from that earlier time.<sup>66</sup>

If the debtor had filed for re-negotiation of his debts first, any charge of bankruptcy could be discussed during the talks supervised by the commissioners, and eventually these aldermen decided whether or not they were true.<sup>67</sup> However, if a creditor’s proceedings had been initiated after the negotiations had begun, it was not possible for the commissioners to halt or suspend the proceedings. This move would have gone against the powers of the litigating parties, as well as the overall passive attitude and reluctance of judges, which was a typical feature of procedural principles during this time period. Commissioned officials could try to pressure a creditor into abandoning or suspending his actions, though. In one case, the commissioners advised the Council of Brabant to compel that a trial be stopped, even though this was technically not possible.<sup>68</sup>

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63 ACA, V, 1233, f. 38 (15 Jan. 1504 (ns)).

64 ACA, V, 144, f. 18v (27 Jan. 1542 (ns)).

65 The complex debt relations in the Antwerp market meant that the list of invited creditors was largely written in accordance with the debtor’s statements, especially when he did not keep books.

66 ACA, PK, 271, 13 (1537) and ACA, PK, 271, 54 (letter of commissioners of 15 Dec. 1545).

67 In one file, they proved to be true: ACA, PK, 271, 63 (letter of commissioners 16 Dec. 1544)

68 ACA, PK, 312, 9–17 (1536). It is unclear what the outcome was. The advice is remarkable since it was not allowed for a judge or court to call an end to an ongoing proceeding, and certainly not on the basis of policy considerations.



The lack of procedural threats also regarded payment plans that were signed by creditors. Even when an agreement had been reached, any creditor that did not sign it was not bound by its terms. It was only at the beginning of the seventeenth century that moratoria and compromises among the majority of creditors had to be honoured by other creditors as well.<sup>69</sup> In his *Descrizione di tutti I Paesi Bassi* (1567), Guicciardini mentions the fact that in Antwerp creditors could only be bound if they had consented with the provisions of the agreement.<sup>70</sup>

All in all, the constraints mentioned were rather weak. An efficient procedural framework forcing creditors into talks and agreements was lacking for the most part. If, by proceeding against the debtor, creditors wanted to challenge the aim of the Antwerp administrators in seeking a compromise, they could do so. One creditor alone could seriously damage the negotiations by starting a proceeding and thereby raising doubts among those who remained at the negotiating table. Yet in so doing, such dissenting “free riders” seriously challenged the authority of the municipal government, and a decision of this kind was probably not taken too lightly.<sup>71</sup>

What the new mindset for re-negotiation of debts allowed, then, was the buying of time. The debtor could continue his business at least during the talks as well as for a short period of time afterwards, for example, of a few months (which was the period that was most common). Lawsuits that had been started by unwilling creditors usually lasted longer than this limited period of relief. Thereafter persistent creditors could lay attachment and even apply for arrest. Since exemptions such as *sûreté de corps et de biens* and also terms agreed on in a settlement were temporary, creditors not wanting to be lenient could await their opportunity. A procedural framework that enshrined agency for litigants likewise ensured the persistence of the fifteenth-century mentality of defamation and culpability in many respects.

## Conclusion

The Antwerp example shows that, after a period of transition, a procedure for voluntary bankruptcy was implemented that focused on cooperation between the debtor and his creditors and aimed at drawing up agreements of postponement

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69 This was detailed in the 1608 Antwerp law book.

70 Guicciardini, Lodovico: *La Description de tous les Pais-Bas, autrement appellés la Germanie inférieure, ou Basse Allemagne*. Plantin: Antwerp 1582, pp. 108–109.

71 Unfortunately, how many persistent creditors that left the negotiations started proceedings while the talks were ongoing could not be checked. This is due to lacunae in the series of judgments of the municipal court of Antwerp for the period 1533 until 1541.

of debt. This new practice came to be applied in the 1520s, and it followed from an earlier collectivity in bankruptcy among creditors, not to mention from a new attention towards “good bankrupts”. The control enjoyed by Antwerp aldermen over the negotiations was crucial, for as commissioners they could attempt to persuade creditors into accepting a compromise, even though this action was not always successful. It seems from the Antwerp evidence that creditors were not *per se* averse to moratoria, and it can be presumed that they understood that under some circumstances leniency was also to their advantage. In this regard, a dichotomy between creditor-friendly and debtor-friendly measures and systems is not demonstrated in the Antwerp source material. At the same time, however, it seems that individual actions of creditors jeopardized the voluntary insolvency approach and that its best result was temporary relief. Liquidation remained the default proceeding in the long run. Even though creditors could in principle be convinced of the necessity of postponements, some of them were not. As independent agents, those free riders had the tools to depict the debtor as a fraud, and thus undermine his possibilities of definitive recovery. They could wait until the short-term exemptions expired.

The struggle between a compromise-oriented municipal government and free-acting individuals in debt collection, which could hamper negotiated solutions, went on throughout the sixteenth century. Near the end of the 1500s, the legal framework had integrated the negotiation strategy, but in practice defamation and a search for individual expropriation were still common, as had been the case in the 1400s. It seems that after around 1540 settlements became more practised than before, which is reflected in declining numbers of public announcements of liquidation proceedings and of summons for creditors to present their claims, as well as in several princely laws of the 1540s prohibiting debt settlements for criminal bankrupts.<sup>72</sup> Negotiations could start following a request to the Council of Brabant, they could remain extra-judicial, or they could be initiated even after allegations of criminal bankruptcy and the start of liquidation proceedings. High-level merchants commonly evaded official proceedings by organizing informal talks, but they still might be accused of bankruptcy and drawn into a trial. It was fairly typical of the new attitude towards debt negotiations that even under such circumstances creditor meetings were organized. The example of John Over is telling. He was the governor of the English Company of Merchant Adventurers.

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72 De ruysscher 2008, pp. 325–326 and De ruysscher, Dave: ‘Naer het Romeinsch recht alsmede den stiel mercantiel’. *Handel en recht in de Antwerpse rechtbank (16de–17de eeuw)*. UGA: Kortrijk 2009, pp. 320–327.

He owed considerable sums to his creditors and was publicly denounced as a bankrupt in January 1540, with an ordinance that invited creditors to present their debts. The correspondence of the agent of the Van der Molen house, which was one of the creditors, shows that in the course of February 1540 there had been a creditor meeting at which the debtor had offered to repay his debts to Van der Molen in kerseys and English cloth.<sup>73</sup> However, in spite of a tendency towards negotiations pursuant to financial problems or bankruptcy, liquidation was the proceeding that remained the easiest to prosecute. The only collectivization with lasting effects that was legally enforceable concerned the expropriation and distribution of proceeds from a public sale of assets. A request to the Council of Brabant could enforce talks, but the outcome was uncertain and mostly temporary. This situation did not change after 1540, either. As a consequence, the solutions of both these laws from 1516 and 1518 continued to prevail over the entire period of the Golden Age of Antwerp, lasting until the middle of the 1560s.<sup>74</sup> The result of innovations in the 1520s and 1530s was therefore a modest two-branched bankruptcy system for *bona fide* debtors, providing but temporary protection from actions of expropriation and detention.

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73 Puttevils 2012, p. 295.

74 See for the second half of the sixteenth century, De ruyscher 2008, pp. 325–326 and De ruyscher, Dave: 'Naer het Romeinsch recht alsmede den stiel mercantiel'. *Handel en recht in de Antwerpse rechtbank (16de–17de eeuw)*. UGA: Kortrijk 2009, pp. 320–327.