Debt recovery and debt adjustment: assessing institutional change in Antwerp (ca. 1490–ca. 1560)

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D. De ruysscher

Abstract:

Between the middle of the fifteenth century and approximately 1540, the Antwerp institutions concerned with debt collection, insolvency and bankruptcy underwent important changes. However, in spite of adaptations in formal rules, continuity within these regulations was extensive. The Antwerp aldermen took decisions on legal points, but for the most part they hesitated to do so and were inclined to stick with older solutions. When change did come, it was a belated response to market developments. Change was triggered by exogenous shocks and by political actions of the prince, therefore, but was above all incremental. The municipal norms evolved slowly, through juridical interpretation. Notwithstanding removed causality between normative responses and economic developments (at different levels of government), there is no evidence for direct causality between the majority of concrete solutions and those events. After 1540, several processes continued to co-exist, which allowed for opportunities for free riders. The haphazard institution of these practices affected debt collection. If Antwerp’s economy blossomed between 1490 and 1560, this heyday did not result from a consistent configuration of formal constraints regarding debt collection. In consequence, identifying successful economies in the past with their institutions can be due to ‘hindsight bias’, and must be taken into careful consideration.

Introduction

This paper analyses changes in rules and practices regarding debt collection in the city of Antwerp that were employed during its economic heyday (ca. 1490-ca. 1560). By 1540, several legal practises relating to expropriation, bankruptcy and debt adjustment existed. In point of fact, ever since the third quarter of the fifteenth century, debt collection had become more collective and debtor-orientated. This paper focuses on the interplay of various internal and external causes in these developments, on the agency involved in implementing new rules and regulations, and on the impact of these developments on the enduring plurality and diversity of remedies in debt collection in Antwerp. It draws on some earlier publications on Antwerp bankruptcy and debts settlement standards and practices, and adds new data regarding collateralisation in the fifteenth-century, on clemency proceedings (1520-1550), and concerning cessio bonorum (1510-1536) (i.e. the forfeiture of property in exchange for release from debtors’ prison).

The first section contains an overview of four developmental stages of proceedings regarding debt enforcement and expropriation. A second section analyses the continuity and change in these legal adaptations and elaborates on their causes. A third section details how in the 1530s, 1540s and 1550s the continued plurality of proceedings, which followed on from haphazard institutional change, meant that debt adjustments were difficult to obtain. In spite of the policy considerations of municipal administrations in Antwerp and princely governments in the Habsburg Netherlands debt adjustments were difficultly realized.

1. Changes in debt collection and bankruptcy in Antwerp (ca. 1450-ca. 1540)

In both the fifteenth and sixteenth centuries, the political power in the city of Antwerp was in the hands of the

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aldermen. They were appointed leaders, selected by the prince (i.e. the duke of Brabant) from a list of candidates that was submitted to him by the aldermen in office.\(^3\) This list contained primarily names of patricians, whereby the inclusion of newcomers with guild or merchant backgrounds was minimal, both for the fifteenth and the sixteenth centuries.\(^4\) The aldermen controlled the judiciary (Antwerp had one central municipal court), the officials supervising expropriation proceedings (the *amman* in particular), and the registration of contracts. The aldermen had jurisdiction to enact ordinances and to issue judgments for all topics that were deemed municipal. In matters of trade in the fifteenth century, this authority concerned adjudicating disputes among visitors of the Whitsun- and Bamisfairs and, pursuant to their verdicts, issuing rules regarding the contract provisions and debt enforcement.\(^5\) At the level of the central, princely government, competences were broadened over the first half of the sixteenth century. The growing involvement of the sovereign at the Antwerp Exchange, which went hand in hand with war and taxation, caused what happened there to be increasingly considered as *de regalibus*. As a result, princely ordinances regulated the payment of both bills obligatory as well as bills of exchange in Antwerp, for example.\(^6\) This state formation went hand in hand with the professionalisation of administration and litigation. From the middle of the fifteenth century onwards, and certainly after 1480, numbers of university graduates working in the Antwerp Town Hall continuously rose. Many of those with advanced degrees had studied at law faculties. Prominent Antwerp families sent their children to university, preparing them for a career in municipal government institutions. Upon studies at a faculty of arts, many graduates went on to study law. After 1520, the numbers of university-trained aldermen remained considerably higher in Antwerp than in other cities of the Low Countries, including the university town of Leuven.\(^7\) State formation had a part in these developments as well. The rules of Romano-canonical procedure were applied in the princely Council of Brabant, which since the late 1460s had appellate jurisdiction over the municipal court of Antwerp. As a result, these doctrinal standards to be applied by jurists were henceforth codified into municipal legal practices in Antwerp.\(^8\)

The Antwerp municipal policy of the late medieval and early modern period concerning debt collection, insolvency and bankruptcy can be divided into four stages. In a **first phase**, which lasted until the third quarter of the 1400s and slowly developed into the second phase, debt collection was by law individual. Creditors could join forces against a debtor they had in common, but this joint action was not compulsory. The procedural rules that were in use in the Antwerp municipal court were not altered to fit such collective lawsuits. Moreover, insomuch as enforcement resulted in bankruptcy of the defaulter, it was very much oriented towards

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\(^3\) In the period from 1450 until 1540, the Antwerp council of aldermen consisted of sixteen members. Every year eight of them were replaced. Selection by the prince was based on a list of 32 names. The body of respectable citizens (*poorterij*), consisting of patricians) presented sixteen of the candidates; the other part of the list of candidates comprised the sixteen aldermen in function. See G.E. Wells, *Antwerp and the Government of Philip II*, 1555-1567, PhD dissertation, Cornell University, 1982, 40.

\(^4\) Between 1520 and 1555, only 8.54% of the aldermen (10 out of 117 aldermen for this period) were newcomers with a merchant background, and nearly all of these *homines novi* were ‘gentrified’ financiers, not active businessmen (‘*staplemen*’). See K. Wouters, ‘Een open oligarchie? De machtssituur in de Antwerpse magistraat tijdens de periode 1520-1555’, *Revue belge de philologie et d’histoire* 82/4 (2004), 905-934, at 915. The ‘merchant’-newcomers were nearly always sons of immigrant merchants, and many of those sons had obtained university degrees. This was, for example, the case for Charles de Renaulme, Jan de Haro and Ambrosius Tucher, all of whom had studied at the University of Leuven. See H. De Ridder-Symoens, ‘De universitaire vorming van de Brabantse stadsregenten en stadsfunktionarissen Leuven en Antwerpen, 1430-1580’ in *De Brabantse stad*, ‘s-Hertogenbosch, Provinciaal Genootschap van Kunsten en Wetenschappen, 1978, 21-126, at 70-76. Other ‘merchant’-newcomers had been active in trade in early stages of their career but had adopted a gentry style of life afterwards (for example Alvaro de Almaras). Melchior Schetz was still a businessman after he had become alderman, but this was rare. Data for the period 1550-1566 demonstrate the same trends. See G. Marnef, *Antwerp in the Age of Reformation: Underground Protestantism in a Commercial Metropolis*, 1550-1577, John Hopkins University Press, 1996, 17.

\(^5\) In 1488, regent-duke Maximilian had given his control over settlements at the Whitsun- and Bamisfairs that were held in the city to the Antwerp aldermen, and henceforth they were formally authorised to pronounce judgments ‘regarding the fairs’. See Antwerp City Archives (hereinafter ACA), Privilegiekamer (hereinafter PK), 79, fol. 311 (1488). The decision of 1488 was a corroboration of what had been going on before that time, but the aldermen interpreted it nonetheless in a broad way thereafter.

\(^6\) For example, *Recueil des ordonnances des Pays-Bas*, 2nd series, vol. 4, 26-27 (9 May 1537) and 34-35 (25 May 1537).


\(^8\) Ph. Godding, *Le Conseil de Brabant sous le règne de Philippe le Bon* (1430-1467), Brussels, Royal Academy, 1999, 254-260.
defamation. This orientation had to do with a general philosophy of deterrence vis-à-vis insolvency, but also with the political economy concerning collateral in the city and a weak appraisal of mercantile debt.

Mercantile debts, that is, were not distinguished from other debts. Typical of fifteenth-century Antwerp, and of the late medieval Low Countries in general, was that official law generally did not stipulate specific rules applying to contracts signed by traders or having mercantile contents. Civil and commercial debts were treated on the same footing. According to the Antwerp law of the time it was not possible to lay attachment on the basis of non-authenticated documents or promises. Authenticated deeds were ‘aldermen’s letters’ (schepenbrieven), and after 1465 certificates (certificatien) as well were handed out in the form of deeds by aldermen. These deeds contained the provisions of the agreement of parties soliciting its registration, with a copy recorded in official ledgers. Registration was compulsory for some agreements (when concerning immovable property, for example) and optional for others. Agreements regarding movable property or merchandise could, but were not required to be presented for registration. For registered contracts regarding immovable property, collateralisation of the debt was relatively easy. The creditor could sequestrate (i.e. attach) the secured property, and for the duration of the proceedings leading up to public sale, the debtor’s rights to sell or mortgage that property were suspended. Sequestering the property was often sufficient for pressuring the debtor into seeking new credit or surety for the debt. However, even when merchandise was mentioned as security, non-authenticated promises and arrangements did not include rights to dispossess the debtor except after obtaining a judgment. The latter was the outcome of a lengthy proceeding before the aldermen of the Antwerp municipal court. Underlying these rules was the idea that rights of collateral had to be checked and approved by the municipal administrators, that is, the aldermen. In the middle of the fifteenth century, mercantile debts were not always put down in writing and if they were, they were inserted into privately written agreements that were not presented to the aldermen for registration. As a result, for most debts of merchants, it was only by verdict of the Antwerp municipal court that rights of collateral could be established.

All this explains why imprisonment for debts was important. Imprisoning a debtor was a swifter method for creditors to collateralise their unauthenticated debts, because detained debtors could transfer (‘abandon’) their estate to their creditors in order to be released from prison. Since insolvent defaulters were labelled as frauds, remedies supporting their recovery were not practised. All this prompted problems of compliance, as debtors aimed at avoiding application of the official rules. From the debtor’s perspective, compliance inevitably resulted in detention and the demise of their reputation, which would also prevent them from engaging in contracts after imprisonment. Thus, following payment problems, fleeing from jurisdiction or seeking asylum in churches were typical responses of merchants in financial distress.

In a second period, between around 1450 and approximately 1490, the notion of general collateral came to be practised. Over this period, 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 — were nonetheless held to comprise rights of collateral. Even if this had not been expressly

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10 For deeds concerning mercantile contracts in which merchandise was stipulated as collateral, at first no attachment was allowed, but thereafter it was gradually accepted. See further in Section 2.
11 All this is evident in some sections of the Keurboeck, which is a compilation of municipal rules that had been extended from around 1390 onwards. These sections stipulate exceptions for hostellers to the general rule that the sequestering and dispossession of assets was not executed without a deed, if there was no cooperation of the debtor. See Coutumes du pays et duché de Brabant: Quartier d’Anvers. Coutumes de la ville d'Anvers, G. De Longé (ed.), vol. 1, Brussels, Gobaerts, 1870, 20 (s. 53/3). See also p. 46 (s. 125).
12 William Van der Tannerijen, Boec van der loopender praktijken der raadscameren van Brabant, E.I. Strubbe (ed.), Brussels, CAD, 1952, vol. 2, 262-263. It seems that the aldermen of Antwerp did not restrict apprehensions and imprisonments of merchants too much. There are no traces of preliminary authorization, as was the case in fifteenth-century Bruges for example (see hereafter).
14 Aldermen’s letters of the 1440s often contained clauses in which the debtor waived ‘invoking the privilege of citizenship, flight or asylum’. See ‘Het 2e oudt register in’t parkement gebonden, 1438-1459’, Antwerpsch Archievenblad, 1st series, 30 (s.d.), 79-80 (8 Nov. 1442) and 304.
stipulated, it was generally accepted that creditors could seek compensation by means of sequestring the debtor’s movable property. This stage of development came about rather slowly (see hereinafter, in Section 2). At the end of the fifteenth century, creditors could lay attachment on assets of any defaulter, which involved their sequestring assets and freezing the debtor’s rights to sell or mortgage them. Thereafter, they started a proceeding before the municipal court in order to be granted the right to have that property auctioned. Attachment served as an efficient compulsory instrument. Because debtors were dispossessed, seized movable goods could be secured in the city hall and the rumour of attachments could spread, debtors had incentives to have the ban on their assets lifted as soon as possible. If sureties or additional credit was offered, creditors commonly withdrew from a proceeding of public sale. During the time period after approximately 1470, and especially in the 1490s, attachment became the prime method of debt collection in Antwerp, both during and after the fairs, and among merchants. In this period, methods of debt recovery were thus more oriented towards mercantile needs.

In a third stage, from January 1516 forward, the shortcomings of attachment proceedings were amended. An attachment of assets by one creditor, namely, could alarm other creditors and result in generalised distrust and subsequent attachments. Furthermore, when many creditors seized properties of the same debtor, multiple claims could be raised on what could be only a few assets. Therefore, debts became prioritised, though at first this ranking was done according to their date incurred or in respect of the swift legal action undertaken by the creditors. Privileged debts (deeds of aldermen) were compensated according to their date, and priority was given to the oldest debt. 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 prioritised over those who had done so at a later stage. This rule had some important negative consequences. Firstly, it resulted in ‘a run on the debtor’. Creditors quickly sought legal 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, even 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 proceedings already commenced, but because of the municipal rules and regulations their debts were paid only after those of the creditors who 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. In response, in January 1516, the Antwerp leaders transformed bankruptcy into a compulsory collective proceeding by means of a municipal ordinance. According to this law, 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, the total of the debtor’s assets 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, bankruptcy proceedings became collective by law, and equality was imposed among non-privileged creditors. Bankruptcy was construed a risk that had to be shared by all those having contracts with the ‘perpetrator’. Over the 1520s, the idea that debts were to be considered on equal footing when they were not privileged by law was extended and applied in every

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15 These developments are evident in the transformation of the ‘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 were allowed. See ACA, Vierschaar (hereinafter v), 2, section 141 and fol. 35.
16 ‘Oudt Register, mette berderen, 1336–1439’, Antwerpsch Archievenblad, 1st series 29 (s.d.), 144-146 (26 June 1437); E. Strubbe and E. Spillemaeckers, ‘De Antwerpse rechtsaantekeningen’ van Willem de Moelnere’, Bulletin de la Commission royale pour la publication des anciennes lois et ordonnances 18 (1954), 67.
17 ACA, V, 68, fol. 12v (around 1508); ACA, V, 1233, fol. 281v (20 Oct. 1509).
18 For example, ACA, V, 1233, fol. 67v (23 Jan. 1505 (ns)).
proceeding in which multiple creditors enforced debts against their common debtor.\textsuperscript{20} However, as will be seen hereinafter (Section 3), in other respects the co-existing proceedings did not conform with each other.

The \textit{fourth phase}, starting in the 1510s and lasting until 1536, witnessed the development of voluntary insolvency proceedings. The 1516 ordinance had only regulated involuntary bankruptcy; the creditors held the initiative. Moreover, the 1516 ordinance only envisaged criminal acts: its rules still hinged on ideas that had been popular in the fifteenth century. Deterrence remained a general paradigm in matters of insolvency. Different impetuses (state formation, economic crisis, procedural law – see Section 2 for more details) resulted in a transformation of the older practice of ceding one’s estate in exchange for release from debtor’s prison. This method had lost much of its utility because of the generalisation of collateral some decades before, but it was still applied for purposes of defamation or to secure the presence of the debtor. The fifteenth-century practice of ‘abandonment’ could be prevented by creditors; moreover, they could prolong imprisonment after a release from debtors’ prison, in the form of private detention. The debtor was kept under arrest at the home of one of the creditors, on the condition that he received water and food and was allowed to see visitors. Moreover, the debtor forfeited citizenship rights and guild membership.\textsuperscript{21} From the first decade of the 1500s onwards, this older practice became fused with academic rules that were described in literature on the Roman-law convention of \textit{cessio bonorum}.\textsuperscript{22} In the late 1520s, many older characteristics of ‘abandonment’ (decision-taking authority for creditors, private detention, proscriptions against signing contracts and non-rehabilitation) had disappeared. The petition to be released from prison was by that time transformed into a request for debt adjustment. When it was honoured, municipal officers organised talks among creditors. This transition is detailed under Section 3.

2. Continuity and change; agency and causality

Source materials concerning the mentioned changes can be analysed by taking theories of institutional change proposed by economists and political theorists as a point of departure. For the subject of this paper, the most fruitful method is to combine historical data with models regarding the incentives exerted by market developments onto the formulation and selection of formal rules (e.g., North, Acemoglu). In this case, formal rules are taken to mean the norms that are imposed by a central governing body having jurisdiction over a market onto actors in that market. This focus on formal rules follows on from characteristics of the political economy of Antwerp in the 1400s and 1500s, and also from the features of bankruptcy and insolvency. For the period and location studied in this paper, in matters of expropriation and imprisonment proceedings as well as cases concerning negotiations on debt adjustment, an element of force was deemed necessary, and this requirement resulted in a request for cooperation from the authorities. Therefore, informal rules were less relevant than formal rules. Even when informal practices prevailed, the inadequacies of formal rules could be exploited (see Section 3). Moreover, one could argue that in matters of bankruptcy and insolvency, which usually involve claims of more than one creditor vis-à-vis their common debtor, the primacy of formal over informal rules is most natural since informal constraints are typically aimed at honouring agreements and sanctioning individual default. Such constraints do not provide much when claims are concurring against a common debtor, except maybe for a constraint to negotiate. Nevertheless, even for debt collection regimes in Antwerp, theories concerning informal constraints (coalition-forming, multilateral sanctioning, and so on) can be applied to the extent that they detail the effect that informal norms – or the groups/organisations that apply them – have on the policy of rulers, not to mention on the formal rules that those policy-makers issue, and inasmuch as they provide further explanations for informal rules that are shared among all players in a market.

This above-mentioned outline of four stages does not refer to \textit{overhauls} of previously existing regimes of formal rules, but rather to amendments to sets of norms and proceedings that were not abolished entirely. Such modification is evident in several examples of path dependence. Even in the ordinance of January 1516, which marks the most sudden change of regime among the above-mentioned examples, attachment was considered to be the formal declaration of a debt, made in the case of the bankruptcy of a debtor. This process

\textsuperscript{20} De ruysscher, ‘De ontwikkeling’, 85-86, 140-141 (Gulden Boeck, c. 1511-c. 1528, s. 85).

\textsuperscript{21} Van der Tannerijen, \textit{Boeck}, vol. 2, 262-263. For the older rule, applied elsewhere in the duchy of Brabant, see E.I. Strubbe, ‘Het veertieendeeuwse oude rechtsboek van Vilvoorde’ \textit{Bulletin de la commission royale pour la publication des anciennes lois et ordonnances de Belgique} 15/2 (1936) 45, 79-80.

\textsuperscript{22} ACA, V, 1233, fol. 85v (1 Oct. 1505) and fol. 89 (6 Nov. 1505).
was reminiscent of the collateralisation of the 1480s and 1490s. The 1516 ordinance was novel in stipulating equality of non-privileged debts, but it was also based on the earlier idea of deterrence in bankruptcy. The municipal official (the amman, i.e. a ‘magistrate’) had to seek and retrieve the assets of the debtor who was thought to have hid them. Voluntary proceedings were not acknowledged. Moreover, the strict separation between administering the estate of the bankrupt debtor and the lawsuits on priority of debts reflects the same trends of later fifteenth-century Antwerp (the delineated competences of the amman and the municipal court, see hereinafter).  

Sometimes the results of path dependence were not fraud-resistant. For example, the dispossession of the bankrupt debtor was pronounced as from the moment of attachment of his assets onwards, and by means of the municipal proclamation that ordered creditors to present their debts. The denouncement as bankrupt was not meant for past activity, except for when fraud in the case of transactions preceding the opening of the proceedings could be proved. It often happened that debtors who were expecting to default on their debts would abscond with certain valuable possessions. It was only in 1608 that a so-called ‘suspicious period’ was introduced in Antwerp: it was thenceforth assumed that transactions of a bankrupt/insolvent debtor within a period of ten days preceding his collapse had been detrimental to his creditors.  

There are other examples, too. Imprisonment remained possible even after the general collateralisation of property, even though imprisonment served purposes other than expropriation as well (see hereinafter, on cessio bonorum).

The various phases outlined above were, as mentioned, slow to develop. One example is the collateralisation of debt, which took some decades to reach the point where attachments on informal debts or unregistered contracts were generally accepted. It is likely that in the first decades of the 1400s, the rigid Antwerp rules on collateral were circumvented to a large extent by drawing on the cooperation of hostellers and – to a lesser extent – money changers. Hostellers often brokered deals and operated on behalf of their clients.  

Storage and depositing could be combined. It is most probable that hostellers often stood surety for their guests’ debts or that the properties of the latter were presented as collateral. Money changers were active in large numbers in the first decades of the 1400s, and some of them maybe engaged as agent and cashier for their customers. The growing numbers of foreign merchants at the Antwerp fairs, the presence of more and more business agents in Antwerp, and the concentration of so-called nations of foreign entrepreneurs in residential compounds in the city all may explain why hostellers became gradually less important from around mid-century. It is clear from the ledgers of aldermen’s letters from around 1460 that over the course of subsequent years, more and more of these registered documents related to mercantile debts that had been negotiated at the fairs. Equally clear is the generalisation of a clause of collateral, allowing for rights on assets and the debtor himself (‘obligat se et sua’), in these aldermen’s letters. In the 1460s and 1470s, this clause could not serve as the basis for attachments when written in private documents. For aldermen’s letters, though, these clauses opened up that possibility, but only after some time. Even in the 1470s, for debts that were written in

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23 In seventeenth-century Amsterdam, the administration and prioritisation of debts was combined in the clustering of both tasks in the Chamber for Insolvencies (1643). See G. Moll, De Desolate Boedelskamer te Amsterdam, Bijdrage tot de kennis van Oud-Hollandisch failliten-recht, Amsterdam, University of Amsterdam, 1879, 77-86.

24 Coutumes de la ville d’Anvers, G. De Longé (ed.), vol. 4, Brussels, Gobbaerts, 1874, p. 398 (part 4, ch. 16, s. 29)

This is evident in a project of municipal ordinance of January 1438. See ‘Oudt Register metten Berderen’, Antwerpse Archievenblad, 1st series, 29 (s.d.), 203-207, at 204 (27 Jan. 1438 ns). See also E. Dilis, Les courtiers anversois sous l’ancien régime, Antwerp, Van Hille-De Backer, 1910, 16-22, 124-128.

25 ‘Oudt Register metten Berderen’, Antwerpse Archievenblad, 1st series, 29 (s.d.), 62 (23 March 1436 ns). In this aldermen’s letter, a hosteller was appointed as surety for the debt. There is no trace of a general rule, but it can be assumed that many hostellers offered this service. See for contemporary Bruges, O. Gelderblom, Cities of Commerce. The Institutional Foundations of International Trade in the Low Countries, 1250-1650, Princeton, Princeton University Press, 2013, 49.


27 Near the end of the 1460s, nearly all aldermen’s letters for mercantile debts contained the clause ‘obligat se et sua’. This clause stipulated that all assets and also the person of the debtor could be seized in case of default. See ACA, Schepenregisters (hereinafter SR), 69 (1465-66), containing at least six letters without collateral, both in and outside the privileged period surrounding the fairs: fol. 44v (5 Aug. 1465), fol. 46v (7 Aug. 1465), fol. 83r (17 Oct. 1465), fol. 182r (3 Jan. 1466 ns), fol. 192v (12 Oct. 1465) and fol. 193v. (10 Nov. 1465). In the ledger of 1469-70, no such letters could be found and all mercantile letters had the clause ‘obligat se et sua’. See ACA, SR, 76, fol. 26v (6 June 1469), fol. 28r (8 June 1469), fol. 34v (23 June 1469), fol. 129r (28 March 1470 ns), fol. 323r (11 March 1470 ns) and fol. 367r (13 Febr. 1470 ns).
A crucial step towards collateralisation was framing the debt as pertaining to a ‘crime’, which meant that the municipal officials could more easily interfere with the ownership rights of defaulters. When the default was defined as criminal, then the collateral clause in an alderman’s letter sufficed for sequestering and freezing assets of the debtor. The circumstances of war in the 1480s provided ample opportunities in this respect. Attachments were explained as a measure of reprisal, for example, against merchants of the nation that had supported the Flemish rebellion against the Burgundian house. Gradually the limits were expanded and the protections provided during the fair were weakened. Merchandise that had been stolen but was relocated could be attached, even if no deed of the aldermen was presented. Court records, which exist for the late 1480s and early 1490s, are bursting with cases of this type. In 1493, attachments were laid in Antwerp without submittal of a deed for the first time, and without framing the default as criminal; in other words, default per se and even for informal debts, had become a sufficient ground for seizure of assets.

These developments had been a combination of bottom-up and top-down events. Merchants solicited broader collateral rights, which the officials registering the alderman’s letters acknowledged. The lowering of the bar to attach assets without a lengthy expropriation proceeding was a (slow) response to this request, but it also concerned the ambitions of public officers. As from the 1460s onwards, the amman – who was one of the representatives of the duke of Brabant in Antwerp – was considered the only official competent for seizures in Antwerp. The revenue coming from organizing attachments and public sales most probably provided an

29 For the 1460s, I know of only one mention of attachment in the alderman’s ledgers, describing it in terms of an exceptional proceeding. See ACA, SR, 69, fol. 520r (29 Nov. 1465). From the document, it is unclear what was the legal ground for the attachment. A merchant had solicited seizure of some bolts of silk; the amman and two aldermen were present at the actual seizure of the objects that were thereafter sequestered.

30 Slootmans states that in Bergen op Zoom the ban did not comprise all debts. In Antwerp, it did. In contrast to Flemish fairs, the ban on attachment and apprehension also concerned debts agreed on at a previous or at the same fair. See C.J.F. Slootmans, Paas- en koudemarkten te Bergen op Zoom, 1365-1565, Tilburg, Stichting Zuidelijk Historisch Contact, 1985, vol. 1, 40; J.A. Van Houtte, ‘Les foires dans la Belgique ancienne’ in La foire, [Recueils de la Société Jean Bodin pour l’histoire comparative des institutions, 5], Brussels, Librairie encyclopédique, 1953, 203.

31 It was a general rule of restricted collateral that the debtor chose which asset he would pledge in response to a demand for payment upon default. See Coutumes du pays et duché de Brabant: Quartier d’Anvers. Coutumes de la ville d’Anvers, G. De Longé (ed.), vol. 1, Brussels, Gobbaerts, 1870, 46 (Keurboeck, s. 125).


33 ACA, V, 1231, fol. 7r-v (9 Dec. 1488), fol. 19r (9 April 1489).

34 ACA, V, 1231, fol. 212r (22 March 1493 ns, in this judgment of the municipal court the attachment is grounded with the general phrase ‘because of certain actions’, whereas before explicit mention was made of the deeds justifying sequestering the assets), and fol. 220 r-v (21 May 1493; this is the first judgment in which attachment was laid without mention of justification).

35 At first, the Council of Brabant strictly interpreted the ‘freedom of the market’. In two verdicts, of 1489 and 1494, it blocked framing seizure as a measure to prevent criminal behaviour. In the second case, a Spanish merchant had apprehended a Dutch debtor and underpinned his action with the argument that the debtor was ‘fugitive’ since he had hopped from fair to fair in order to profit from the freedom of the market. See Slootmans, Paas- en koudemarkten, vol. 1, 76. In the 1489 lawsuit, a Venetian merchant threatened to seize a ship and cargo. In both cases, the creditors’ actions were dismissed as going against the ‘freedom of the fair’. See Slootmans, Paas- en koudemarkten, vol. 1, 75-80.

36 ACA, V, 1231, fol. 220r-v (21 May 1493, the assets were kept with the amman). The delegation of this matter to one officer was due to the rising numbers of attachments. In the 1460s, the amman and two aldermen monitored the exceptional seizure of assets. See ACA, SR, 69, fol. 520r (29 Nov. 1465). Before that time, at least until the early 1440s, liquidations and the distribution of proceeds from public sales did not involve the amman. See, for example, ‘Het 2de Oudt Register’, Antwerpisch Archievenblad 30 (s.d.) 31-32 (13 Jan. 1442 ns).
In contrast to collateralisation, the 1516 law imposed a sudden change of regime. However, even though the ordinance was a detailed document containing six extant paragraphs, sections were changed as well in the years after its enactment. Specifically, the hierarchy of debts was most disputed in the years and decades after 1516, for the 1516 ordinance had not provided a strict order among privileged debts. A new ordinance of June 1518 thus added more detail. It provided that wages had to be paid before tax debts and that only after settlement of these debts were other privileged debts that had been written down in deeds of the Antwerp aldermen to be paid out. Nevertheless, again, interpretation brought out ambiguities, and new changes were made possible, some of which went against earlier established norms. In 1523, for instance, the dowry was given priority over all debts, including wages and rent money, but in 1548 the order changed again when rent money was put before the dowry. Another example concerns cessio bonorum. In 1536, it was imposed by princely decree that cessio bonorum (i.e. transfer of estate in exchange for release from debtors’ prison) had to be granted even if the creditors did not consent. Since 1520, though, the Antwerp rule had been that liberation from debtors’ prison had to be condoned, but that creditors could thereafter arrange for private detention. In practice the Antwerp aldermen did not accept private detention after 1536, while Antwerp legal texts of the 1530s and 1540s sometimes reformulated the 1520 rule instead of the one of 1536. The vetoing rights of creditors were thus resuscitated, albeit only on the books and not in practice.

These examples point to uncertainty as to how to formulate rules into more sophisticated precepts, and they do not always concern changes of policy. A change of policy implies a weighing of options, following analysis of the topic under discussion, and a strategy of systematization. Even though the aldermen could deliberate over legal subjects (the 1516 ordinance is an example), no legal programme that was imposed from within the body of Antwerp leaders existed – at least for the first half of the sixteenth century. In that period, the municipal law became more detailed over time, but it evolved mostly through the interpretation of existing norms, many of which were rather vague and even unclear. The Antwerp aldermen could decide a debated issue by means of an ordinance, or with a statement on the Antwerp law. However, this process was usually conducted when court cases continued to reflect debates over legal issues. Other evidence points to hesitant intervention from the aldermen. Statements of law, issued by the aldermen, mostly confirmed older rules, rather than formulating new norms. Moreover, matters under debate could be solved tacitly with judgments implementing a new line of legal thought, yet without the aldermen intervening with ordinances or certificates. This method was, for example, the case in changing the rule that a seller could remain owner of the delivered merchandise if the price had not been paid, on the condition that no explicit credit (a date of later payment) was formulated. This new norm, which was drawn from academic literature, replaced the earlier rule that the seller ceded his ownership rights together with the merchandise at delivery, irrespective of payment of the price. The aldermen never publicly intervened in this matter, and after 1503 the new rule was systematically imposed in court judgments.

37 ACA, V, 68, fol. 23v (1 Dec. 1507).
38 ACA, V, 68, fol. 22 (11 March 1507 ns)
39 Coutumes de la ville d'Anvers, vol. 1, 172 (ch. 4, s. 14-15).
40 ACA, V, 68, fol. 33r-35v (1 juni 1520).
41 De ruyscher, 'De ontwikkeling', 142 (Gulden Boeck, c. 1511-c. 1528, s. 83) and 249 (c. 1541-1545, s. 7).
42 De ruyscher, 'De ontwikkeling', 75-76.
44 For court cases on this issue, see ACA, V, 1233, fol. 11v (30 June 1503) and 1235, fol. 265v (10 July 1520). It seems that under the old regime only one exception to the rule of 'delivery conveys ownership' was accepted. This exception concerned the case where the contract stipulated that the seller had to be 'paid in kind at delivery' (gereeden penningen) and on the condition that the buyer still had the delivered merchandise with him at the time of the claim. See De ruyscher, 'De ontwikkeling', 140 (Gulden Boeck, c. 1511-c. 1528, s. 77). The academic rule was even more sophisticated: in case credit had been granted explicitly (i.e. a later date of payment had been mentioned and agreed on), the unpaid seller was still considered owner of the delivered merchandise if the buyer went bankrupt shortly after the delivery. For the academic
Another example of how uncertainty on the part of administrators combined with incremental change of law through interpretation relates to cession bonorum. In the first years of the sixteenth century, the earlier concept of ‘abandonment’ was called ‘cession’, referring to the Roman-law rectification of cession bonorum. In fact, the remedy was known from the Romano-canonical procedure that had intruded into the Antwerp municipal court. As a result, added to the older ‘abandonment’ were the Roman elements of an oath of good faith and a promise to repay the creditors when the debtor acquired new wealth. These novelties were slowly introduced and acknowledged. In the years after 1510, also due to interventions from the prince (see Section 3), the aldermen doubted whether the arrangement had to be further reformed. As an example, one turbie-inquiry – a type of group interview – is particularly revealing in that it mentions the arguments that were raised in the courtroom by the advocates of both the plaintiff and the defendant. The technique of inquiry by turbie allowed litigants to evidence unwritten rules that were important in light of their case. These inquiries were controlled by the aldermen. They selected ten or more persons for an interview on the contents and the application of adduced rules. The witnesses were typically former aldermen, legal practitioners (advocates, proctors or public notaries) or officers working for the Antwerp government (town pensionaries or law clerks).

As a result, since many of them had had academic training, their phrasing of rules combined the use of legal terminology and formulations. In June 1520, when this particular turbie-investigation was held, the practice of ‘abandonment’ was still applied and controversial. In the court case leading up to this turbie, the advocate of the defendant (i.e. the creditor) denied the right to release from debtors’ prison on the basis of policy considerations. He stated that it would become too easy to escape consequences of defaults if imprisoned debtors could simply ‘choose to walk’. By contrast, the advocate of the plaintiff referred to the older rules and the right to be granted release, but admitted at the same time that private detention remained possible. The aldermen decided who was consulted to decide this dispute, and they recorded the answers of the interviews into official ledgers, the so-called turbieboeken. It was unusual that the introduction to the statements of witnesses represented the debates in the courtroom, as was the case in this inquiry. The witnesses, who all were practitioners, officials and former aldermen, decided in favour of the plaintiff, and they used academic terminology (cession bonorum). It is very clear from this turbie, then, that the Antwerp aldermen were uncertain which way to proceed. In contemporary Flanders (and in Bruges), for example, cession bonorum was not allowed (see hereinafter). Moreover, other cities in the Low Countries provided creditors the right to veto release from debtors’ prison. It was typical that the Antwerp aldermen – i.e. their selected witnesses – decided to stick with the older solution, yet at the same time acknowledged the modifications that had been accepted over the years (e.g., oath, promise of repayment).

How can one explain the relative slowness and path dependence, the hesitations and development of law through interpretation, in Antwerp’s political economy? Economists have proposed explanations for legal regimes that continued to be out of touch with market developments. Path dependence explains continuity in legal remedies, while different possible causes have also been identified. One such cause is a lock-in of political decision-making, or institutional stickiness, both of which assume that path dependence prevents adopting more efficient solutions. This hindrance is likely due to rent-seeking behaviour by some actors, which conflicts with others wanting to impose market-oriented solutions. Another possible cause is the bounded rationality of individuals and market players (organisations, merchants), who cannot see the optimum economic advantages and have a tendency to resort to solutions they know. A bias towards relying on well-known
formulas in situations of uncertainty has been highlighted in many theories.\textsuperscript{50} Other approaches identify, moreover, the slow accumulation of small additions and interpretations, by actors having the power and incentives to do so, as part of the process of institutional change.\textsuperscript{51}

At the present juncture, the essay at hand proposes two factors as an answer for these changes in Antwerp law. One concerns the agency in deciding the norms that apply in matters of debt collection in Antwerp, another the heterogeneity of solutions in relation to problems of debt collection.

Merchants did not participate in the political and judicial bodies of the city of Antwerp. While exceptions occur in mediating court cases as arbiters, even then there was only partial delegation from the aldermen-judges, who in the main insisted that any legal issue could only be decided by them.\textsuperscript{52} Arbiters, on the other hand, merely tried to reach a compromise among litigants, and checked factual elements of a case (weights, damages, accounts, and so forth). Additionally, although they were organised in nations, merchants did not lobby for legal change very much. The Antwerp market in the first half of the sixteenth century, and before, was not a forum where organisations of foreign and local merchants competed in proposing market-broad solutions. The nations provided support for members, their compatriots, and the leaders of a nation could impose sanctions in contractual affairs involving members of their nation. Admittedly, there are some examples of nations petitioning the Antwerp aldermen for legal change. In 1537, for example, the English nation, which was the organisation of Merchant Adventurers who were trading in Antwerp, submitted a request to the Antwerp aldermen for swifter court cases in matters of the payment of bills obligatory.\textsuperscript{53} In the late 1550s, some nations also attempted to influence decisions regarding the registration and brokering of marine insurance contracts.\textsuperscript{54} However, this soliciting did not transpire systematically. Organisations of merchants had no guaranteed or usual say in the judicial policy of the Antwerp municipal court, or in the legislative actions of its council of aldermen. Sometimes merchants were consulted, most probably when legislation or changes in judicial approaches were prepared. From later periods, though, it is clear that their advice could differ, and that different opinions concerning constraints and policies existed within the mercantile community.\textsuperscript{55} Nations of merchants were not competing in the domain of the municipal political economy, in other words; there is no evidence that solutions imposed by the aldermen regarding debt enforcement and bankruptcy were blended rules, containing elements of propositions of different organisations.

With regard to the 1516 ordinance, there are indications pointing towards its being developed mainly from the top down. It was issued in Antwerp on 21 January, and received approval from the princely courts one week later, on 28 January.\textsuperscript{56} No substantive additions or changes were made to the initial Antwerp text. The swift corroborations might indicate that there were few opponents seeking support from the higher, princely authorities against the municipal legislator. A proposition by an assembly of nations seems unlikely. The introduction of the 1516 ordinance reveals that the aldermen had become aware of fugitive debtors and of the problems that arose therefrom, without mentioning a petition of some sort. Moreover, the introduction states that confusion in these cases was detrimental to citizens, residents ‘and also to merchants trading in the city’.\textsuperscript{57} This general formula seems to reflect the idea that bankruptcy was not considered a uniquely mercantile problem, and it does not hint at merchants being the only ones concerned. This concept is also evident in the

\textsuperscript{50} For example, Sugden states that in new situations there is a tendency to stick with known formulas, even if they are not efficient. See R. Sugden, ‘Spontaneous order’, Journal of Economic Perspectives 3 (1990) 85-97.


\textsuperscript{52} ACA, V, 1235, fol. 202v (22 Oct. 1519) and V, 1233, fol. 110r (27 June 1506). The common formula used in the order to the arbiters stated that they were to reach a compromise, ‘the law excluded’ (‘totten rechten exclusys’).

\textsuperscript{53} O. De Smidt, ‘De keizerlijke verordeningen van 1537 en 1539 op de obligaties en wisselbrieven. Eenige kantteekeningen’, Nederlandsche Historiebladen, 3, 1940, 16-17.

\textsuperscript{54} D. De ruyscher and J. Puttevils, ‘The Art of Compromise. Legislative Deliberation on Marine Insurance Institutions in Antwerp (c. 1550-c. 1570)’, BMGN-Low Countries Historical Review 2015, in press.

\textsuperscript{55} De ruyscher, and Puttevils, ‘The Art of Compromise.’

\textsuperscript{56} Recueil des ordonnances des Pays-Bas, 2nd series, vol. 1, 464-466.

\textsuperscript{57} De ruyscher, ‘De ontwikkeling’, 196. The introduction of the princely ordinance is comparable. See Recueil des ordonnances des Pays-Bas, 2nd series, vol. 1, 464-466. Other laws, which were imposed following petitions from merchants, referred only to merchants in their introductory lines. See for example Recueil des ordonnances des Pays-Bas, 2nd series, vol. 3, 15 (7 March 1537).
1518 follow-up ordinance, which extended the scope of the collective proceeding to insolvent inheritance estates, even though it also adjusted delays for the submission of claims according to the geographic location of foreign merchant creditors. Another indication of the swift and unexpected issuing of the 1516 law is that its basic features (the pooling of non-privileged debts in particular) were often contested in the courtroom. In the 1520s advocates even had turbé-inquiries organised concerning rules that were straightforward in the text of the ordinance, and which were confirmed by the witnesses at the examinations. Apparently, even though merchants could be inclined to appreciate the 1516 solutions as equitable, not all merchants sensed pooling of non-privileged debt as economically sound; as late as 1550, the aldermen reinforced the pooling principle in a statement. Furthermore, as was mentioned, the 1520 rule, which reinforced private detention after a defaulter’s release from the public prison, was apparently imposed in a way similar to the 1516 ordinance. It seems that both measures were taken within the small circle of Antwerp leaders on the basis of policy considerations, maybe after some consultations with merchants, but not pursuant to any demand from the mercantile community or from coalitions of merchants or their organisations. The search for the common good is explicitly mentioned as grounds for municipal ordinances subsequent to the one of 1516, and it is also evident in the princely decree that acknowledges the 1516 municipal law. That decree states that privy councillors and the Council of Brabant had checked the Antwerp text, and that they had considered that the measures would be ‘for the greater well-being of all residents of the city, and also the visiting merchants.’

At first sight, all this conforms with the recent thesis of Oscar Gelderblom, who has considered the municipal leaders of cities of commerce to be apt interpreters of market developments. They were knowledgeable and adaptive enough to change their laws in response to shifting economic conditions and the corresponding tactics of merchants, in order to facilitate and support trade and thus enable growth. However, the idea that they were able to take advantage of economic conditions (‘rules of the game’ or an equilibrium of interests) more or less directly and swiftly is difficult to uphold. That problem derives in part from the differences in political economy yet also from the similarities in commercial settings of cities that were trading hubs, both prominent and otherwise. In this respect, rules concerning debt enforcement could differ to a large extent, for example, even within the same regions.

A comparison of the Antwerp case with Bruges is interesting in this regard. Since the early fourteenth century in Bruges, foreign merchants received charters entitling them to the restitution of deposits that were made with official money changers and hostellers. This meant that the municipal government was obliged to bail out bankrupts to the extent that they owed sums to these privileged merchants. Sometimes the Bruges aldermen took pre-emptive action on bankruptcies by acquiring a part of the business of a money changer. At the collapse of the Medici bank’s branch led by Tomasso Portinari, for instance, the city bailed out a shortfall of 16,000 livres Fl. Another difference with the Antwerp rules relates to incarceration for debt in the public prison, which could be obtained following authorization of the aldermen and also against defaulting merchants, but for which cessio bonorum was not accepted. When considering these differences, one might say that the Bruges government was more of an active player in bankruptcies than any Antwerp government of the fifteenth and sixteenth centuries. In other regards, though, there were additional similarities. The city of Bruges knew compulsory collective expropriation proceedings, of bankrupts estates and insolvent inheritance estates, already since the middle of the fourteenth century. Here again, however, spotlighting

58 De ruyscher, ‘De ontwikkeling’, 199-205.
59 ACA, V, 68, fol. 36r-37r (19 Sept. 1521), fol. 42 r-44 v (2 Jan. 1525 ns).
60 ACA, V, 69, fol. 16 r-v (1 Sept. 1550).
61 ‘for the common good’ (ordinance 2 June 1518, De ruyscher, ‘De ontwikkeling’, 199).
64 J.M. Murray, Bruges, the Cradle of Capitalism, 1280-1390, Cambridge, CUP, 2005, 156-157, 199
65 Cartulaire de l’ancienne estaple de Bruges, 318.
66 On the required authorization, see Gilliodts-Van Severen, Coutumes de la ville de Bruges, vol. 2, 169 (middle 15th century). For examples of imprisoned merchants, see Murray, Bruges, the Cradle of Capitalism, 144, 146.
67 The Bruges aldermen stated in 1527 that in 1487 an agreement had been made with the Official’s Court of Tournai, providing that this clerical court would not grant cessio to citizens or residents of the city. In the same year, merchants and others had confirmed that it had never been practised in the city. See Gilliodts-Van Severen, Coutumes de la ville de Bruges, 306-315.
68 Murray, Bruges, the Cradle of Capitalism, 157. It is unknown whether non-privileged debts were pooled at compulsory collective proceedings in Bruges in the 1300s and 1400s. In 1564, this was done at liquidations of insolvent inheritance
collateralisation and seizure practices yields contrasts with the Antwerp methods. One gains the impression that even in the middle of the 1400s individual seizure of movables for mercantile debts was rather exceptional in Bruges. Even for debts that were incorporated in official acts, it was not acknowledged as a general rule, and it was closely monitored by the municipal authorities. 69

When seen from a broader geographical perspective, institutional diversity between cities of trade is apparent as well. In various cities with fairs on the European continent, some sort of compulsory collective proceedings against ‘fugitives’ were introduced during the 1400s, but they did not entail full pooling of non-privileged debts (fragmentary laws in Augsburg (1439) and Nuremberg (1431)). These proceedings were imposed by ordinance and were considered as exceptions to cumbersome government-controlled individual collateralisation proceedings (Gantraprozess, Arrestprozess). 70 By contrast, in France in the late Middle Ages, it had been a common rule in the northern pays de droit coutumier that shortage of assets at a public auction to compensate debts automatically entailed rateability of proceeds for all creditors involved. 71 Furthermore, in other cities of the Low Countries, at the turn of the fifteenth century and up to the 1530s, when princely ordinances were issued, different solutions applied in regard of imprisonment for debt and cessio bonorum. For example, in Mechelen, creditors could block demands of an imprisoned debtor to be released from prison in exchange for transfer of his estate. 72

Generalizing from these circumstances, it is clear that in spite of developments of collectivisation, collateralisation and the pooling of debts happening in many places, their extent and timing varied according to the city and region, and substantial differences could last. In fourteenth-century Bruges, a growing international market could thrive with remedies having higher bars that were more dependent on government intervention than in Antwerp after 1490. Augsburg and Nuremberg knew hesitant government-imposed collectivisation early on, whereas in Antwerp this process came about later. Collateralisation in Antwerp after 1450 was also a bottom-up process, preceding compulsory collective proceedings and the pooling of debts.

As for regulatory competition between Bruges and Antwerp, there is substantive evidence pointing to contrary conditions in regard of rules on debt enforcement. 73 Bail-outs of the Bruges type were not practised in Antwerp, neither in the fifteenth nor in the sixteenth century. Were bail-outs a response typical of the economic circumstances in fourteenth- and fifteenth-century Bruges, then, different from those prevailing in Antwerp in the fifteenth and sixteenth centuries? One could link the Bruges restitution policy to the controls for hostellers and moneychangers, but Antwerp in the 1400s did not differ much from Bruges in that respect, even though hostellers in Antwerp were on their way out after 1450. If Bruges was an example, why were compulsory collective proceedings only imposed in Antwerp in 1516, and not decades before? Furthermore, arguments on intrinsic qualities and deficiencies of the solutions mentioned can go either way. One could argue that bail-outs bring about moral hazard, but then again the same can be said of compulsory collectivisation in combination with the pooling of non-privileged debts. This process entails haircuts and thus a
stimulus to raise credit from as many lenders as possible. Low-bar attachments of assets could result in the debtor losing his reputation. In that sense, the Bruges approach of restricting access to seizure proceedings is understandable. But how efficient was debt collection with high preliminary requirements for collateralisation? Did this not have the effect of inciting severe measures (flight, imprisonment)? All in all, it is difficult to conceive that differences in market equilibrium or competitive advantage between fifteenth-century Bruges and fifteenth- and sixteenth-century Antwerp are able to explain the varying rules in debt collection in both cities, when the competences of the magistracies of the cities to detect what was to be done is taken as a given.

There were no easy answers, and crafting remedies was difficult. Cities could be inspired by what happened elsewhere, but a systematic copying of solutions was largely absent. Moreover, there was a trend to resort to solutions found in academic literature, but the consistency of such sources was fairly low. The 1516 Antwerp ordinance reveals terminology of that origin, as was true for other Antwerp legal texts of the period. Yet the example of cessio bonorum shows that solutions proposed in scholarly writings could vary according to the author, and that even for crucial elements (cooperation of creditors, rehabilitation of the released debtor) there was no communis opinio doctorum. Academic texts had the advantage of adding layers of interpretation to legal solutions, in which the level of abstraction raised was effective in helping to explain complex mercantile relations, even to the extent that they were beneficial for commerce. However, these intellectual texts did not provide clear-cut solutions to every concrete legal question. The rising numbers of university-trained lawyers, working in and for the Antwerp municipal government, resorted to the terminology with which they were acquainted, but their academic legal backgrounds did not give them an advantage in choosing which remedy to impose on the Antwerp market. Likewise, Antwerp law did not merely absorb principles and rules that were shared by merchants visiting the Antwerp Exchange, even though it was (also) built on mercantile practices. Both practices of merchants as well as fragments and terms drawn from legal literature were building blocks, yet the aldermen nonetheless remained the architects and masons.

Furthermore, the timing of changes, in Antwerp and elsewhere, is not entirely consistent with economic change; they generally came after considerable passage of time. Shocks played some part in this regard. It is clear, for instance, that improvements in the 1516 reform (in 1518 and thereafter) and the developments towards voluntary bankruptcy in the 1520s (see hereinafter in Section 3) responded to economic problems. The latter were triggered by the Frisian War (from 1517 onwards) and the Italian Wars (resumed in 1521). 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). The Frescobaldi failure was the first international bankruptcy case that caused disturbance in the Antwerp market. While these exogenous shocks could trigger changes, they were still not a sufficient cause, not even a necessary cause. Indeed, in explaining the changes in debt collection reform before 1515, they play only a minor part. Antwerp, that is, had been a fair-based economy since the second quarter of the fourteenth century. Its Whitsun- and Bamisfairs blossomed after 1406, when competition with Bruges could be relaunched after the formal reintegration of Antwerp (which had been under Flemish rule between 1355 and 1406) within the duchy of Brabant. In addition, shocks due to circumstances of

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74 De ruyscher, ‘From usages of merchants’, 1-23. 75 It was debated whether the imprisoned debtor or the creditors had the right to propose a payment plan. This discussion touched upon the decisory powers of creditors. One way of interpreting the legal texts meant that if the creditors had the right to offer a moratorium, they could refuse cessio to a debtor who declined, or they could refuse cessio if a moratorium had been granted earlier which had not been honoured and for which the debtor had been imprisoned again. Another interpretation, which was more favourable to the debtor, was also recognised. See on these issues, W. Forster, Konkurs als Verfahren. Francisco Salgado de Somoza in der Geschichte des Insolvenzrechts, Cologne, Böhla u, 2009, 201-204, 207-218; W. Pakter, ‘The origins of bankruptcy in medieval canon and Roman law’ in P. Linehan (ed.), Proceedings of the seventh international congress of medieval canon law, Vatican City, Bibliotheca Apostolica Vaticana, 1988, 490-493, and also H. Dondorp, ‘Civil custody as coercive measure in medieval law’ in P. Andersen, M. Münster- Svendsen and H. Vogt (eds.), La wand private life in the Middle Ages, Copenhagen, DIOF, 165-180. 76 D. De ruyscher, ‘From usages of merchants’, 22-23. 77 H. Van der Wee, The Growth of the Antwerp Market. Nijhoff: The Hague 1963, vol. 2, 141-153. 78 R. Ehrenberg, Das Zeitalter der Fuggier. Geldkapital und Creditverkehr im 16. Jahrhundert. Erster Band: die Geldmächte des 16. Jahrhunderts, Jena, Fischer, 1922, 280-281. 79 For example, ACA, V, 1235, fol. 92 (23 June 1518), fol. 99 (20 July 1518) and fol. 106v (19 July 1518).
war were endemic, \(^{80}\) and offer no sufficient explanation for the changes in collateral between around 1450 and approximately 1490. The framing of default as crimes was facilitated by circumstances in the 1480s, but the contractual adding of clauses of collateral had started earlier. The opening up of attachment, by officials such as the amman, cannot be linked to a shock either. Moreover, there is no clear shift in market developments. Both groups of English and Hanseatic merchants had become firmly established in the city long before 1450. The same is true of the 1516 change. Foreign merchants from southern Europe had flocked to the Brabant city since the 1490s. Even so, the rising market integration, the growing contacts between merchants of different nationalities and the abstracted features of trade after 1490 (for example, in the use of bearer bills) meant that the problems surrounding attachments by many creditors became more urgent. Still, it took more than two decades before the Antwerp leaders changed the formal rules of debt collection. Economic conditions were remote causes of change, therefore, but they did not determine what the solutions were.

Doubt as to which method to choose, from a variety of possible approaches, is a likely explanation for the mentioned time lags. The lock-in of political structures is – as was mentioned above – not probable. It seems instead that the Antwerp aldermen perceived changes in the Antwerp market, but only responded under the pressure of exogenous shocks, or after long deliberations about what to do (the 1516 reform). In view of all this, the emphasis of some authors on ‘rules of the game’ that are not entirely grasped due to the bounded rationality of self-interested individuals, but which could be sensed from within larger groups (North, Greif), is problematic. In fact, these theoretical notions practically fail when tested against the Antwerp case, given the relative absence of merchants or merchant organisations pleading for reform. Furthermore, the recent argument of Oscar Gelderblom that municipal leaders were capable of detecting what was required in new economic conditions is equally difficult to reconcile with the Antwerp data on debt collection reforms, due to the time lags and hesitance in crafting solutions.

3. Voluntary bankruptcy and the cost of non-integrated institutions

Another problem in this regard is the haphazardness and the inconsistencies among coexisting proceedings concerning debt collection. The development towards voluntary bankruptcy, in the 1520s, is a case in point. Exogenous incentives invited the Antwerp municipal leaders to take action. The above-mentioned economic problems of the late 1510s and of the 1520s were important causes for this development towards voluntary proceedings. Additionally – in contrast to the first three phases in Antwerp’s debt collection rules – the development towards voluntary proceedings hinged on actions taken from within central government bodies. From the viewpoint of the Antwerp leaders, they were to a large extent exogenous factors as well.

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. \(^{81}\) In the 1510s, central institutions issued such letters only to debtors that were deemed to have been unfortunate. This judgment followed on from the growing influence of academic literature among lawyers, which was also taking place within the princely councils. The rule of required good intent and others that related to these *lettres de justice* were part of the Franco-Flemish variety of Romano-canonical procedural norms that were in use at the Council of Brabant, and from the late fifteenth century onwards also in the Antwerp Municipal Court. \(^{82}\)

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\(^{80}\) Gelderblom, *Cities of commerce*, 217-221.

\(^{81}\) In the late 1400s and early years of the sixteenth century, debtors only 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 National Archives (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, fol. 38 (15 Jan. 1504 (ns)). Unfortunately, for the period after 1520, fiscal records lack data on numbers of applications for letters.

\(^{82}\) The arrangement can be found in practice-oriented treatises such as *Somme rurale* by Jean Boutilier (later fourteenth century). In tandem with the reception of scholarly procedure in Flanders, *cessio bonorum* found its way into tracts such as *Practijke civile* by the Flemish jurist Filip Wielant (early sixteenth century).
In the 1520s, both above-mentioned developments of economic crisis and princely actions became entangled. Petitions from debtors for letters rose. As a result, the practice of handing out *lettres de justice* became standardised.\textsuperscript{83} The Council of Brabant sought cooperation from the Antwerp aldermen for judging petitions it received, and it ordered them to summon creditors for talks on debt adjustment. As a result of all this, when a letter was applied for in the 1530s, it was normal practice 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.\textsuperscript{84} 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.\textsuperscript{85} If the aldermen corroborated the applicant’s story, the debtor’s properties were inventoried; thereafter the creditors were summoned to present the debts owed to them, while submitting evidence of those amounts claimed. In a subsequent phase, negotiations began under the guidance of commissioned Antwerp aldermen and public officers. The case file was then returned to the Council of Brabant, which confirmed and registered the contract, or took other measures if no compromise had been reached.

It is evident from the developments mentioned already that the intrusive princely clemency proceedings surrounding applications for *lettres de justice* broke with some persistent ideas of the Antwerp aldermen. The 1516 ordinance had taken criminal behaviour as a requirement for mandatory collective actions, for example. Now, the summoning of creditors did not end up in liquidation but could result in a moratorium. Changes were incremental at the level of the princely authorities, but from the perspective of the Antwerp aldermen they could be sudden. The leeway to elaborate the princely initiatives was limited. The gradual transitions mentioned before culminated in the issuing of a princely ordinance, in August 1536, which detailed the rules applying to the collective voluntary proceedings.\textsuperscript{86} Yet the Antwerp aldermen were opposed to this creeping intrusion from the princely institutions. Even though they complied with the princely orders in practice, as late as 1549, they solicited a return to their previous level of autonomy in matters of bankruptcy and *cessio bonorum*.\textsuperscript{87} Pressure from the top down explains why the proceeding of *cessio bonorum* became fused with the clemency proceeding. The 1536 law proclaimed that *cessio* was a princely affair.

In line with their behaviour in previous years and decades, the Antwerp aldermen did not organise their institutions so as to make them congruent with the new central initiatives. The plurality of proceedings that had been in use since 1516, persisted after 1536. This plurality went together with haphazard correlations between proceedings, which resulted in opportunities for free riders, and which facilitated a preferential use of some proceedings over others among groups and strata of mercantile professionals.

For the turbulent 1520s, no records of clemency proceedings were found. However, for the 1530s and 1540s, some hints of negotiations between a debtor and his creditors are present 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.\textsuperscript{88}

\textsuperscript{83} Differences between *lettres de justice* faded away. It seems that in the early decades of the sixteenth century, *inductie* or compulsory summoning of all creditors had systematically applied only for *lettres de répit*. In the 1530s, the earlier types of letters were subsumed under a new general category of ‘letters of induction’, involving mandatory summoning. For the first traces of these new letters, see *Recueil des Ordonnances des Pays-Bas*, 2nd series, vol. 3, 134-135 (s. 547 and s. 552) (princely ordinance on the procedure in the Council of Brabant, 20 March 1531 ns).

\textsuperscript{84} ACA, Privilegiekamer (hereinafter PK), 271, 299 and 312. These files contain many of such forwarded requests.

\textsuperscript{85} See for example, ACA, PK, 271, 63 and 66.

\textsuperscript{86} *Recueil des ordonnances des Pays-Bas*, 2nd series, vol. 4, Brussels, Goemaere, 1907, 328 (30 Aug. 1536).

\textsuperscript{87} D. De ruysscher, ‘Lobbyen, vleien en herinneren: vergeefs onderhandelen om privileges bij de Blijde Inkomst van Filips in Antwerpen (1549)’, *Noord-Brabants Historisch Jaarboek* 29 (2012), 64-79.

\textsuperscript{88} ACA, PK, 271, 299 and 312. Unfortunately, to my knowledge, the files that were sent to the Council of Brabant have not survived.
The materials mentioned provide insight into the profile of applicants. 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’ (‘coöpmann’, ‘marchant’), nearly all 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 modest. 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. By contrast, in the period of the 1530s and 1540s, high-flying businessmen, when seeking to hold talks with their creditors, more often did so informally, and possibly through arbiters, in any case outside or without cooperation from the municipal institutions. It seems to have been a practice for prominent merchants not to apply for lettres de justice when soliciting debt adjustment from their creditors.

The measures that were requested under the clemency proceedings 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. Exceptionally, the request and compromise stated a five-year term. 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 (‘appointment’). In every request, commissioners were solicited, sometimes by name. 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.

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. As mentioned, (active and retired) merchants rarely became aldermen, and the supervision over talks was thus mostly in the hands of patricians or gentrified members of mercantile families. 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 discrete 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. The debtor himself was usually not present at the talks, although he could give instructions to the commissioners. 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.

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89 The highest debt, which compared to the other demands was exceptionally high, was some £ 2,500 great Flemish (hereinafter 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 Platynmakkere (c. 1540) and ACA, PK, 312, 126-130 and 299, file of Jacob van Wijnrecht (1549)). For some liquidation cases in the 1520s and 1530s in which more than £ 1,500 gr. Fl. was requested, see J. Puttevils, The Ascent of Merchants from the Southern Low Countries. From Antwerp to Europe, 1480-1585, PhD dissertation, University of Antwerp 2012, 291.
90 Of the 59 files, only two were drawn up for foreign traders: ACA, PK, 271, 48, file of Arnoul de 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).
91 See the examples of negotiations in Puttevils, The Ascent of Merchants, 292-297.
93 ACA, PK, 271, 43 (s.d., c. 1544).
94 E.g., ACA, PK, 312, 5-6 (request, ap. Oct. 1540).
95 E.g., ACA, PK, 312, 28 (request, ap. 12 Oct. 1540).
96 E.g., ACA, PK, 271, 5 (Oct. 1535).
97 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.
98 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.
99 E.g., ACA, PK, 312, request and file (1536).
The tactics of creditors could differ. When confronted with invitations regarding debt adjustment, creditors faced the dilemma of accepting postponements or executing their debt through individual actions. An initial constraint to start up talks did not prevent invited creditors from attempting to cash in on their debts individually.

It seems that coalitions could be formed in favour of the debtor’s position, but also that these coalitions came about due to coercion from the municipal leaders. All thirteen files containing evidence of negotiations, except one, refer to at least one creditor not consenting to an agreement of postponed payments. Not every creditor was easy-going or convinced of potential higher returns. In those cases, the authority of the Antwerp aldermen and their commissioners imposed 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. 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. 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. If eventually all invited creditors agreed, a contract was signed.

The constraints mentioned here were no guarantee of success, which was due to inconsistencies in the coexisting proceedings. The features of the institutions allowing for talks were flawed, even to the point that they were detrimental. For example, creditors could – once they had shown up after being summoned – 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. 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 proceedings. Procedural principles, of openness of courts and concerning the right to challenge and contradict, meant that the option of starting lawsuits was not commonly blocked. If a creditor initiated proceedings 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.

Another inconsistency in the legal framework concerned the pooling of debts. As for collective expropriation in the case of bankruptcy, privileged and non-privileged debts were not treated on the same level. For privileged debts, not only debt proceedings, but even proceedings of attachment were allowed, in spite of a granted lettre de justice. Talks were mandatory, but once they had started many privileged creditors gave in on incentives to pursue their debts privately. Privileged creditors going after their debt diminished the estate of assets for the communality of creditors when recovering assets as compensation for their arrears. This explains why most of the above-mentioned files only concerned non-privileged debts. If formal and authenticated debts could not be paid, for the debtor there was no use in starting a clemency proceeding. Because these debts comprised outright collateral, the creditors for these debts could not realistically be forced into concessions. Their collateralised debt had priority in any case. 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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100 ACA, PK, 312, 9-17 (1536).
102 E.g., ACA, PK, 271, 19 (July 1535).
103 ACA, PK, 271, 43 (s.d., c. 1544).
104 ACA, PK, 312, 9-17 (1536). It is unclear what the outcome was. The advice is remarkable since a judge or court was not allowed to call an end to an ongoing proceeding, and certainly not on the basis of policy considerations.
105 For lettres de cession, see Recueil des ordonnances des Pays-Bas, 2nd series, vol. 5, Brussels, Goemaere, 1910, 56 (s. 37) (19 May 1544). For lettres de répit, this seems to have been the practice as well. See Coutumes de la ville d’Anvers, G. De Longé (ed.), vol. 4, Brussels, Gobbaerts, 1874, 430 (part 4, ch. 17, s. 14).
The lack of procedural threats also regarded payment plans that were signed by creditors. Even when an agreement had been reached, any creditor – also the non-privileged ones – 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.\footnote{This process was detailed in the 1608 Antwerp municipal law book.} In his Descrittione 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.\footnote{L. Guicciardini, La Description de tous les Pais-Bas, autrement appelés la Germanie inférieure, ou Basse Allemagne, Antwerp, Plantin, 1582, 108-109.}

The behaviour of creditors could be opportunistic in light of these holes in the institutional framework. They could easily drag a debtor into lawsuits, even while attempts to reach debt adjustment compromises were ongoing. In lawsuits of debt collection or attachment, free-riding creditors strategically denounced the debtor, in order to accrue their chance at a favourable verdict. Allegations that the debtor was ‘a bankrupt’ were common.\footnote{E.g., ACA, V, 144, fol. 18v (27 Jan. 1542 (ns)).} 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.\footnote{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.} 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.\footnote{ACA, PK, 271, 13 (1537) and ACA, PK, 271, 54 (letter of commissioners of 15 Dec. 1545).}

It seems that negotiations could be informal as well. There are examples of high-level merchants evading official proceedings by organizing talks of their own. It is possible that this reflected informal norms regarding behaviour in cases of insolvency. An argument in favour of a new inclination towards debt negotiations, at least among these elitist merchants, concerns the fact that even under accusations of fraud creditor meetings were organised. The example of John Over is a case in point. He was the governor of the English Company of Merchant Adventurers. 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 kerieys and English cloth.\footnote{Puttevils, The Ascent of Merchants, 295.} Moreover, public denouncements of bankrupts, which were common at the start of the bankruptcy proceeding since 1516, dwindled over the 1540s and 1550s.\footnote{De ruysscher, ‘Designing the limits’, 325-326.} Here again, however, free riding was happening as much in the circles of well-off merchants. Even if prosperous traders considered talks an appropriate convention, they faced the fact that deliberations with the debtor might be broken off when accusations of bankruptcy were uttered or a trial was started.

All in all, the constraints mentioned were informal and thus 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 – even when in so doing they seriously challenged the authority of the municipal government.\footnote{Unfortunately, how many persistent creditors left the negotiations and started proceedings while the talks were ongoing could not be checked, owing to lacunae in the series of judgments of the municipal court of Antwerp for the period 1533 until 1541.}
What the proceeding of re-negotiation of debts allowed, then, was buying 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. In spite of a policy of promoting negotiations pursuant to financial problems or bankruptcy, liquidation was the proceeding that remained the easiest to prosecute. The only collectivisation 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.114

Conclusion

By 1540, the result of legal innovations that had taken place in Antwerp over the fifteenth and sixteenth centuries in matters of debt enforcement was a number of juxtaposed and non-harmonised debt collection proceedings. This situation opened up possibilities for opportunistic behaviour on the part of creditors, and a selective use of some proceedings by different groups. The leeway for free-riding attitudes had the effect of continuing the individual approaches of debt collection that had existed ever since the early fifteenth century. In essence, all this was caused by uncertainty among Antwerp municipal leaders as to which remedy to impose on the Antwerp market, exacerbated as well by a tradition of incremental change of formal rules through interpretation. Shocks and state formation processes with a prince pursuing his own agenda had an influence, but seem to have been less fundamental. The aldermen had the agency to pursue and impose change, but instead reluctance, long deliberation and ambivalence marked the attitudes of the municipal government. It was only around 1550 that plans were made to unify Antwerp municipal law, when coherent compilations of official rules were assembled.

That is not to say that legal reform could not have an effect, also in terms of growth, but rather that linking the economic boom of Antwerp to, and explaining it on the basis of, its political economy is too far a stretch. As has been shown, detailed analysis of the three changes in debt collection regime (1450-1490, 1516 and 1510-1536) yields combinations of causes and factors. In all of them the municipal government had a crucial part, but – in contrast to what some authors claim – the aldermen were far from capable interpreters of economic conditions and challenges. These deficiencies are evident in the time lags between market changes and the implementing of new rules, in the inconsistencies of proceedings in the second quarter of the sixteenth century (in spite of free-riding behaviour of creditors), and in the diversity of solutions among cities across the Low Countries where international commerce thrived. Path dependence did not follow on from political lock-ins or competing coalitions or organisations of merchants. The agency in determining the legal solutions lay with the aldermen; they consulted merchants, but since merchants’ opinions varied, decision-making was ultimately in the aldermen’s hands. Mercantile usage and ideas could be taken on as elements, as could fragments from within the body of academic legal literature. None of these sources, though, were sufficient and consistent enough to provide lasting blueprints. The Antwerp magistracy had to do it all by itself, and that is also why innovation in formal institutions took time. The Antwerp case examined here clearly argues for being more circumspect in terms of deducing institutional efficiency from economic success. Responses to changing market conditions may have been more hesitant, open-ended and contingent than is often thought; further, the attractiveness of trading towns was less likely due to law and institutions.115 In these respects, then, detailed scrutiny of processes of change, as well as comparative approaches, provides better methods for such investigations into the role institutions may, or may not, have played within any given political economy.
