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*The emergence of a municipal legal culture of insolvency (Low Countries, c. 1450-c. 1570)**

1. Introduction

The history of insolvency regulations and proceedings in the Low Countries is only in part a story of the reception of Italian examples. In the fourteenth and fifteenth centuries, local traditions of debt enforcement existed which preceded the academic and Italian influences that arrived in the late 1400s. Legal agency on the matter resided mostly at the level of the jurisdiction of cities and villages, and – to some extent – the princely councils. Provincial princely courts were involved with insolvency matters from around the middle of the fifteenth century, but their role remained exceptional until approximately 1500. This paper analyzes developments in five cities (Leiden, Amsterdam, Antwerp, Bruges and Mechelen), and the principalities of which they were part (the counties of Holland and Flanders, as well as the duchy of Brabant).[1] It will be demonstrated that collective proceedings of debt enforcement were for a long time exceptional and that rules on pledge, debt enforcement and insolvency were highly interconnected. When collective proceedings became more usual, after 1500, idiosyncrasy in legal regimes remained. From the early sixteenth century onward, princely legislation resulted in harmonization of some degree, rendering some of the older solutions obsolete. However, many of the earlier approaches could persist. For the fifteenth and early sixteenth centuries, even with divergence remaining, in the towns mentioned a municipal legal culture involving proceedings against insolvent defaulters developed. This legal culture was mostly connected to cultural ideas, which marked a base line for rules and proceedings; economic factors mattered but were less important in these changes.

2. Collateral, enforcement of debts and collective proceedings against defaulters in the late Middle Ages

In the nineteenth and early twentieth century, legal historians considered that debt enforcement in the High and Late Middle Ages commonly implied the seizure

* This chapter was written with the support of ERC (ERC Starting Grant CLLS, no. 714759).

[1] Mechelen was a principality of its own, consisting of the city and the *district*, a *contado* of several villages.

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Referee List (DOI 10.36253/fup_referee_list)
FUP Best Practice in Scholarly Publishing (DOI 10.36253/fup_best_practice)

Dave De Ruysscher, *The emergence of a municipal legal culture of insolvency (Low Countries, c. 1450-c. 1570)*, © Author(s), CC BY 4.0, DOI 10.36253/979-12-215-0963-2.09, in Angela Orlandi (edited by), *Gestione del rischio, insolvenza e bancarotta nel mondo premoderno (secc. XIII-XVIII) / Risk management, insolvency, and bankruptcy in the pre-modern world (13th-18th centuries)*, pp. 107-131, 2026, published by Firenze University Press, ISBN 979-12-215-0963-2, DOI 10.36253/979-12-215-0963-2

of assets. Enforcement against the person of the debtor, by way of imprisonment, was exceptional. Hans Planitz (1954) proposed a theory that distinguished between *Acht* and *Fehde*. The former was an official criminal proceeding, directed against a persistent defaulter, who was considered *friedlos*. Default on a formalized debt was deemed a crime, resulting in the *Friedlösigkeit* of the debtor; the proceeding of *Acht* brought about the debtor's arrest and imprisonment. Enforcement on the person in the case of «peacelessness» was a sequestration on behalf of the public authorities rather than a private action. The taking of assets of the imprisoned «peaceless» person was a confiscation. By contrast, according to Planitz (1905; 1913-1918; 1954), *Fehde* was a private action; it entailed the taking of a pawn for a debt that had remained unpaid. *Acht* was the oldest proceeding, *Fehde* came later and had a more restricted scope. It only applied to goods, not to immovable property, for example, and did not strip the debtor of property rights in the goods that were taken as pawn.[2]

According to Planitz, enforcement on the person was not considered a regular, or private affair, whereas assets were thought of as being easily accessible to creditors. With a proceeding of *Fehde*, assets were locked to force the debtor to seek guarantors or loans to satisfy the creditor. *Fehde* was preservatory rather than executory; its goal was not to have the debtor's estate sold publicly but to pressure the debtor to pay.

In addition, Planitz (1905, 176-96) stressed that abscondence because of insolvency (*fuga debitis*) was a situation that triggered the application of «relative» *Friedlösigkeit*, which resulted in the debtor's loss of ownership of the goods that were left behind. Debtors, having fled or with the intention to do so, were deemed forfeited of their property rights and debtors' goods could therefore be seized and sold to compensate the creditors' debts. According to this perspective, *fuga debitis* allowed creditors to organize a public sale of an absconded debtor's estate, which typically was not an option for them. The «peacelessness» that was caused by the debtor's flight provided the legal basis for the expropriation of the debtor's goods.

These views have only quite recently been challenged, in research on France and the Low Countries (Claustre 2005; Cremers 2017). It seems that the ideas of Planitz were largely reflecting nineteenth-century conditions. In the 1800s, the rule of generalized collateral was applied throughout Western Europe. Creditors had access to all goods of their debtors, which they could seize to force them to pay. The idea that debtors silently pledged all their assets for the payment of their debts originated in Roman law. It had become part of the medieval *ius commune* and the codifications of the eighteenth and nineteenth centuries. The rule of generalized collateral was combined with lenient procedural rules of seizure of goods.[3]

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[2] The same views, projected onto source texts from medieval Holland, can be found in Rintelen 1908, 25-43.

[3] This practice went back to the praetorian proceeding of *missio in bona*. A praetorian decree ordered the fixation of all assets of a debtor, which were thereupon sold publicly for the benefit of all the debtor's creditors. Creditors not having securities were summoned and treated equally. They were paid rateably, according to how much the auction yielded, and received a portion of the proceeds that corresponded to a percentage of their debt (Buckland 2011, 387-388, 411-413). The rule of generalized collateral can be found, for example, in the French Civil Code (art. 2284) and the Spanish Civil code of 1885 (art. 1911). Planitz was probably influenced by the Prussian *Allgemeine Gerichtsordnung* of 1791 (ch. 50 § 33),

However, in the medieval Low Countries, the academic tradition that was based on Roman law was received only after approximately 1450. Over the past years, it has been shown that in the fourteenth and early fifteenth centuries movable assets and the person of the debtor were commonly pledged in combination in contracts, and that in regulations of debt enforcement proceedings both were often linked as well. Thiébald Cremers (2017, 278-80) has demonstrated that in the thirteenth century, in the county of Flanders, imprisonment for debt was a prerequisite to lay seizure on the debtor's goods. Imprisonment was either an executory measure (that is, when it was based on a verdict of the local judges and the order to pay mentioned in it had not been followed), or a preservatory measure. In the latter case, imprisonment and the concomitant seizure of goods were allowed without a supportive judgment and with proof of the debt only. However, these preservatory proceedings were only possible against non-citizens and those who had fled or were on the verge of fleeing the jurisdiction. Most municipal town laws of the 1200s limited the use of enforcement proceedings to officially acknowledged debts (that is, registered in a judgment or official certificate), and allowed enforcement of unregistered debts only following a proceeding of verification of the debt (Rintelen 1908, 31).

From the thirteenth century forwards, both in France and the Low Countries, the pledging of oneself became a contractual practice. Julie Claustre (2005, 243-66) has pointed out that in fourteenth-century France «assets and person» were often pledged in combination. This phenomenon resulted in imprisonment becoming a regular proceeding of enforcement for unregistered debts (Cremers 2017, 288-92). All the above directly challenges Planitz' idea that only in criminal proceedings the debtors could be imprisoned. It seems that judgments on debt and, later also, evidence of unpaid debts, sufficed to have debtors arrested and imprisoned. Moreover, imprisonment and seizure of assets were often combined, also when it came to private actions of debt enforcement.

In thirteenth-century Holland, similar rules applied. «Execution on the person» was a default proceeding of enforcement of debts. At Haarlem, in 1245 it was imposed that a debtor could be imprisoned in the town's prison. After being held for some time, the debtor was handed over to the creditor who had solicited the imprisonment (Hoogewerf 2001, 13-14; Rintelen 1908, 25-26). The subsequent private detention had to be organized in consideration of the well-being of the debtor: the imprisoned debtor had to receive sufficient food and drinks (Rintelen 1908, 25-26). In the fourteenth century the practice of *leisting* became usual in the county of Holland. Debtors commonly stipulated that in the case of non-payment they would take residence at an inn until the payment was made or additional guarantors were found (De Blécourt and Fischer 1950, 281-82; Dijkman 2011, 258). At Amsterdam, a debtor was summoned in *gijzeling* by an official of the city; he was invited to go to a certain inn within twenty-four hours. If the debtor did not show up in time, he was imprisoned in the criminal prison of Amsterdam (the «*boeyen*»). In

which spoke of a «*allgemeines Pfandrecht*» (a general right of collateral) in the debtor's estate to the benefit of the latter's creditors.

the later decades of the seventeenth century, in Amsterdam some inns were still well-known for their *gijzelkamers* (chambers for *gijzeling*) (Hell 2017, 269-70).

In the county of Flanders, private imprisonment had been forbidden in Bruges by 1304. However, imprisonment in the public prison was, then and thereafter, the normal method of enforcing debts, even in the fifteenth century (see further below). In the fourteenth century private imprisonment remained normal practice in many Flemish towns (Lille, Camphin-en-Pévèle, also in Cambrai) (Cremers 2017, 290). The taking of debtors as hostage has for a long time been considered a remnant of Germanic principle of self-help. However, it is more likely that the practice developed from the late thirteenth century forwards, in tandem with the obligation to bring captured debtors to the public prison of the town. Since the costs of imprisonment had to be advanced by the creditor seeking the debtor's imprisonment, it was accepted that after some time in the public prison the creditor could continue the detention of the debtor in private confinement.[4]

In the 1200s and early 1300s, Roman law already had some influence, mostly through canon law and ecclesiastical sources. In some municipal regulations it was imposed that enforcement on the person was only allowed if insufficient assets were found with the debtor.[5] This referred to rules of Roman law, which since the late Republic had preferred the seizure and public sale of goods and had stipulated that any imprisoned debtor had to be released from prison when all assets were handed over to the creditors (*cessio bonorum*) (Buckland 2011, 388, 392). As was mentioned higher, such proceedings were collective; all creditors were summoned to receive compensation. An early example of a collective proceeding can be found in the *Livre Roisin* of Lille (dating 1286) (Cremers 2017, 287). However, in the periods mentioned, in the bylaws of towns rules that had roots in Roman law were still very exceptional.

In all five cities studied here, the private proceeding of having assets of a debtor seized was an individual proceeding up until the middle of the 1400s. There was no general rule to summon all creditors of an insolvent debtor and make sure that all were given the opportunity to recover a part of their debts. If public summons were issued, for example regarding insolvent money changers, it was a political decision (De Roover 1948, 332-33). These approaches persisted in most towns of the Low Countries until the early sixteenth century, even in cities that were visited by foreign merchants such as Antwerp and Bruges. However, even though collective proceedings were not a part of cities' private law, insolvency was known, and abscondence by debtors, who run from their creditors. Abscondence was condemned in fourteenth- and fifteenth-century municipal ordinances, proclaiming the loss of citizenship and residency rights for those who did not return to confront their creditors (De Longé 1874, 2-89; Breen 1902, 524). Declarative judgments, imposing the banishment of fled debtors, served to inform market players of the collapse of the debtor's business.[6]

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[4] The teleological perspective, from private to public imprisonment, is still dominant in recent literature. See, for example, Dunbabin 2002.

[5] For example in Dordrecht in 1252 (Rintelen 1908, 29-30).

[6] For example, State Archives Ghent, *Chartes de Saint Genois*, 903.

The situation mentioned followed from institutional path dependence. Two principles were more important than collective debt enforcement through seizure. One was the connection between land rights and seignorial jurisdiction. The second one, the idea that debts had to be «warranted» by officials in order to be considered legitimate. Both principles were connected when it came to the sale of land and estates. But also when movable goods were at stake, the rule that forceful payment of debts was only possible when the debts had been 'known' by the local judges was important.[7]

In the High Middle Ages, the transfer of property rights pertained to seignorial jurisdiction. The emphasis was on transactions of immovable property. Therefore, impounding the movable properties of debtors was not a standard proceeding. In the thirteenth century, all over Western Europe, the idea lived that property-related disputes (that is, related to immovable property) were «king's pleas». In thirteenth-century Antwerp, disputes on land were brought before the *Vierschaar*, the municipal court. The municipal judges (*scabini*) and the duke's official, the *écoutète* (*scultetus*), gathered in the churchyard of St Walburga, the church within the walls of the Antwerp Fort. The proceedings and the pronunciations of verdicts were done in the open. This feature was a remnant of the older *placitum generale*. The Carolingian *placitum generale* was an assembly of freemen, which was chaired by the king or his *comes*. This assembly court provided the opportunity for anyone to present grievances on trespass, use and conveyances of land and estates. The chair heard the complaints. Thereafter, advisors (*scabini*) spoke about possible solutions. The chair then rendered a ruling to which the court agreed.[8]

In the 1300s, the Antwerp *Vierschaar* confirmed transactions of immovable property and expropriations of land and houses following seizure three times a year, which had been the rhythm of the older *placita generalia*. Public sale of seized assets was called *panding*. It was only possible for debts that had been registered in aldermen's letters or for non-registered debts that had received confirmation after verification by the *scabini* («Het 2e oudt register» 1438-1459, 28-29). Initially, seizure and expropriation of goods was exceptional. In fifteenth-century Leiden, similar rules applied. In addition, *panding* was possible on the movables of strangers, but only for creditors having certificates or judgments of the debts. Even in the event of insolvency, when debtors ran off and left their estate in disarray, the mentioned distinction between ratified and special debts on the one hand and non-ratified debts on the other was maintained (Blok 1900, 273; Planitz 1913-1918, 130).

In the fourteenth and fifteenth centuries, in several cities in Holland the enforcement of non-ratified debts was done by way of a proceeding called *thoonpand*. The debtor received a notice from the creditor and was invited to choose («*aennysen*») a tangible item that was handed over or locked until the payment of the debt.[9] It was

[7] In medieval Dutch, *kentnis* or *kennis* were terms used for an aldermen's certificate. These terms pointed to *kennen* (knowing), which also had the connotations of acknowledging and communicating publicly.

[8] The existing literature on *placita generalia* in Brabant is rather limited and outdated. See for example Behets 1971, 385-386, 402; Byl 1965, 154-167; Poullet 1867, 12-15, 40-41.

[9] In the sixteenth century, the expression «the debtor who does not offer an asset» («*die geen goed (aen)wyst*»), which then referred to a debtor not having assets, was a remnant of this rule. See for example

not required that this securing of pledge had been agreed between the creditor and the debtor beforehand. However, initially, the creditor had to seek co-operation from the city's official, who assisted the creditor at the summoning of the pledge. No court proceedings were started; when the debtor refused to indicate an item of pledge, the creditor could only resort to the imprisonment of the debtor.

Thoonpand served to avoid the proceeding of *panding*. *Panding* was the executory debt enforcement proceeding for officially ratified debts; it was also used when the creditor aimed to have a pawn publicly sold. However, since *panding* was organized only a few times each year (Blok 1900, 323-24; Hamaker 1887, 24-25; Huizinga 1911, 153-54) *thoonpand* often was opted for even by creditors with ratified contracts.

The form of the agreement was highly relevant in regard of the enforcement of pledges and debts. Proof of the local government's ratification of the debt or pledge and of the expiry of the debt was deemed necessary to start *panding* proceedings. Debtors were considered directly liable with their assets only for ratified debts and pledges. Exceptionally, the same applied for some special – even non-ratified – debts that were defined in local bylaws, such as debts out of lease or salaries (De Blécourt, Fischer 1950, 263; Fockema Andreae 1907, 103-04).[10] *Thoonpand* was most suited for creditors with privately written or oral debts. However, the assistance of municipal officials at the summoning of the debtor did not replace the requirement of verification. If the creditor wanted to have the designated asset sold, because the debtor did not pay, it was required that first verification proceedings were initiated. With the judgment that was its outcome *panding* could be started and, thereafter, the public sale.

Therefore, when further considering Planitz' assessments, it is evident that some of his ideas are corroborated by the historical materials. Imprisoning a defaulter was possible and it impacted the assets of the debtor as well. Planitz had acknowledged this as part of the *Acht* proceeding, and – outside the criminal context – in reference to abscondence. However, Planitz considered public authority as more important than the historical data suggest. In the thirteenth and fourteenth centuries, imprisonment was a private affair, which was initiated without allegations of crimes or *Friedlösigkeit*.[11] Moreover, it seems that when the debtor absconded from the creditors or was on the verge of flight, the above-mentioned restrictions on seizure were initially not lifted. There are several examples of city administrators granting authorization to have collective proceedings of seizure against the estate of absconded debtors. These authorizations only involved official debts, not privately written or informal ones (for example, «Oudt Register», 1437, 144-46).

Soutendam 1870, 38 (art. 2), and 43 (art. 12). The notion of *thoonpand* was not used in the seventeenth-century Republic, but was common in the sixteenth-century Southern Low Countries. Rather, the common expression was «*pand (aen)wijsen*». See for example Rintelen 1908, 34.

[10] See for some examples of municipal bylaws from a later period stating that only ratified debts and special unratified debts of lease can be enforced through *panding* proceedings (Blok 1900, 103; Breen 1902, 12; Heeringa 1911, 96-98; Soutendam 1870, 15-16).

[11] Planitz' ideas were criticized by some of his contemporaries. In nineteenth- and early twentieth-century German legal-historical literature seizure and debt enforcement were amply studied. See, for example, Kisch 1913; Wach 1868. See for an overview of the literature: Amend-Traut 2008. The connections with insolvency were analyzed as well (Kohler 1891; Seuffert 1888).

3. Changes in the 1400s

Besides *thoonpand*, imprisonment remained the most feasible alternative to the lengthy *panding*. This method of debt enforcement changed thoroughly in the period between c. 1450 and c. 1550. In the fifteenth century, it remained possible to have a defaulting debtor incarcerated to pressure him/her and the debtor's network, even if no *panding* or other executory proceeding had been started (Hamaker 1887, 26-27), and for non-ratified debts, as well. Because of the low-set requirements for its application, imprisonment was a normal tactic to steer debtors towards payment. When being incarcerated, debtors were forced to seek help from relatives and within their network to regain their liberty as soon as possible. Occasionally loans made for release payments are mentioned in the registers of Antwerp *schepenbrieven*.[12] Moreover, imprisonment for debt granted access to the debtor's assets when the debt was non-ratified. The debtor was then forced to hand over assets or sign contracts that secured the creditor's debt.

There are indications that imprisonment for debts became practised more after around 1450. In the sources, examples of abscondence by debtors became more prominent from this time onwards (Godding 1999, 293).[13] However, imprisonment was not merely a safety measure, aimed at preventing the debtor's flight. In the second half of the fifteenth century, it became more common that creditors were unable to judge whether the debtor had sufficient goods to pay for the debts outstanding. In Antwerp and Bruges in this period titles of ownership in goods were often swapped from one party to the next without a formal transfer of the merchandise.[14] This meant that even when debtors had assets at their disposal, in their possession, they could pertain in ownership to someone else. As a result, it became more difficult for creditors to gauge the creditworthiness of their debtors. Initially, this situation incited strict legislation, which sought to deter debtors from hiding assets and declaring insolvency.

In Amsterdam, a so-called *eigening van schulden* («self-appropriation of debts») was organized. If a creditor arrested a debtor, and no payments followed, the debtor was brought before the Amsterdam City Court. If no additional assets, funds or pledges were found at that stage, the debtor was brought outside to the Dam Square where the Court was located. The debtor was guided to a «circle, paved with the coat of arms of the city». The bailiff, representing the count, took the debtor three times round the circle, upon which the debtor's citizenship was forfeited. Afterwards the debtor was jailed in the town prison (Barels 1780, 146-148; Van Hall 1838, 201-02). At Leiden, a similar proceeding existed: insolvent debtors-citizen were brought to the «blue stone», in a ceremony that took away citizen rights (Barels 1780, 146; Orlers 1781, 31; Van Hall 1838, 202-03).

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12 Antwerp City Archives (ACA), *Schepenregisters* (SR), 102, fol. 129v-130r.

13 Bruges City Archives (BCA), *Civiele Sententiën*, 157, fol. 17v; ACA, SR, 57, fol. 248v.

14 This was common practice in inns. See for example, General Archives of the State Brussels (GAS), Council of Brabant, *Griffies,* 550, fol. 77r-83v. Here a package of velvet was delivered to the inn of the buyer, in a closed chest; the key was later handed over to a new buyer.

Before bringing debtors to prison, creditors had to have a good insight into their networks and the composition of their estate. The ultimate benefit of having a debtor imprisoned depended heavily on these factors. Creditors had to take costs of imprisonment, potential proceeds from a public sale of the debtor's effects (if there were any), and procedural obstruction into consideration. If the creditor judged that the debtor had few arguments to oppose the enforcement of the debt and the imprisonment and, at the same time, had sufficient assets, then the action was worthwhile. However, if a debtor continued to deny the debt or refuse to appoint guarantors, creditors could be dragged into a situation in which they had to release the debtor. As was mentioned, it happened more frequently from the late fifteenth century that it was found out after imprisonment that the debtor did not have assets.

In the latter circumstances, creditors could be harsh towards their debtors. They could keep them in prison for long consecutive periods. Therefore, in the late 1400s, many cities put limits to the duration of imprisonment. In Antwerp and other Brabantine cities, a deadline of six weeks applied. If debtors had been in the town prison for forty days (Strubbe 1950, 150 and 167; Van der Tannerijen 1952, 262),[15] they had the right to demand being set free. This request was granted on the condition that all rights of ownership to the belongings were given to the creditors. In Antwerp, this transfer was made in a public performance, at the *Vierschaar*, in which prisoners declared under oath that they had not hidden parts of their estate from their creditors. The purpose of this ceremony was to grant creditors access to the debtor's goods. The goods concerned in this public ritual could also be assets that could not be found in the debtor's premises. They could be owned by the debtor but stored elsewhere or received from relatives or friends. In 1474-1476, in Antwerp, the ceremony mentioned was referred to as «showing the tail of one's coat» («*zijn slippe presenteren*»). Debtors had to bend over and show their behind to the audience in a public session of the City Court, as a defamatory ritual (Van der Tannerijen 1952, 262-263). In Mechelen, at the end of the fifteenth century, the formal transfer of assets to creditors in order to be liberated from the public prison was called «abandonment».[16] This ritual, as well as the one held in Antwerp, brought about a loss of citizenship (De Longé 1874, 370; Maes 1960, 158)

Similar situations arrived when merchants passed away. In the late 1400s, the *beneficium inventarii* came to be applied, first in Flanders and Brabant and some time later in Holland.[17] This was a privilege for heirs: they could petition the provincial princely court to have an inventory drawn up of the estate of the deceased before

[15] ACA, *Privilegiekamer* (PK), 1371, bylaw of 22 Febr. 1438 ns (stipulating that imprisonments of »foreigners« had to last six weeks; therefrom the rule emerged that imprisoned debtors had the right to propose forfeiture of their goods in exchange for release from prison).

[16] The 1535 *costuymen* (i.e., the compilation of municipal law) defines »*cessie*« (see further) with the notion of »*abandonneren*«. In the 1527 draft version of the Mechelen *costuymen*, this concept had pointed to the practice of refusing an inheritance. See Maes 1960, 89 (art. 462), 158 (ch. 21, art. 3).

[17] The *beneficium* is mentioned in the works of the Ghent jurist Philip Wielant (dating *c.* 1508-*c.* 1519) and in Van der Tannerijen 1952 (Van der Tannerijen had been secretary of the city of Antwerp in 1456-1465; he wrote this *Boec* in 1474-1476); ACA, *Vierschaar* (V), 2, art. 33 (dating before 1511). In Holland the *beneficium inventarii* was introduced with a princely law of 1531 and further detailed in a law of 20 Oct. 1541 (Vorsterman 1531, art. 229; Recueil des Ordonnances des Pays-Bas 1506-1700, 328).

deciding whether to accept or reject the inheritance. As was mentioned, it was not always clear which goods belonged to the estate and whether sufficient assets and claims were available to cover the debts. The order of the princely court (*mandement*) granting the *beneficium* went together with the appointing of a curator. For inheritances that were refused by the widow, because they were too burdened with debts, it was normal practice that publicity was given to that act. At Schiedam and Leiden, the widow «went before the bier»; she went ahead of the funeral procession (Heeringa 1911, 112) (Keuren Leiden 1657, 123). Quite typically, a curator was appointed in that case (Heeringa 1911, 112, Keuren Leiden 1657, 123). In Mechelen, there was a clear connection between the situation of a widow rejecting the indebted inheritance of her husband and a debtor «abandoning» goods to be released from prison. Widows in these circumstances «threw the key» of the family house on the husband's grave, thus showing to the community that she was not liable for the debts of her deceased partner (Maes 1960, 88-89; Den Hollander 2023, 282-283).

From the middle of the fifteenth century onwards, in many European cities, the principles regarding expropriation, collateral and seizure changed. Executory proceedings became possible for all debts, irrespective of their form and contents. In the middle of the 1400s, municipal aldermen of towns in Holland still often considered debts in notarial deeds and private contracts as being unofficial because they had not been ratified (Blok 1900, 126).[18] Graduallly, non-ratified debts were considered as sufficient to start a proceeding of *panding*. In Antwerp, this development happened in the 1510s and 1520s. An Amsterdam *turbe* of 1562 stated that any certificate of the aldermen, referring to an expired debt, had priority over informal and notarial debts. Yet also, at the same time, this *turbe* shows that creditors with notarial deeds and private agreements could be involved in proceedings of *panding*, even though creditors having aldermen's certificates were given priority (Willekeuren Amsterdam 1624, 100).

Over the course of the sixteenth century, when the notarial deed gained popularity as debt instrument, notaries were more commonly controlled by city governments. In 1565 the city of Amsterdam imposed a *numerus clausus* on notaries, appointing only five (Willekeuren Amsterdam 1597, 145-146). The same system of five city notaries was applied in Leiden since 1577 (Hamaker 1887, 444-445). By contrast, Antwerp had a more liberal regime. At any moment in the period between 1480 and 1520 around twenty-five notaries could be found in that city (Oosterbosch 1992, 411). In the 1520s, there were around forty Antwerp notaries (Oosterbosch 1995, 94). After the opening of the new Bourse building in 1531-1532, several notaries opened an office in its vicinity. From the 1540s onwards, they defined themselves as «notaries of the Bourse» (Goris 1925, 93; Oosterbosch 1995, 92),[19] which was not an official title, but referred rather to their expertise in the drafting of mercantile contracts and documents. Slowly the Antwerp example was copied

[18] However, in 1421 in Leiden it had been decided that *obligatiën* (private, non-ratified acknowledgments of debts) of English merchants were to be considered as having the same value as ratified debts (Hamaker 1887, 202-203 (art. 37)). This was made into a general rule only in 1508, when it became possible to use all kinds of »letters« and witness reports as proof before the Leiden City Court (Hamaker 1887, 326).

[19] ACA, *Processen*, 240, notarial deed of 17 Febr. 1552 ns.

elsewhere. In 1591 there were already twenty licensed Amsterdam notaries (Willekeuren Amsterdam 1597, 146).

In those towns where *thoonpand* remained in use, it became a preservatory seizure proceeding devised for debts in private, non-ratified documents, whereas the regular *panding* was to be applied for the public sale of assets and immovable property. The older distinctions became blurred (yet, preservatory arrest on the person remained exceptional). The widening of the scope of the *panding* proceeding often meant that *thoonpand* became an introductory proceeding of *panding*, thus replacing the verification proceeding that had existed before (Planitz 1905, 267-68).[20]

In the second half of the sixteenth century, in Holland *panding* was split into two different proceedings, namely, *executie* and *arrest*. This was most probably influenced by the procedural regulations of the Court of Holland, which reflected academic influences. For the German territories, it has been found out that due to the infiltration of legal scholarly writings at the end of the fifteenth century a distinction was made between executory and preservatory seizure. This change was due to an influence of Italian examples, found in legal doctrine or otherwise (Wach 1868). With the broadening of collateral rights mentioned, the entry requirements for seizure were lowered.

One of the consequences of the widespread use of seizure proceedings, used as pressuring tools, was a reinforcement of debtors' rights. City governments imposed rules against unjust seizure. In Leiden, in the second quarter of the fifteenth century a proceeding known as *pandkeering* came into existence. Leiden was early in generalizing the scope of seizure. Initially, only *panding* existed, which was an executory proceeding for ratified debts (Blok 1900, 148). Around the middle of the fifteenth century, it was acknowledged that creditors could lay *besetting* or *becommering* on goods of their debtors, and for small amounts, stemming from informal debts (Blok 1900, 143-44, 167 and 220). This innovation preceded similar changes in Antwerp and Amsterdam by more than half a century.

In Amsterdam, the debtor's contestation of seizure of assets was called *schutting* (Amsterdamsche secretarye 1726, 128-29). In Antwerp, any arrest (on both goods and person) was brought before the City Court within three days, where the arresting creditor had to advance the reasons for his action. Proceedings of *pandkeering* could be abused as well. In Amsterdam, it was decided that *pandkeering* could only be granted to the debtor if the latter provided guarantors (Breen 1902, 467-68).

The abovementioned developments influenced other proceedings and contractual practice, too. For example, imprisonment became a subsidiary executory remedy, for when there were no assets that could be sequestrated (Instructie, art. 124)[21] Now the rule of Roman law that execution on the person could only apply in

[20] In Leyden, *thoonpand* was known in the early fifteenth century, but disappeared afterwards. See Hamaker 1887, 480. In some towns, a distinction was made between a regular *besetting* and a »simple« *besetting*. The latter had most probably evolved out of *thoonpand*. It entailed the locking of assets but without preliminary consent from the city government. However, it differed from *thoonpand* in that subsequent authorization was required in any case (Telting 1901, 377).

[21] Only when a judgment of the Court of Holland concerned an obligation to do something, *gijzeling* was the normal method of enforcement of the judgment. This was not imprisonment, but rather

case of insufficient goods came to apply fully. It remained possible to have a debtor for public debts (penalties, taxes) imprisoned right away, even with assets available, but this became categorized as a punishment (Rintelen 1908, 66-74). In creditor-debtor relations, imprisonment was possible only after seizure of goods had been laid. As a result, imprisonment became more punitive again; it served no longer to gain access to goods, but rather to force the debtor to seek additional funds, imposing shame at the same time. Under the influence of Roman law, the older practices of *abandonment* and *eigening*, which had imposed public shame on a debtor without assets, when being released from prison, were mitigated. For example, they did no longer result in a loss of citizenship (Zambrana Moral 2001, 154-55). Towns struggled to keep their defamatory rituals against princely councils imposing rules that did no longer culpabilize insolvency (see further, below).

The generalization of seizure resulted in the further lowering of requirements. At first, the claimant at a seizure proceeding had to evidence an agreement on, or a clause of, collateral. Throughout the late Middle Ages in Holland provisions of pledge became more commonly stipulated in contracts. Clauses of general collateral, «on all assets present and future», were frequently used in the first decades of the fifteenth century, in ratified annuity contracts (Zuijderduijn 2009, 217) and in ratified acknowledgments of debt (Pos 1971, 129-30). In Antwerp, by around 1520, no absolute title of ownership, or a ratified debt, was required for the creditor to lock the debtor's assets in case of his default. All proof of a debt, which could be evidenced with any document (letter, bill, account book), was accepted. Amsterdam followed suit over the course of the sixteenth century. In 1656, an Amsterdam bylaw on procedure re-stated the older rule that seizure could be laid on the basis of «public or liquid» instruments, the latter including *obligaties* (i.e. acknowledgments of debt to bearer, bearer bonds) and bills of exchange (*wisselbrieven*) (Noordkerk 1747, 501; Ordonnantie der stadt Amsterdam 1656, 42-43).[22]

A mounting popularity of provisions of collateral alone does not explain the changes mentioned above. The generalization of seizure proceedings came rather late. Only in Leiden in the middle of the 1400s, it was possible to lay seizure on non-ratified debts, without preliminary authorization of the town administrators and without a clause or agreement of collateral. In Amsterdam, Antwerp, Bruges and Mechelen it was not legally possible around that time. Changes were more dynamic, happening in interactions between academic views, contractual practice and economic developments. For example, from around the middle of the fifteenth century, more cases of absconded debtors came to the fore. This happened throughout the Low Countries and was most probably caused by changing economic conditions. In the late 1450s and in the 1460s inflation rose, due to monetary policies. Leiden by that time already had opened its seizure proceedings. A clear connection between the changes mentioned and these economic conditions, or growth in other periods, is absent. Leiden grew more important until 1520; Antwerp had been a hub for foreign merchants since the 1430s and saw fundamental changes to its seizure

compulsory presence at an inn during a certain period of time (Van Apeldoorn 1938, 132-33) (dating between *c.* 1550 and *c.* 1570).

[22] This was repeated in a 1663 *turbe*, as well as in a new bylaw of 1779.

proceedings only in the 1490s. Academic views mattered but they did not trickle in everywhere at the same time. Towns could provide examples (the Antwerp example was important for Amsterdam), but – as will be explained in the next paragraph – idiosyncratic choices and path dependence were not exceptional either.

4. Differences between towns

The mounted importance of seizure in nearly all the cities mentioned near the end of the fifteenth century was first combined with a «first come, first served» policy. The first seizing creditor, not having any negotiated security or official debt instrument, was given priority over creditors that laid seizure later. For secured creditors, the oldest debt had priority. There were no exceptions to these rules: even if the debtor had run off, or when the creditors seized an insolvent inheritance estate, burdened with other debts, the priority for the first seizing creditor applied.[23]

However, developments in the seizure proceedings of the cities under study here were far from similar. As was mentioned, Leiden was early in allowing general seizure also for non-ratified debts. By contrast, in Bruges and Mechelen, imprisonment remained the default proceeding of debt enforcement, and the rule continued to apply until the early 1500s that an imprisoned debtor could not be pursued for another debt until the imprisoning creditor had been paid (Maes 1960, 21; Gilliodts-van Severen 1875, 314-15). Moreover, in both Bruges and Mechelen, the older distinction between ratified and non-ratified debts persisted. For non-ratified debts, in principle seizure was only possible following a judgment of the City Court. The compilation of Bruges municipal law of 1619 (the so-called *costuymen*) still contained the rule that seizure for a debt that was «*ongewysd*» (not judged) was only possible if the debtor was a non-citizen and there was fear of the latter's abscondence. However, a clause of «seignorial execution» (*heerelicke executie*) in a privately written debt sufficed to meet the requirement of ratification (Gilliodts-van Severen 1875, 72-74).

In Antwerp and Leiden, from the early 1500s forwards, imprisonment became less practised because of the lowered entry requirements for seizure. At Antwerp, the older concept of the 'freedom of the fairs', which had prohibited seizure of goods and arrest of persons during the span of the fairs, was hollowed out and by approximately 1520 largely abolished.[24] Therefore, also during the Whitsun- and Bamis fairs it became possible to lock merchandise of merchants who had come to the fairs. No exceptions were made for citizens or residents. They were only protected against arrest and imprisonment, not against seizure of goods.[25]

Starting from the 1510s, authorities of the five cities analyzed here started imposing a sharing of risk among creditors of an insolvent debtor. This happened in many regions of continental Europe North of the Alps from the early 1400s onwards (Fischer 2013, 176-77; Hellmann 1905 40-53). In 1510, the Parisian *coutume* provided for the first time that the «first come, first serve» rule did not apply in the case of

[23] ACA, V, 68, fol. 12v (around 1508).

[24] ACA, V, 2, art. 141; ACA, V, 68, fol. 62v-64r (*c.* 1526).

[25] GAS, *Papieren van State en Audiëntie*, 1191/41, no. 34 (ch. 17, art. 5).

déconfiture. *Déconfiture* consisted of a shortage of funds that was attested when more than one creditor sued for debt (Oliver-Martin 1922, 590).[26] In the Low Countries, this phenomenon of pooling of debts in case of insolvency was exacerbated by the crisis of the period roughly between 1518 and 1530.

In sixteenth-century Holland cities, the proceeds of the public sale of an insolvent's assets were distributed first according to the *prior tempore* rule, for aldermen's certificates and judgments (Soutendam 1870, 24-25, 52-53),[27] and then, for the other creditors, equally but with rateable deductions on their claims (Hamaker 1887, 426; Willekeuren Amsterdam 1624, 108; Willekeuren Amsterdam 1639, 100). In Antwerp, the principle of equal distribution between creditors not having titles of collateral was imposed in January 1516. The ordinance issuing the new rules contained the Roman ideas that had underpinned the proceeding of *missio in bona*. All creditors were summoned; they could present their debts within a certain period of time. All the debtor's goods were inventoried and sold publicly. Among creditors not having specific collateral, equality of distribution, *pro rata portionis*, applied (De ruysscher 2008, 310-13).

By contrast, in early sixteenth-century Bruges, no collective insolvency proceeding that could be initiated before the City Court existed. However, insolvency cases were handled in an administrative fashion, on an ad hoc basis, by the city's administrators. Since the early fourteenth century, foreign merchants received charters entitling them to the restitution of deposits that had been made with official money-changers. This policy meant that the municipal government was obliged to bail out the latter when they went insolvent to the extent that they owed sums to these privileged merchants (Fieremans 2023; Murray 2005, 156-57, 199). As a result, sometimes the Bruges aldermen took pre-emptive action on impending insolvencies by acquiring a part of the business of a money-changer. At the collapse of the Medici bank's branch led by Tomasso Portinari in 1496, for instance, the city covered a shortfall of 16,000 pound gr. Fl., in order to appease the market (De Roover 1948, 347-348). Collective liquidations, with auctions, were very exceptional. They were organized with respect to insolvent money-changers or hostellers, and under the strong control of the municipal government. It is unsure whether in the publicly administered cases involving insolvent money changers the Bruges city administrators applied the rule of equal distribution among creditors (De Roover 1948, 332-33; Murray 2005, 157).[28]

All this invites for reflection on the conditions of legal change and the quality of the legal regimes in place. First, as was suggested above, there was no impact from economic conditions on the changes in rules. As was mentioned above, in fair towns and commercial cities rules could apply that for a long time did not allow general seizure. Moreover, the emergence of collective insolvency proceedings was not an

[26] Olivier-Martin treats this rule as only featuring in the 1580 *coutume*, but the principle of rateable distribution at *déconfiture* was already mentioned in the 1510 *coutume* (art. 197).

[27] In early sixteenth-century Delft, the rule was that debt certificates corroborating private written agreements and instruments were given priority over debt certificates that were not based on such documents.

[28] These authors express doubt. In case the city bailed out an insolvent money-changer, as a principle, all creditors were repaid fully.

indication per se of more insolvencies. For example, in the middle of the fifteenth century, in the cities studied here, for the first time the idea emerged that flight resulted in the loss of citizenship.[29] Abscondence by debtors became more widespread. However, these circumstances did not trigger a change of rules. For example, in Leiden it does not seem that the generalization of seizure was connected to more insolvencies. In all but one city, it was only near the end of the fifteenth century and in the early sixteenth century that most changes were made, which was due to a combination of factors. There was a certain «wave» of change in debt enforcement rules across Western Europe in the 1400s and early 1500s. However, these changes were not predicated by economic factors. For Antwerp, for example, it had been customary since the 1460s to insert the clause «*se et sua*» in debt acknowledgments, registered in aldermen's certificates.[30] This phrase was a clause of collateral, which provided the creditor the surety of access to goods and the person of the debtor in case no payment followed. However, seizure became generalized only in the early 1490s, in a combination of circumstances of war (in the 1480s) and the ambitions of one ducal official, the *amman* (De ruysscher 2013).

Examples of other cities could provide inspiration. However, change was mostly due to local incentives, and not always economic ones. Moreover, coherence and continuity within existing systems could prevent change, even if it was ubiquitous in other cities. Bruges is a case in point. As was mentioned, Bruges did not adopt generalized seizure, not even in the sixteenth or seventeenth centuries. Rather, the city government perpetuated the approaches that had existed since the fourteenth century. Imprisonment remained a default debt enforcement proceeding. Seizure of assets was combined with the imprisonment for debt, but only when the imprisoned debtor did not provide guarantors for the debt. This was the exact opposite of the rule of Roman law, requiring enforcement on the goods before the person. At Bruges, proceedings of debt enforcement were not mandatorily collective. In practice, however, it was possible that several creditors teamed up to imprison a shared debtor.[31] It is striking that Bruges did not adjust its rules in the competitive struggles with Antwerp in the period 1490-1510, which was when the rules of debt enforcement between the two cities were very different.

Municipal legal culture relating to debt enforcement could have regional characteristics. For example, *thoonpand* was largely unknown in Flanders and Brabant, but was practised in several cities of the county of Holland. Moreover, it is unlikely that competition between cities was a driver of legal change (Gelderblom 2009). Bruges did not feel pressured to change its rules, even with several other commercial cities having completely different regimes of debt enforcement. Sometimes, cities stuck to their adjustments and did not change afterwards. Bruges had a head start

[29] Leiden Archives, *Schepenbank*, 41B.

[30] ACA, SR, 69 (1465-56, containing at least six letters without collateral, both in and outside the privileged period surrounding the fairs: fol. 44v (5 Aug. 1465), fol. 46v (17 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 contained 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).

[31] BCA, *Oud Archief*, *Kamer, Civiele Sententiën*, 1473-1474, fol. 7r-9r (12 Nov. 1473).

handicap in the later fifteenth century; in the later fourteenth it had been innovative in promoting imprisonment as a debt enforcement mechanism. However, at the end of the 1400s, the Bruges rules were very different from cities where non-ratified debts were sufficient to lay seizure and where assets could be locked irrespective of the imprisonment of the debtor.

Furthermore, there was no linear trend. There are examples of legal changes that were reversed. For example, in the later sixteenth century, the general application of seizure became somewhat more restricted. In Antwerp, the rule that arrest on goods was possible even against citizens continued to apply. However, in Leiden, the city administrators strengthened the rights of citizens. In 1583 it was imposed that *arrest (besetting)* could be laid only with a «deed of commission or an order»; for *arrests* against citizens, even when they were absconding, preliminary authorisation was required (Keuren Leiden 1538, 81 and 87-88).

In Amsterdam, a strict distinction came to be made between proceedings focusing on the person of the debtor as a means to secure the debtor's presence in court (*arrest op de persoon*) and those purporting to enforce a judgment condemning to payment (*executie bij apprehensie*). In Amsterdam, the former, the preservatory apprehension, was allowed against citizens and residents only upon authorization by the bailiff (Rooseboom 1644, 77-78). By contrast, *executie* was possible against citizens without preliminary approval (Rooseboom 1644, 79). *Arrest* served mostly as a measure against non-resident merchants. At Leiden, the *roedrager* who imposed the preservatory *arrest* on the person had to stay with the debtor when his relatives were searching for guarantors; within one hour the debtor had to present someone who stood surety for the unpaid debt. If the debtor could not deliver sureties, he was escorted to the city's prison and stayed imprisoned for as long as no surety was provided (Keuren Leiden 1657, 81-82).

5. Princely interventions, incomplete harmonization

Partial legal harmonization resulted from princely legislation. In the later decades of the fifteenth century, princely interventions in matters of debt enforcement increased. State formation efforts under the Burgundian dynasty had resulted in the installation of provincial princely courts since the later fourteenth century. Bruges was subjected to the Council of Flanders, Antwerp to the Council of Brabant and Leiden to the Council of Holland. In the second half of the fifteenth century, these courts issued *lettres de justice*, princely letters of protection. Some were concerned with protection during travels (*lettres de saufconduit*); others could be solicited by insolvent debtors. Initially, letters of the latter type could demonstrate high levels of leniency. The Joyous Entry charter of Mary of Burgundy (1477) stipulated the promise not to hand out letters shielding debtors from arrest and seizure during five years (Van Uytven, De Ridder 1985). The Joyous Entry charter of Philip the Fair for the duchy of Brabant (1494) detailed that no *lettre de répit* could be issued without guarantors, thus securing the rights of the creditors, and that an applicant could not obtain more than one letter Poullet 1867, 316-317). In the 1480s and 1490s, *lettres de répit*, imposing a moratorium on cities' payments of public debt, were also handed out to cities which

had gone insolvent in the period of the civil war against Maximilian of Habsburg (Zuijderduijn 2009, 127-29).

In the 1510s, more attention was paid to the honest insolvent, who had not committed bankruptcy. Bankruptcy was fraudulent insolvency; a fraudulent insolvent was a debtor who had demonstrated malicious intent in certain actions (for example abscondence, concealment of assets, collusion with creditors). *Lettres de justice* were handed out only to those whose insolvency was the result of misfortune. When installed as duke of Brabant in 1515, Charles of Habsburg (later, Emperor Charles V) declared that *lettres de répit* could be awarded only to applicants of good faith (Anselmo, 136).

Furthermore, in the 1510s and thereafter, imprisoned debtors could seek *lettres de cession*, to be released from prison, even against the will of the creditors who had them locked away. When released, they transferred to their creditors whatever property they still possessed. This measure of «*cessie van goede*» (*cessio bonorum*) prevented lifelong incarceration of poor and *bona fide* debtors. In Antwerp, *cessio bonorum* replaced the proceeding of abandonment from the early 1500s.[32] This proceeding of «*cessie van goede*» did not discharge debts, and if the released debtor acquired new capital, he had to repay any debts that remained. Initially, in Holland, letters for *cessie* could be obtained directly with the Court of Holland. In January 1518, a new princely instruction to the Court of Holland prohibited this practice. Applicants first had to file a request to be released from prison with the Court, after which the request was sent over to the local jurisdiction where the debtor was imprisoned. The debtor had to provide a list of creditors, swear that no goods had been hidden from the creditors, after which the creditors were summoned. If the creditors could not substantiate objections of fraud against the debtor's request, the *cessie* was granted by the Court of Holland (Vorsterman 1531, art. 22). In a response to an increasing demand for letters of *cessie* from the Court of Holland, Leiden and Rotterdam asked for comital privileges to confirm their older defamatory rituals for those who were released from their town prisons (Den Hollander 2023, 280).

The practice of obtaining princely letters of cession and *répit* grew popular in the early sixteenth century. Antwerp received the applications from the Council of Brabant and secured control over the process; the city's administrators de facto decided on the implementation of requests for *cessie*, even though the Council of Brabant formally had jurisdiction. However, in Bruges, the reaction of the city government was more reluctant. It was decided that *lettres de répit* did not have any impact on the municipal proceedings of debt enforcement.[33] Moreover, in Bruges *cessie van goede* was not accepted. A debtor could be released from prison only if suficient guarantors were presented to the creditors. Therefore, creditors had the right to keep a debtor incarcerated if that was not the case (Gilliodts-van Severen 1875, 306-15).

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[32] ACA, V, 1233, fol. 85v (1 Oct. 1505), fol. 89r (6 Nov. 1505) and fol. 110v (9 July 1506); ACA, V, 1235, fol. 51r (12 Nov. 1517); ACA, V, 68, fol. 33 (1 June 1520). I would like to thank Jeroen Puttevils (University of Antwerp) for bringing the first two references to my attention.

[33] BCA, *Oud Archief*, *Kamer*, *Civiele Sententiën*, 1504-05, fol. 2r-v (4 Sept. 1504) and fol. 7v (13 Sept. 1504). In both cases, it was argued that *lettres de répit* did not have force according to the «customs of Flanders».

At around 1520, insolvents could apply for princely letters that aimed for a composition between the debtor and his creditors. In the 1520s, in the dire economic circumstances of the period, it became normal practice for an insolvent to file a request with the Council of Brabant to commission the Antwerp administrators to mediate an agreement between the creditors and their debtor. The Antwerp aldermen checked the veracity of the applicant's statements and the causes of his or her insolvency. If it became clear that the applicant had committed malicious acts, the request was denied. If no such behaviour was found, first an inventory of the debtor's property was made, then the creditors were summoned who submitted evidence of their claims. Thereafter, negotiations began under the guidance of the Antwerp government. When an agreement had been reached, the case file was returned to the Council of Brabant, which confirmed (*intériner*) and registered the contract.[34]

The Antwerp practice was for a large part written into a princely law of 1536 (Recueil des Ordonnances des Pays-Bas 1506-1700, 549-50), which further centralized the practice. First a request had to be sent to the Council of Brabant. After a minimal check of the application the Council granted a provisional letter of protection to the debtor. This practice was new. The case file was then sent over to the municipal court of the applicant's domicile and creditors were invited but they already suffered the consequences of the letter. By way of compensation for this change, the *intérinement* of the letter of *cessie* was taken by the local court, not the Council of Brabant, even though the latter was informed on the decision and could oppose it, as well. Moreover, it was accepted that applicants who were unmasked as being fraudulent remained in prison, at the costs of the creditors. According to the 1536 law in that case the creditors could organize a defamatory *cessie*, after which they could detain their debtor in their homes. In 1531, Bruges became subjected to princely rules on *cessio bonorum*, which had to be requested with the Council of Flanders (Gilliodts-van Severen 1875, 343-48). In princely laws of 1541 and 1544, which were issued in Flanders, Brabant and Holland, the practice of *lettres de répit* became restricted further; applicants had to provide guarantors and the proceedings were organized at the local level of courts. This was a clear confirmation of the view that these matters were best handled locally. In the 1550s and 1560s, the Antwerp leaders were very vocal when the Council of Brabant took decisions that went against the municipal authority in insolvency (for example when an incarcerated bankrupt was provisionally released from prison).[35]

In the 1520s and 1530s, the Antwerp administrators actively negotiated with debtors and creditors, to secure as many accords on debt reshufflements as possible. Upon their appointment, the commissioners either went to the homes of creditors or they could summon them to the City Hall. It seems that there was no public announcement attached to these actions: no proclamations or public statements were made. Visits and invitations were discreet and also swift, even though this depended on the number of creditors and on their presence in the city. Even in complex cases,

[34] ACA, PK, 271, 1 (1 June 1527); ACA, PK, 299. This practice was formalized in a 1536 princely law. See *Recueil des ordonnances des Pays-Bas*, vol. 4, 328 (30 Aug. 1536).

[35] ACA, PK, 1549 and 1551.

with multiple sessions of negotiations, it took no more than three weeks for the commissioners to inform the Council of Brabant of the results.[36] The debtor was usually not present at the talks,[37] although he or she could give instructions to the commissioners.[38] 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.[39]

59 files of applications, with notes on the outcome of meetings, have been preserved. In 24 of them, the petition refers to the type of trade or the occupation. From the descriptions of their activities, it seems that even though many applicants described themselves as «merchants» («*coopman*», «*marchant*»), most of them were in fact small-scale mercers, stallholders and craftsmen. Most of the debts in the aforementioned files were private or informal; annuities or other debts encompassed in deeds (i.e. aldermen's certificates or judgments) were exceptional. The measures that were requested varied. It was not uncommon to specify terms of payment, which was either for a few months or for a longer period (three or four years). A partial discharge was sometimes granted, but never explicitly requested.[40] Exceptionally, the petition and compromise stated a five-year term.[41] Yet many requests were rather vague in what was demanded: often only an «*inductie*» (i.e. an invitation of all or some creditors) was requested or a «reasonable» compromise («*appointement*»).[42] In every request, commissioners of the city government were solicited, and sometimes *nominatim*. In some cases, the request targeted «unwilling» creditors; asking for commissioners then served the purpose of pressuring such creditors into accepting an agreement that had been signed by a number of other creditors of the applicant.[43]

As a result of these developments, creditors resorted less frequently to imprisonment of their debtors. Generalized seizure on assets had restricted the scope of application of imprisonment for debt in many cities. In addition, the imprisoned debtor could always petition for a letter of *cessie*, which would allow him or her to walk free upon negotiation with the creditors and abandonment of properties to them.[44] The creditors retained one unilateral weapon, namely the public announcement of bankruptcy. There are some examples of creditors applying to the Antwerp aldermen for a public statement that mentioned criminal action before starting a collective insolvency proceeding.[45] There were few opportunities for

[36] E.g. ACA, PK, 271, 5 (Oct. 1535).

[37] 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.

[38] 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.

[39] E.g. ACA, PK, 312, request and file (1536).

[40] See for some examples of modest discharges, see Puttevils 2012, 292-297.

[41] ACA, PK, 271, 43 (*s.d.*, *c.* 1544).

[42] E.g. ACA, PK, 312, 5-6 (request, ap. Oct. 1540).

[43] E.g. ACA, PK, 312, 28 (request, ap. 12 Oct. 1540).

[44] Such letters were granted (exceptionally) by the Privy Council, by the Council of Brabant and by the Great Council of Mechelen, until the latter lost its jurisdiction around 1515.

[45] ACA, PK, 675, fol. 258v (22 Dec. 1595). In this request, creditors petitioned for measures following »a big and ugly bankruptcy.« After 1516, similar petitions were directed to the aldermen in

debtors to deny such allegations once the public statement had been made. Therefore, public announcements of bankruptcy became less common from the 1540s. However, imprisonment was still possible, and from the middle of the sixteenth century onwards imprisonment was used mostly to prevent fraudulent insolvents from running away.

The sources reflecting accords made in Antwerp are exceptional. For the other cities mentioned, few traces of accords survive. However, it seems that majority compositions became slowly acknowledged. Majority compositions were accords accepted by a majority of creditors, which also bound absent and unwilling creditors. When debtors wanted to negotiate majority accords, they could apply with a princely council for a letter of *atterminatie* or *conformatie*. These letters were not regulated in princely laws and pertained to the discretionary jurisdiction of princely councils. A letter of *répit* could result in a moratorium that was ignored by unwilling creditors. By contrast, for *atterminatie* the approval of a majority of the creditors was required, after which also absent and non-consenting creditors were obliged to respect the negotiated terms (Van Apeldoorn 1938, 172-175). In his *Descrittione di tutti I Paesi Bassi* (1567), Lodovico Guicciardini (1582, 108-109), a former Florentine merchant with close knowledge of Antwerp, mentions the fact that in the city creditors could only be bound if they had consented to the provisions of the debt-rescheduling agreement. After statutes of 1540 and 1541 had condemned agreements in which creditors were forced to comply,[46] a law of May 1544 stipulated that accords in which debts were partly acquitted were only allowed if all creditors accepted the deal. Agreements on delays had to be accompanied by rights of collateral.[47]

As a result of the princely legislation, the liability of debtors shifted further towards a liability in goods. The princely rules on *cessio bonorum* brought about a further decline of the practice of imprisonment for debts. Rituals such as the proceeding of *eigening van schulden* in Leiden became out of use in the third quarter of the sixteenth century (Orlers 1781, 21-23; Whitman 1996, 1879). The generalization of seizure proved a bedrock for negotiations among creditors. Imprisonment for debt remained an option for creditors who wanted to inflict reputational harm. However, even fraudulent bankruptcy did not trigger arrests and imprisonments as much as had been the case before. In the first half of the seventeenth century, negotiated agreements between creditors and debtors could be made after a debtor returned after a period of abscondence (Den Hollander 2021, 94-96). Eventually, this practice of negotiation after return marked the beginning of *Desolate Boedelkamers*, which were established in Dutch cities from the 1640s. These municipal institutions secured the management of insolvents' estates and facilitated negotiations on debt schemes (Den Hollander 2022). However, all this did no alter path dependence in

order to obtain a public ordinance on the bankruptcy of the creditor. For an early example of such an ordinance, see ACA, PK, 914, fol. 75 (8 Nov. 1516).

46 *ROPB*, 2nd series, vol. 4, 328 (20 Oct. 1541).

47 *ROPB*, 2nd series, vol. 5, 52-56 (10 May 1544). This distinction reflected an earlier difference between *répit* and *atterminatie*. *Répit* was modelled largely on the moratory rescripts mentioned in the Justinian Code (C. 1,19,2-4), while *atterminatie* was based mostly on C. 7,71,8. The former was considered a method of *dilatio* (that is, postponement of payment), the latter of *remissio* (discharge of debt) (Dalhuisen 1968).

some towns. In Bruges and Mechelen, the municipal law of the early seventeenth century did not provide for collective insolvency proceedings, besides the princely imposed *cessie van goede*.[48]

6. Conclusion

In the period between c. 1450 and c. 1510, in the cities of Amsterdam, Antwerp, Bruges, Leiden and Mechelen a municipal culture of insolvency emerged. Insolvency was a situation in which a debtor had less goods than needed to pay for imminent debts. A loss of reputation could precede this situation; or, the debtor left the city before creditors became aware of the insolvency. The problems mentioned (insufficiency of goods, abscondence, enforcement of debts) were addressed at the level of the local jurisdiction. Even though princely councils and *lettres de justice* gained influence, the legal agency of cities remained largely intact. Rules and proceedings involving insolvency could be very different across jurisdictions. Even though around 1600 many more cities had adopted Roman rules, this was not always the case (Bruges, being a prime example). Moreover, rules and practices were interconnected. As a result, systems of debt enforcement could function even when being different. In Bruges, debtors were pressured to pay because they were imprisoned; at Antwerp, general seizure had the same goal. Even though some phenomena could happen across larger regions (for example, more abscondences from around 1450), the legislative reactions from the municipal administrators could arrive late. Regional similarities could exist, but proceedings nonetheless differed from one city to the next. Idiosyncrasies persisted in judicial regimes after 1500, when group proceedings became increasingly common. Princely regulation led to some degree of uniformity starting in the early sixteenth century, making some of the earlier methods outdated. Many of the earlier methods, though, might still be used.

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[48] In 1625, Paul Van de Christynen wrote a tract on the law of Mechelen in which he referred to supplementary Roman law (Christinaeus 1671, 51 and 53-54).

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