

Protecting the Foreign Creditor – International Insolvency in Early Modern Amsterdam and Frankfurt am Main

Maurits den Hollander and Remko J. Mooi¹

TSEG 16 (3-4): 37-57

DOI: 10.18352/tseg.1060

Abstract

In early modern Europe, insolvency was an inherently localized procedure. Whereas merchants and investors operated as part of an internationalizing economy, financial misfortune was treated by local authorities in cities such as Amsterdam and Frankfurt am Main. Throughout the early modern period, increasing levels of communication between municipal authorities on such matters can be observed. Governments cooperated in order to support their citizens' position as creditors of a foreign debtor. The case study of the Amsterdam insolvent Gasparo Schellekens displays how the Amsterdam Desolate Boedelskamer used tailor-made forms of communication to allow both local and foreign creditors to participate in its insolvency procedure on an equal footing. We will argue that reciprocity rather than competition formed the basis of this open access institution, much to the benefit of all parties involved.

Introduction

'Noble, honourable, highly learned, wise, provident and most discreet lords'. In these flattering terms, the commissioners of the *Desolate Boedelskamer* or Chamber of Insolvencies in Amsterdam addressed the

¹ Maurits den Hollander (MA) and Remko J. Mooi (LLM, MA) are affiliated with the *Department of Public Law and Governance* at Tilburg Law School, Tilburg University, The Netherlands. This paper was written as part of the ERC-funded project Coherence in Law through Legal Scholarship (ERC Starting Grant 714759). We would like to thank dr. Dave De ruysscher, the editors of *TSEG* and the anonymous reviewers for their comments on earlier versions of this article.

local authorities in Frankfurt am Main in a letter of 8 March 1701.² The commissioners friendly requested them to notify a number of Frankfurt citizens about an insolvent in their care, Gasparo Schellekens. Because of his international trading activities, this merchant had engaged in commerce with several foreign traders. Among them were merchants from Frankfurt, Paris and Rome. Schellekens' case forms an intriguing example of how international insolvencies were treated in early modern Europe.

The seventeenth and eighteenth centuries can be typified as the cradle of our modern global economy. Upcoming nation states strived to improve their commercial position vis-à-vis their international competitors through a variety of political and economic strategies. This phenomenon can also be observed at the local level. In this period, the authorities of important commercial cities still operated as independent actors in the international political arena. Oscar Gelderblom describes how Amsterdam, for instance, strived to attract merchants in competition with regional rivals like Antwerp through a combination of diplomacy and favourable open access institutions.³

In this period, the role of foreign merchants within insolvency procedures was usually complicated. A first hurdle in their equal treatment was formed by geographical distance. Foreign creditors might hear about an insolvency too late to successfully press their claims and be unable to join proceedings organized in a far-removed location. Secondly, even if they managed to be physically present or delegate a proxy to represent their interests, their position within the insolvency process was potentially weaker than that of local parties. In order to enforce their rights and resolve disputes, they had to depend upon a variety of legal regimes that were alien and potentially hostile to them.⁴

2 Institut für Stadtgeschichte Frankfurt am Main (hereafter ISG Ffm), Bürger wider Fremde (hereafter BwF), UGB D 66 S, nr. 57 (1701), f. 3r.

3 O. Gelderblom, *Cities of commerce. The institutional foundations of international trade in the Low Countries, 1250-1650* (Princeton 2013). D.C. North, *Institutions, institutional change, and economic performance* (Cambridge 1990) was one of the first to highlight the importance of institutions in economic growth. A. Greif, *Institutions and the path to the modern economy. Lessons from Medieval trade* (Cambridge 2006) and F. Trivellato, *The familiarity of strangers. The Sephardic diaspora, Livorno, and cross-cultural trade in the early modern period* (New Haven 2009) oppose the rather top-down Northian view by stressing the role of private order solutions, instead. This has been contested through a more nuanced public-order view by S.C. Ogilvie and A.W. Carus, 'Institutions and economic growth in historical perspective,' in: Ph. Aghion and S.N. Durlauf (eds.), *Handbook of economic growth*, vol. 2A (Amsterdam 2014) 403-513.

4 The very interesting chapter of Magnus Ressel highlights the close similarities between the position of foreign creditors in insolvency procedures and the challenges related thereto in early modern Venice

Gelderblom points out that the treatment of insolvencies is a good example of how a city like Amsterdam opened up its institutions to both domestic and foreign parties in order to adapt to the growth of international trade during its Golden Age.⁵ Rather than privileging certain groups, Amsterdam treated all merchants as equals.⁶ While authors like North and Gelderblom explain the rise of open access institutions in this period by their favorable effect on economic growth, our analysis of early modern insolvency procedures suggests reciprocity as an alternative driving force behind this development. We would like to argue that in the case of cross-border insolvency procedures, cooperation rather than competition between local authorities formed the leading motive for the creation of open access institutions.⁷ As we will make clear in this article, through what might be described as reversed reprisal-policies cities actively opened up their institutions to foreign merchants in the expectation that in return, this would also lead to a more favourable treatment of their own citizens abroad. These reciprocal policies relied upon cooperation between urban governments, to their mutual economical advantage.

As part of his discussion of French economic policy, Moritz Isenmann has shown that in early modern international relations it was generally expected that ‘between equals, treatment itself had to be equal.’⁸ This principle can not only be observed in relations between nation states, but also between cities. In these turbulent and war-infested centuries, cities rather than states were the most important actors that merchants looked at for the protection and guaranteeing of their rights.⁹ In the Holy Roman Empire, for instance, free imperial cities that possessed a large degree of legal and political autonomy concluded series of bilateral treaties in which the rights of foreign creditors were se-

and Amsterdam: M. Ressel, ‘Norms and practice of handling complex and international insolvencies in early modern Venice’, in: A. Cordes and M. Schulte Beerbühl (eds.), *Dealing with economic failure. Between norm and practice (15th to 21st century)* (Frankfurt am Main 2016) 115-138.

5 Gelderblom, *Cities of commerce*, 123-125; S. C. Ogilvie, *Institutions and European trade. Merchant guilds, 1000-1800* (Cambridge 2011) 32-34.

6 Ogilvie, *Institutions*, 32-34.

7 Compare, for instance: Gelderblom, *Cities of commerce*, 4: ‘The motivation of commercial cities to create inclusive institutional arrangements [...] issued not from the political franchise of their merchants but from the economic rivalry between these cities. Competition has long been recognized as a key feature of European history with a deep impact upon [...] economic growth.’

8 M. Isenmann, ‘Égalité, réciprocité, souveraineté. The role of commercial treaties in Colbert’s economic policy’, in: A. Alimento and K. Stapelbroek (eds.), *The politics of commercial treaties in the eighteenth century* (Cham 2017) 50-54.

9 Gelderblom, *Cities of commerce*, 3 and 10-15.

cured on an explicitly reciprocal basis. Directly linking the membership of a citizen community and individual rights, these can be interpreted as a continuation and further development of the late medieval treaties that were concluded in order to offer citizens mutual protection against reprisals.¹⁰ These new treaties did not only offer protection, but also – and most importantly – equal rights.¹¹

Between 1666 and 1729, Augsburg issued a series of decrees that guaranteed equal treatment of creditors coming from St. Gallen, Schaffhausen, Zürich, Winterthur and Basel.¹² The city council of Nürnberg acted in a similar way, concluding treaties with Basel (1678), Gent (1712) and Bamberg (1756).¹³ In Ulm, treaties were concluded with Basel (1695), Bern (1708), Zürich (1715) and Schaffhausen (1721).¹⁴ Even when no specific treaties had been concluded, these German cities acknowledged the importance of a good treatment of foreign creditors for their economy. In Frankfurt am Main, for instance, the demand for reciprocity in order to grant foreign merchants access to its insolvency procedures was laid down in its *Wechselordnungen* (Bills of Exchange Acts) of 1666 and 1739.¹⁵ While Augsburg had already stressed the importance of protecting foreign creditors in the introduction of its 1574 *Faillitenordnung*, from 1721 onwards it explicitly demanded reciprocal treatment before it allowed foreign creditors to participate in its insolvency procedures.¹⁶ These examples highlight the importance that these cities attached to fair, reciprocal treatment of their citizens abroad.

Based upon the Schellekens case, we will examine how these emerging policies of international cooperation influenced the position of foreign creditors in commercial hubs like early modern Amsterdam and

10 Due to the fact that reprisals caused the innocent to suffer for the guilty, they were controversial among medieval lawyers. See: M. Keen, *The laws of war in the Late Middle Ages* (London 2015); L. Sicking and J. Wink, 'Reprisal and diplomacy. Conflict resolution within the context of Anglo-Dutch commercial relations C1300-C1415,' *Comparative Legal History* 5:1 (2017) 53-71.

11 B. Wessels, B. Markall, and J. Kilborn, *International cooperation in bankruptcy and insolvency matters* (Oxford 2009) 71-75.

12 F. Hellmann, *Das Konkursrecht der Reichsstadt Augsburg* (Breslau 1905) 140-144.

13 W. Schorr, *Zwangsvollstreckung und Konkurs im Recht der freien Reichsstadt Nürnberg* (Nürnberg 1961).

14 K. Beyerle, *Zur Geschichte des Konkursrechts der Reichsstadt Ulm* (Heidelberg 1909) 29-30.

15 *Des Heil. Reichs-Stadt Franckfurt am Mayn, Erneuerte Ordnung in Wechsel- und Kauffmans-geschäften* (Frankfurt am Main 1666) §18; *Heiligen Reichs-Stadt Frankfurth am Mayn, Erneuerte und vermehrte Ordnung In Wechsel- und Kauffmans-Geschäften* (Frankfurt am Main 1739) §47.

16 S. Birnbaum, *Konkursrecht der frühen Augsburger Neuzeit mit seinen gemeinrechtlichen Einflüssen* (Münster 2014) 100-101.

Frankfurt. This article will start with a short general introduction of the Amsterdam Desolate Boedelskamer. Secondly, its insolvency procedure will be treated on the basis of our case study. Through letters, foreign creditors from Frankfurt and other cities were provided with the opportunity to participate in the Amsterdam insolvency procedure. It will be shown that this case was part of a wider development towards international cooperation in insolvency matters between important cities of commerce.

Sources

Insolvency cases potentially contain two international aspects. Firstly, the debtor's assets could be spread out over multiple jurisdictions and localities.¹⁷ Secondly, a substantial number of foreign creditors might be involved. Due to the lack of universality in early modern insolvency procedures, cases that contain the first element are not typical for insolvencies in this period. However, as we will show, cases involving significant numbers of foreign creditors frequently occurred. It might be argued that the single insolvency discussed in this article does not allow to arrive at meaningful conclusions about these larger developments. However, as we will demonstrate, the relevance of the material stems precisely from the fact that it is *not* unique, but a single instance of a rather common procedure. Like Thomas Safley has argued, 'historians need to turn their attention to microhistorical patterns of business organization and practice in order to determine their macrohistorical influence on business and economy in the past'.¹⁸

The source material on which this case study is based predominantly originates in the archives of the Amsterdam Chamber of Insolvencies or Desolate Boedelskamer.¹⁹ This has been supplemented by related documents found in the *Institut für Stadtgeschichte* in Frankfurt am Main.²⁰ It is difficult to quantify the annual number of Amsterdam international insolvencies that contained a number of foreign creditors. A series

17 See, for instance: F. Meili, *Die Geschichtliche Entwicklung Des Internationalen Konkursrechtes* (Zürich 1908); K. Nadelmann, 'Bankruptcy treaties', *University of Pennsylvania Law Review* 58 (1944) 58-97; Wessels, Markall, and Kilborn, *International cooperation*, 1-3.

18 T.M Safley, 'Business failure and civil scandal in early modern Europe,' *The Business History Review* 83 (2009) 60.

19 Gemeente Amsterdam Stadsarchief (hereafter GAS), 5072: Archief van de Commissarissen van de Desolate Boedelkamer (hereafter DB), inv. nrs. 625 (inventory), 1833 (accord) and 30 (rehabilitation).

20 ISG Ffm, BwF, UGB D 66 S, nr. 57 (correspondence).

of registers called 'Lists of Creditors', which might have provided statistical data on the background of creditors in every concluded accord, has only been preserved from 1729 onwards.²¹ The series of *Staten der Cessionanten*, which have been preserved from this period, treats a different type of insolvent than Schellekens. It contains data on the creditors of those who applied for *cessio bonorum*, a procedure which did not result in an accord, but was predominantly used for artisans, local traders and other smallfolk.²² The 'Registers of Unsigned Creditors' interestingly also list the creditors that *did* sign an accord from roughly 1695 onwards, but unfortunately do not note their geographical origin.²³ There is, however, one series of registers that provides an insight into the communications sent out by the commissioners to creditors of cases in which an accord had been proposed. The general minutes of the commissioners contain notes of meetings at which it was decided to send letters to individual foreign creditors, or to inform local ones through placards. This data will be treated in more detail below.²⁴

Through an analysis of the inter-city correspondence about the insolvency of Gasparo Schellekens, much can be learned about the exact ways in which local governments opened up their institutions in an attempt to further the interests of their own citizens abroad. We will now describe the Schellekens case and the procedures of the Chamber in further detail.

An Amsterdam Insolvent: the Case of Gasparo Schellekens

The last years of the seventeenth century were a politically and economically uncertain period for the Dutch Republic. Dwindling profit margins in all important sectors of the economy were accompanied by continuing English and French protectionist measures in the form of tariffs, while the Nine Years' War (1688-1697) and War of Spanish Succession (1701-1713) strangled the Republic with an enormous state debt.²⁵ Gasparo or Caspar Schellekens – his name is written in different styles – was one of the unfortunate victims of these harsh economic

21 GAS, 5072: DB, inv. nrs. 836-883.

22 GAS, 5072: DB, inv. nrs. 689-691.

23 GAS, 5072: DB, inv. nrs. 934-939.

24 GAS, 5072: DB, inv. nrs. 1-57.

25 J. De Vries and A. Van der Woude, *Nederland 1500-1815. De eerste ronde van moderne economische groei* (Amsterdam 1995) 776-782.

conditions. The texts of his inventory and accord, which will be discussed in this paragraph, both start with rather general formulations. It is stated that due to *ongelegenthyt van saken* or 'bad business', Schellekens was unable to repay the arrears that he owed his creditors.²⁶ This paragraph will go through all facets of the insolvency procedure in late seventeenth-century Amsterdam on the basis of this case study.

The Desolate Boedelskamer

Until well into the seventeenth century, the aldermen in Amsterdam handled all insolvency cases themselves.²⁷ When news reached them about a citizen in financial distress, a curator was appointed, who then proceeded to draw up an inventory of the estate in order to gather the affected parties. Increasing amounts of work for the aldermen from time to time led to the wish to establish more subsidiary, specialized courts. In November 1643 the first five commissioners of the new Desolate Boedelskamer, a special court for insolvency cases, started their work. The official proceedings were laid down in a municipal ordinance.²⁸ In 1659, this ordinance was updated and replaced by a more elaborate set of regulations, probably based upon the experiences in the first decades of the Chamber's functioning.²⁹

As soon as the commissioners were notified about a potential case of insolvency, at least two of them had to visit the house of the debtor together with the Desolate Boedelskamer's secretary. There, they would produce an inventory of all goods and possessions, and confiscate the administration: the *Boecken, ende Papieren* belonging to the estate. As

26 GAS, 5072:DB, inv. nr. 1833, f. 2r; inv. nr. 625, f. 94v.

27 The Amsterdam insolvency practice developed from older Antwerp examples. Here, we also already encounter the strong focus on arbitration and reaching an accord with a majority of the creditors: D. De ruysscher, 'Antwerp commercial legislation in Amsterdam in the 17th century. Legal transplant or jumping board?', *Tijdschrift voor Rechtsgeschiedenis* 77 (2009) 459-479; D. De ruysscher, 'The struggle for voluntary bankruptcy and debt adjustment in Antwerp (c. 1520-c. 1550)', in: Cordes and Schulte Beerbühl (eds.), *Dealing with economic failure*, 77-95; G. Moll, *De Desolate Boedelskamer te Amsterdam. Bijdrage tot de kennis van het oud-Hollandsch failliten-recht* (Amsterdam 1879) is the classic study on the Desolate Boedelskamer, but mainly focusses on its functioning in the late eighteenth century.

28 G. Rooseboom, *Recueil van verscheide keuren, en costumen: Mitsgaders maniere van procederen binnen de stad Amsterdam. Den tweeden druck, nu merkelyck vermeerdert en verbeterd* (Amsterdam 1656), 304-309.

29 H. Noordkerk, *Handvesten; ofte Privilegien ende octroyen: Mitsgaders willekeuren, costuimen, ordonantien en handelingen der stad Amstelredam II* (Amsterdam 1748) 687-690. This ordinance serves as the source of the procedures described in this article.



Illustration 1 Gerrit Berckheyde, *Het stadhuis op de Dam*, c. 1670 (source: Amsterdam Museum).

soon as the inventory had been completed, a curator was appointed. He would attempt to secure any goods, rights or claims belonging to the estate outside of the city of Amsterdam by mail: *brieven, ende (is 't noodt) door expresse*, and proceed to collect any outstanding sums. As long as the estate resorted under the Chamber, it was managed by the curator.

The first time we meet Gasparo Schellekens in the archives of the Desolate Boedelskamer in Amsterdam is when its secretary received such an inventory.³⁰ The document had been produced on 16 February 1701 in consultation with a specialist, Catharina Verlaen, who describes herself as *geswoore schachter* or 'sworn appraiser'. The inventory provides an interesting glimpse of the house of Schellekens and Maria Nuys, his wife. For instance, in the antechamber a 'veneered bench' was accompanied by such varied items as porcelain, paintings, a swordfish and 'a little Japanese boat'. From their big oaken bed, the couple could watch themselves in a large 'mirror in a silver-plated frame', in a room adorned by tapestries and lacing. It is clear that the owners

30 GAS, 5072: DB, inv. nr. 625, f. 94v-101v.

were wealthy and possessed a certain stature. In a time when an average skilled worker's annual wage amounted to roughly 360 guilders, furniture like that of the Schellekens, which was worth 2,250 guilders, amounted to a small fortune.³¹

Notwithstanding their personal wealth, the Schellekens business amassed a substantial debt. At the time of the insolvency, Gasparo owed his creditors 171,704 guilders and 10 *stuivers*.³² When the extent of an insolvent's debt and possessions had been established, the chamber moved on to the 'mediation phase', in which it tried to facilitate the conclusion of an amicable accord between an insolvent and his creditors.³³ During the seventeenth century, this became an increasingly favoured alternative for a 'hard' execution sale, as the debtor's willing cooperation usually ensured a higher return from the procedure for the creditors.³⁴

For a period of six weeks after the initial inventory the insolvent, or, in case he were deceased, his relatives and friends could attempt to reach such an accord with the creditors. This entailed agreements between all involved parties on how much of the debt could be repaid, generally expressed as a percentage, and the fixed terms at which payments would be made available to the creditors. The commissioners had the discretion to prolong this phase, during which they officially managed the estate. If an accord was reached, the estate would be returned to the insolvent and his creditors, upon payment of the costs the chamber had incurred during its management. One day after the inventory of their furniture had been deposited at the Chamber, Gasparo and his wife Maria Nuys signed a proposal for an accord. This document will now be examined in more detail.

The Accord

On 17 February, the day when the negotiations with Gasparo's creditors were initiated, the commissioners also came to an agreement with his wife Maria about their *boedel* or furniture. Rather than providing a guarantor, as was usual, she was able to deposit 2,250 guilders at the Desolate

31 De Vries and Van der Woude, *Nederland 1500-1815*, 703-713.

32 GAS, 5072: DB, inv. nr. 1833, f. 13v. A *stuiver* was one-twentieth part of a guilder.

33 Noordkerk, *Handvesten* II, 687-688.

34 D. De ruysscher, 'Business rescue, turnaround management and the legal regime of default and insolvency in Western history (Late Middle Ages to Present Day),' in: J. Adriaanse and J.-P. Van der Roest (eds.), *Turnaround management and bankruptcy* (New York 2017) 22-42.

Boedelskamer in order to pay off her husband's creditors' claim upon their furniture. In the margin, it is pointedly noted that besides this sum, she would also have to pay 'the city's right, as well as the rights of the secretary and the concierge'.³⁵ These parties had the privilege to receive a small part of the proceedings from the sale of a debtor's furniture, due to their involvement with its assessment for the creation of the inventory.

The accord states that, if enough creditors would sign the concept, Schellekens would pay back twenty per cent of his debts in two tranches of ten per cent each. The first term would be paid three months after his act of rehabilitation, the second term three months thereafter. As was usual practice, guarantors were provided in order to secure the payment of this twenty per cent to the creditors. Intriguingly, Maria Nuys, who had already proved wealthy enough to buy off the creditor's claim to their furniture, also served as her husband's guarantor, together with her guardian, Gerrit Willemszoon van Boxbergen.³⁶

In order to make this possible, she had to refrain from several protective legal measures. Firstly, she renounced the right to make use of the benefice *ordinis divisionis excussionis*. This provided each guarantor with the protection that he or she could only be executed for their share, rather than the whole, of the principal debt that they had undersigned.³⁷ Secondly, Maria renounced the benefices of *senatus consulti velliani* and *authenticae siqua mulier*. These made it impossible for a married woman to legally bind herself in favour of her husband, which she was clearly doing by becoming his guarantor.³⁸ Thirdly, she also acknowledged that she willingly renounced the right to be protected by the *willekeur* (local bylaw) of the city of Amsterdam, which also forbade women to serve as guarantor, even for their own husbands.

Besides guaranteeing to pay back twenty per cent of all outstanding debts, Schellekens also ceded two substantial claims to his creditors. The first of these amounted to roughly 70,000 guilders, described as *soodanigh reght, actie en pretentie* that he possessed against a merchant in Venice, Pietro Francisco Nani. The second claim contained 'all that he or his insolvent estate might gain from the heirs of Adriaan Justus from Hamburg'. The accord empowers Egidius van der Bempden, Abra-

35 GAS, 5072:DB, inv. nr. 625, f. 101v.

36 GAS, 5072:DB, inv. nr. 1833, f. 2-3r.

37 M. Caesar, *Ius hodiernum ofte hedens-daaghs recht beschreven ende gecolligeert naer ordre ende tot elucidatie van de vier boecken der Institutien des keizers Justiniani* (Amsterdam 1656) 214-215.

38 J. de Coeur, *Styl der notarissen, zynde een verzameling van actens, contracten en instrumenten* (The Hague 1740) 351; B. van Zutphen, *Practycke der Nederlansche rechten vande daghelijcksche soo civile als criminele questien* (Leeuwarden 1664) 57.

ham van der Lip, Jeremias van der Meer and Johannes Boelens to pursue these claims on behalf of all of Schellekens' creditors, if necessary in court. Gasparo promised to assist them wherever he could, however, any costs he would make in doing so would be paid out of the gains from these proceedings. Furthermore, from these same proceeds, he would be repaid any 'damage through defaults or other [harmful acts] by the named debtors'.³⁹

In exchange for these concessions, and if Schellekens would act according to the provisions of the accord, his creditors gave up their right to proceed against him in order to force further repayment. Schellekens in turn promised that if he would ever 'come to prosperity' again, he would attempt to repay as much as possible of the debts that his creditors would have to write off due to the accord. Concluding such an agreement therefore required mutual trust between the parties that the other was acting 'in good faith'.⁴⁰ If the creditors did not trust their debtor, they would opt for an execution sale and thereby accept smaller returns than might potentially be gained from an accord.⁴¹

Convening the Creditors

Now that a proposal had been drawn up for an accord, the debtor and his curator had six weeks to gather enough creditors' signatures to make it legally binding. In order to reach a legally valid accord, the agreement of 3/4 of the creditors in number possessing at least 2/3 of the total value of the debts was required. Alternatively, a 2/3 numerical majority of the creditors possessing at least 3/4 of the total debt value was also sufficient. While the dissenting minority was also bound to such agreements, exemptions were made for those creditors who possessed *borgen, pande of versekeringe*. They could not be forced to follow an accord, as their privileged position placed them outside of the general creditor body. Until a creditor had signed the accord, the debtor or his representatives would have to transfer the sums that were rightly theirs to the commissioners. They would then distribute these to the creditor as soon as he had signed the agreement.⁴²

39 GAS, 5072: DB, inv. nr. 1833, f. 2.

40 GAS, 5072: DB, inv. nr. 1833, f. 3r.

41 W.F.H. Oldewelt, 'Twee eeuwen Amsterdamse faillissementen en het verloop van de conjunctuur (1636 tot 1838)', *Tijdschrift voor Geschiedenis* 75:4 (1962) 422.

42 Noordkerk, *Handvesten* II, 687-688.

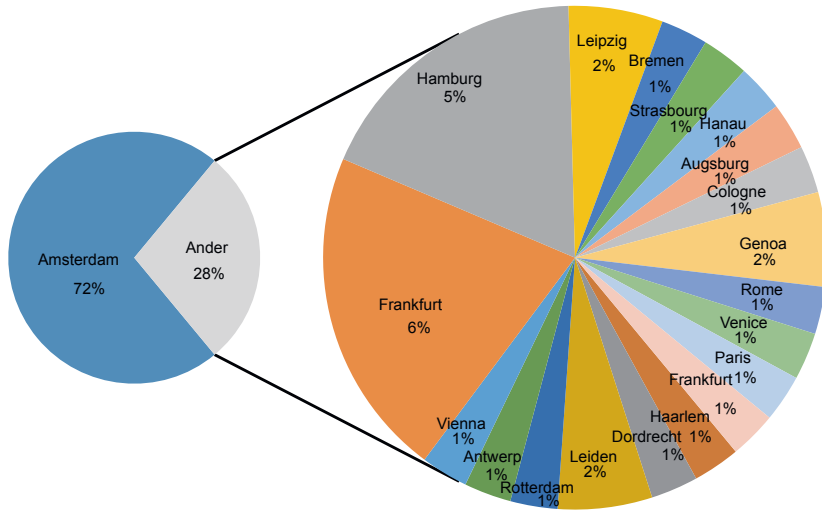


Illustration 2 Geographical origins of the creditors of Gasparo Schellekens (diagram created by M. den Hollander).

The 1659 ordinance provides details about the gathering of creditors for the first time. Its seventh article is dedicated to the procedure in which an accord should be reached, ‘to ensure that such accords are concluded in an orderly fashion’. All creditors would officially be summoned to the Chamber in Amsterdam. Inhabitants of that city would be notified through a citation, while placards and letters (*weetbrieven*) would be distributed to creditors outside of Amsterdam.⁴³ This was especially relevant in Schellekens’ case, as he was an international trader with many foreign debtors (see illustration 2).

For the production of placards, the Chamber made use of external parties. On 10 February 1690, the commissioners ordained that they would exclusively employ the services of bookseller Joachim van Dijck after that date.⁴⁴ His business was located south of the city hall on the Dam, and therefore very close to the Chamber’s quarters in that building. However, Van Dijck only briefly enjoyed the fruits of this arrangement, as on 5 December of that same year he was buried in the Nieuwezijds Kapel.⁴⁵ After Van Dijck’s death, the Chamber continued to employ the services of his widow, until the moment at which she left

43 Noordkerk, *Handvesten* II, 687.

44 GAS, 5072: DB, inv. nr. 58, f. 46r.

45 M.M. Kleerkoper and J.J. van Stockem Jr., *De boekhandel te Amsterdam voornamelijk in de 17e eeuw. Biographische en geschiedkundige aantekeningen* I (Den Haag 1914) 188.

the 'shopping business' or *winkelneringe* in November 1709.⁴⁶ Therefore, the widow Van Dijck will most probably have printed the placards used to convene the creditors of Gasparo Schellekens.

The *Notulen* or 'minutes' of the commissioners of the Desolate Boedelskamer contain an interesting entry about the actions undertaken to inform the creditors that had not immediately signed in on the accord. Through placards, twelve creditors living in Amsterdam were notified about the accord and invited to join the agreement before 5 April. All foreign creditors were notified by *weetbrieven*, 'informing letters' that were sent to a large number of cities: Augsburg, Paris, Lyon, Hamburg, Leiden, Venice, Genoa, Middelburg and finally Frankfurt, as will be discussed in greater detail in the next section. Interestingly, Cesare Sachi from Rome was not among the creditors informed by letters. This can be explained by the fact that he seems to have been represented by Biljotti Sardi, who was residing in Amsterdam and therefore included in the placards.⁴⁷

Eventually, 94 out of 118 creditors signed the accord, while 89 were required. These signing creditors possessed 127,421 guilders of debt, while the necessary 2/3 amounted to 114,469 guilders and 14 *stuivers*. This meant that the accord was declared valid 'according to the ordinance of this Chamber' at 4 April 1701.⁴⁸ In their minutes, the commissioners note that as a result of their actions to inform the unsigned creditors, Willem van der Does from Amsterdam signed the accord. Furthermore, they noted that *behoorlijk bescheyt* or 'proper responses' arrived as reactions on the *weetbrieven*. Their actions had proven sufficient to create a binding majority of creditors in support of the accord. At 12 July 1701, the commissioners of the Desolate Boedelskamer decided to discharge the estate of Gasparo Schellekens from their custody, and restored it 'to its former freedom'. He could now 'trade and negotiate, receive and spend in the same manner as before the date of his insolvency'. Of course, this rehabilitation was only valid if Schellekens would adhere to the conditions that had been laid down in the accord.⁴⁹

While Magnus Ressel justifiably draws parallels between the Venetian and Amsterdam insolvency regimes, with regards to creditor-friendliness the Amsterdam commissioners definitely outreached their Venetian counterparts. In Venice, creditors who did not register

46 GAS, 5072: DB, inv. nr. 58, f. 71r.

47 GAS, 5072: DB, inv. nr. 30, f. 122r.

48 GAS, 5072: DB, inv. nr. 1833, f. 13v.

49 GAS, 5072: DB, inv. nr. 30, f. 122r.

in time would lose their claim with the conclusion of an accord.⁵⁰ In Amsterdam, the Desolate Boedelskamer itself compiled a list of creditors from the administration of the insolvent and secured their claims. Rather than making it their own responsibility to be informed and react on time, its commissioners actively contacted foreign parties and safely stored their part of the proceeds of an accord once it had been concluded. If they proved their claim satisfactorily at a later time, this would be handed over to them straight away.

The Schellekens case forms an intriguing example of how the local authorities cooperated to further their citizens' rights. The Amsterdam procedure was well-organized and transparent, but did in principle not necessitate an equal treatment of foreign creditors. Due to the limited temporal scope of insolvency proceedings, a swift way of communicating with the external parties involved was essential to ensure that foreign creditors would also be given a fair chance to participate in the process. The Desolate Boedelskamer itself initiated contact with, among others, the Frankfurt city council, asking to inform five of Gasparo Schellekens' creditors, all residents of this free imperial city, of his insolvency. We will now examine how exactly these communications helped to open up insolvency procedures.

Insolvency Communications between Amsterdam, Frankfurt and other Cities

The question arises whether these communications between Amsterdam and Frankfurt were exceptional, or whether they were symbolic of a larger development in the early modern commercial landscape. We believe the latter to be true. In this section, we will briefly discuss the treatment of the Frankfurt creditors in the Schellekens insolvency, after which this case study will be placed in the wider context of Amsterdam's communications to external creditors in insolvencies that were handled by its Desolate Boedelskamer. Finally, the letters will be discussed in the context of the collection of international correspondence on similar topics that can be found in the Frankfurt archives from this period.

It is at this moment that we encounter the letter of 8 March 1701 that was mentioned in the introduction. Creditors Killian Muller, Chris-

⁵⁰ Ressel, 'Norms and practice,' 124-127.

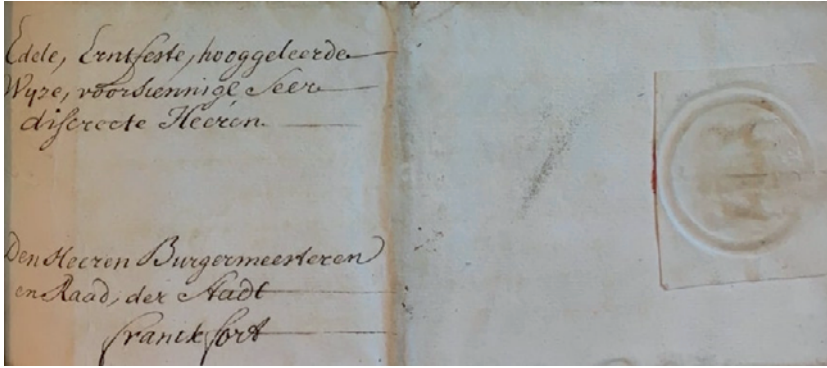


Illustration 3 Letter by the Amsterdam Desolate Boedelskamer of 8 March 1701 (photographer R. J. Mooi).

tian Schneyder, Jan Pieter and Arnoud Vermeeren and Coenrad Valentijn Reinek were all residents of Frankfurt am Main. Apparently, the Amsterdam authorities considered it more efficient to address them through the local city council than to send direct messages to all these individuals. Through the letter, these creditors were invited to join or contradict the proposed accord. In order to provide them with proper information, the commissioners briefly summarized the main conditions that had been drawn up in consultation with Schellekens. The creditors would have to act quickly upon this news: they would have to appear at the Chamber in Amsterdam in person or by attorney before '5 April 1701, being a Tuesday, at nine in the morning'.⁵¹

A response letter dated at 30 March 1701 suggests that the Frankfurt citizens had been notified on time.⁵² Still, they do not appear on the list of signed creditors. Intriguingly, some other creditors from Frankfurt *do* actually appear on this appendix to the accord, while they did not feature in the letter of the 8th of March. Egidius van den Bempden signed on behalf of David and Jacob de Neufville, as well as for Alexander Lahr. Likewise, Jean Francois Dorville signed as attorney of a certain 'Campringssoon tot Frankfurt'. How can we explain this discrepancy?

Likely, the 'signed' creditors from Frankfurt were quickly notified about Schellekens' situation by their own contacts in Amsterdam, who could also represent them at the Chamber. The fact that they are not included in the first letter suggests that they signed the accord before this date. For part of the foreign creditors, it might not have been rele-

⁵¹ ISG Ffm, BwF, UGB D 66 S, nr. 57 (1701), f. 3v.

⁵² ISG Ffm, BwF, UGB D 66 S, nr. 57 (1701), f. 4r.

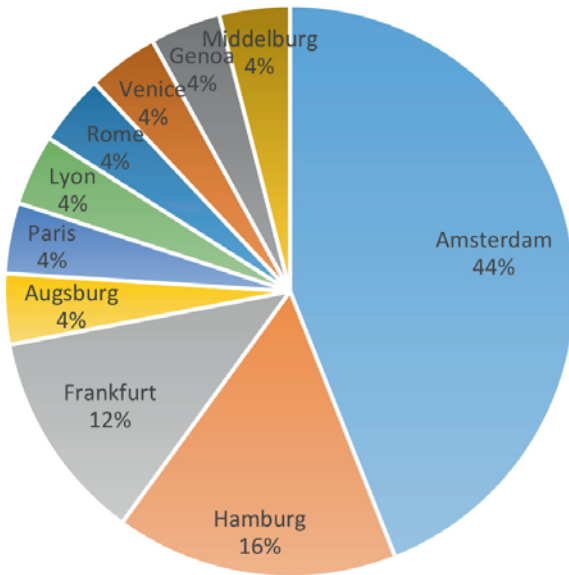


Illustration 4
Geographical origins of the creditors of Gasparo Schellekens that did not sign the accord before the communications of March 1701 (diagram created by M. den Hollander).

vant to engage with an insolvency process in which they only possessed a rather limited claim. The marginal monetary gain that was to be expected from an accord as opposed to a simple execution might simply not warrant extra travel expenses or representation costs. This reasoning is supported by the fact that many of the other ‘unsigned’ creditors came from far removed cities such as Hamburg, Augsburg, Rome or Paris. While foreign creditors formed 28 per cent of the total body of claimants, the majority of the unsigned creditors lived outside Amsterdam (see illustration 4).⁵³

The *weetbrieven* from the Frankfurt archives discussed here are not special or unique in themselves. Much to the contrary, their importance is that they form an example of a type of letter that was sent out on a very regular basis by the Desolate Boedelskamer in Amsterdam. A thorough analysis of one of the registers of the commissioners’ minutes, covering the period between August 1699 and February 1702, uncovered 24 cases like that of Schellekens, in which an act of rehabilitation was issued after an accord had been concluded between debtor and creditors (see Illustration 5). In 22 of these cases, the commissioners communicated with creditors through placards and/or letters. Out of the 171 creditors that were informed about one of these insolvencies, 60 (or 35 per cent) were foreigners that were contacted through *weet-*

⁵³ GAS, 5072: DB, inv. nr. 1833, f. 6r-9r.

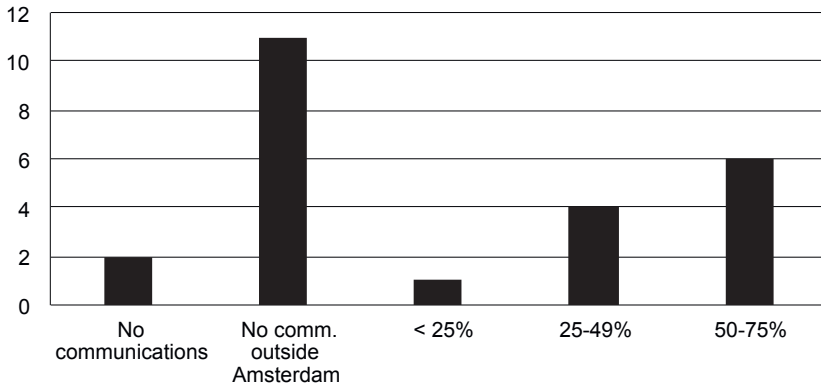


Illustration 5 Foreign creditors in relation to the total number of contacted parties in 24 accords mentioned in the minutes of the commissioners of the Amsterdam Desolate Boedelskamer between August 1699 and February 1702 (diagram created by M. den Hollander).

brieven like the one found in Frankfurt. The actual number of foreign creditors involved in these insolvencies is even higher than this number suggests, as some of the people contacted through placards (because they lived in Amsterdam) acted as *procureurs* or representatives of foreign parties rather than on their own title. In the Schellekens case, for instance, we encountered Cesare Sachi from Rome, who was represented by Biljotti Sardi.⁵⁴

A survey of older minutes suggests that this situation, from around 1700, is typical of the way in which the Chamber had communicated with creditors outside Amsterdam from its establishment in 1643. In 1682, for instance, letters were sent to unsigned creditors of Marcus Broen in Frankfurt, Antwerp, Staden, London and Leiden. Intriguingly, a marginal annotation mentions that when after almost two months a response arrived from Leiden, this was ‘written in Latin’.⁵⁵ In the notes regarding one of the first accords discussed by the commissioners, that of Francheijs Lodeweijcx and Manuel Pelt from December 1643, it is explicitly mentioned that ‘because part of their debt concerns creditors from outside the country’, letters had to be sent before the accord could be ratified, as the commissioners argued that it was undesirable to deprive them of the chance to sign or oppose the arrangement as it had been drawn up by those present.⁵⁶

⁵⁴ GAS, 5072: DB, inv. nr. 30.

⁵⁵ GAS, 5072: DB, inv. nr. 24, f. 162v-163r.

⁵⁶ GAS, 5072: DB, inv. nr. 1, f. 26v-27v.

Now that it has been made clear that the Amsterdam commissioners were actively corresponding with foreign creditors from at least the 1640s onwards, we need to examine the context in which these letters from Amsterdam were saved in the Frankfurt archives. The Frankfurt *Institut für Stadtgeschichte* contains numerous documents related to matters between Frankfurt citizens (*Bürger*) and foreign nationals (*Fremden*). Frankfurt communicated with a large number of different cities. The majority lay within the German territories, but important international commercial centres like Amsterdam, Lyon, and Basel would also send letters to Frankfurt about individual insolvency cases.

The cases of the merchants Johann Provintz from Rottweil and Tobias Born from Leipzig highlight important similarities to the treatment of the Schellekens insolvency and the involvement of the Frankfurt and Amsterdam authorities therein. We will briefly discuss them in order to show the relative homogeneity in such chains of communication. Similarly to the Schellekens correspondence, Frankfurt creditors were notified of the insolvency of a foreign debtor, and summoned to take action in order to submit their claims.

In 1668, the Frankfurt city council received a communication of the city council of Rottweil, which is located 216 kilometres to the south of Frankfurt. Rottweil citizen and merchant Johann Provintz had become insolvent ‘despite hoping for the better’. Now, the Rottweil city council requested to inform two Frankfurt merchants, Diettrich Hoffstadt and Johann Kasimir Werlin, of Provintz’s insolvency. The letter does not contain more specific information on the terms within which the creditors would have to submit their claims. This can be explained by the fact that the letter mentions the sending along of the original placards (*Anschlagen*) from Rottweil, which would contain more detailed information on the insolvency.⁵⁷

A case from 1695 involves an insolvent from Leipzig. There, Tobias Born had gone into *Konkurs*, leading to the summoning of his creditors. Amongst these creditors were the Frankfurt citizens Carl Ludwig Fels and Abraham Mangon. In a letter to their Frankfurt counterparts, the Leipzig city council requested that the Frankfurt citizens be notified of the insolvency of Tobias Born. The creditors could submit their claims to the Leipzig court of commerce themselves or through a proxy. A response from Frankfurt confirmed that the two aforementioned creditors had been notified of the Leipzig insolvency.⁵⁸

57 ISG Ffm, BwF, UGB D 57 H, nr. 51 (1668).

58 ISG Ffm, BwF, UGB D 55 F, nr. 41 (1695).

These two cases serve as examples of the much larger set of inter-city *Ladungen zum Konkurs*. This positively affected the Frankfurt economic climate, as international merchants were now in a much better position to pursue their claims when one of their debtors became insolvent. Insolvency procedures were often relatively fast, requiring creditors to submit their claims in a matter of weeks. Quick and reliable communication between cities was therefore of the utmost importance to give international creditors a fair chance to participate in the proceedings. Local governments played a key role in informing foreign creditors, as it was much harder for this group to obtain information about such events. Through the emergence of a network of foreigner-friendly insolvency procedures, local governments managed to create favourable conditions for their own merchants on a reciprocal basis.

Conclusion

The case of the Amsterdam merchant Gasparo Schellekens provides an interesting example of how the legal position of foreign creditors in insolvencies improved during the early modern period. The commissioners of the Amsterdam Desolate Boedelskamer actively strived to inform both local and foreign creditors of the insolvency of one of their citizens. In fact, they even sent letters to foreign authorities such as the Frankfurt city council when creditors from their city had not joined the proposed accord as of yet. Due to the time constraints of the insolvency proceedings, it is likely that without this active approach, the contacted Frankfurt merchants would not have been able to properly represent their interests.

The Schellekens case did not stand on its own. The city of Frankfurt received insolvency communications from a wide range of cities, both within the German territories and from international hubs of commerce like Amsterdam. At first sight, local creditors did not have an interest in sharing information about the insolvency of a debtor. This could lead to more claims being submitted, and the creditors' shares of the debtor's assets to dwindle. However, such communication strategies make much more sense when viewed with the common economic and political principle of reciprocity in mind. When an Amsterdam court treated Frankfurt creditors as equals to its own citizens, it could be expected that the Frankfurt authorities would act in a similar way towards Amsterdam creditors. It was therefore cooperation, and not com-

petition, that to a large extent characterised these legal polices of early modern cities of commerce. This was an important way to provide securities for international credit, strengthening the local economic climate.

The way in which foreign creditors were included in the Amsterdam insolvency procedure highlights its flexibility. The institution was not exclusively formed through top-down or bottom-up strategies, but displays a combination of elements from both public- and private order solutions. While the city authorities actively sought to inform foreign parties through letters, individual traders served as proxies for external parties and informed their contacts about an Amsterdam insolvency. The commissioners of the Desolate Boedelskamer actively stimulated and facilitated arbitration, preferring a widely supported accord to the 'hard' execution of an estate. At the end of the day, this benefitted all parties involved in the insolvency, both locals and foreigners.

In this article, we have demonstrated how the treatment of insolvencies in early modern Europe was supported by networks of correspondence between local authorities, which utilised the principle of reciprocity to the mutual benefit of all of their citizens. In our case study, cooperation rather than competition formed an important motive for the creation of open access institutions. The improved inter-city relations provided all creditors with a stronger position in foreign insolvency proceedings. This reduced risks, strengthened mutual trust, and thereby likely increased the availability of credit. From the cases discussed in this article, it becomes clear that reciprocal inter-city cooperation on insolvency matters played an important role in the rise of open access institutions and a truly international economy.

About the authors:

Maurits den Hollander (MA) (1994) works as PhD Researcher in Legal History at the Department of Public Law and Governance of Tilburg University. His research interests span a broad range of financial, political and institutional topics, but in the last years he has focused on late medieval governmental auditing bodies and local financial crisis management in the northern Habsburg Netherlands. Den Hollander's current research focusses on insolvencies in seventeenth century Amsterdam. Main publication: Den Hollander, M., 'Comparative cultures of accountability. The Scottish Exchequer and the Audit Chamber of Holland between 1477 and 1515', *Comparative Legal History* 6:2 (2018) 158-183.

E-mail: M.denHollander@uvt.nl

Remko J. Mooi (LLM, MA) (1989) works as PhD Researcher in Legal History at the Department of Public Law and Governance of Tilburg University. Next to his main focus on the history of international insolvency and trade law, he has an interest in the history of human rights. His PhD research focusses on the development of the position of foreign creditors in insolvency procedures in seventeenth and eighteenth century Frankfurt am Main.
E-mail: R.J.Mooi@uvt.nl

