2 Business Rescue, Turnaround Management, and the Legal Regime of Default and Insolvency in Western History (Late Middle Ages to Present Day)

Dave De ruysscher

2.1 Introduction

The legal concept of insolvency has changed tremendously over the past decades. Legal scholars and lawmakers have for a long time considered insolvency, in addition to the options provided for by legislation in case of permanent default, as a means of last resort. Inevitably, this concept has had an impact on the perception of the legal history of indebtedness and insolvency as well. Legal historians have for a long time addressed these themes as encompassing only fraud and expropriation of assets. Moreover, they have not usually been very interested in business history. This lack explains why intersections between the management of companies on the one hand and insolvency in legislation and court practice on the other have virtually not been analyzed from a legal-historical perspective.

As a consequence, the approaches mentioned regarding insolvency are outdated. Nowadays, reorganization and continuity of business are key paradigms in legislative reforms. Accordingly, the largely neglected legal history of corporate rescue can be revived. In the Middle Ages, examples can be found of legal regimes allowing for debt arrangements upon insolvency. This chapter will provide an overview of the gradual acceptance of compositions over long periods of time and across regions in continental Europe, in England, and in the United States. It sketches the slow emergence of a rescue culture in law. Furthermore, the chapter proposes some potential lines of research relating to turnaround management and its interactions with official approaches toward insolvency. One new area of research relates to the impact of legal modalities of debt recovery on turnaround management strategies. Especially in the late Middle Ages, changes were taking place in this regard. Moreover, the incrementally developing idea that companies could have separate capital and personhood is likely to have had consequences for turnaround management.

2.2 The Flexible Form of Firms and Repressive Insolvency Laws (Late Middle Ages)

In the 1200s, international commerce expanded. The Mediterranean was opened up for trade from Northwest Europe. The commercial boom resulted in the creative development of new credit instruments (bills of exchange, bills obligatory), of techniques for distributing risk (bottomry, maritime insurance), and of company contracts that allowed for shielding investments (e.g., the *commenda*) (Lopez, 1976). In spite of vibrant mercantile activity and the formulation of new contracts, which characterized the period until around 1400, how firms were constituted and how they operated demonstrate much uniformity throughout the ensuing centuries. The commercial revolution took place largely in Southern Europe, and the mentioned new developments were initiated above all from within the commercial cities on the Italian Peninsula. Innovations that came after originated mostly in England and Northwest Europe.

Over the course of the late nineteenth and twentieth centuries, scholars have analyzed the operations of many individual firms active in the late-medieval era (c.1250–c.1500) and in the sixteenth century. Early historical research focused on the links between entrepreneurs and the political elite (e.g., Ehrenberg, 1896); over the past decades, historians' attention has shifted toward family relations and merchant networks (e.g., Häberlein, 1998). The management of companies during the mentioned eras has often been examined from within these frameworks. Turnaround and shutdown management in these periods have not often been studied as such, or in detail, even though now and again major monograph studies have provided glimpses into the strategies that were deployed within companies under financial duress.

In the centuries that followed the commercial revolution of the thirteenth and fourteenth centuries, family firms still dominated the economic scene. Owners were typically family members or business relations within close-knit networks. These features were also characteristic for those companies concerned with international commodity trading and finance. Moreover, such firms did not usually specialize; merchant houses engaged in trading and financing, and although different activities were often confined to separate companies, they were closely intertwined. Studies have explored the management tactics of international banking firms, such as the Medici and Fugger holdings. Even when consortiums of partnerships were international, they depended on coordinated actions directed among owners; agent-managers could be given power of attorney, but they did not commonly have much leeway in assessing business opportunities. Company contracts generally provided restrictions in negotiating deals. Managers were salaried agents acting on instructions that were sent out by the general manager, who was the owner of the firm. Moreover, capital was drawn in the form of loans and shares but minor investors typically remained outside the decision-making processes (De Roover, 1966, pp. 90–107; Häberlein, 2012).

Family firms of this kind usually had the legal form of a general partnership. An important feature of general partnerships was that partners were held jointly and severally liable. Creditors could sue for the debts made on behalf of the company, against any of the partners and for the totality of the debts, even if those debts exceeded the investments made by the partners involved (Zimmermann, 1996, pp. 466–472). Another characteristic of partnership firms was that their capital was not entrenched. The notion of legal personhood was developed only slowly, albeit at a faster pace from the sixteenth century onward; still, it was acknowledged for private companies only haltingly over the course of the eighteenth and nineteenth centuries (Mehr, 2008). In the late Middle Ages and early modern period (c.1500–c.1800), general partnerships were joint ventures without a veil between private and company-related properties. Investments were not shielded from private creditors, thus exposing the firm to debt recovery actions by outsiders. Moreover, according to the law, partnerships were dissolved at the death of one of the partners, or when they resigned (Zimmermann, 1996, pp. 455–457).

The features of unlimited liability, lack of entrenched capital, and the risk of untimely ending have been described as weak in terms of investment protection and continuity (e.g., Hansmann, Kraakman, & Squire, 2006, pp. 1366–1372). These properties have often been linked to the fact that general partnership contracts were signed for specific short terms only. Usually, general partnerships were drafted for a period typically spanning between two to five years (De Roover, 1966, p. 241, pp. 247–248; Postan, 1973, p. 86). However, in spite of these deficiencies, limited liability companies were not very common throughout the periods mentioned earlier. They were used in naval trade, above all, and on a limited scale. Quite remarkably, the most prolific and successful firms of the late Middle Ages did not usually opt for this company type. Italian banking firms sometimes set up *commenda*-type daughter firms, but only if they ventured into a new market or with new partners. Even so, when investments were consolidated, general partnerships were preferred instead (De Roover, 1966, pp. 59–60, pp. 89–90, p. 237, p. 325).

There are a number of reasons that explain why general partnerships remained widespread. Flexibility is one of them. The structure of the company could easily be devised in the company contract. It could be provided that the partnership would continue, notwithstanding the death of a partner, for example. Furthermore, even though associates of a general partnership were held jointly and severally liable, there were important gray zones. A lack of information as to who the investors were meant that often only the visible actors were sued for debts. In many commercial hubs of Southern and Northwest Europe, company contracts were not made public. A lot of agreements remained informal as well: they were not written down, and the venture only materialized in books and letters, which were kept by the insiders. Some cities such as Florence provided that limited liability firms had to be registered. Yet even in that case, the main public information regarding which partners were accountable came via the name of the firm, which was used by its agents signing on behalf of the partners. Company names did not always mention all associates (they could have the form of '& Cie,' for example). As a result of these limited public sources, creditors relied on the information that they had received from their debtors, even if the latter were acting on behalf of a company. Moreover, directors of companies were the ones with whom creditors negotiated, and in case of default directors, they were the ones who answered for the debts. Creating separate partnerships for different activities thus signified a form of protection for non-active partners and investors (Goldthwaite, 2009, p. 77). Because personal and company-related assets were fenced only to a limited extent (Hansmann et al., 2006, pp. 1366–1372), in practice, liquidation of a company equaled the auctioning of the assets found with the 'administrator' (De ruysscher, 2015a).

An indirect explanation as to why in the late Middle Ages general partnerships were the most used legal form of business relates to late-medieval practices and law concerning debt enforcement. The custom of identifying companies with their agents, which served to protect outside investors, also followed on from legal regimes and mercantile practices that took persons rather than assets as preferential guarantees for debt. Most general partnerships had their business operations in cities. There and also at fairs, debt recovery was structured in such a way that expropriation of a defaulter's assets was not easy to obtain. At the thirteenth-century fairs in Champagne, and among fourteenth-century Flemish and German merchants, renewal of debts was the normal practice. If debts matured, debtor and creditor often matched claims and debts that were due within their credit networks (North, 1996, pp. 223–226). As a result, they avoided enforcement. This convention not only constituted mercantile practice, but it was also due to official rules that made expropriation dependent on proceedings. Generally speaking, only judgments were considered to be titles to organize an auction of debtors' assets, movable and immovable. Sometimes contracts provided for collateral, but this provision was in many instances not deemed sufficient for pre-judgment attachments or extrajudicial pursuit of properties (De ruysscher, 2015b). Moreover, debt execution proceedings were not swift. In late-medieval France, debts under seal were considered as entitled to fast-track proceedings of this kind, but even under those proceedings, the sequestration and auctioning of a defaulter's merchandise were far from automatic. Even when royal privileges granted procedural exemptions to traders, the public sale of the debtor's assets was subject to notification, delays, and judgments (e.g., Claustre, 2007, p. 158, p. 160, p. 299, pp. 300–308). Rules that were applied at fairs—for example, those of Champagne—were construed so as to avoid private seizures on debts and securities, and they hinged on control by officials (Edwards & Ogilvie, 2012, p. 135). The origins of these procedural bars are diverse. It is possible that they stem from earlier medieval periods, when property could be secured for debt by explicit agreement only (e.g., De Blécourt & Fischer, 1950, pp. 246–247). Another explanation is that incremental state formation during the twelfth and thirteenth centuries, which resulted in governmental control over the pursuit and punishment of criminal behavior, also meant that private enforcement of debt against assets, among other things, became restricted (e.g., Planitz, 1913, p. 52).

When considering such rules on debt enforcement, the imprisonment of debtors was a more efficient method of relief for creditors. Apprehension and incarceration put pressure on the defaulter to seek new credit or sureties. In most cities and regions of late-medieval Europe, coercive pre-judgment arrest and imprisonment for debt were relatively easy. In late-medieval France, since the later thirteenth century, incarceration of defaulters was a generalized practice (Claustre, 2007, pp. 105–106). Admittedly, citizens and residents were commonly granted protection against detention, and groups of merchants trading in a city usually applied for exemptions in this regard (Godding, 1987, p. 507). In practice, however, there are many examples of members of such privileged groups who were seized and imprisoned, even though they were given the opportunity to adduce and evidence the illegality of these measures in court. Merchants without fixed domicile could be locked away without reservations (e.g., for fifteenth-century Antwerp: De ruysscher, 2016, pp. 79–80).

These practices were largely directed against individuals, even when they were agents of firms. Moreover, they were detrimental for trade. Because merchants in financial difficulties faced the prospect of being incarcerated, which would ruin their reputations, they often fled the market, or they sought sanctuary in churches or religious institutions (Jones, 1979, p. 14; Kadens, 2010, pp. 1233–1234). In turn, municipal administrators responded by imposing severe penalties on debtors who absconded from their creditors. In thirteenth- and fourteenth-century Italy, ordinances of cities commonly proclaimed banishment for fled debtors, thus pushing them out of the mercantile community. After a while, more lenient penalties such as forfeiture of civil or political rights became common (Santarelli, 1998, pp. 74–78). Of course, even such softer measures did not increase the appeal of stepping forward when having financial difficulties. From the perspective of creditors as well, the effects of all these practices were disadvantageous. The repeated flights incited swift action on their behalf, out of fear that the debtor would abscond. As a result, debtors were often put in jail prematurely. Merchants having financial difficulties could then experience a ripple effect when one of their creditors had them imprisoned or started a lawsuit. Alarmed by the actions of their peers, other creditors then additionally executed on their debts (De ruysscher, 2013, p. 190).

The aforementioned bars on expropriation and pre-judgment attachment were lowered throughout Europe between the late thirteenth and sixteenth centuries. They disappeared fully only over the course of the early modern period, however. The speed at which these developments took place differed from region to region. This development had its roots in the idea of general collateral, which gained ground in many places and regions in Europe north of the Alps, from the later thirteenth century onward. The generalization of collateral meant that assets of a debtor were increasingly considered to be the common guarantee of his creditors and that they could be expropriated in case of default. General security interests and non-possessory pledges were accepted as lawful, for example (De Blécourt & Fischer, 1950, p. 252; Godding, 1987, pp. 217–218).

In terms of proceedings, however, introduction of swift seizure and expropriation of assets, pledged or otherwise, was long in the making. The aforementioned rules barring expeditious enforcement against assets remained problematic in this regard. As was the case before the end of the thirteenth century, in the 1300s, municipal ordinances commonly stressed that seizure of property of citizens and residents could only be granted following a proceeding in the town's courts (Godding, 1987, p. 507; Planitz, 1913, pp. 55–62). Even if a written contract had been drafted that waived this protection, judicial control was generally required. In fourteenth-century France and England, the acknowledgment of debts in court and cooperation of the debtor marked common features of rules of debt proceedings (Claustre, 2007, pp. 174–175; Cohen, 1982, pp. 154–155; Duffy, 1985, pp. 61–65). Slowly, however, in the course of the fifteenth and sixteenth centuries, municipal authorities as well as regional and central courts began to acknowledge that debt enforcement was directed first toward the assets of a defaulter and less toward his person (Claustre, 2007, pp. 267–271; Godding, 1987, pp. 510–511). This development unfolded in Antwerp between 1470 and 1540 (De ruysscher, 2013). The 1510 Parisian *coutumes* provided that pre-judgment *arrêt* of a debtor's assets upon his default was accepted if the debt was certain. All over the Continent, it became common that creditors were entitled to seizure before proceedings when they demonstrated that the debtor had signed or agreed on a debt (Verheul & Wade, 1992, p. 378). For such pre-judgment seizures, authorization from municipal administrators was often required. However, this was frequently a formality. Moreover, the increasingly widespread literacy among merchants made proof of debt easy. The plaintiff could substantiate his claim by submitting letters, books, or mercantile instruments such as bills obligatory.

As a result of all these developments, bankruptcy legislation came to concentrate more on pooling debtors' assets and on distributing their debts over many creditors. Because debt was more easily enforceable against a defaulter's estate, the problem of concurring claims had to be addressed. Late-medieval debt enforcement proceedings had commonly been devised for individual recovery only. The first municipal laws to break with this principle by imposing summons of all a defaulter's creditors were Italian (e.g., Amalfi 1274, Florence 1322) (Santarelli, 1998, p. 93). North of the Alps, this approach only slowly gained ground. In many regions of fourteenth- and fifteenth-century France, and also in the Low Countries of that time, it was still generally held that even when proceedings were collective, the first seizing claimant was given priority over those non-privileged creditors who laid attachment on the debtor's assets at a later stage (Brissaud, 1972; De ruysscher, 2008, p. 310). Early Northwest European examples of collective proceedings, in which proceeds of auctions among creditors were ratably distributed, existed in Hanseatic towns from the end of the thirteenth century in case the debtor had fled or died (Dalhuisen, 1968, p. 16; Fischer, 2013, p. 175). In Northwest Europe, such proceedings became more generalized in the three centuries that came after 1300. In 1510, the Parisian *coutume* provided that this 'first come, first serve' rule did not apply in case of *déconfiture*. *Déconfiture* consisted of a shortage of funds that was attested when more than one creditor sued for debt (Levinthal, 1918, p. 245). In the 1510s and 1520s, collective proceedings were imposed in Antwerp (1516), Freiburg im Breisgau (1520), and Augsburg (first mention in 1529) (De ruysscher, 2008; Fischer, 2013, pp. 176–177).

In the periods mentioned, these developments were happening within the jurisdictions of fairs and commercial towns in response to merchants' needs. The legislative actions of magistrates were also supported by a reception of views propagated within academic legal doctrine, which built further upon the solutions of Roman law. Some economic historians have claimed that bankruptcies might have been a new phenomenon in the fifteenth century, which became endemic in the second half of the sixteenth century (Safley, 2013, p. 3; Schulte-Beerbühl, 2016, p. 13). A full consideration of institutional configurations and mercantile practices, however, allows for the conclusion that collective insolvency proceedings were mainly due to incremental administrative innovation rather than economic developments.

Although this area has not been explored, it is quite likely that general collateral regimes meant that firm owners and general managers had to keep track of their loans and had to resort to retrenchment activities more often than before. Of course, partnership contracts were of limited duration, and they purported to assign liability to a few merchants only. Yet the new approach of addressing a defaulter's estate in an expedient fashion added to the dangers that these partnerships faced. Not only assets but also funds and claims could easily be seized upon default, which could hamper reputation and endanger the financial reliability of the firm. An earlier practice of renewing debts could continue, but now it hinged on the contacts with creditors and no longer on a lack of institutions supporting enforcement. There are several examples of bankruptcies that were caused by general economic and political conditions, but which were initiated through seizures laid by creditors. In the early sixteenth century in the commercial metropolis of Antwerp, this practice proved a common beginning to insolvency proceedings (De ruysscher, 2013, pp. 189–191).

2.3 Toward Voluntary Bankruptcy Proceedings (Early Modern Period)

Until the end of the Middle Ages, bankruptcies initiated by creditors (hence 'involuntary bankruptcy') were the most common. As mentioned earlier, debtors did not have much to look forward to when making their default public. Yet from the fifteenth century onward, in continental Europe, voluntary, collective, and outside-liquidation insolvency proceedings that involved a debtor applying for debt relief were slowly developed along three different tracks. One such approach, initially, unfolded in late-medieval Italy and encompassed a focus on post-bankruptcy negotiations in which decisions as to postponements and reductions were based on the insights of creditors. A second track, at first exceptionally pursued, both in Italy and Northwest Europe, involved the active mediation of authorities in seeking to draw up schemes of arrangement among creditors. A third line originated in government-granted temporary stays following petitions by debtors, which were common both south and north of the Alps. It was only in the eighteenth century that these three strands were more commonly blended together. In England, however, developments were different. In the early 1700s, bankruptcy proceedings were linked to a discharge of unpaid remainders of debt granted by the creditors. The concept of discharge remained largely unknown in continental Europe. Insolvency proceedings in early modern England remained mainly involuntary as well.

In the late Middle Ages, the aforementioned conception of insolvency as criminal behavior precluded a context in which continuity of business was preferred over liquidation. In most thirteenth-century Italian city-states, the denunciation of a defaulter as bankrupt was generally made by one or more creditors. It usually consisted of a declaration of the debtor's abscondence. From the late fourteenth century onward, municipal administrators of Italian cities reluctantly began to acknowledge debtor-creditor agreements (sometimes labeled *concordato*), which could be drawn up after the start of collective bankruptcy proceedings and the debtor's dispossession (Rocco, 1902, pp. 36–40). Fled defaulters could return and offer cooperation in inventorying their estate in exchange for extensions or reductions. It came to be acknowledged that in doing so debtors avoided criminal prosecution, were reinvested in their ownership rights, and protected from creditors' actions. The purpose of a *concordato*, then, was to grant a contractual moratorium (Rocco, 1902, p. 37).

In spite of the acknowledgment of post-bankruptcy deals, the legal configurations and mercantile practices in late-medieval Italy did not favor business rescue. A one-track approach toward insolvency in laws remained typical. Schemes of arrangement were drafted only following a declaration of bankruptcy. Many Italian municipal ordinances of the late Middle Ages provided that the debtor's flight or (publicly announced) insolvency was the first requirement to reach lawful debt adjustment or extension agreements. Moreover, negotiations could suspend collective expropriation proceedings and halt the public sale of the debtor's estate, but when they failed, liquidation was the only outcome. Creditors were summoned and involved in a collective proceeding that could easily switch from negotiations to a public sale when the legal conditions were not met (Rocco, 1902, p. 46; Santarelli, 1998, p. 103, pp. 106–107).

Such a change was not an unlikely scenario. Municipal laws commonly stipulated unwieldy majority requirements. They provided that creditors representing a quorum of claims had to agree in order to impose the contents of the agreement on dissenting and absent creditors. Such rules marked exceptions to the general principle, upheld in legal scholarship of the era, that no one could be bound under a contract who had not been present at its drafting. The majority requirements were necessary for ensuring that a contractually negotiated stay on claims and threats was effective. Non-consenting creditors had to be blocked out in order to avoid their actions jeopardizing the moratorium. As a result of the derogation from principles of contract law, in fifteenth- and sixteenth-century legal academic writings of municipal laws regarding imposed debt arrangements, in particular those encompassing reductions, were received only reluctantly (Dalhuisen, 1968, pp. 19–24; Migliorino, 1998, pp. 131–138, pp. 164–194; Santarelli, 1998, p. 104).

Majority requirements as established in Italian city ordinances of the fifteenth and sixteenth centuries were often strict, thus marking a high bar for achieving a legally enforceable agreement. In Genoa, for example, for involuntary bankruptcies, a majority rate of seven-eighths (in claims) applied (Rocco, 1902, pp. 41–42, n. 21). Other impediments made late-medieval Italian debt schemes on bankruptcy a flawed measure for rescuing a business. Legislative provisions limited the duration of such arrangements (Rocco, 1902, p. 43), and short periods of time were imposed during which they had to be negotiated (Rocco, 1902, p. 40). Most municipal laws concerning insolvency allowed for the full resuscitation of creditors' rights upon the slightest breach of the agreement (Rocco, 1902, p. 44). Moreover, the moratorium features of debt schemes implied that the debtor was still held to repay his creditors when he came to acquire new means, even in cases where they had conceded reductions (Rocco, 1902, p. 45).

In spite of a general administrative approach that did not promote lasting continuity of insolvents' business activities, there were exceptions as well. One of them was Venice, where the government's administrators actively sought to craft debtor-creditor agreements. Already in 1395, the Venetian Great Council had provided that absconded debtors who returned and deposited their account books and a survey of their property were exempted from criminal prosecution. When cooperating, they were deemed of good intent. Within a certain period of time, protection against debt enforcement served to initiate negotiations with the creditors. Their consent was required for any debt adjustment scheme, but municipal officials mediated in order to assure that a deal was struck. In most cases, this practice resulted in arrangements that were accepted by all creditors (Ressel, 2016, p. 123; Santarelli, 1998, pp. 105–106, pp. 107–108). However, the normal start of this proceeding remained denunciation of flight, as elsewhere in late-medieval Italy. Voluntary debt negotiation proceedings that were started outside of bankruptcy were very rare (Rocco, 1902, pp. 45–46).

Because legal scholarly texts had a European-wide readership, ordinances allowing for a 'cram-down' of post-bankruptcy negotiated deals on unwilling creditors appeared relatively late outside of Italy. In Nuremburg, majority compositions of this kind were held lawful for the first time in 1564; Augsburg copied the arrangement in 1574 (Birnbaum, 2014, pp. 50–53; Dalhuisen, 1968, p. 21, n. 99). In Antwerp, majority debt schemes were acknowledged only in 1608, long after that city's heyday. Frankfurt followed suit in 1611. The 1673 French *Ordonnance sur le commerce* labeled majority arrangements as lawful provided they were supported by creditors representing three-quarters of claims (Dupouy, 1960, pp. 153–154). Furthermore, academic doctrine provided another obstacle for proceedings of composition, which concerned the position of creditors with pledges and hypothecs. According to Roman law, compositions involving reductions could be rejected by secured creditors (Dalhuisen, 1968, p. 11, p. 24, p. 27). As a result, imposing majority debt schemes on dissenting secured creditors had proved the exception in most Italian city-states (Rocco, 1902, p. 43). It remained a conundrum into the sixteenth and seventeenth centuries as well. The 1673 French *Ordonnance sur le commerce*, for example, provided that creditors with hypothecs could not be affected if they did not consent to a plan for debt relief (Dupouy, 1960, p. 154).

In early modern England, debt adjustment agreements were discouraged. In the sixteenth and early seventeenth centuries, the Privy Council still mediated among creditors following petitions for delays or reductions. In addition, in those periods, the High Court of Chancery handed out bills of conformity, binding the minority of dissenting creditors to comply with a scheme accepted by the majority. Yet by the 1640s, these measures were abolished and compositions were discarded (Dalhuisen, 1968, p. 32; Treiman, 1938, pp. 511–521). Therefore, the differences between continental Europe and England with regard to debt adjustment agreements upon insolvency are striking. In seventeenth- and eighteenth-century France, for example, it was relatively easy for a debtor to invite creditors to negotiate on postponement of payment, even outside bankruptcy proceedings (Sgard, 2013). By contrast, in England, negotiations on debtor-creditor arrangements were easily categorized as 'acts of bankruptcy.' Such acts triggered the start of a liquidation proceeding that was for a large part organized by the creditors (Jones, 1979, p. 25). This convention meant that the only insolvency proceeding in English law for a long time was liquidation. In the English approach, collective proceedings initiated by creditors were considered the only option for safeguarding the interests of all creditors. As a result, according to English law for most of the seventeenth century, a moratorium did not exist; only upon the start of insolvency proceedings did an automatic stay apply, but it was exclusively devised so as to maintain the debtor's estate and thus protect the interests of the creditors. All the while, the debtor was not left in possession of his effects (Sgard, 2013).

In many early modern jurisdictions on the Continent, municipal administrators, princely courts, and other administrations had powers to grant protection from seizure and arrest. Their injunction orders were most commonly intended to impose a cooling down period, during which negotiations on reductions or extensions were begun. Some Italian cities of the late Middle Ages had well-known remedies of this kind (*salvocondotto, inducia*) (Santarelli, 1998, p. 106). In the sixteenth and seventeenth centuries, these approaches spread across larger areas. A government-imposed moratorium to allow for negotiations on compositions was opted for in the 1603 Hamburg *Stadtrecht* as well as in the 1643 insolvency ordinance of the city of Amsterdam. In some regions, the stay was more or less automatic. In that case, creditors were not invited to support a debt scheme, but at the same time, they could only contest the validity of the applicant's statements. Particularly in France, this practice seems to have been the case. The disparate jurisdictions in matters of insolvency offered French merchant debtors several options. They could apply for *Lettres de Répit* and other comparable measures, which stipulated a period of protection. These letters had to be registered with civil courts, which were required to audit the debtor's statements. In practice, however, this supervision was minimal. Petitions for letters more or less imposed a moratorium on the creditors, who could not easily contest their contents (Deshusses, 2008, pp. 28–30; Dupouy, 1960, pp. 138–145; Sgard, 2013, p. 227). *Lettres de répit* and the like (e.g., *lettres de saufconduite*) were commonly granted in the Low Countries as well by provincial princely courts. Yet in contrast to France, and at least since the late 1520s, they were considered mere remedies, meant to initiate negotiations. The princely injunctions did not extend so far as to impose delays upon and reductions to the creditors (De ruysscher, 2016, pp. 83–86). Even so, all the mentioned instruments did allow for pressure to the advantage of debtors; they constituted a stick for incentivizing creditors to accept or negotiate debt relief. The voluntary nature of these measures, which were requested by debtors, meant that the defaulter stayed out of liquidation proceedings. Yet again, the widely held principle that all creditors had to consent to agreements meant that enforcing the initiation of talks was not a guarantee of success (e.g., De ruysscher, 2016, pp. 90–93).

For most of the sixteenth century, in many cities and regions on the European continent, other acknowledged voluntary proceedings concerned the debtor's surrender of his entire estate to his creditors. This practice was generally called *cession*, after the arrangement of *cessio bonorum* from Roman law. This proceeding was generally adopted earlier than a compulsory negotiations regime directed at compositions. Although *cession* was not intended to grant the debtor a fresh start, its procedural characteristics often marked the patterns for voluntary negotiation proceedings outside bankruptcy that came after. *Cession* entailed the forfeiture of all assets in exchange for liberation from prison. *Cession* was commonly defamatory: the act of ceding one's property in order to be liberated from prison was public, and rituals and ceremonies were organized in order to destroy the applicant's reputation (Whitman, 1996, pp. 1871–1883). With the reception of Roman law, which in continental Northwest Europe became stronger over the course of the 1400s, came a transformation of this earlier practice. *Cession* came to offer temporary protection against seizure and arrest instead. Additionally, typical for the Romanized *cession* was that debts were not discharged. If the transferred assets were not sufficient to compensate all debts, then creditors could pursue their debtor for the remainder afterward. Even though they had to give the debtor time, the latter had to swear an oath that he had not hidden assets from his creditors and pledge to repay debts when he later acquired sufficient funds to do so (Pakter, 1988, pp. 495–496). An important building block of negotiation proceedings that were implemented after *cession* concerned the voluntary nature of the arrangement. The permeation of Roman law meant that proposals of forfeitures could not be refused by the creditors (Zambrana Moral, 2001, pp. 81–84, pp. 146–147). Because it was often considered too easy a way out, some commercial cities did not allow *cessions*: they were not applied in Bruges and Genoa, for example (Birnbaum, 2014, p. 32; De ruysscher, 2015b).

Voluntary bankruptcy proceedings focusing on negotiation among all creditors developed from these beginnings. An important turn was the growing awareness that insolvency did not equal fraudulent behavior in all cases. The latter had been a general paradigm in the High Middle Ages (c.1000–c.1250), subsumed in the maxim '*decoctor ergo fraudator*.' In this period, flight, recourse to sanctuary, or the subtracting of assets were considered the events that launched insolvency proceedings. From the fourteenth century onward, Italian municipal governments incrementally started using the criterion of insolvency. Absent debtors were indicted to appear before the town's authorities. If they responded, they were deemed insolvent and not *fugitivus*. This categorization allowed for their exemption from criminal prosecution. Moreover, city laws provided that those who 'stopped' payments were subjected to insolvency proceedings (Santarelli, 1998, pp. 71–74). In practice, all these conditions marked a (modest) incentive for debtors to return and negotiate with creditors.

In continental Europe north of the Alps, starting from the later fifteenth century onward, the ideas regarding bona fide and treacherous bankrupts slowly trickled down into the legal systems. For most of the fifteenth century, insolvency legislation of commercial cities in those regions only stipulated public auctions of a bankrupt's effects, and laws did not generally distinguish between unfortunate insolvents and criminal bankrupts. In the course of the sixteenth century, this situation changed. Beginning in the 1510s in the Low Countries, princely authorities started to impose, as requirement for princely injunctions, that the debtor had acknowledged the interests of all creditors and had not plotted his insolvency (De ruysscher, 2016, pp. 83–84). In the Holy Roman Empire, the 1548 *Reichspolizeiordnung* provided for strict punishments of 'bankrupts,' meaning fraudulent insolvents, which incited municipal lawmakers to adjust their rules. In 1564, the Augsburg 1447 *Gantordnung* and the Nuremberg *Reformation* of 1479 were replaced with *Faillitenordnungen*, based on insolvency as the criterion (Fischer, 2013, p. 179). In many areas, this approach changed an earlier idea of equaling 'impending flight' or 'fear of flight' with factual abscondence (Spann, 2004, pp. 183–184). Benvenuto Stracca's treatise *De conturbatoribus sive decoctoribus*, which was published in 1553, contributed to a growing awareness: this author distinguished between accidental insolvents and those that had become insolvent due to their own actions (De ruysscher, 2008, pp. 319–320).

In some areas, petitions for princely moratoriums were transformed into voluntary collective negotiation proceedings. The three aforementioned strands were in that case blended together in a proceeding outside bankruptcy in which local administrators engaged in pressuring dissenting creditors into accepting a composition. Such was the case in Antwerp, for example. From the later 1520s onward, every petition for a measure from princely courts and councils was sent over to the municipal administrators. They appointed commissioners who invited the creditors and, as had been the case in late-medieval Venice and in the sixteenth-century English Privy Council, they attempted to seek an agreement among all of them. When a deal on debt adjustment was made, which was often the case, it was confirmed by the court or council that had transferred the case (De ruysscher, 2016, pp. 86–93).

The Antwerp and Venice examples were followed elsewhere only later. In Hamburg, government-directed negotiations upon a debtor's petition emerged in the eighteenth century. In 1753, the Hamburg *Faillitenordnung* provided that an innocent insolvent had to be granted the option of reaching an agreement on debt adjustment. According to the law, majority rules applied, but in practice, the municipal commissioners supervising the negotiations actively brokered consensus among all creditors (Misler & Misler, 1781, p. 3, pp. 30–31). It was also deemed possible that three-quarters of creditors allowed the debtor to remain in possession of his estate during the proceedings (Misler & Misler, 1781, p. 20). Comparable approaches were imposed in Amsterdam in 1777 in a new insolvency ordinance. The insolvent was granted a temporary stay in order to negotiate with his creditors.

The ordinance provided explicitly that the commissioners of the Insolvency Chamber, which was the subordinate municipal court competent for bankruptcy litigation, had to persuade minority creditors to accept negotiated deals (Roestoff, 2005, p. 83). It was also in the eighteenth century that secured creditors, with the exception of owners, were more frequently required to support debt schemes. The Hamburg 1753 law stipulated that secured creditors were to receive a higher percentage from compositions than unsecured creditors. A distinction was made between prior and recently secured creditors as well (Misler & Misler, 1781, pp. 25–27). As a result of this pooling of secured and unsecured debt, pre-packaged deals became feasible. Negotiations could then take place before any government intervention (Misler & Misler, 1781, p. 31).

In the tradition on the Continent, discharge had been uncommon before the middle of the eighteenth century. When in late-medieval Italy a *concordato* was drafted, acquittals lasting beyond the contractual moratorium were not usual. The voluntary forfeiture of assets by imprisoned debtors (*cessio bonorum*) also failed to bring about a fresh start. In England, however, at the beginning of the eighteenth century, discharge became important. Because bankruptcy proceedings had always been oriented toward the auctioning of the debtor's assets, this discharge came after the public sale. It was conceived of as a method of ensuring cooperation from the debtor in guaranteeing a modest rehabilitation. Continuity of his business was thus not intended. In 1706, a royal statute provided that bona fide debtors were discharged for the parts of their debt that had not been compensated with the proceeds from their auctioned effects. In 1707, however, a new statute stated that this discharge could only be granted by the creditors, at a high majority rate (four-fifths in claims and persons) (Kadens, 2010, pp. 1262–1270). Probably following the English model, continental municipal laws started providing for majority discharges as well. The aforementioned 1753 Hamburg law stated that an unfortunate insolvent who transferred his properties to his creditors, and who signed a composition for repayment of a certain portion of the remaining debts, was considered discharged for the remainder (Misler & Misler, 1781, pp. 50–52).

2.4 Corporate Rescue: A Further Perfection of Preventive Compositions, Two-Track Proceedings, Administration and Government Control (Nineteenth to Twenty-First Century)

In spite of the development of voluntary collective proceedings that were centered on creditor-debtor negotiations between the sixteenth and eighteenth centuries, by the beginning of the nineteenth century, a true rescue culture was still lacking in Europe. The aim of preserving distressed companies as going concerns developed in interactions between England, continental Europe, and the United States. It came together with further legal acknowledgment of preventive composition proceedings and with a mounting entrenchment of company capital in the form of legal personhood. Furthermore, throughout Europe, but foremost on the Continent, the role of governments and judges had grown more considerable. Increased legislative efforts to impose accountability upon firms meant that official authority to detect indebtedness and to prevent insolvencies increased. However, throughout the nineteenth and twentieth centuries, as was the case in the centuries before, path dependence and hesitance regarding the best methods for safeguarding the balance of interests meant that solutions remained different across regions. This is still the case today, notwithstanding attempts toward harmonization (in the EU, for example) (Madaus, 2015).

On the European continent, the age of codifications brought about a relapse into older models of insolvency laws. In particular, the Napoleonic *Code de commerce* of 1807 marked a break with the practices and laws of Old Regime France. Preventive and pre-pack compositions were replaced with court-controlled majority arrangements on bankruptcy. These compositions (*concordats*) could entail debt adjustment and extensions. However, the debtor was not rehabilitated until the full repayment of his debts. Proceedings were involuntary and the *Code* imposed imprisonment or confinement of the insolvent during the course of the proceedings. A one-track approach was imposed. Liquidation was the default proceeding; it was the only outcome of bankruptcy proceedings if negotiations failed or if the required majority of consenting creditors (three-fourths in claims and persons) was not achieved. Secured creditors were not required to comply. Moreover, the *Code de commerce* did not consider the interests of maintaining a business as a going concern. The duties of court-appointed trustees were mainly to preserve the assets for the public sale (Szramkiewicz & Descamps, 2013, pp. 384–394). The *Code de commerce* was introduced across wide areas of continental Europe, and for many European countries, it determined insolvency policies well into the second half of the nineteenth century. The Belgian law of 1851, the Prussian *Konkursordnung* of 1855, and the Italian commercial code of 1865 were all heavily influenced by the French code.

In England, preventive compositions were slowly reintegrated into official insolvency proceedings after their demise in the seventeenth century. In 1793, majority compositions concerning the aftermath of the liquidation were officially allowed. Preventive debt arrangements for merchants were considered lawful after 1849. The Bankruptcy Law Consolidation Act of that year provided that debtors could initiate bankruptcy proceedings and avoid liquidation if three-fifths of the creditors (in persons and claims) agreed on extensions, a partial sale, or reductions (Dalhuisen, 1968, p. 33). However, the one-gateway approach still prevailed, which put the applicant in jeopardy of losing his business if the requirements for a composition were not met. The new Bankruptcy Acts of 1861 and 1869 allowed for compositions but, again, they were dependent on creditors' votes and thus factually were initiated only following the formal declaration of the debtor's bankruptcy (Dalhuisen, 1968, pp. 33–34).

It was only near the end of the nineteenth century that two-gateway approaches emerged. The 1883 Belgian law was the first nineteenth-century law to allow for preventive majority compositions outside bankruptcy (*concordat préventif*). It remained possible to turn such a proceeding into bankruptcy proceedings, but formally the two were separate. For a *concordat préventif*, it was sufficient that the debtor was 'unfortunate,' and it was not required that he had 'stopped payments' (*cessation de paiements*), which triggered the bankruptcy proceedings. However, the approaches of the *Code de commerce* still loomed in the background, as was evident in high majority requirements (two-thirds of claims), the exclusion of secured creditors, and a relatively easy switch to bankruptcy proceedings (Dalhuisen, 1968, pp. 50–53; Dunscombe, 1893, pp. 128–132). In 1883, in addition, England started promoting pre-packaged majority compositions ('deeds of arrangement'). Other countries maintained preventive compositions within the framework of bankruptcy proceedings (Germany, *Reichskonkursordnung* 1877, Italy 1903), or offered compositions as a possible outcome of liquidation proceedings outside bankruptcy (France 1889) (Hautcœur & di Martino, 2013). As a result, over large areas, and even in spite of the aforementioned innovative Belgian and English reforms, liquidation was still a normal outcome of insolvency proceedings. Near the end of the nineteenth century, everywhere in, Europe majority requirements remained high and secured creditors were not obliged to conform to the wishes of creditors having unsecured debts.

The approach of considering a business as a going concern was rooted in the English practice of deeds of arrangements. These extrajudicial agreements involved all creditors or—after 1883—a majority, which could leave the debtor in possession of his effects in combination with discharge. In the French commercial code, a *concordat* had been devised as a means to grant temporary relief to the debtor. As had been the case in the Italian tradition, a *concordat* was not considered an instrument to allow the debtor to be rehabilitated. Only upon full repayment of his debts could the debtor deploy new commercial activities and be reintegrated in the market. The English concept of discharge—which had gained some acceptance in eighteenth-century continental Europe as well, but disappeared afterward—marked the veritable start of a paradigm of business rescue. As was mentioned, in the early eighteenth century, discharge had been crafted as a compensation for liquidation. Over the course of the nineteenth century, however, when compositions left the debtor in possession of his estate, contractually agreed definitive reductions marked a veritable basis for business rescue.

The effects of these legal changes on management strategies have not often been analyzed. One can presume that the context of corporate finance was a major factor for how owners and managers dealt with financial distress, even with several available options for maintaining the firm's activities. When ownership of companies was dispersed, an exit forced by creditors was a likely scenario. This situation is what happened near the end of the nineteenth century in the United States. Railroad companies were not often wound up but, rather, continued to exist even in the face of financial difficulties. The management of the company set up a public sale of parts of the firm and distributed the proceeds to bondholders who agreed with the operation. Shareholders and dissenting creditors were given small portions on their debts (Skeel, 2001, pp. 48–70). This practice of *receivership* had a corollary in England, where one creditor (typically a financial institution) could expropriate a firm when he had been granted a 'floating charge.' Therefore, insolvency could result in the lender taking over the firm. Even before floating charge became accepted in the third quarter of the nineteenth century, 'deeds of inspectorship' allowed English creditors to supersede the managers-owners of firms (Duffy, 1985, pp. 336–340; Hoppit, 1987, p. 29).

A context of family firms with majority block owners—which remained more common in France than in the United States, for example—also prevented legal approaches that kept a lender perspective from being fully embraced. The early twentieth-century divorce of ownership from control, which took place above all in the United States, meant that managers could easily be replaced, within or outside a context of insolvency (Morck, 2005). Differences among countries explain why administration proceedings, which involve the sale or reorganization of the firm by an administrator, working under court control but with wide discretion, have only very recently been introduced in continental Europe (e.g., Germany 1999). The typical solution on the Continent is for a trustee to act as agent of the court rather than as an independent administrator (Westbrook, 2010, pp. 135–136).

Over the course of the twentieth century, even in continental Europe, the replacement of managers was made possible because of the combined separation of ownership from control along with the development of legal personhood for firms. The early nineteenth-century codifications had devised the corporation with shareholders as the only legal entity among a number of company types. This designation changed in the second half of the nineteenth century. Government control over corporations was reduced (the preliminary authorization was abolished in France in 1867, in Belgium in 1873). Legal personhood was extended to other company types as well (e.g., limited partnerships). Even though more research is needed in this regard, these developments most probably facilitated a conception of firms as pools of assets rather than personal ventures, and they may have incited or facilitated administration proceedings and repositioning strategies.

Until the last decades of the twentieth century, the threshold for obtaining a formal rescue arrangement was often so high that official proceedings equaled liquidation. Under the influence of American legislation (Chandler Act of 1938, Bankruptcy Act of 1978), continental European countries slowly started reducing majority requirements. The inclusion of secured creditors, rules on fresh money ('superpriorities'), and division of stakeholders into classes were American elements that trickled down into European bankruptcy reforms. The Belgian reform of 1997 and the German

Insolvenzordnung (1999) included secured creditors in majority compositions, for example. A German reform of 2012 allowed for priority for fresh loans. In a concurring development—which is still ongoing, and again following on from the American example—judges were given powers to 'cram-down' viable reorganization schemes on classes of stakeholders in which the required majority was not reached (e.g., Germany 2012, Spain 2014). This new approach blended in with an older European tradition of temporary government-imposed stays upon simple request of the debtor (*salvocondotto, répit*). In the second half of the twentieth century, especially France but also Spain had gone far in enforcing the powers of courts to preserve businesses with the debtor being left in possession (Dalhuisen, 1968, pp. 62–65). This approach is still evident in proceedings before bankruptcy, combining a temporary court-ordered stay with mediation with creditors or preparation of negotiations on composition (e.g., the French *sauvegarde*) (Madaus, 2015).

Since the late nineteenth century, furthermore, governments have obliged companies to submit financial reports, and their contents were used over the course of the twentieth century in insolvency proceedings. Already in the late 1800s, laws commonly provided recourse to shareholder meetings when the company capital dropped under critical levels. Nowadays, many European countries require that courts are informed when companies face financial difficulties. The competence of courts to declare debtors bankrupt *ex officio*, even when no request has been made, has been acknowledged by law in continental European countries since the early nineteenth century (*Code de commerce* of 1807) (Bariatti & van Galen, 2014, p. 29). Today it serves as a means to screen financial reports in order to detect indebtedness and to prevent the untimely initiation of insolvency proceedings (e.g., Belgium since 1997).

References

Bariatti, S., & Van Galen, R. (2014). *Study on the new approach to business failure and insolvency: Comparative legal analysis of the member states' relevant provisions and practices*. European Commission Report.

Birnbaum, S. (2014). *Konkursrecht der frühen Augsburger Neuzeit mit seinen gemeinrechtlichen Einflüssen*. Berlin: Hopf.

Brissaud, J. (1972). *Le créancier 'premier saississant' dans l'ancien droit français*. Paris: Presses universitaires de France.

Claustre, J. (2007). *Dans les geôles du roi. L'emprisonnement pour dettes à Paris à la fin du Moyen Âge*. Paris: Publications de la Sorbonne.

Cohen, J. (1982). The history of imprisonment for debt and its relation to the development of discharge in bankruptcy. *The Journal of Legal History*, *3*, 153–171.

Dalhuisen, J. H. (1968). *Compositions in bankruptcy: A comparative study of the laws of the E.E.C. countries, England and the U.S.A*. Leiden: Sijthoff.

De Blécourt, A. S., & Fischer, H. F. W. D. (1950). *Kort begrip van het oud-vaderlands burgerlijk recht*. Groningen: Wolters.

De Roover, R. (1966). *The rise and decline of the Medici bank, 1397–1494*. New York: Norton.

De ruysscher, D. (2008). Designing the limits of creditworthiness. Insolvency in Antwerp bankruptcy legislation and practice (16th–17th centuries). *The Legal History Review (Tijdschrift voor Rechtsgeschiedenis)*, *76*, 307–327.

De ruysscher, D. (2013). Bankruptcy, insolvency and debt collection among merchants in Antwerp (c1490 to c1540). In Th. M. Safley (Ed.), *The history of bankruptcy: Economic, social and cultural implications in early modern Europe* (pp. 185–199). London: Routledge.

De ruysscher, D. (2015a). A business trust for partnerships? Early conceptions of company-related assets in legal literature, and Antwerp forensic and commercial practice (later sixteenth-early seventeenth century). In B. Van Hofstraeten & W. Decock (Eds.), *Companies and company law in late-medieval and early modern Europe* (pp. 9–27). Leuven: Peeters.

De ruysscher, D. (2015b). *Debt recovery and debt adjustment: Assessing institutional change in Antwerp (ca. 1490-ca. 1560)* (Working Paper No. 2015–3). Retrieved from http://www.vub.ac.be/CORE/wp.

De ruysscher, D. (2016). The struggle for voluntary bankruptcy and debt adjustment in Antwerp (c. 1520–c. 1550). In A. Cordes & M. Schulte-Beerbühl (Eds.), *Dealing with economic failures: Extrajudicial and judicial conflict regulations* (pp. 77–95). Frankfurt: Peter Lang.

Deshusses, F. (2008). Mesurer l'insolvabilité? Usages statistiques des dossiers de faillite. *Histoire & Mesure*, *23*(1), 19–41.

Duffy, I. P. (1985). *Bankrupty and insolvency in London during the industrial revolution*. New York: Garland.

Dunscombe, S. W. (1893). *Bankruptcy: A study in comparative legislation*. New York: Columbia College.

Dupouy, C. L. (1960). *Le droit des faillites en France avant le Code de commerce*. Paris: Librairie générale de droit et de jurisprudence.

Edwards, J., & Ogilvie, S. (2012). What lessons for economic development can we draw from the Champagne fairs? *Explorations in Economic History*, *49*, 131–148.

Ehrenberg, R. (1896). *Das Zeitalter der Fugger. Geldkapital und Creditverkehr im sixteen. Jahrhundert* (2 Vols). Jena: Fischer.

Fischer, P. (2013). Bankruptcy in early modern German territories. In Th. M. Safley (Ed.), *The history of bankruptcy: Economic, social and cultural implications in early modern Europe* (pp. 173–184). London: Routledge.

Godding, P. H. (1987). *Le droit privé dans les Pays-Bas méridionaux 12e-18e siècles*. Brussels: Royal Academy.

Goldthwaite, R. A. (2009). *The economy of Renaissance Florence*. Baltimore: John Hopkins University Press.

Häberlein, M. (1998). *Brüder, freunde und betrüger. Soziale Beziehungen, Normen und konflikte in der Augsburger Kaufmannschaft um die mitte des sixteen. jahrhunderts*. Berlin: Akademie Verlag.

Häberlein, M. (2012). *The Fugger of Augsburg: Pursuing wealth and honor in Renaissance Germany*. Charlottesville, VA: University of Virginia Press.

Hansmann, H., Kraakman, R., & Squire, R. (2006). Law and the rise of the firm. *Harvard Law Review*, *119*, 1333–1403.

Hautcœur, P. C., & Di Martino, P. (2013). The functioning of bankruptcy law and practices in European perspective (ca.1880–1913). *Enterprise & Society*, *14*(3), 579–605.

Hoppit, J. (1987). *Risk and failure in English business, 1700–1800*. Cambridge: CUP.

Jones, W. S. (1979). *The foundation of English bankruptcy: Statutes and commissions in the early modern period*. Transactions of the American Philosophical Society, *69*(3), 1–63.

Kadens, E. (2010). The last bankrupt hanged: Capital punishment for bankruptcy in 18th century England. *Duke Law Journal*, *59*, 1229–1319.

Levinthal, L. (1918). The early history of bankruptcy law. *University of Pennsylvania Law Review*, *66*, 223–250.

Lopez, R. S. (1976). *The commercial revolution of the middle ages, 950–1350*. Cambridge: CUP.

Madaus, S. (2015, June 10). Vorinsolvenzliche sanierungsverfahren—Perspektiven einer europäisch geprägten Rechtsentwicklung. *Kölner Schriften zum Wirtschaftsrecht*, 183–190.

Mehr, R. (2008). *Societas und universitas. Römischrechtliche institute im unternehmensgesellschaftsrecht vor 1800*. Cologne: Böhlau.

Migliorino, F. (1998). *Mysteria concursus. Itinerari premoderni del diritto commerciale*. Milan: Giuffrè.

Misler, J. N., & Misler, J. G. (1781). *Essai sur le droit de Hambourg touchant les faillites*. Geneva: Froullé.

Morck, R. K. (Ed.). (2005). *A history of corporate governance around the world: Family business groups to professional managers*. Chicago: The University of Chicago Press.

North, M. (1996). Von den warenmessen zu den wechselmessen. Grundlagen des europäischen zahlungsverkehr in spätmittelalter und früher neuzeit. In P. Johanek (Ed.), *Europäische messen und märktesysteme im mittelalter und neuzeit* (pp. 223–238). Cologne: Böhlau.

Pakter, W. (1988). The origins of bankruptcy in medieval canon and Roman law. In P. Linehan (Ed.), *Proceedings of the seventh international congress of medieval canon law* (pp. 485–506). Vatican City: Bibliotheca Apostolica Vaticana.

Planitz, H. (1913). Studien zur Geschichte des deutschen Arrestprozesses. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte / Germanistische Abteilung*, *34*, 49–140.

Postan, M. M. (1973). Partnership in medieval English commerce. In *Medieval trade and finance* (pp. 65–91). Cambridge: CUP.

Ressel, M. (2016). Norms and practice of handling complex and international insolvencies in early modern Venice. In A. Cordes & M. Schulte-Beerbühl (Eds.), *Dealing with economic failures: Extrajudicial and judicial conflict regulations* (pp. 115–138). Online: H-Net.

Rocco, A. (1902). *Il concordato nel fallimento e prima del fallimento. Trattato teorico-pratico*. Turin: Bocca.

Roestoff, M. (2004–05). Skuldverligtingsmaatreëls vir individue in die Suid-Afrikaanse Insolvensiereg: 'n historiese ondersoek. *Fundamina*, *10*, 113–136 and *11*, 78–111.

Safley, Th. M. (2013). Introduction. In Th. M. Safley (Ed.), *The history of bankruptcy: Economic, social and cultural implications in early modern Europe* (pp. 1–16). London: Routledge.

Santarelli, U. (1998). *Mercanti e società tra mercanti*. Turin: Giappichelli.
Schulte-Beerbühl, M. (2016). Introduction. In A. Cordes & M. Schulte-Beerbühl (Eds.), *Dealing with economic failures: Extrajudicial and judicial conflict regulations* (pp. 9–25). Frankfurt: Peter Lang.
Sgard, J. (2013). Bankruptcy, fresh start and debt renegotiation in England and France (seventeenth to eighteenth centuries). In Th. M. Safley (Ed.), *The history of bankruptcy: Economic, social and cultural implications in early modern Europe* (pp. 223–235). London: Routledge.
Skeel, D. A. (2001). *Debt's dominion: A history of bankruptcy law in America*. Princeton: Princeton University Press.
Spann, M. (2004). *Der Haftungszugriff auf den Schuldner zwischen Personal- und Vermögensvollstreckung. Eine exemplarische Untersuchung der geschichtlichen Rechtsquellen ausgehend vom Römischen Recht bis ins twenty-one. Jh. unter besonderer Berücksichtigung bayerischer Quellen*. Münster: Lit.
Szramkiewicz, R., & Descamps, O. (2013). *Histoire du droit des affaires*. Paris: LGDJ.
Treiman, I. (1938). Majority control in compositions: Its historical origins and development. *Virginia Law Review*, *24*, 507–527.
Verheul, J. J., & Wade, J. P. (1992). Prejudgment attachment of movables in French, Dutch and English law. *Netherlands International Law Review*, *39*, 377–390.
Westbrook, J. L. (Ed.). (2010). *A global view of business insolvency systems*. Leiden: Martinus Nijhoff.
Whitman, J. Q. (1996). The moral menace of Roman law and the making of commerce: Some Dutch evidence. *Yale Law Review*, *105*, 1841–1889.
Zambrana Moral, P. (2001). *Derecho concursal histórico I. Trabajos de investigación*. Barcelona: Cometa.
Zimmermann, R. (1996). *The law of obligations: Roman foundations of the civilian tradition*. Oxford: OUP.