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ARTICLE

Preinsolvency Proceedings and Court Dynamics in Antwerp (ca. 1880–1914)

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This article explores the dynamics of court practice with regard to mercantile preinsolvency in later nineteenth- and early twentieth-century Belgium. In 1883, the Belgian legislature introduced the proceeding of *concordat préventif*, making it possible for insolvent entrepreneurs to remain outside the liquidation-oriented procedure of *faillite*. Instead, they could declare their financial problems and propose a scheme of payment to their creditors. Despite this goal, however, the 1883 law, along with subsequent laws of 1885 and 1887, imposed high majority voting requirements. Accordingly, in the Antwerp commercial court, the shortcomings of the legislation were amended to ameliorate its procedural and judicial practice. The new practices of the court resulted in higher rates of acceptance of applications. However, these success ratios were not evenly distributed among the groups of debtors who applied. Perceptions shared by both creditors and judges may have advantaged merchants, brokers, and entrepreneurs who belonged to the higher strata of the city's business world.

Keywords: bankruptcy; business law; strategy; legal history

Introduction

In the later nineteenth century, mercantile and corporate insolvency regulations underwent important changes. Legislators in Europe and the United States sought to amend existing court procedures to accommodate debtor cooperation and, ultimately, business rescue. The Belgian authorities pursued a new legislative policy that was based on in-court negotiations. In 1883, Belgium introduced the *concordat préventif* (preventive composition),[1] which was one of the

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1. *State Gazette*, 23 June 1883, *Loi de 20 juin 1883 sur le concordat préventif de la faillite.*

first preinsolvency and debtor-in-possession proceedings in Europe.[2] With this proceeding, unfortunate debtors were given the opportunity to stay outside the procedure of *faillite*, which normally resulted in the public auctioning of the debtor's assets.

How the Belgian courts implemented the 1883 reform has remained an open question. Attention to the judicial handling of insolvencies has been minimal, as is the case for other countries. Research on mercantile and corporate (pre)insolvency proceedings in Western Europe in the nineteenth century and the beginning of the twentieth century has thus far mainly been concerned with the analysis of legislation[3] and developments in the number of proceedings over time.[4] Qualitative appraisals of individual cases and trends have been the most common;[5] quantitative surveys, distinguishing between groups of stakeholders and taking into account variables such as the number and total of debts remain very exceptional.[6] As a result thereof, the dynamics of in-court preinsolvency proceedings remain largely unknown. Agents made decisions before and during these proceedings,[7] and, in combination, the strategies of parties to preinsolvency trials may have affected judicial approaches, and vice versa. This article seeks to add data to the ongoing debate about which institutional factors contributed to business rescue efforts, and how legislation, the organization of court proceedings, and judicial tactics played a part in all that.[8]

This article explores the use of the 1883 preinsolvency proceeding based on court records for the commercial court of Antwerp. In the late nineteenth and early twentieth centuries, Antwerp was one of the most important ports in Western Europe and the main commercial hub in Belgium, then an industrial powerhouse. The city's economy was mainly focused on financial and commercial services; industrial activity was rather limited and mostly involved with the processing of raw materials that were brought in from elsewhere in Belgium or from overseas.[9]

Several dossiers of Antwerp *concordats préventif* from this period 1883–1914 have been preserved, which contain data that allow us to assess the tactics of debtors and creditors, as well as the methods and attitudes of the judges. In a second section, the features and implementation of the 1883 preinsolvency law are discussed. The third and fourth parts address the actions of creditors and the profiles of debtors. Thereafter, in the fifth and sixth sections, the court's approach is analyzed in detail.

2. France introduced the comparable proceeding of *liquidation judiciaire* in 1889; the British deeds of arrangement, available since 1887, were similar. See Di Martino, Latham, and Vasta, "Bankruptcy Laws Around Europe (1850-2015)", 944; Sgard, "Do Legal Origins Matter?", 406–407.

3. See, besides the articles in the previous footnote, Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution*; Sgard, "Bankruptcy Laws",198–220.

4. Di Martino, "Dealing with Failure", 137–165; Hautcœur and Levratto, "Legal vs. Economic Explanations", 23–45; Hautcœur and Di Martino, "The Functioning of Bankruptcy Law and Practices", 579–605.

5. For example, see Balleisen, *Navigating Failure*; Mann, *Republic of Debtors*; Skeel Jr., *Debt's Dominion*.

6. Exceptions include: Carlos, Cosack and Castro Penarrieta, "Bankruptcy, Discharge, and the Emergence of Debtor Rights", 475–506, and Hoppit, *Risk and Failure*. For a social-historical perspective, starting from the personal history of twenty-one Belgian insolvents from 1886 to 1914, see Debruyne, "Des faillis".

7. Fridenson, "Business Failure", 565–566.

8. Stressing the importance of the approaches of judges is Hautcœur and Levratto, "Legal vs. Economic Explanations."

9. Veraghtert, "From Inland Port to International Port."

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The Incremental Success of the Preinsolvency Proceeding, 1883–1914

In the 1870s, an expansive phase of the European economy came to an end. Inflation and rising unemployment rates resulted in a period of recession, which lasted until approximately 1895. In the Kingdom of Belgium, after around 1875, reduced returns from coal mining and conversion problems in the metallurgic and textile industries added to the economic decline.[10] Previously, too, in the early 1870s, there were liquidity problems in the Belgian banking sector.[11] However, after 1895, the Second Industrial Revolution marked a period of renewed growth.[12] As a result of these conjunctural developments, the number of economic failures in Belgium multiplied from the 1870s onward, resulting in an increased workload for the courts that administered cases of mercantile insolvency (Table 1). Therefore, the Belgian legislature was compelled to make amendments to the existing insolvency proceedings.

In the later nineteenth and early twentieth centuries, the 1807 Napoleonic *Code de commerce* was still in force in Belgium. This code, which was retained when the kingdom was founded in 1830, provided that for economic professionals, structural default (*cessation de paiement*) brought about the status of *failli* (insolvent person). The procedure that established a debtor's state of *faillite* resulted in the dispossession and public sale of the insolvent's effects.[13] This procedure was administered by the commercial court (*tribunal de commerce*). The judges of this court were merchants and entrepreneurs who served as lay judges and were appointed annually following an election among the peers who resided in the jurisdiction of the court.[15]

According to the 1807 Code, an in-court majority composition upon *faillite* (*concordat*) was possible, though difficult to obtain. A double majority of consenting creditors was required. Besides a majority of votes, the approving creditors had to represent three-fourths of the total debts (in sums, not in number) (art. 519, § 2). These rules were largely to the advantage of creditors since they de facto steered toward liquidation. They were based on the idea which had been common in the Old Regime, that insolvent debtors were to blame for their insolvency.[16] Moreover, the rules targeted individuals, not partnerships or corporations. In this regard, the Napoleonic Code perpetuated the older view that trade was done by people, not by companies. Therefore, the *Code de commerce* was poorly suited to accommodate investments

10. Buyst, "The Causes of Growth", 85–89.

11. Some notorious failures included those of the financial entrepreneur and salesman André Langrand-Dumonceau in 1870 and of the Bank Dujardin in 1874. They caused great upheaval in the financial sector: Jacquemyns, *Langrand-Dumonceau*. On the international aspects of banking crises in the later nineteenth century, see Flandreau *et al.*, "Business Cycles", 105–106.

12. Buyst, "De evolutie van het Belgische bedrijfsleven", 357–358; Fontana, "The Economic Development."

13. For a general appraisal of the bankruptcy proceeding in the Commercial Code of 1807, see Hautcœur and Levratto, "Faillite"; Hautcœur and Levratto, "Legal vs. Economic Explanations," 25–27; Hilaire, *Introduction historique*, 325–330; Szramkiewicz and Descamps, *Histoire du droit des affaires*, 384–394.

14. In this article data from both calendar years and court years, which start in September, are used. Calendar years are used for the set of collected archival data; published statistics are typically arranged according to court years. Where possible the differences between the collected archival data and the published statistics were compared and resolved. In the tables it is indicated whether numbers correspond to calendar or court years.

15. Martyn, "De rechtbanken van koophandel", 209–213; Valente, "Les juridictions consulaires", 111–128.

16. Dalhuisen, *Compositions in Bankruptcy*, 13.

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Table 1. Number of court-imposed insolvencies (*faillites*) in Belgium, 1871–1914, per court year[14]

	n Belgium	n Antwerp		n Belgium	n Antwerp
1871–1875	413	n/a	1896–1900	553	24
1876–1880	577	n/a	1901–1905	584	37
1881–1885	618	54	1906–1910	561	49
1886–1890	632	49	1911–1914	621	47
1891–1895	612	37	ave. 1881–1914	596	42

Source: *Administration de la justice criminelle et civile de la Belgique. Résumé statistique* (1871–1914); *Exposé de la situation du royaume 1876-1900* (Brussels, 1902), vol. 1, 204.

and joint trade enterprises. However, both in France and Belgium, these procedures of *faillite* and *concordat* were not fundamentally changed until the 1870s and 1880s.[17]

The purpose of the Belgian law of June 1883 was to provide debtors the possibility to obtain a deal on postponements or reductions, or to transfer assets swiftly, without running the risk of being dragged into a court-imposed liquidation after a categorization as *failli.* The debtor declared financial difficulties to the court; if no indications of fraud were detected, the debtor's creditors were invited to submit evidence of their claims and they voted on a proposition of payment scheme or transfer arrangement made by the debtor, who in the meantime remained in charge of the business. Moreover, the 1883 law allowed for a quick resumption of professional activities. Under the procedure of *faillite* insolvents could not resume their previous trade without applying for *réhabilitation.* This rehabilitation was granted following a court proceeding and only if all debts had been paid.[18] The requirement of *réhabilitation* did not apply to *concordat préventif.* This situation points to the purpose of the 1883 law, which was foremost to secure the cooperation from debtors at an early stage; the flexible options of the restart were considered an invitation in this regard. Business rescue could be the outcome of the proceeding but was not the main legislative goal.[19]

The law of June 1883 stipulated the following rules. The law applied to *commerçants* (art. 1)—that is, tradesmen and women (economic professionals)—who encountered payment problems but had not ceased payments permanently (art. 2, § 3 and art. 18). Since 1873, companies that undertook mercantile or financial activities also were considered *commerçants* and thus fell within the scope of the 1883 law.[20] Eligibility required that applicants were honest (*honnête et loyal*) but unfortunate (*malheureux*) (art. 2, § 3). The applicant added to the request to the court an overview of the circumstances that had caused the financial difficulties (art. 3, °1). In addition, an inventory of properties (art. 3, °2) and a list of creditors and their debts (art. 3, °3) had to be attached.

After receiving the application for *concordat préventif* and checking the abovementioned requirements by the court, the judges granted a moratorium (art. 5, § 1). This moratorium entailed that the debtor received a temporary suspension of payments. This suspension

17. In 1838, the French legislation was amended, though only to a limited extent. See Thiveaud, "L'ordre primordial de la dette", 87–89. For an analysis of the succinct and confusing 1851 Belgian insolvency law, which did not change the main characteristics of the Napoleonic framework, see: De Ruysscher, "Legal Culture", 382–385.

18. Di Martino, Latham and Vasta, "Bankruptcy Laws," 944; Hautcœur and Levratto, "Legal vs. Economic Explanations," 26–27.

19. De Ruysscher, "At the End the Creditors Win", 205–206.

20. Art. 2, § 2 and 846–864 *State Gazette*, 25 May 1873, *Loi de 18 mai 1873 sur les sociétés commerciales.*

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included an automatic stay: creditors were thenceforth no longer allowed to lay seizure for their debts. During the period of the moratorium, the debtor kept properties but was not allowed to make new contracts or alienate assets in any way (art. 6).

The applicant submitted a proposal of *concordat* to the court (art. 12, °3), which could include postponements, reductions, or relinquishment of assets.[21] After a public invitation, which was based on the list presented by the debtor, creditors brought forward their claims (art. 9). They gathered in a meeting and voted on the proposal of the debtor after the commissioned judge registered the declarations of debt and read out his assessment of the economic situation of the debtor ("*l'état des affaires du débiteur*," art. 9, § 1). In this stage, creditors could contest the debts declared by other creditors or make remarks on the debtor's proposal (art. 12, 2, and art. 14). The proposal had to be approved by a majority of creditors, which represented at least three-quarters of the total of indebted sums (art. 2). This was a double requirement. The majority of creditors were calculated on the heads of the creditors with registered and accepted debts; the sum of these debts marked the total against which the 75 percent threshold was determined (art. 19, 2). Several meetings were possible. The commissioned judge could adjourn a meeting and organize several subsequent meetings if he deemed it necessary (art. 11). Within eight days after the (final) meeting creditors could bring evidence of contested debts to the court (art. 14, § 1), and in that same period creditors who had not been invited earlier could still declare their debts (art. 14, § 2 and § 4). In the latter case, there was no new meeting: newly appearing creditors had to verify the debtor's proposal at the court clerk's office and state whether they voted in favor or against (art. 14, § 4).

Even after creditors had accepted the debtor's proposal, it could still be refused by the court, for example, when in the meantime it turned out that the debtor did not comply with the requirement of being honest and unfortunate. In that case, the court could directly pronounce the debtor as being *failli* (art. 18). After the homologation by the court of the composition, the insolvent had to comply with its terms and had to punctually execute what had been agreed at the negotiating table. The accepted *concordat* (the composition) applied to all creditors, including the ones who had disagreed with the debtor's propositions and those being absent from the meeting (art. 23). However, taxes, alimony, and debts of secured and privileged debtors—these included creditors with hypothecs (*hypothèque*)—were not affected by the *concordat* (art. 23, § 2). If the creditors' vote was negative, the court could not amend the outcome. Since the case for *concordat préventif* was then closed, creditors could subsequently divert the proceeding toward a proceeding of *faillite*. A resubmission for *concordat préventif* following a rejection by the same debtor and for the same debts, was not possible according to the letter of the law.

The number of *faillites* rose rapidly in the 1870s, and the increase topped out in the 1880s (Table 1). The new preinsolvency proceeding nonetheless made a hesitant start. The numbers of tradesmen and women, as well as firms, that went *faillite*, peaked around 1888 and

21. The *concordat par abandon d'actif*, which required that all assets were sold publicly for the benefit of the creditors, was formally introduced only in the law of 1887 (art. 24, see further below) but could previously be part of a *concordat préventif* as well. It had been introduced in France in 1856. See Hautcœur and Levratto, "Legal vs. Economic Explanations," 27. Reductions (*remise de dette*) were possible outcomes as well. Art. 24 of the 1883 law stipulated that the debts had to be repaid in full when the debtor recovered, but art. 23 § 2 suggested that a reduction was allowed (this latter article refers to codebtors who cannot profit from the *concordat*). However, it seems that—also after 1887—reductions only applied to those creditors who were present or represented at the meeting. See *Pandectes Belges, Concordat Préventif de la Faillite* (Brussels, 1887) 171.

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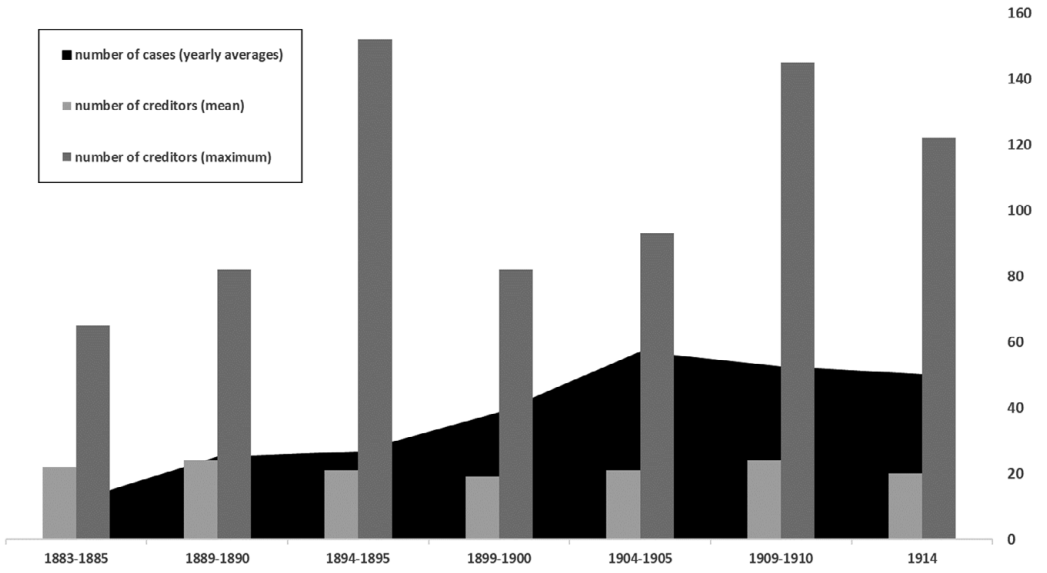

Figure 1. Number of analyzed requests for *concordat préventif* at the Antwerp commercial court and of creditors involved (fourteen sample years, calendar years, 1883–1914).

Source: Own dataset.

remained at a relative height during the entire period of recession until 1895. In that period, on average approximately six hundred *faillites* were pronounced in Belgium every year.[22] From the later 1880s onward, the preinsolvency proceeding became used more often, both in Belgium and in Antwerp (Table 2, Figure 1). In Antwerp, the preinsolvency proceeding became markedly more popular than the *faillite* proceeding. At the turn of the century, in Antwerp, the number of preventive compositions was higher than the number of court-imposed *faillites*.

In contemporaneous legal writings, several explanations were given for the modest use of the preinsolvency proceeding during its first years. Several authors identified flaws within the law and they argued against the high majority thresholds; the preinsolvency composition, they stated, had to be a shield "against the greed and the excessive appetite of uncompromising creditors" but the strict requirements of the law did not allow for that.[23] According to the letter of the law, for a debtor in financial difficulties, applying for a preinsolvency composition was indeed a huge gamble. For example, precourt deals were difficult to negotiate, because only the filing for preinsolvency with the court protected against a declaration in *faillite*. Inviting a creditor to agree with postponements of payment before the formal application could trigger this creditor to denounce the debtor as being *failli*. Moreover, it was impossible to be sure

22. Beneath these numbers was a shift in geographical distribution. At first, *faillites* were declared mostly in the largest Belgian cities and in rural areas. In smaller towns and medium-sized cities, fewer *faillites* were pronounced by the commercial courts. These proportions changed near the end of the nineteenth century, when *faillites* became more evenly distributed across the kingdom.

23. Lowet and Destrée, *Du concordat préventif*, 45–46; *Pandectes belges, Concordat préventif*, 221–226.

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Table 2. Number of court-imposed insolvencies (*faillites*) and accepted *concordats préventifs* in Belgium and Antwerp, 1871–1914, per calendar year (numbers with an asterisk) or per court year

	Belgium		Antwerp	
Year	n *faillites*	n *concordats préventifs*	n *faillites*	n *concordats préventifs*
1871–1872	341	n/a	20	n/a
1872–1873	309	n/a	13	n/a
1873–1874	381	n/a	42	n/a
1874–1875	488	n/a	52	n/a
1875–1876	545	n/a	54	n/a
1876–1877	566	n/a	74	n/a
1877–1878	585	n/a	50	n/a
1878–1879	584	n/a	43	n/a
1879–1880	618	n/a	64	n/a
1880–1881	534	n/a	270	n/a
1881–1882	548	n/a		n/a
1882–1883	634	n/a		n/a
1883–1884	655	202		5 (*)
1884–1885	593			16 (*)
1885–1886	660		245	0
1886–1887	636	703		117 (*)
1887–1888	678			
1888–1889	652			
1889–1890	614			
1890–1891	577		185	
1891–1892	673	673		143 (*)
1892–1893	663			
1893–1894	623			
1894–1895	544			
1895–1896	548		26	
1896–1897	539	120	24	
1897–1898	601	128	23	33
1898–1899	519	141	24	37
1899–1900	535	113	23	25
1900–1901	573	131	37	21
1901–1902	613	167	42	31
1902–1903	613	179	30	38
1903–1904	580	140	32	30
1904–1905	538	155	45	37
1905–1906	576	123	48	23
1906–1907	547	150	46	36
1907–1908	517	175	52	43
1908–1909	562	195	53	36
1909–1910	592	166	44	29
1910–1911	587	199	49	36
1911–1912	596	173	41	40
1912–1913	626	144	46	28
1913–1914	642	164	52	57

Source: *Administration de la justice criminelle et civile de la Belgique. Résumé statistique* (1881–1914), with some adjustments on the basis of the own dataset (*).

about the outcomes of the voting on a proposed *concordat*. The rules regarding majority thresholds, in combination with the uncertainty of creditors' voting intentions, made the outcome of any assembly of creditors highly unpredictable.

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The eventual success of the preinsolvency proceeding affected the durability of the legislation. The law of June 1883 had been envisaged as imposing exceptional and temporary measures. The 1883 legislative reforms did not replace previous insolvency legislation but were made on top of the existing laws and the Commercial Code: "*La loi du 20 juin 1883 n'est qu'un essai.*"[24] The 1883 legislation was planned to be in force until the end of 1885 and then replaced by better alternatives but was prolonged by consecutive laws in 1885 and 1887.[25] Considering the rather low numbers of *concordats préventif* in those years, these prolongations were therefore rooted in the conviction that the proceeding would eventually be used more. It was only the latter law of 1887, which contained some minor changes, that was definitive. This law did not expire, was not withdrawn, and remained in force; it was only structurally amended after World War II, in 1946.[26] The decision to implement the law indefinitely responded to the now increased application of the *concordat préventif* in practice.[27]

In the early twentieth century, the importance of preinsolvency proceedings, both in Belgium and in Antwerp, rose further. The beginning of the twentieth century saw a series of minor economic crises and financial drawbacks, which were brought about by economic events in the United States.[28] Different sectors of Belgian commerce were affected, pushing up the number of *faillites*. In this period the preinsolvency legislation became more widely applied throughout Belgium. From 1908 onward, preventive compositions already made up one-fourth of the sum of all failures and compositions in Belgium (25.8 percent of the 757 cases in 1908–1909). Even so, this figure was no match for the share of *concordats préventifs* in Antwerp. On average, before the First World War, the number of preventive compositions that were granted by the Antwerp commercial court constituted 40 percent of the sum of all failures and compositions pronounced there, in contrast to 19 percent in the kingdom as a whole (Table 2).

Creditors' Responses to Preinsolvency Applications

On 1 September 1883, the Antwerp shoelace maker J. Hemmelder was the first to profit from the new preinsolvency law. He brought his 33 creditors together in a meeting held at the Antwerp commercial court.[29] Although he did not succeed in convincing them of his payment plan and therefore did not obtain a *concordat préventif*, many would follow in his footsteps and with more success.

From 1883 to 1914, a total of 39,725 creditors would meet with their debtors at an in-court preinsolvency meeting in the Antwerp commercial court. In total, in this period 1,372 applications were made and 861 *concordats préventifs* were granted by the Antwerp commercial court (Tables 2, 3, and 8). Not all documents relating to these *concordats* have been preserved.

24. *Pandectes belges, Concordat préventif*, 206, no. 11.
25. Ruyssen, *Commentaire*.
26. Del Marmol, "La transformation"; De Ruysscher, "Legal Culture." 391–392.
27. Lowet and Destrée, *Du concordat préventif*, 7–8.
28. On the influence of the Panic of 1907 in Belgium, see Chlepner, *Le marché financier belge*, 92.
29. State Archives in Beveren (hereinafter: SAB), Commercial court of Antwerp (hereinafter: CCA), 917, 1 September 1883.

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Court dossiers contain the application form, the debtor's proposal, and an overview of the registered debts, together with the evidence for them.[30] Reports of creditors' meetings are found in a separate series of *procès-verbaux*.[31] In total, a sample of sources for 484 cases were analyzed, referring to applications made in fourteen years sampled (1883–1885, 1889–1890, 1894–1895, 1899–1900, 1904–1905, 1909–1910, and 1914), and for which the report of the final creditors' meeting was retrieved.[32] Typically, the sources mentioned do not include a final judgment or information on the outcome of the proceeding. However, for 216 applications the dossier could be linked to the meeting report of the final meeting, the homologated composition, and the registered judgment.[33] Therefore, whereas the first set of 484 cases provides information on the creditors and debtors, along with their negotiations at the final meeting, only for 216 cases within this group can conclusions be drawn on the interactions between the profiles and actions of stakeholders on the one hand, and the court's decision on the other.

When comparing the abovementioned articles in the laws of 1883 and 1887 to the procedural practices of the Antwerp commercial court, some important differences become evident. For example, the inventory of assets was typically added to requests for admission to the preventive composition procedure, but in many cases, this inventory was left blank. However, for several applicants who added a blank statement, we can assume that they nonetheless had tools, equipment, or merchandise.

Another difference between the legislation and the Antwerp procedural practice, which is connected to the previous one, is the general absence of the commissioned judge's assessment of the debtor's "state of affairs," which was imposed by the law. During the meeting of creditors, there was no preliminary reading of a report on the debtor's creditworthiness made by the commissioned judge. The creditors could check the debtor's inventory at the court clerk's office, but it seems that this audit was not often carried out. Possessions of the debtor were nearly never discussed during the creditors' meeting.[34]

The archival sources do not usually allow us to determine how many meetings were held. For intermediate meetings, not many *procès-verbaux* have been preserved. Moreover, the reports of final meetings that have been retrieved for the 484 cases listed above usually do not refer to earlier meetings. However, some data on consecutive meetings were found in the court files. There are indications that successive meetings were organized, but they usually did not seek to amend proposals. In the final, concluding *procès-verbal* references were typically made to the proposal that the debtor had made at the outset of the proceeding. Therefore, few initial propositions of the debtor were tweaked during the course of the

30. SAB, CCA, 1038–1677, and 4617–7046.

31. SAB, CCA, 907–963.

32. The year corresponds to the year in which the preinsolvency request was made. In nearly all cases, it was also the year of the last dated document in the court file. In order to ensure sufficient distribution of data, however, some years were combined for those cases in which the application and judgment year are not the same.

33. The series of judgments in SAB, CCA, 161–368 is not complete; data on the judgments were therefore also obtained from the other sources mentioned.

34. One exceptional example is SAB, CCA, 924, 14 February 1890, in which creditors brought up certain assets that had been listed in the inventory.

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Table 3. Number of preinsolvency requests made for *concordat préventif* and of creditors involved in the Antwerp commercial court, 1883–1914, calendar years

	Applications	Number of creditors				Applications	Number of creditors		
Year	n	Total	Mean	Maximum	Calendar year	n	Total	Mean	Maximum
1883	5	127	21	40	1900	31	714	21	57
1884	10	226	18	47	1901	28	682	22	59
1885	20	630	26	100	1902	51	1,344	22	103
1886	46	1,421	21	131	1903	54	1,755	26	135
1887	34	1,099	23	168	1904	56	1,485	23	93
1888	31	936	28	68	1905	58	1,328	18	71
1889	27	707	24	72	1906	42	1,044	19	90
1890	23	624	24	82	1907	68	2,429	29	151
1891	27	916	30	98	1908	74	2,251	23	154
1892	34	1,026	33	67	1909	52	1,476	23	97
1893	35	1,031	21	130	1910	53	1,552	25	145
1894	30	874	18	152	1911	66	1,695	23	68
1895	23	611	21	72	1912	78	2,569	24	160
1896	42	1,041	19	108	1913	93	2,968	27	123
1897	45	1,490	20	217	1914	50	1,396	20	122
1898	40	1,241	24	101					
1899	46	1,037	18	82	1883–1914	1,372	39,725	23	217

Source: Own dataset.

proceedings, even when several meetings were necessary. The adjournments for which source materials are available were related to the verification of debts, not to discussions over the contents of the debtor's proposal.

Closely related to the above was a broad possibility to resubmit applications. In contrast to what the law stated, a failed negotiation between debtor and creditors during the preinsolvency proceedings was not a direct path toward *faillite* and liquidation. In Antwerp, the debtor was allowed to propose a new preinsolvency composition, by sending a new request to the commercial court (see further, below).

Finally, in contrast to what the 1883 law allowed, proposals were nearly always plans for payment. Relinquishments of assets were very rare.[35] Neither were partial sales or mergers proposed, except in the few cases involving companies. Additionally, reductions do not feature among the 484 cases of the sample. In this regard, late-nineteenth-century practices largely continued older rules that had favored postponements over partial acquittals.[36]

Therefore, considering the above, the procedure of *concordat préventif* in the interpretation of the Antwerp commercial court was a moratorium procedure. The question to be decided by the creditors was whether the debtor was entitled to an extension of the provisory automatic stay that had been granted at the beginning of the procedure. The procedure of *concordat préventif* was therefore close to procedures of the Old Regime, such as those of

35. One example is SAB, CCA, 924, 14 February 1890.

36. In the civil law tradition, reductions for a long time could only be granted by all creditors; majority rules first applied to postponements only. See Dalhuisen, *Compositions in Bankruptcy*, 10–19.

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lettres de répit, which had involved demands for clemency and temporary relief from debtors.[37]

Creditors' meetings did not discuss the proposal, but rather the debts. Creditors were invited on the basis of a list that had been submitted by the debtor. In addition, a general convocation was carried out, with announcements in the *State Gazette* and/or in a local newspaper.[38] Creditors then came forward and presented the debt that they claimed.

If during the creditors' meeting, it was found out that the debtor had intentionally not mentioned creditors in the list attached to their application, then the debtor could be declared *faillite* and, in addition, criminally liable for "simple *banqueroute*" (*banqueroute simple*). This latter crime, which was defined in the Belgian Penal Code of 1867 (art. 489), was punishable by imprisonment for up to two years.

Notwithstanding this rigid penalty, several preventive composition meetings in Antwerp were attended by people who had not been mentioned by the debtor and who turned up after the public convocation. However, in this regard, the Antwerp judges were generally complacent toward indolent debtors. Their omissions were usually explained as accidental, not as indications of fraudulent intent. This was the case even if the stakes were high. For instance, Amélie Antheunis—a *femme marchande* (an independent businesswoman) in financial trouble—had not put her main creditor, Mrs. Pasman, on the list.[39] The latter was owed a debt of 3,187.99 francs, making up for almost one-fifth of the total indebted amount of 16,653.86 francs. Maybe the commissioned judge took into account that forty-eight other creditors were involved and considered the lack of mention of Mrs. Pasman by the debtor as excusable for that reason. However, this assumption may have been too generous. Mrs. Pasman arrived late at the meeting and she was the only creditor to vote against the preinsolvency proposal, which raises the suspicion that Amélie Antheunis had intentionally left her out of her list of creditors. Another example: In 1885, debtor Louis Cleiren "forgot" to mention no less than five creditors.[40] As mentioned, such omissions were generally condoned by the commissioned judges, but they could nonetheless provoke irritation from creditors. With one or more unexpected creditors appearing at the meeting, creditors could in response reconsider their vote and as a result, majorities could shift.[41]

Most cases in which creditors complained about the debtor's omissions related to conflicts of interest. In 1885 the shipbroker company E.J. Isenbaert, a general partnership, was in trouble. The firm had asked for a *concordat préventif*, even though the debts were high, totaling 238,150.62 francs.[42] During the court proceeding, it became clear that the widow of the founding partner, E.J. Isenbaert, was a creditor as well, even though she had not been listed as such in the firm's application for the preventive composition. Her debt amounted to 85,672.82 francs, which was around 36 percent of the total owed. According to the letter of the law, it was perfectly possible that a widow claimed a dowry, or what had been promised in

37. Dupouy, *Le droit des faillites*, 141–143.

38. For an example, see *State Gazette* 12 April 1896, 1316. Publication of an announcement of creditors' meetings in the *State Gazette* had first been imposed in the 1851 law, for *sursis de paiement.*

39. SAB, CCA, 929, 5 January 1895.

40. SAB, CCA, 919, 2 February 1885.

41. SAB, CCA, 919, 21 February 1885; SAB, CCA, 924, 22 April 1890.

42. SAB, CCA, 919, 16 December 1885.

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the matrimonial contract, from the estate of her late husband, even if the latter's estate was entangled in a partnership.[43] The Civil Code of 1804, which was still applied in Belgium at the time, provided that women claiming their dues on the basis of a matrimonial contract when creditors had concurring claims in the immovable property of the inheritance or insolvency estate, had priority because of their "silent hypothec."[44] In this case, however, the personal interests of widow Isenbaert triggered a new investigation into the firm's bookkeeping.[45] Usually, though, objections made by creditors did not incite further inquiry, even though sometimes remarks by creditors on the collusion of interests were registered in the report of the meeting.[46]

Protests about conflicts of interest could be linked to the involvement of relatives in businesses. Debts were often for loans that had been granted by family members. However, even under such circumstances, arguments on conflicts of interest were relatively rare, especially when debtors were transparent about family bonds with their creditors. Related creditors usually supported the debtor's cause, and it seems that the other, unrelated, creditors were more reassured in case that happened. In 1894, for example, the father of cobbler Albert Martin held a debt of 5,000 francs from his son, who applied for preinsolvency. Albert proposed to reimburse his father's share only after the other creditors had received their money. As a result, the creditors accepted the proposed composition.[47] In another example, the sisters Marie and Pauline Mallesie were two tradeswomen who were involved in a general partnership. Their father, to whom his daughters owed money, came to the negotiating table in his quality of creditor, yet he actively reassured the other creditors. He told them that he would receive a permanent allowance soon and that it was involved in a pending lawsuit that was turning in his favor. The goal of this information was to convince creditors that if he obtained the money mentioned, all his daughters' debts would be repaid.[48] All this documentation demonstrates that when relatives were involved as creditors the other creditors, being nonrelatives, did not typically object to this. The involvement of relatives could reassure creditors of the viability of the debtor's affairs, but openness on behalf of the debtor was required. The abovementioned case of E.J. Isenbaert shows that leaving out creditors who were family members could raise suspicions, especially when they had large claims.

A topic that was often debated in the creditors' meetings was the veracity of debts. Disputes over the extent of the debts and their existence could be made by the debtor or by other creditors.[49] In the first years after the issuing of the 1883 law, this debate frequently happened,

43. On the lack of shielding of partnerships from personal estates, see De Ruysscher, "Legal Culture," 391.

44. This debt was considered a super-priority hypothec, which trumped even contractual hypothecs that had been granted to creditors: *Code civil des Français*, 517–518 (art. 2135–2136). Note that merchants were required to register their matrimonial contracts in the commercial court, in order for the merchant community to know about this preferential hypothec. If they had not done so, they were criminally liable, even though the hypothec was still enforceable. See *Code de commerce*, 19–20 (art. 67–70).

45. The result of the vote was anything but favorable to shipbroker company E. J. Isenbaert. Only two out of ten creditors voted in favor of the proposed composition, representing only 48 percent of the total debt.

46. SAB, CCA, 919, 14 December 1885; SAB, CCA, 919, 2 November 1885.

47. SAB, CCA, 928, 20 December 1894.

48. SAB, CCA, 928, 1 March 1894.

49. During the session of the limited partnership Louis M. L. Gielis & Cie different creditors refuted each other's debts: SAB, CCA, 939, 7 October 1905.

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and discussions tended to slow down the proceedings. In later years, commissioned judges did more preparatory work before the meeting was held. They rigorously checked the evidence of declared debts,[50] which explains why discussions among creditors on the issues mentioned became less common.

The percentages of dissenting votes remained stable over time. For the period 1883–1914, the proportion of rejected proposals was between 35 and 45 percent. On average for the entire period, 62.8 percent of applications were granted (861/1372) and 37.2 percent denied (Tables 2 and 3).

There were no pronounced fluctuations in these percentages over the period mentioned. However, when looking into the responsiveness of creditors to convocations, there were clear shifts throughout the period of study. One trend concerned the absence of creditors. Creditors did not have to show up in person. They could be represented by a proxy, and already in the first years after 1883 creditors did so to a large extent. Proxy votes could be cumulated; representatives had as many votes in the meeting as they had mandates.[51] Proxy-holders could be experts from the field, such as merchants or traders. Typically, though, they were legal professionals. Approximately nine out of ten mandated creditors were represented by lawyers (*avocats*).[52] For the most part, proxy-holders did not split votes: they promoted the interests of different creditors having the same voting intentions.

Notwithstanding the lenient rules on representation, many creditors were absent and without representatives. In the 1880s, their share was approximately 35 percent; in the 1890s, it had already increased to more than 45 percent (Table 4). The sample of 484 cases yielded only seven occasions on which all creditors came to the meeting—by proxy or in person. The rising number of absentees (without proxy) over time may have related to the court's practices, as will be argued further below.

It is striking how creditor absenteeism was also a normal phenomenon when stakes were high. In 1910, for example, the *Banque Populaire pour l'Arrondissement d'Anvers*, a creditor of the metallurgic entrepreneur Octave Denys for a debt of 37,820.80 francs, did not show up at the meeting on Denys' preinsolvency request. This investment bank held the biggest claim of all creditors; it was listed by the debtor but remained undeclared by the creditor.[53] When Walther Dierckx and Corneille Van Diest called their creditor A. Leroy, having a debt of 11,840.79 francs, to the creditors' meeting of 3 December 1910, no representative showed up, and so Leroy's vote was lost. This event is all the more remarkable because one month before, on 5 November 1910, he had been present in person at an earlier meeting, following an earlier application, for the same debtors and while representing the same debt. He had voted against the proposal and as a result thereof the *concordat préventif* had not been granted.[54] Also in 1910, the main creditor for

50. It is notable that court dossiers of cases of more recent dates are more voluminous, which is attributable to the increasing requirements as to evidence.

51. *Pandectes belges, Concordat préventif de la faillite* (Brussels, 1887) 216, no. 69.

52. Technically speaking, during the meetings these lawyers were mere proxy-holders and not acting in their quality of *avocat*. Lawyers had been accepted in the Belgian commercial courts only in 1869; before that time only *agréés* (special delegates) could represent the parties, not lawyers.

53. SAB, CCA, 944, 10 June 1910.

54. SAB, CCA, 944, 3 December 1910; SAB, CCA, 944, 5 November 1910.

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Table 4. Number of creditors present and absent at 484 (final) in-court meetings on *concordat préventif* in the Antwerp commercial court (fourteen sample years, calendar years, 1883–1914)

	Total	Absent	Absent
Year	n	n	%
1883–1885	983	342	34.8
1889–1890	1,331	529	39.7
1894–1895	1,485	737	49.6
1899–1900	1,751	766	43.7
1904–1905	2,813	1,310	46.6
1909–1910	3,028	1,644	54.3
1914	1,396	638	45.7
total	12,787	5,966	46.6

Source: Own dataset.

Guillaume Radoux, a merchant in construction materials from Berchem, to whom the high amount of 100,816.90 francs was owed, was not present at Radoux's composition meeting.[55]

Passivity existed among creditors of all profiles and ranks. The cost to gain information or to be represented by a proxy might have been considered too high. Therefore, many creditors merely had their debt registered and did not participate in the voting meetings. Nowadays, because of cost calculation, creditor passivity is relatively more common for small creditors than for larger creditors.[56] For the data analyzed here, the same conclusion can be drawn. Figure 2 and Figure 3 provide an overview of the overall (final) voting outcomes in the 484 files studied, in relative numbers, over time. The first figure shows the number of votes, while the second indicates the indebted sums represented by these votes. Of the total number of votes, 48.8 percent voted pro and 4.6 percent of registered creditors showed up in person or by proxy to explicitly cast a no vote; 46.6 percent of the registered creditors were absent. The mentioned percentage of yes votes represented 61.2 percent of the debts, whereas the no votes stood for 5.5 percent of the debts. Voters on average represented higher debts than absentees.

Approximately one-third of all debts were held by absent, yet registered creditors. Both figures mentioned demonstrate that in the 1890s the number of absent creditors rose. However, this trend went together with homologations that bypassed the legal thresholds (see further, below). One exception was the highest segment amongst the debtors (the 99th percentile), that is, the companies that had a total debt of several hundreds of thousands of francs (Table 11). In the meetings held for them, creditors were typically more present than at meetings that were organized for applicants with lower totals of debt.

The Profile of Debtor-applicants

The dynamics of in-court negotiations not only depended on the number of creditors, in addition to the debts they claimed but also on the profile of the debtors. Who made use of

55. SAB, CCA, 944, 18 November 1910.
56. Coussement, "Macht en onmacht", 90–91, no. 48; Pierce, "Curbing the Exploitation", 106.

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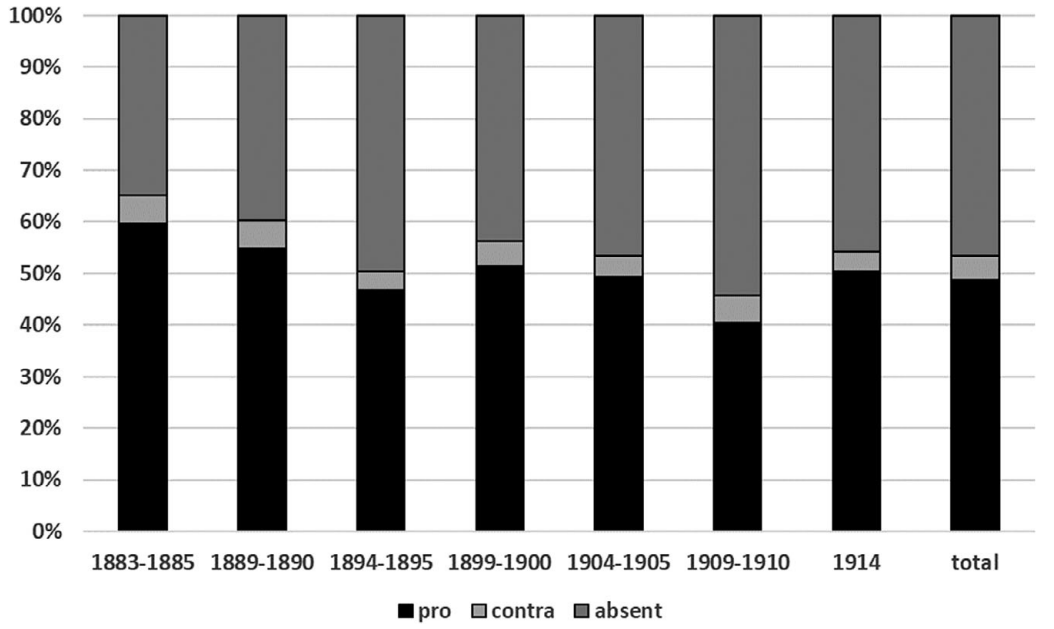

Figure 2. Relative number of votes, as percentages, in the (final) meetings on *concordat préventif* (commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914).

Source: Own dataset.

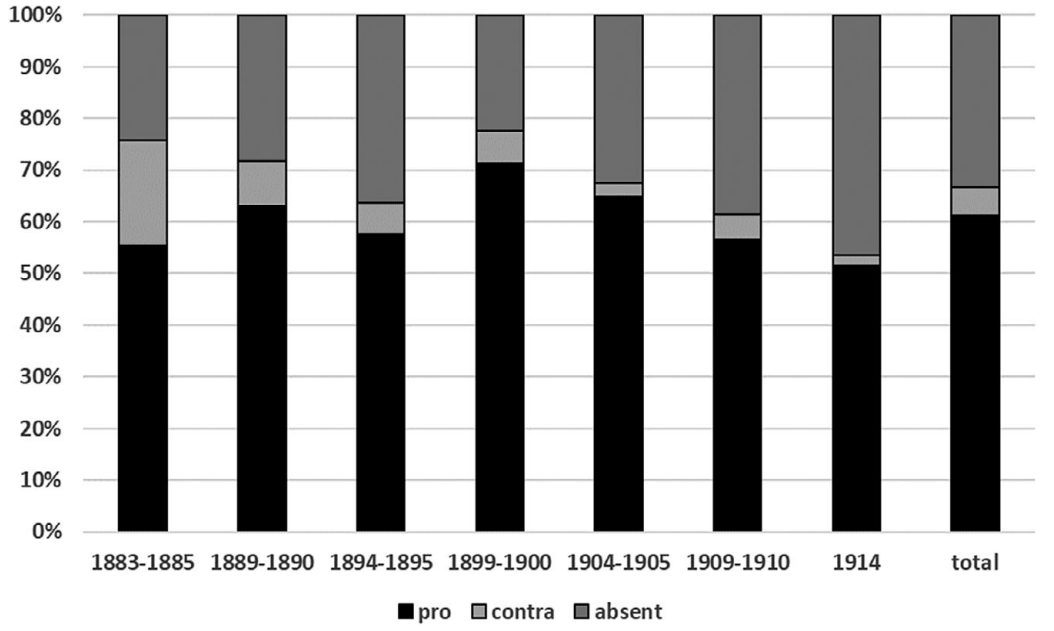

Figure 3. Amount of owed money, as percentages, represented by the votes in the (final) meetings on *concordat préventif* (commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914).

Source: Own dataset.

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preinsolvency arrangements in prewar Belgium? The legal and economic historiography of Belgian businesses has mostly been concerned with big companies and entrepreneurial success stories.[57] Yet little shops, local artisans, and small family businesses made up the bulk of commercial activity during Belgium's Belle Époque.[58] Were the applicants for preventive compositions during this prewar period retailers and small merchants rather than big businesses and enterprises?

In the years prior to the introduction of the preventive composition in 1883, especially insolvent small traders ran the risk of going through the process of *faillite.* Judicial statistics for the entire Kingdom of Belgium during the ten years from 1866 until 1875 contain some indications on the professions of the insolvents, even though the data are crude.[59] 48.16 percent of insolvents were small artisans and shopkeepers who held a retail business. A total of 16.2 percent of insolvents were bankers and exchange brokers, or merchants active in the wholesale business. Manufacturers and the bigger factory owners made up a much smaller share, of 5.4 percent.

From the records of the Antwerp commercial court, it appears that the applicants for a *concordat préventif* belonged to these same social groups and in roughly similar proportions as the ones mentioned. In order to assess the debtor's profile we looked at their professional activity and the size of their liabilities, as stated in the abovementioned preinsolvency court files. The French-language documents of the Antwerp commercial court referred to debtors' professions with standardized labels (*négociant*, *artisan*, *marchand*, *manufacturier*, *entrepreneur*). These stylized categories matched with the ones that were common in contemporary legal writings and government statistics.[60] *Négociant* referred to the owner of a wholesale enterprise. *Marchand* was used for holders of a retail business but could equally refer to middle- and high-volume traders alike, typically engaged in buying and selling of products. A *manufacturier* owned a shop that transformed raw materials and crafted finished products. Craftspersons were called *artisans.* An *entrepreneur* was an entrepreneur or contractor.

These labels can be refined even further. Table 5 shows the differentiation between the professions according to the sector (transport, production, trade) and type of business (wholesale business, retail business, and companies). From the analysis of data on the sectoral branch and profession of the applicants, it is evident that the largest debts were accumulated by companies, particularly in the transport industry (Table 5). Whether preinsolvency was sought by a company or an individual mattered greatly for the average total amount of debt. For example, the few businesses that were involved in production (five as opposed to seventy-six individual artisans) had a debt that was much higher than the debt of the artisans. Moreover, individual brokers applying for a *concordat préventif* typically brought with them a sizeable debt. The lowest debt was from shopkeepers and retailers. By contrast, the number of creditors did not bear clear reference to their sector of industry or profession. Most significant in this regard is the fact that firms had the largest number of creditors.

57. Laureyssens, *De naamloze vennootschappen* . See also idem, "L'esprit d'association". An exception is Kurgan-Van Hentenryk, "L'apport des actes".

58. As demonstrated in Jaumain, *Les petits commerçants belges.*

59. *Compte de l'administration, période de 1861 à 1870*, vol. 3, 67; *Compte de l'administration, période de 1871-1875*, vol. 3, 59.

60. De Reu, "Modifying Procedural Practices, Shaping Economic Identities", 58–59.

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Some professions struggled more than others. One high-flying group that was vulnerable in times of crisis consisted of the merchants and manufacturers in the diamond industry. At least fifteen diamond dealers feature in the sample of 484 cases. Their dues were typically high: the liabilities of four of them ranged between 200,000 and 500,000 francs.[61] The *concordat préventif* files also show two other professions in economic trouble. In the last quarter of the nineteenth century, the massive import of American wheat disrupted the Belgian agricultural markets.[62] At least nine traders and merchants in grain had to negotiate with their creditors. Their total debt ranged from 9,261.43 to 84,899.00 francs.

With regard to business entities, the company type was a proxy for the size of debt. At the beginning of the 1800s, legal personhood was not very well developed; personal and business-related assets were often mixed. Only when the firm had the structure of a limited partnership (*société en commandite*, hereinafter also SC) or a corporation (*société anonyme*, or SA), a veil between personal and company-related assets was accepted.[63] Corporations were usually larger than SCs. Only in 1873, insolvency legislation was amended to include companies with legal personhood. The *Code de commerce* of 1807 had focused on individual entrepreneurs, which was closely related to an older principle that mercantile insolvency in legal terms was concerned with unsecured debt only, and not with secured debt and stock.[64] In practice, notwithstanding the amendments of 1873, this view partially lived on. In the last quarter of the nineteenth century, the general partnership was still widely used. This type of firm did not have legal personhood, involved unlimitedly liable directors, and the personal assets of associates were not shielded from company-related debts. In Antwerp, the number of SCs and also of SA corporations—having fixed capital and limitedly liable directors—remained rather minimal, even after the government authorization requirement for SAs was lifted in 1873.[65]

In the sample of 484 court files nineteen general partnerships, eight corporations (SA) and three limited partnerships (SC) applied for preinsolvency.[66] Even though these thirty businesses brought with them only 6 percent of all creditors, they amassed almost one-third of the total amount of all debts, over 7.5 million francs in total. The largest sums were owed by companies that had an earmarked or fixed capital including the *Pecher & Cie*, which was a *société en commandite simple*, the SA *de Verlaine Belge*, and the SA *Compagnie de Constructions Mécaniques*.[67] These companies were in debt for respectively 1.57 million francs,

61. For instance, diamond trader A. Forton (with a total debt of 258,635 francs) (see SAB, CCA, 923, 28 February 1889 and no. 4753), and diamond trader Alexander Isserman (with a total debt of 224,827 francs) (SAB, CCA, 939, 20 July 1905, no. 5382 and no. 5405).

62. Blomme, *The Economic Development*, 81, 271; Rothstein, "Centralizing Firms and Spreading Markets", 107.

63. De Ruysscher, "Partnerships".

64. Secured creditors were considered super-priority *separatists*; their pledge was taken out of the insolvent's estate and was not subject to collective liquidation, and secured creditors were not involved in post-insolvency compositions. Shareholders were not considered creditors; they could only recover their investments if the public auction yielded more than what was required to pay the debts. As a result of these rules, mercantile insolvency was mostly concerned with individual debtors, not companies.

65. De Ruysscher, "Partnerships", 181.

66. On the different types of partnerships in nineteenth-century Antwerp: De Ruysscher, "Partnerships", 171–175.

67. SAB, CCA, 934, 24 August 1900; SAB, CCA, 938, 9 October 1904; SAB, CCA, 943, 11 March 1909.

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Table 5. Total amount of debts in francs and the number of creditors per debtor according to the professional occupation of the debtor (applications for *concordat préventif*, the commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914)

	Sectoral branch			
	Debtors active in (n)	Total debt (mean per debtor)	Creditors (total)	Creditors (mean per debtor)
Transport	6	76,736.82 francs	188	17
Production	81	33,137.18 francs	1,759	19
Trade	355	41,691.36 francs	9,734	23
	Social profile			
	Debtors active in (n)	Total debt (mean per debtor)	Creditors (total)	Creditors (mean per debtor)
Merchants	102	17,612.09 francs	6,185	21
Brokers	16	53,401.34 francs	537	18
Shopkeepers and retailers	76	20,439.70 francs	1,802	18
Companies	38	293,791.11 francs	2,140	32

Source: own dataset. Please note that the sectoral branch of the debtor could be identified in 442 cases, and the social profile was mentioned in 232 cases.

1.18 million francs, and 927,000 francs. The large sums involved and the specialized nature of infrastructure and assets of such companies made the *concordats préventifs* for them different as compared to preinsolvency agreements of individual debtors. For example, mergers could be part of the negotiation process leading up to *concordats préventifs*. In 1904, three corporations with plants in Hoboken, having different owners, applied simultaneously for a preinsolvency composition: steel plant SA *des Acieries d'Anvers*, electricity company SA *La Compagnie Industrielle d'Électricité d'Anvers* and the sheet iron factory SA *des Tôleries d'Anvers*. The proposals made in the three separate proceedings were identical. According to the propositions, the infrastructure and archives of SA *des Tôleries d'Anvers* would be used —in case of a successful preventive composition arrangement—to form the newly founded SA corporation. After homologation of the applications, the various former directors set up the *Union Métallurgique d'Hoboken-Anvers*, on 2 July 1904.[68]

The Three Routes Toward Obtaining a *Concordat Préventif*

The Antwerp commercial court allowed three paths toward a homologated *concordat préventif*. One was a legal route, while the two others were in breach with the law and only based on court practice. The legal method was to try to obtain sufficient votes from the creditor meeting. The two other routes were open once this failed. The court could rescue a proposal by

68. *Le recueil financier*, vol. 1, 793–794; Pauwels, "De 'Aciéries d'Anvers'", 13–22.

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homologating it, or the debtor could submit a new application and have another try at securing the creditors' vote or the court's approval.

A debtor's proposal could become a binding document if the meeting of creditors approved it. In the meeting, all creditors—present in person or by proxy—had to cast a vote by writing down their approval or rejection of the debtor's preinsolvency proposal. As mentioned above, the double majority of 50 percent of creditors and 75 percent of debts had to be obtained.

These rules were burdensome. In 53.5 percent of the 484 cases, the debtor obtained fifty or more percent of the votes; in a mere 29.9 percent of the meetings was the three-quarters requirement met. Because of the two majority requirements, the number of successful meetings was limited. In only 27.7 percent of the court cases in the sampled years were both majority requirements met (Table 6).

These data are remarkable considering the mounting number of homologations. The number of homologations was higher than the number of cases in which both majority thresholds were met (Table 8, Figure 4). That means that homologation served as a safety net for proposals that were not accepted by the creditors' meeting. This method, however, was against the law. The 1883, 1885, and 1887 laws stipulated that when a proposal was not accepted by the creditors, considering the two thresholds mentioned, the court could not homologate the proposal as *concordat préventif*.

What caused this discrepancy? One factor was the procedural practices of the Antwerp commercial court, which were applied to all cases. It became conventional practice that the judge in the calculation of the threshold did not consider the creditors with registered debts who did not show up at the meeting. According to the law, the majority requirements were calculated on the basis of the number of registered creditors irrespective of whether they participated in the meeting.[69] However, the commercial court of Antwerp did things differently. The three-fourths majority requirement was calculated on the debts that were registered and declared, but only for those creditors who came to the voting meeting. The Antwerp commercial court interpreted the rules such that both the half-plus-one requirement and the 75-percent threshold on debts were based on the creditors present or represented at the meeting, not on all creditors having registered debts. This interpretation meant that absent creditors, even with registered debt, did not influence the vote, which lowered the threshold for corroboration of the composition. As was already mentioned, in the 1883 law the creditors were held to declare their debts at the first meeting, whereupon the commissioned judge could proceed to hold a vote. However, since commissioned judges over the years invested more time in analyzing the evidence supporting creditors' claims, usually several meetings were held for this purpose alone. Creditor passivity increased with the duration of the proceedings. As a result, concluding meetings were held in which votes were cast but not all creditors registered were present or represented.

In practice, the Antwerp calculation method boiled down to the fiction that absent creditors were deemed not to object to the debtor's proposal. Since all debts registered were addressed in the debtor's plan the decision taken by creditors present at the meeting also affected the

69. *Pandectes belges, Concordat préventif*, 221, no. 94. Later, some authors considered that creditors with registered or known debts who remained absent during the meeting were to be held as opposing the deal. See Beltjens, *Encyclopédie* 660, no. 2 and 662, no. 11.

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Table 6. Number of cases per year, in percentages, in which the majority thresholds for *concordat préventif* were met (final meeting) (commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914)

	In debts	In votes	Both		In debts	In votes	Both
Year	%	%	%	Year	%	%	%
1884	50	70	50	1900	26	52	23
1885	35	65	30	1904	38	59	34
1889	26	70	22	1905	24	43	22
1890	30	52	26	1909	21	40	19
1894	40	47	37	1910	19	34	19
1895	13	35	13	1914	40	56	40
1899	17	46	13	total %	29.9	53.5	27.7

Source: Own dataset.

debts of registered absentees. Once the agreement was accepted, following the aforementioned calculations, it applied to all creditors. This meant that creditors upon registration of their debts could refrain from attending the in-court meetings and still profit from the outcome. The method used by the Antwerp commercial court was clearly against the law. The creative application of rules by courts was also noticed by legal authors. Already in 1892, Lowet and Destrée expressed a critical view of these practices.[70] Indeed, there could be peculiar consequences. One creditor showing up could decide over the debts of several other creditors that were not present or represented, even if the debt of the former was for a small amount.

The calculation method was initially devised as a general rule to support more homologations but it quickly went together with judicial discretion. Initially, the exclusive focus on the number of creditors present at the meeting for determining the voting thresholds was a rule of the court, applicable in all cases. But already in the later 1880s, occasionally homologations were accepted when a majority of creditors, present or represented, voted against the proposal, and even when the consenting creditors did not represent a majority of debts.[71]

In the 216 cases for which the court dossier could be linked to a final judgment, 134 homologations were imposed by the court. Of those, sixty-three were in breach of the articles of the law regarding the thresholds. In 28 of those 63 cases, neither the 50 percent majority of votes nor the 75 percent threshold of debts was reached. In only one case was the three-fourths requirement of debts met, though not the majority of votes. In 34 cases sufficient creditors voted, but they did not represent 75 percent of the debts. This situation demonstrates that the court in most cases ignored the 75-percent requirement, not the 50-percent one. When these numbers are distributed chronologically (Table 7), it becomes clear that the practice of homologating rejected proposals became more important in the 1890s.

If a proposal was rejected by the creditors and the court did not grant a rescue homologation, the debtor could submit a new application. Changes to a proposal could be made after the vote

70. Lowet and Destrée, *Du concordat préventif*, 47.

71. For example, SAB, CCA, 929 (1895): one case mentioned in the *procès-verbaux* involved 17,992.78 francs of total debt. 38 of forty-nine registered creditors were present at the meeting, at which eighteen voted in favor of the debtor's proposal. These 18 creditors represented 27.67 percent of the total of debts.

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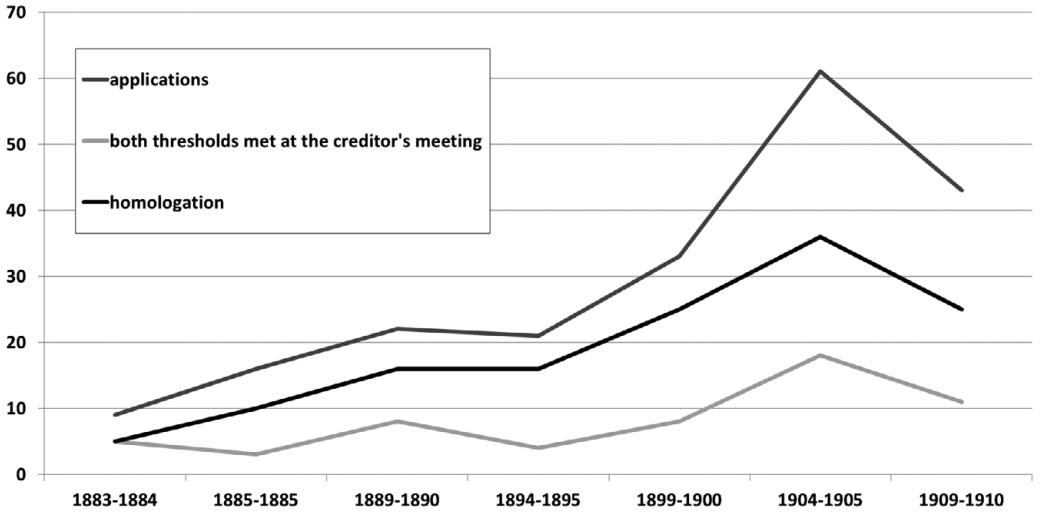

Figure 4. The success rate of applications for *concordats préventifs* in Antwerp, fourteen sample years 1883–1914, according to meeting result and homologation (216 cases).

Source: Own dataset.

and in that case, resubmittal was possible. It was a practice of the court to accept new submissions after negative outcomes of proceedings held previously. This resulted in the start of a new proceeding; the previous proceeding was not resumed.

The sources usually do not allow for the identification of resubmitted proposals. Therefore, within the sample of 484 cases, it is unclear how many of the proceedings were second or third attempts to obtain a *concordat préventif*, or to what extent proposals had been amended in consecutive proceedings. However, it is evident that resubmission was not a regular practice and remained rather exceptional. In the sampled data, to which additional sources of the years 1906 and 1907 were added, we find sixteen merchants in trouble who had a second try at securing a *concordat préventif*. The silence in the sources likely indicates that most applications did not constitute second or third attempts. After all, a resubmission represented a significant risk. For a second rejection, *faillite* was a more likely outcome.

Successive preinsolvency proceedings generally occurred within short delays. The mentioned data show that in Antwerp debtors reapplied after one or two months. A resubmission was usually accompanied by a thorough revision of the initial proposal. A mere resubmission of the initial proposal was often not a good strategy. On 23 October 1900, for example, coffee roaster G. Bowles made his first preinsolvency proposal. On 28 November 1900 Bowles assembled the same creditors as before, all representing the same amount of debts. The four no-voters from a few weeks before now voted for the debtor's proposal. However, one important creditor, who had voted in favor in the first round, now reconsidered his decision and voted contra. This change resulted in a larger rejection of the proposal (in sum).[72]

72. SAB, CCA, 934, 23 October 1900; SAB, CCA, 934, 28 November 1900.

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Table 7. Number of homologations, with detail on majorities for rescue homologations (216 cases, commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914), chronologically

Year	Cases	Homologation	Homologation after creditor approval (legal requirements)	Rescue homologation	Debt majority not met	Creditor majority not met	Both majorities not met
1883	5	2	2	0	0	0	0
1884	10	5	5	0	0	0	0
1885	11	8	3	5	1	1	3
1889	6	4	3	1	1	0	0
1890	16	12	9	3	1	0	2
1894	6	4	3	1	0	0	1
1895	15	12	3	9	1	0	8
1899	16	12	4	8	4	0	4
1900	17	14	5	9	8	0	1
1904	16	11	7	4	3	0	1
1905	45	25	15	10	7	0	3
1909	14	6	2	4	4	0	0
1910	39	19	10	9	4	0	5
1914	0	0	0	0	0	0	0
Total	216	134	71	63	34	1	28

The timing of a resubmittal may have been a factor influencing the outcome. Swift resubmissions may have been less successful on average. For example, the hatter Gérard Galesloot reapplied a mere two weeks after an unsuccessful first try.[73] Galesloot had used the days in between to attract new loans—before his total debt amounted to 3,353.40 francs, now an extra total debt of 267.90 francs had been added. This swift reshuffling upset the earlier creditors and some of them changed their votes. The Antwerp hatter ultimately did not obtain a *concordat préventif*.

In the interval between the two proceedings, amendments to the original proposal were normal. Obtaining extra credit also meant that new creditors came to the negotiating table. Denis Van Den Eynde, for instance, owned a manufacturing shop in default. He met his creditors twice, on 18 January 1905 and on 10 March 1905.[74] The second creditors' meeting decided in favor of the debtor, although Van Den Eynde had in the meantime more than doubled his debts (from 12,567.33 to ca. 24,600 francs). The added debt came from four new creditors who had granted additional loans. As a result of this, also other creditors became more positive about the debtor's prospects.

Other resubmissions were made after a few years. J.B. Braeckmans, a trader in bricks and roof tiles, managed to summon his creditors three times to the negotiating table over the course of two years, in 1906 and 1907.[75] Typically, when the intermediate periods between submissions were long, the debtor's situation was very different in each instance. For example, the general partnership Parser-Brodsky from Antwerp, with Emmanuel Parser and Jules Brodsky as directors, submitted a first application in the autumn of 1907 but failed to achieve a *concordat*

73. SAB, CCA, 919, 20 July 1885; SAB, CCA, 919, 5 August 1885.

74. SAB, CCA, 939, 18 January 1905; SAB, CCA, 939, 10 March 1905.

75. SAB, CCA, 940, 24 December 1906; SAB, CCA, 941, 20 August 1907; SAB, CCA, 941, 16 November 1907.

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Table 8. Success rate of applications for *concordat préventif* (homologations), Belgium and Antwerp 1883–1914 per court year

		Belgium			Antwerp		
Years	(n)	Applications (n)	Accepted (n)	Success rate (%)	Applications (n)	Accepted (n)	Success rate (%)
1883–1884 to 1885–1886	3	343	202	58.9	35	21	60.0
1886–1887 to 1890–1891	5	1,110	703	55.6	161	117	72.7
1891–1892 to 1895–1896	5	1,210	673	55.6	149	116	77.8
1896–1897 to 1900–1901	5	1,113	633	56.9	204	143	70.1
1901–1902 to 1905–1906	5	1,385	764	55.2	247	159	64.4
1906–1907 to 1910–1911	5	1,620	885	54.6	289	180	62.3
1911–1912 to 1914–1915	4	964	483	50.1	287	125	43.6
Sept. 1883–Aug. 1915	32	7,745	4,343	56.1	1,372	861	62.8

Source: own dataset and *Administration de la justice criminelle et civile de la Belgique. Résumé statistique* (1881–1914)

préventif. In February 1910, more than two years later, a second attempt was made.[76] By then, the company had been able to reduce the total amount of debt by half, from 548,812.26 to 244,593.93 francs, and had to negotiate with sixty-one creditors instead of the seventy-six creditors from 1907. Dealer in colonial goods François Verbert and company (SC) Louis M. L. Gillet & Cie even took five years, between 1905 and 1910, to alleviate some of their debts and to renegotiate.[77] When Louis Gillet faced his creditors a second time, on 22 September 1910, the previous debt of 72,825.04 francs had been reduced to 40,768.32 francs. He had thirty-one creditors to convince, which was substantially less than the seventy-one creditors from 1905.

Debtors' Profiles and the Court's Policy

When cross-referencing the archival data with the proxies of debt size and professional profile of the debtor, it becomes apparent that from the 1890s onward debtors with sizeable debt had more chances of receiving a positive answer from the creditors' meeting. Table 10 demonstrates that initially, in the middle of the 1880s, on average positive decisions from creditor meetings on *concordat préventif* more often involved debtors with a smaller total amount of debt. However, at the latest from around 1890 onward, this changed. At least until 1914, positive decisions usually were made for debtors with a more than average debt; when majorities were not reached, it was typically for less sizeable debts (see also Table 11).

76. SAB, CCA, 941, 8 October 1907; SAB, CCA, 944, 23 February 1910.

77. SAB, CCA, 924, 14 February 1890; SAB, CCA, 939, 12 August 1905; SAB, CCA, 939, 7 October 1905; SAB, CCA, 944, 15 April 1910; SAB, CCA, 944, 22 September 1910.

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A similar conclusion can be reached with regard to the second route toward a *concordat*, which was homologation after insufficient votes (Table 9). The chance of obtaining a rescue homologation for debtors with a total debt above 10,000 francs was generally higher than for those with smaller debt totals. That probability rose sharply for debtors with total debt above 100,000 francs. As was mentioned above, if the debtor had a total debt of more than 200,000 francs, participation by creditors in the proceedings and the final voting meeting was normally higher, which rendered rescue homologation less necessary.

All this shows that the court could step in and save a composition, but that such action was more likely when the debt total was high. Therefore, in this regard, the court's methods were not responding to creditors' passivity. Creditors' passivity was not a cause of rescue homologations. For creditors with higher debts, it was more normal to seek representation from an advocate at the meeting or to be present in person to cast a vote. For them, the cost of following up the proceeding was relatively smaller than for creditors with modest debts. However, the court did not rescue more proposals of debtors with small debts. Instead, the opposite happened. In cases with higher creditor participation rates—that is, for debtors with larger debts—the court was more likely to intervene when the majority requirements were not reached.

For the third option of resubmitting a proposal, it is difficult to reach conclusions with the same detail. Regarding resubmissions, as was mentioned, the sources are very incomplete. It is difficult to identify proposals as resubmitted proposals. Also, traces of earlier submissions by the same debtor can usually not be retrieved. The separate series of *procès-verbaux* is incomplete; mentions of previous meetings can occasionally be found in the court dossiers. Therefore, it is not possible to draw up a record for each debtor, listing earlier applications and homologations, or consecutive attempts to obtain a *concordat préventif.* However, given the examples mentioned above, the size of the debt, as related to the profession, may have been a factor as well. The hatter, the coffee roaster, and the tile dealer failed to persuade the creditors' meeting for the second time, whereas the industrialist, the trader in colonial goods, and the big firm did succeed.

The question then is: what underpinned the higher success rate, both in meetings and rescue homologations, for debtors with higher debt totals?

One possible answer is the different structure of the business of the applicants involved, and in that connection, the appraisal of the creditors and/or the judges relating to the creditworthiness of the debtors' enterprises. However, as was already mentioned, during creditors' meetings there was no discussion of the debtor's estate. It is true that the applicant could provide an overview of his assets and creditors could consult this inventory at the office of the court clerk. However, there were no references to this inventory during the discussions when the creditors convened. Moreover, reports by the judge delegated did not mention the debtor's asset status. Admittedly, there is little information on intermediate meetings. Yet, even so, typically, the proposal that was submitted at the concluding voting session was the one that the debtor had handed in at the start of the proceeding. Furthermore, from the contents of the homologated proposals it is evident that monthly repayments—expressed as percentages of the total debt—were largely comparable for debtors with low and high debt totals (Table 12). This further demonstrates that the meetings of creditors did not adjust repayment proposals in reference to economic factors. Therefore, it is improbable that the debtor's financial or asset situation was a matter of scrutiny or analysis during the meetings.

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Table 9. Number of homologations (216 cases, commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914), according to total size of debt

Total size of debt	Cases	Homologations	Homologations after creditor approval (legal requirements)	Rescue homologations	% rescue/ homologations	% rescue homologations/ cases	% homologations/ cases
< and = 10.000	70	40	23	17	42.5	24.29	57.14
10,001–20,000	55	28	13	15	53.57	27.27	50.91
20,001–50,000	48	33	17	16	48.49	33.34	68.75
50,001–100,000	27	19	10	9	47.37	33.34	70.37
100,001–200,000	8	7	3	4	57.14	50	87.5
200,001–>	8	7	5	2	28.57	25	87.5
Total - average	216	134	71	63	47.01	29.17	62.04

Table 10. Number of creditors and amount of debts per request (averages) and majorities achieved versus majorities not achieved in the sources of cases of *concordat préventif* (commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914)

	Majorities achieved		Majorities not achieved	
	creditors n on average	indebted sum in francs on average	creditors n on average	indebted sum in francs on average
1885	29	27,704.76	30	78,943.06
1890	27	40,334.70	32	12,762.91
1895	28	22,993.05	24	20,074.23
1900	24	99,868.54	21	29,241.12
1905	24	49,613.51	21	20,743.84
1910	30	63,417.75	27	20,647.90

Source: own dataset.

Table 11. Thresholds and results of the final meeting on *concordat prévéntif* in combination with debtor's profession and total size of debt (commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914)

			75% majority met		Majority met in votes (registered creditors)		Both thresholds met	
Total debt (francs)	Applications (n)	Debtor's profile	(n)	(%)	(n)	(%)	(n)	(%)
500,001– >	7	firms (SA, SC)	6	85.7	7	100.0	6	85.7
200,001–500,000	17	top-segment traders, a.o. diamond traders	7	41.2	11	64.7	7	41.2
100,001–200,000	17	wholesalers and higher-scale merchants	8	47.1	14	82.4	7	41.2
50,001–100,000	66	wholesalers, brokers, and higher-scale merchants	21	31.8	33	50.0	15	22.7
< and = 50,000	377	shopkeepers, low- and middle-scale merchants and small retailers	93	24.7	174	46.2	89	23.6

Source: Own dataset.

Table 12. Modalities of payment stipulated in homologated compositions (216 cases, commercial court of Antwerp, fourteen sample years, calendar years, 1883–1914)

Total debt	Cases	Average percentage of debt to be repaid per month	Mean percentage of debt to be repaid per month
<10,000	70	4.2	2.67
10,001–20,000	55	4.99	1.94
20,001–50,000	48	1.74	2.5
50,001–100,000	27	0.77	1.93
100,001–200,000	8	1.66	1.22
200,001–>	8	2.42	1.91

Source: Own dataset.

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Of course, this absence does not preclude any economic evaluation on the part of creditors. The overview of debts, the proposal made by the debtor, as well as the latter's profession and reputation, no doubt were information that they took into account.

With regard to the third route of resubmissions—in contrast to the first and second options mentioned—there was commonly a difference between the new proposal and those previously submitted. After a first attempt, debtors could reschedule their debts, which could entail a reduction of the debt total, with or without additional credit. However, since sources on resubmissions are minimal, it is unclear to what extent for resubmitted proposals creditors were more involved in the economic analysis of the debtor's situation. From the few documents that allow speculation in this regard, it is possible that for debtors belonging to the higher strata of the Antwerp business community resubmissions were more common. There may have been a higher chance of success as well. However, whether this followed from differences in procedural or evaluation practices is impossible to say.

Homologations were not only decided by creditors but, at the end of the proceeding, also by the court. The judges' influence is not explicitly mentioned in the sources and can only indirectly be found, for example when a rescue homologation was granted after rejections by creditors. As mentioned, these rescue homologations were more typical for the debtors with higher totals of debt (Table 8).

When the data on the first and second routes are combined, it becomes clear that the success rate of debtors with a total debt of less than 20,000 francs was about 50 percent, while debtors with higher total debts had at least a 70 percent chance of obtaining a *concordat préventif* (Table 9). Rescue homologations saved more debtors with total debts between 100,000 and 200,000 francs.

There was more to it than providing a safety net for those companies that narrowly missed the high thresholds for creditor votes. One might still think that the judges offered debtors with debt between 20,000 and 200,000 more chances of homologation, based on an economic analysis that was not done by creditors. This would then assume that the delegated judges made an economic assessment which they did not communicate at the meeting, but which nonetheless determined whether or not a homologation was granted. That is a very complicated explanation and for that reason not very likely. Moreover, the similarities between outcomes of the first and second routes, in terms of the debtor's profession and total debt, make it improbable that the judges prepared for themselves a thorough economic analysis of the debtor's situation, did not disclose it, but allowed it to count toward a rescue homologation.

The rescue homologations that went against the letter of the law were not for cases that narrowly failed to be accepted by creditors. In the group of rescue homologations, only fourteen out of sixty-three cases had percentages for both majority requirements between forty and fifty (for the first requirement) and above sixty (for the second requirement). Thus, this indicates that rescue homologations were, as a rule, not for cases in which sufficient votes had nearly been obtained. They were not granted in the main order for those cases where the majority thresholds were just missed.

All the above renders the explanation that differences between cases were exclusively due to economic variables, and assessments dependent thereon, less probable. Instead, a possible explanation for the more frequent acceptance of *concordats préventifs* for higher debts is the fact that the profile of the successful debtors was close to that of the judges themselves.

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The 1807 Commercial Code had provided that only "notable" merchants could elect judges in the court, among them the "heads of the oldest commercial houses," who had demonstrated "integrity, sense of order and economic success."[78] Judges needed to have practiced trade "with honour and distinction" for five years.[79] In Antwerp, as well as elsewhere, the judges in the commercial court were part of the city's commercial elites.[80] Data on the composition of the Antwerp commercial court is incomplete. For certain years, however, the judges of the commercial court are known, and a rather detailed profile can be drawn up for them.

One example is Pierre François Adolphe Verspreeuwen (d. 1908). In the 1860s, he was an international merchant in wood, who imported from Florida, among other sources.[81] In the 1880s he became judge and later president of the commercial court of Antwerp.[82] In the later nineteenth century, he continued to be the administrator and main partner of the SC Verspreeuwen, based at Antwerp, which was extended to include his son and two new associates in 1899.[83] In 1900 Adolphe was elected as senator for the liberal party and he remained in that office until his death in 1908.[84] His position as senator did not prevent him from remaining active as a merchant in Antwerp.[85] Adolphe Verspreeuwen was involved in the main mercantile networks of Antwerp, and he was a shareholder in several corporations (SAs) that had their seat in the city. The networks of the higher strata of the Antwerp business community have been analyzed in detail for the first half of the nineteenth century.[86] In the period under study here, the ties between the mercantile elites of Antwerp—commercial, institutional, and family bonds—were probably as solid as they had been decades before, even though no detailed research has been done thus far. However, it is possible that these connections did influence decisions made by Verspreeuwen, in his capacity of judge. This influence may have been an inadvertent perception that debtors with known backgrounds or profiles similar to the merchant-judges themselves were better suited to receive a *concordat préventif*. That perception could also have been a shared assumption about the higher creditworthiness of certain professions. Brokers and industrialists were generally more indebted when they applied for a *concordat préventif*. Their financial condition was not analyzed in detail, yet both creditors and judges were more inclined to grant them the concordat.

The impact of the abovementioned judicial tactics was clear. Acceptance rates rose, but mostly for the higher segments of the debtor population (Tables 9 and 11). Absenteeism of creditors was a phenomenon that initially was not linked to these numbers but may have been modestly reinforced by the court's approaches. Creative majority calculations took no notice of absent creditors and this, in turn, stimulated others to not be involved in creditors' meetings. However, the stated increase in the number of homologations did not have a major effect on the

78. *Code de commerce*, 194 (art. 618).

79. Ibid., 194–195 (art. 620).

80. See for example Mees-Braun, *Le Tribunal de Commerce*, 119–141; *Le Tribunal de Commerce de Liège*, 6–40.

81. *Jurisprudence du port d'Anvers* (1875), 233–235.

82. Adolphe Verspreeuwen was judge at least from the judicial year 1882–83 onward. See *Almanach royal officiel* (1882), 213. He was president in 1898, see *Pasicrisie belge* 1898, 36.

83. *Recueil spécial des actes* (1899) 959.

84. He collected and published his speeches as senator in Verspreeuwen, *Redevoeringen*.

85. *Jurisprudence du port d'Anvers* (1905), 77.

86. Greefs, "De terugkeer van Mercurius".

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number of applications. The *concordat préventif* remained a last resort, and it is unlikely that the court's changing policy per se led to significantly more demand for it. The number of applications rose because the proceeding of *concordat préventif* became better known and was seen as a viable option. Applications from debtors with debts exceeding 100,000 francs remained relatively exceptional, even after about 1890 when the court favored such applications more.

Behind all the above, it was clearly also the mindset that the *concordat préventif* was a moratorium arrangement, which in the end only imposed payment schedules on creditors.[87] No property rights or collateral were involved. A *concordat préventif* was an agreement on postponements of payment. Therefore, the cost of the actions of creditors may have been relatively high considering what they could gain from a proceeding. One can expect that the behavior of parties to a liquidation proceeding, in which votes were cast on postinsolvency proposals, was different. Further research may delve into the differences between proceedings in this regard.

Conclusion

Considering all of the above, the example of the Antwerp preinsolvency court dynamics provides several caveats for assessments of court proceedings surrounding (pre)insolvency. The efficiency of such proceedings must not only be estimated on the basis of variables such as the legal framework, length of proceedings, involvement of creditors, or avoidance of liquidation as an outcome. If the Antwerp example is indicative of other insolvency courts in Belle Époque Europe, then only an integrated analysis of economic, social, and institutional factors will allow us to provide answers to the question of the functionality and purpose of (pre)insolvency proceedings. Approaches that focus either on the financial profile of debtors or on market-based developments[88] risk missing important clues. Comparative analysis will reveal whether certain court strategies and dynamics of negotiations were linked to, for example, the economic profile of the place. For example. in Antwerp, the share of producers in proceedings of *concordat préventif* was limited (see Table 5), which no doubt was due to the city's economic settings.

The Belgian preinsolvency procedure of June 1883 was not considered flawless by contemporaries. Its contents were layered on top of existing laws and majority requirements were high. Due to all this, at first, the proceedings were not very popular. Slowly more applications were made. In the Antwerp commercial court, the disadvantages of the legal framework, in particular the high majority thresholds, incited circumvention.

87. This also explains why virtually no appeals were lodged against the verdicts of the Antwerp commercial court on *concordats préventifs*, even when the court had applied methods that were not in line with the legislation. Few appeals on the topic of *concordats préventifs* with regard to Antwerp cases can be found in the series of judgments of the Brussels Court of Appeal. See State Archives in Brussels (department Forest), Court of Appeal Brussels, third series, nos. 765–788 (1883–1894, 1896–1898, 1900–1914). Only in cases involving huge sums appeals were occasionally made; however, the Antwerp court's policy on majority rules and rescue homologations was not addressed. Appeals involving Antwerp *concordats* dealt with other aspects, such as the impact of a *concordat* proceeding on a pending attachment (no. 774 [9 March 1894]).

88. For an overview of existing literature, see Li and Faff, "Predicting Corporate Bankruptcy", and—specifically with regard to courts—Arcuri, Levratto, and Succurro, "Does Commercial Court Organization Affect Firms' Bankruptcy Rate?", 576–579.

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The Antwerp data show that this court interpreted many articles of the law freely and altered the proceedings considerably, to the point that more compositions were accepted than strictly allowed. Voting rules were amended and second attempts were allowed. And even with negative voting results compositions were granted. Over the years a trend benefitting higher-profile debtors emerged. The meetings of creditors advantaged debtors with higher total debts. When the court saved rejected proposals with a homologation, a similar bias existed. For resubmissions, too, indications are that higher-profiled debtors could more easily resubmit and obtain a homologation thereafter. Economic evaluation during creditor meetings and by judges was largely lacking. Therefore, it can be presumed that insider bias had a real influence. Debtors were likely treated more favorably when they belonged to the same strata as the merchant-judges in the Antwerp commercial court, due to a shared perception of higher creditworthiness for these categories of debtors. Therefore, the outcomes of preinsolvency cases in Belle Époque Antwerp were the result of complex dynamics between the behavior of debtors, creditors, and judges, in which not only economic but also other, contextual, factors had influence.

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