Restoring trust and credit through innovative governance in 17th-century Amsterdam

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Summary

This article explores the important connections between trust, credit, and innovative governance in seventeenth-century Amsterdam. It combines theoretical insights from both (legal) history and sociology to arrive at a broader understanding of the nature and functioning of trust between creditors and debtors. This article also moves beyond the existing literature, empirically testing the effect of innovative legal institutions on economic relations by means of case studies taken from the rich archives left behind by the Desolate Boedelskamer. Through the creation of systemic trust, innovative governance in the form of efficient insolvency legislation helped to restore good faith between creditors and debtors, strengthening both Amsterdam’s economy and civic community.

Keywords

insolvency – Amsterdam – trust – credit – good governance – bankruptcy – institutions – Dutch Golden Age

In 1632, the city of Amsterdam established a new institution for higher education. At this Athenaeum Illustre, where students would be educated based upon a traditional humanistic program, professors Gerardus Vossius and

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Caspar Barlaeus would enjoy the benefits of the liberal intellectual climate of the Dutch Republic’s prime commercial hub. In his inaugural lecture, Vossius stresses the importance of history as ‘the summary, or *compendium*, of universal experience’. These historical facts were to be selected and studied based upon their practical relevance, to reach Vossius’ ultimate goal: ‘to live a good and happy life’¹. This focus on the practical utility of science is also present in Barlaeus’ inaugural lecture, titled *Mercator sapiens*. Philosophical reflection would not just provide Amsterdam’s hard-working merchants with a much-needed peace of mind or *innerlijke rust*, but also inspire them to explore new business opportunities by utilizing the new knowledge obtained during the lectures².

Perhaps, the Amsterdam distiller Volckert Croock was among the audience listening to the Athenaeum’s inaugural lectures. He knew, however, that notwithstanding the merits of such academic reflections, in the daily reality of seventeenth-century Amsterdam credit was essential to be successful in business. The capacity to obtain credit was strongly linked to one’s reputation, and hence to matters of trust³. A few months earlier, Croock had apparently lost his creditors’ faith in his capacity to fulfil his financial obligations. A formal document dated 10 May 1631 that was preserved in the Amsterdam archives points at his insolvency. The distiller was only able to avoid an immediate execution of his estate by providing substantial additional securities for his debts⁴. When Barlaeus admonished his audience, stating that ‘wisdom warns us to be cautious when engaging ourselves in written contracts or *IOU*’s (‘I owe you’, an informal acknowledgements of debt), he might have forgotten that for entrepreneurs such as Croock, it was often a bitter necessity to ‘pay debts with borrowed money’ when trying to keep their businesses afloat⁵.

Early modern citizens displayed a clear concern about the reputation of their city as a good place to do business when they were confronted with rising numbers of insolvencies in their midst. Investors, especially foreigners, needed to be assured that their claims would be dealt with rapidly and honestly when they became entangled in an Amsterdam insolvency⁶. As Mathias remarks,

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⁴ Gemeente Amsterdam Stadsarchief (hereafter GAS), 5072: Archief van de Commissarissen van de Desolate Boedelkamer (hereafter DB), inv. nr. 1227.
'if access to credit was the first rule for success in business then creditworthiness was the means to this essential end'. This was equally true for international merchants and the proverbial baker around the corner. In order to obtain credit, one had to be seen as trustworthy. This status of respectability, that Mathias regards as essential for the success of any form of business, could not simply be asserted, but had to be built up slowly over time by actions as well as words7.

Trust (Dutch: vertrouwen), notwithstanding its crucial importance in social and economic relations throughout history, nevertheless remains an elusive concept. Weltecke remarks that fides or trust as such does not exist, but is a culturally and specifically constructed phenomenon that is an object of historical transformation8. Therefore trust, as an essential and dynamic element of past and present social and economic relations, must not simply be regarded as a natural phenomenon, but itself be the object of historical research. Frevert, therefore, also advocates the use of proper theories of trust in historical scholarship. Together with Schulte, she was among the first to engage with the work of e.g. Luhmann in historical analysis9. As Hosking remarks, this is highly interesting, because historians are in a much better position to approach questions of trust than the sociologists who had formerly dealt with this phenomenon. Firstly, ‘they do not examine economies, political structures or social welfare systems in isolation: they are interested in whole societies’. Secondly, they ‘locate their studies in the flow of time’. As the mentality and actions of people are strongly influenced by their previous life experiences and that of those around them, this awareness of temporal development and path dependencies is crucial if one really wishes to understand the actions of historical actors such as Volckert Croock and his creditors10.

In order to fully grasp the importance of trust for our understanding of the functioning and use of past legal institutions, it is helpful to analyse a situation

that is characterised by a complete disintegration of trust in its financial variant of credit: insolvency. Not only is insolvency legislation, as Limpens remarks, ‘one of the melting pots in which all legal affairs amalgamate’; if solid and transparent it also forms a crucial part of the legal framework of market economies, providing creditors with confidence in the rules that safeguard their investments. This points at the important fact that trust in institutions can at least partially make up for faltering trust in an individual debtor. I will argue that through this essentially social mechanism, the introduction of a professional, transparent, and broadly accessible subsidiary court for insolvency cases in seventeenth-century Amsterdam, the 1643 Desolate Boedelskamer, had important beneficial economic effects.

Based upon an in-depth analysis of hundreds of insolvencies throughout the seventeenth century that I worked out elsewhere, this article will make use of two new and elaborated case studies to illustrate how exactly legal and institutional innovation could result in positive economic effects. In seventeenth-century Amsterdam, the involvement of a public institution in the resolution of insolvencies created the circumstances in which creditors dared to invest their trust in arbitrated agreements rather than in the debtor’s prison; the traditional way to deal with those who could not make good on their obligations. These legal innovations ensured both the debtor’s continued freedom of action, as well as a higher chance on full repayment over time for the creditors.

This article will explore these important connections between trust, credit, and innovative governance in seventeenth-century Amsterdam. Firstly, I will briefly reflect on sociological theories about the nature, roots, and general functioning of trust. Secondly, the cases of Amsterdam citizens Volckert Croock and Abraham van Herzeele will be discussed, indicating an important change in the ways in which insolvencies were resolved over the seventeenth century.

12 On the Amsterdam Desolate Boedelskamer, see my dissertation below, as well as the original ordinances: Gerard Rooseboom, Recueil van verscheide keuren, en costumen, Midtsgaders maniere van procederen binnen de stad Amsterdam, Amsterdam 1656, p. 304-309 [1643 founding ordinance; amplifications of 1644 and 1647]; Hermanus Noordkerk, Handvesten; ofte Privilegien ende octroyen: Mitsgaders willekeuren, costuimen, ordonnantien en handelingen der stad Amstelredam, vol. 2, Amsterdam 1748, p. 687-690 [1659 ordinance, only replaced in 1777]. On the functioning of the Desolate Boedelskamer in the late eighteenth century, see: G. Moll, De Desolate Boedelskamer te Amsterdam: bijdrage tot de kennis van het oud-Hollandsch failliten-recht, Amsterdam 1879.
Thirdly, I will argue that these changes, brought about by the introduction and subsequent development of Amsterdam’s Desolate Boedelskamer, display the important role of innovative legal institutions in the proliferation of credit. Through the creation of systemic trust, innovative governance helped to restore good faith between creditors and debtors, thereby strengthening both Amsterdam’s economy and civic community.

1 Extending trust

Why do we trust? How can one retain Barlaeus’ much-needed ‘peace of mind’, even when ‘engaging in written contracts or IOUs’ as part of the daily business of commerce? In his classic analysis of this phenomenon, the German functional sociologist Luhmann describes trust or *Vertrauen* as a reduction of social complexity. Our world is overly complex, and therefore presents us with more possibilities than we could ever actualize. This is further complicated by the fundamental unpredictability of other human beings and the changeability of social relations over time. Trust allows to bridge these gaps in time and knowledge. By extending trust, we can reduce the near unlimited future possibilities to a more manageable range of choices in the present. This ‘psychological relief’ liberates both the individual actor and organized social groups from what would otherwise be a paralyzing insecurity, allowing to expand the time horizon of their actions. Therefore, trust is of great and elementary significance for the functioning of complex social systems such as the economy¹⁴.

It is important to distinguish between situations of trust and confidence. Even though both concepts refer to ‘expectations that may lapse into disappointments’, they are set apart by an element of risk. You may, for instance, be confident that politicians will try to avoid war, without being able to consider alternatives: not extending confidence would once more result in the hypothetical state of permanent and paralyzing uncertainty. This separates trust from confidence: ‘assured expectation’ or a passive but to some extent justified faith that something good (or bad) will happen. Luhmann defines a situation of trust, instead, as one ‘where the possible damage may be greater than the advantage you seek’. It is therefore not simply a matter of the rational calculation of costs and benefits, as ‘trust is only required if a bad outcome would make...”

you regret your action. We do not just anticipate the future as if it were certain in a contemplative way, but actively face it. ‘Trust’, according to Sztompka, ‘involves commitment through action, or – metaphorically speaking – placing a bet’. In this sense, he argues, ‘trust is a bet about the future contingent actions of others’. Likewise, Tilly argues that trust consists of ‘placing valued outcomes at risk to others’ malfeasance, mistakes, or failures’. In a paradoxical way, therefore, trust itself (i.e. acting ‘as if’ the risk were small or non-existent) copes with risk by converting it into a new risk, that of extending trust.

In order to understand why we would place ‘bets of trust’, such as taking the risk of extending credit, it is helpful to first consider their object. Among what we could call the primary targets of trust, other persons are probably the most fundamental. However, Luhmann elaborated this basic concept of trust between social actors to the level of social systems. When a system, for instance the institution of money, becomes the object of trust, the trustor ‘basically assumes that a system is functioning and places his trust in that function and not in [...] people’. According to Luhmann, history would have displayed a development from pre-modern societies, in which interpersonal trust dominated, to more complex and variable modern social orders, in which system trust would resolve the ‘greater need for co-ordination and hence [...] to determine the future.

This simple dichotomy has subsequently (and perhaps unsurprisingly) been criticized. According to Forrest and Haour, a ‘more multifaceted characterization of trust and trustworthiness’ is needed to solve Luhmann’s ‘false distinction between an unconnected pre-modern world in which life was lived locally, and a connected modern world in which life is lived globally’. Reynolds even states that such simple depictions of a traditional ‘feudal society [...] in which all significant relations were interpersonal, local, and kin-based’ are ‘nonsense [...], not in any way supported by medieval evidence’. Frevert, lastly, questions whether people who lived through the Thirty Years’ War or the Lisbon earthquake had to face a society that was in any way less

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18 Sztompka, Trust (supra, n. 16), p. 32.
22 Reynolds, Trust in medieval society (supra, n. 10); see also S. Reynolds, Kingdoms and communities in Western Europe, 900-1300, 2nd ed., Oxford 1997.
complex, uncontrollable or dangerous than our own. In order to deal with such circumstances, early modern people would have needed more rather than less trust than their modern counterparts.

Sztompka argues that the difference between interpersonal trust and trust in social systems is not as striking and fundamental as it might seem at first sight. Ultimately, behind complex social objects there also stand some people, and it is them we endow with trust. We might, for instance, vest our trust in institutionalized practices or procedures, based on the belief that if followed these will produce the best results. A good example is trust in science as the best method for reaching the truth, or the due process of law as the best means to reach a justified and balanced verdict. Appearances notwithstanding, all such social objects of trust are reducible to human actions, and derivatively their effects, or products, in which we vest our trust. If we thus accept that social objects or even social systems can also be a proper object of trust, in a similar way as human actors, we still need to answer the question why we would extend it in the first place. What are its foundations?

Trust can to a certain extent be epistemological, based upon more or less certain knowledge or information about the trustee (i.e. the person we trust; in the context of this article: the (insolvent) debtor). But trust is not just a calculating relationship, but also and perhaps primarily a psychological propensity. This directly relates to the first foundation of trust, primary trust or ‘reflected trustworthiness’. Sztompka uses this term to describe trust rooted in reputations (i.e. the principle noblesse oblige), performance (if reputational data are unavailable), or even more fickle outer signals of trustworthiness, such as appearance and demeanour. Even though these categories can be analytically distinguished, in daily practice we often take all three or combinations of them into account when estimating the trustworthiness of others. Fontaine argues that for early modern merchants, for example, both the ‘moral construction of [one’s] personality’ as well as carefully managing one’s appearance were essential to be perceived as someone ‘worthy of trust’.

Secondly, contextual factors might provide an additional foundation for trust, which Sztompka calls ‘derived trustworthiness’. Most important here is the principle of accountability, or the enforcement of trustworthiness. We might think of formal institutions such as the court, to which trustors might

23 Frevert, Vertrauen (supra, n. 3), p. 66.
24 Sztompka, Trust (supra, n. 16), p. 41-46.
25 Sztompka, Trust (supra, n. 16), p. 70.
turn when their trust is breached. But accountability can also be provided by informal groups of friends, family, or colleagues. Accountability enhances trustworthiness as a form of insurance, adding an extra incentive to be trustworthy: to avoid censure and punishment. Yet the sheer act of, for instance, signing a contract at the public notary’s office does not in itself suffice to make the trustee accountable. Agencies of accountability need to be able to enforce trust through (1) the trustee’s non-anonymity, (2) his vulnerability to the institution’s influence (a foreigner, for example, is much harder to track down), and (3) his possession of resources that might potentially be sequestered as collateral. Of course, institutions of accountability can only secure trust most effectively if they are easily and broadly accessible.

We can thus establish that trust is not simply ‘there’, a given, but that it is created over time based upon the foundations of reflective and derived trustworthiness. From this it follows that it is not epistemology, but rather genealogy or history that we must consider when analysing the genesis of trust. Based upon prior positive personal experiences, a learned ‘trusting impulse’, we extend trust to others, which next becomes a common ‘practice’, and finally a codified normative pattern. Once a trust culture, based upon the ‘sediments of the historically accumulated collective experience of a given society, community, or social group’ has been established, it thereby becomes a powerful factor influencing future decisions to trust or to reciprocate trust extended by others. As Luhmann argues, just like a lack of trust ‘reduces the range of possibilities for rational action’, once a trust culture such as that described by Sztompka has come into existence, this greatly increases the possibilities for ‘capital investment under conditions of uncertainty and risk’.

The fact that trust is not only based upon inter-personal experiences but can also be vested in social systems and even be derived from institutions of accountability, means that it can be influenced by governmental activity. Governmental coercion of potential defectors such as fraudulent debtors does not only ensure the compliance of these bankrupts themselves; it has been shown that people in general are more likely to stay within the boundaries of the law if they know that others will have to do so as well. While it has often been assumed that what we might call ‘trust-supporting institutions’ are a predominantly modern phenomenon, this is simply not true. As Muldrew argues, ‘bureaucracies, liberty and credit cards are as much cultural phenomena as

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29 Luhmann, Familiarity (supra, n. 15), p. 104.
30 Tilly, Trust and rule (supra, n. 17), p. 20.
quaint market squares, oral agreements, or reckonings\textsuperscript{31}. Even though the external forms of trust- and credit cultures have changed dramatically over time, their underlying sociological mechanisms appear to be remarkably resilient. In the remainder of this article, I will examine how one of these ‘trust cultures’ functioned in practice, based upon a detailed reconstruction of two insolvency cases that occurred in seventeenth-century Amsterdam.

2 Resolving a lack of trust

If we wish to understand the functioning of trust and trust cultures in practice, it is useful to focus on a number of transitory moments, in which actors lost faith in their trustee’s ability to meet his or her obligations. The topic of insolvency is especially well-suited to study the manifold connections between law and the economy: business strategy and rational choice on the one hand, versus the role of trust and reputation on the other. Insolvency is essentially a breakdown of credit. As long as one is able to resolve moments of illiquidity by obtaining new loans, business operations can continue as usual. The linguistic origins of the word credit in the Latin verb \textit{credo}, closely connected to notions of ‘faith’ and ‘authority’, display its strong links with trust and reputation\textsuperscript{32}. Insolvency was both an economic and a moral problem. At the one hand, it might compromise the financial health of one’s creditors and thus through a chain-reaction of insolvencies endanger the economy as a whole. At the other hand, not paying one’s debts was seen as a form of theft that, if left unpunished, could place the moral order of society at risk. This explains why over time, the authorities of important cities of commerce such as Amsterdam increasingly sought to regulate what was essentially a private economic phenomenon\textsuperscript{33}. Based upon the cases of the Amsterdam insolvents Volckert Croock and Abraham van Herzeele, we will examine how such solutions for the problem of insolvency, essentially meant to resolve a lack of trust, evolved over the seventeenth century.


\textsuperscript{32} Fontaine, \textit{The moral economy} (supra, n. 26), p. 8-12.

\textsuperscript{33} These matters have been treated extensively in my dissertation: Den Hollander, \textit{Stay of execution} (supra, n. 13). The discussion of Amsterdam legal procedures below is based upon this book.
Volckert (Gerrits.) Croock was born in 1592 as the son of Gerrit Volckerts. Croock. On 5 November 1616, he married Maria Meiijnderts. Craegh (*1597). The couple subsequently moved into a house on the Koningsgracht, the current Singel, close to the brewery 't Nagtglas. As often happened in this period, the couple was soon struck by disease. On 8 November 1624, they registered their will with public notary Laurens Lamberti. Maria was too ill to leave her bed at the time, even though ‘she displayed a clear mind, memory and expressed herself in an intelligible manner’. Volckert, however, was described as cloeck ende gesont, i.e. ‘robust and healthy’. It appears that a few years later, this was all but true for his personal finances. In the early 1630s, Croock found himself in a state of onvermogentheyt: he became insolvent. This meant that his estate would be placed into the care of a curator, who was appointed by the aldermen after they had been notified about his financial problems by Croock himself or one of his creditors. Subsequently, the insolvent attempted to arrive at an arbitrated agreement with his creditors, a composition or akkoord as it was commonly called in this period. We should briefly consider the advantages of such agreements for both parties involved.

For a long time, both in Amsterdam and in Antwerp, the prime commercial hub of the Low Countries until the late sixteenth century, creditors had to resort to imprisonment for debt (Dutch: lijfsdwang) in order to force their debtors to accept judgement. According to De ruyscher, this was inescapable, as in this period only judgments were considered valid titles to organize an auction of debtors’ assets, movable or immovable. Such legal procedures were often slow, which made them impractical. The imprisonment of a debtor was simply the most efficient method to execute a debt, as it put pressure on the defaulter to arrange new securities or other types of credit. It also prevented the insolvent from running away with his remaining movable possessions, which would make him a fraudulent bankrupt but at the same time greatly reduced the creditors’ chance to recover their claims. From the seventeenth century onwards, two developments eased these tensions between insolvents and their creditors. On the one hand, local authorities embraced and regulated extra-judicial compositions such as that concluded by Croock and his creditors.

34 GAS, 5001: Archief van de burgerlijke stand: doop-, trouw- en begraafboeken van Amsterdam (henceforth: DTB), inv. nr. 668, f. 30r.
35 This brewery was established in 1592 as ‘t Klaverblad, subsequently renamed ‘t Nagtglas after its new owner between 1631-1634, after which its old name returned. See: T. Bakker, Middeleeuwse bierbrouwerijen te Amsterdam, <https://www.theobakker.net/pdf/brouwerijen.pdf> (visited 16-4-2021).
36 GAS, 5075: NA, inv. nr. 607.
37 GAS, 5072: DB, inv. nr. 1227.
that basically precluded an insolvency. On the other hand, the liberal application of the legal benefice of *cessio bonorum*, which had been re-introduced in the Low Countries by Emperor Charles V in the sixteenth century, over time virtually rooted out the practice of imprisonment for debt38.

In the early seventeenth century, concluding an accord meant that an insolvent needed to obtain the support of all of his creditors for a proposed repayment scheme, that was subsequently registered with a public notary. As part of such agreements, the insolvent would promise to repay a certain percentage of his debts in a number of terms, usually backed up by guarantors or other securities such as real estate. In exchange, the creditors gave up their future right to prosecute the insolvent for his remaining debts if he lived up to the provisions of the accord. This type of legal solution required a fair amount of trust between the insolvent, his creditors, and the guarantors who backed up the agreement. If it was not possible to arrive at an arbitrated composition, the insolvent could request a letter of *cessie* (Dutch: *boedel-afstand*), a legal benefice granted by the High Court of Holland and Zeeland after an inquiry by the local authorities. The resulting advice, which was given after a consultation of the creditors, was meant to ensure that only ‘honest (i.e. non-fraudulent) debtors’ would be admitted to the benefice. *Cessie* protected insolvents from incarceration, in exchange for ceding all their possessions – with some very limited legal exceptions – to the common creditors. Even though debts were never truly acquitted in the early modern period, after a *cessie* creditors could easily enforce further repayment of their old claims once their debtor had ‘arrived at fatter fortune’ and obtained some new financial means. If they had signed an accord, however, this depended on the good faith of the former insolvent, as through such compositions the latter regained full control over his estate as well as protection against future litigation.

The negotiations leading up to an accord did not necessarily take place in a collective meeting where all creditors were physically present. Among the documents that have been preserved relating to Croock’s insolvency, we find a formal act of authorisation dated on 4 October 1630, in which his creditors

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delegate Albert Schuyt, Isbrant Dobbesen, Gerrit de Beer and Bento Osorio to conclude an accord with the insolvent or his legal representative. On 10 May 1631 these representatives of the creditors, together with procureur Bouman and notary Sybrant Cornelisz as legal representatives of Volkert Croock, arrived at a composition. He promised to repay 27½ percent of the debts of any creditor who would sign the accord; 7½ percent immediately in cash or gereden gelde, the remainder within 6 months after its conclusion. Croock assigned his brewery with the attached house, tools, and other belongings as an additional security for the 20 percent. This brewery was located in the city of Weesp, ‘in de hooghstraete omtrent de Muyderpoort’, and was called De Gecroonde Werelt. As usual, it was stipulated that if in future – ‘thanks to God’s blessing and mercy’ – the insolvent would regain his former prosperity, he would ‘sijne conscientie als voor de oogen van Godt almachtich [sal] quijten’ or act in good faith, willingly repaying his old debts. On 10 June 1631 the creditors confirmed to have received the 7½ percent in good order. Soon afterwards, on 1 July of that same year, Antonio Frederick Szal already confirmed to have received the full 27½ percent. Intriguingly, Anthonio Mendez Peixoto did the same only on 23 January 1632; the widow and heirs of Paulo van Gansepoeil issued a similar confirmation on 27 January of that year. No such notes have been preserved from other creditors. Perhaps, these three confirmations of payment were specifically noted down and preserved because they were related to insurance debts.

The accord that constituted the legal solution for Volckert Croock’s insolvency was based upon three forms of trust. Firstly, the creditors clearly believed that if Croock was able to live up to this agreement, he would also be able to repay more of the remainder of his debts than might be obtained from a simple execution of his estate. Secondly, the real estate provided as collateral for the repayment of the 20 percent secured the composition as a whole. Thirdly, the fact that the accord was registered by a public notary provided an additional source of contextual trust. Notaries were only admitted after an official examination by the States of Holland, preceded by a training period as clerk with an active notary. Before starting his own protocol in 1616, Sybrant Cornelisz served as apprentice of Jan Fransz Bruijingh, one of the leading specialists in legal business related to commerce in early seventeenth-century Amsterdam.

39 GAS, 5072: DB, inv. nr. 1227.
40 A. Bosma, Repertorium van notarissen residerende in Amsterdam Amstelland, ambachtsheerlijkheden en geannexeerde gemeenten 1524-1813, Amsterdam 1998, p. 44 and 51. On Bruijingh, see also C. Lesger, Handel in Amsterdam ten tijde van de Opstand, Kooplieden, commerciële expansie en verandering in de ruimtelijke economie van de Nederlanden ca.
of the new Desolate Boedelskamer. Furthermore, notaries were strictly forbidden to pass acts in which creditors’ rights were harmed, for instance by illegally lifting assets outside of the estate that should be divided among the common creditors. This helped to provide credence to the agreement.

Even though a notary was involved in the conclusion of such accords, this did not entirely solve the information problem for the creditors. The creditors who signed the accord or even the notary himself could never be truly sure that all of Croock’s creditors were involved in- and bound by the composition. Perhaps, it is for this reason that the accord stipulates that if an unsigned creditor would at some point turn up and seek to execute the estate, the creditors who had signed the composition would retain their full right to compete with the unsigned creditor(s) for their fair share of the proceeds. Furthermore, the insolvent was not legally obliged to hand over his entire administration to the notary, which would have ensured an additional and somewhat more transparent check on the financial viability of the concerned estate. It is clear that while accords registered with public notaries went quite a way to restoring trust between insolvents and their creditors, they were not the perfect solution for the distrust that characterizes insolvencies.

Over the seventeenth century, the practices surrounding accords changed in important ways. It is useful to briefly examine a second case from this later period, the insolvency of Abraham van Herzeele. This Amsterdam merchant, who lived on the prestigious Herengracht, was born in the French city of Nantes around 1659. It is likely that his wife Anna d’Orville, whom Abraham married on 23 December 1686, was also part of this community of French immigrants. When Van Herzeele’s estate was placed in the hands of the commissioners of the Desolate Boedelskamer due to his insolvency on 15 May 1691, his brothers-in-law David and Gillis d’Orville offered to back up the proposed accord as guarantors. The insolvent merchant promised to pay his creditors 10 percent of their debts in cash, immediately after a legal majority would have signed the composition, but before his act of rehabilitation (Dutch: acten van...
rehabiliteyt) could subsequently be issued. Eventually, 68 of Van Herzeele’s creditors signed the accord, which meant that Van Herzeele and his guarantors regained control over his estate on 22 November 169145.

A fairly standard procedure, one might say at first sight. However, a list of creditors attached to the accord reveals that twenty creditors, holding claims to more than 23 percent of the total debts, opposed the composition. If Van Herzeele had attempted to conclude an accord before a public notary in a manner similar to the case of Volckert Croock, the refusal of so many creditors to support the agreement would have rendered the composition pointless. In the second half of the seventeenth century, however, the Amsterdam authorities introduced legislation that made it possible for the local court to enforce majority compositions, even against the wishes of a minority of the creditors (see below). One might think that this should have resulted in a seriously declining willingness of external parties to extend credit to an Amsterdam debtor, as such bylaws might reduce the security of their claims. However, this was far from true in practice. The legal innovations surrounding the Amsterdam accords are closely connected with the introduction of a new subsidiary court for insolvency cases in 1643, the Desolate Boedelskamer. We should now examine how exactly this institution was able to restore the interpersonal trust between insolvents such as Van Herzeele and their creditors.

3 Restoring trust through innovative governance

Insolvency, a lack of credit, and thus a good example of distrust, can in many cases be reduced to an information problem. Because they generally did not have direct access to their debtor’s administration, creditors simply had to rely on the latter’s ability to make good on his promises. Such fickle foundations of trust as reputation, hearsay, and outward appearances were clearly not the most stable foundation for commerce. As I will argue in this section, it is precisely for this reason that the establishment of the Amsterdam Desolate Boedelskamer in 1643 constituted a great improvement in the efficient resolution of insolvencies. We will examine how through its objective and professional procedure, this innovative institution was able to revive trust where it had previously been lost.

Forrest and Haour have drawn attention to the need to consider the spatial dimensions of trust between merchants. In the open, well-visible and public space of the market, the concentration of sellers, buyers and potential

45  GAS, 5072: DB, inv. nr. 1747 (proposed accord) and inv. nr. 27, f. 54v-55r (rehabilitation).
witnesses supported trust between parties. When, for instance, in the late medieval English wool trade participants in a long-distance transaction agreed upon the delivery of a party of goods at one of the major regional fairs, this was not just convenient, ‘but also gave merchants confidence that the producers would want to be seen to be honest so as not to prejudice future deals’. In a way, the ‘public’ nature of the marketplace conditions behaviour and expectations\textsuperscript{46}. This effect could also work the other way around, as displayed by the treatment of (suspected) insolvents in sixteenth-century Antwerp. According to De ruysscher, the 1582 costuymen or local bylaws firmly linked the moment of insolvency to a merchant’s failure to show up on the local bourse: it was supposed that if someone did not wish or dare to appear on this important public trading venue, he would have something to hide. Due to the separation of the enforcement of debts, carried out by the judge, and the management of the insolvent estate, carried out by a creditor-appointed curator or the amman, a public official, insolvency was simply presumed rather than investigated once collective claims had been presented to the court\textsuperscript{47}. This relative arbitrariness must have reduced these legal institutions’ trust-generating potential among businessmen.

Even though the commercial law of seventeenth-century Amsterdam drew upon Antwerp precedents, on the field of insolvency it clearly moved beyond this older example\textsuperscript{48}. After the establishment of the Desolate Boedelskamer in 1643, the factual establishment of over-indebtedness rather than rumour and hearsay became the formal starting point of any insolvency procedure. When one of its five commissioners was notified about a potential insolvency, they would go to the debtor’s house to be informed about the condition of his business and, if necessary, confiscated his administration. Only when the bookkeeper confirmed the alleged insolvency after reviewing these documents, a curator was appointed to manage the estate. The case of Abraham van Helsdingen, who was unjustly placed under curatele after being reported to the Desolate Boedelskamer by curator Jacob van Dael while staying abroad for business in 1678, clearly shows the great care with which the commissioners handled these delicate matters. As soon as the young merchant filed a complaint upon his return, the commissioners issued a formal excuse

\textsuperscript{46} Forrest and Haour, Trust in long-distance relationships (supra, n. 21), p. 209.

\textsuperscript{47} D. De ruysscher, ‘Naer het Romeinsch recht alsmede den stiel mercantiel’: handel en recht in de Antwerpse rechthand (16de-17de eeuw), Kortrijk-Heule 2009, p. 324-25; De ruysscher, Designing the limits (supra, n. 38), p. 322-325.

\textsuperscript{48} See also: D. De ruysscher, Antwerp commercial legislation in Amsterdam in the 17th century: Legal transplant or jumping board?, Tijdschrift voor Rechtsgeschiedenis, 77 (2009), p. 459-479.
after investigating the matter, publicly proclaiming their error to restore Van Helsdingen’s reputation and punishing the erring curator Van Dael, who had caused this unfortunate situation49.

Once the insolvency procedure had formally started, the commissioners attempted to arbitrate between the insolvent and his creditors, ideally seeking to arrive at an official accord. Only if no agreement had been reached six weeks after the start of such negotiations, the curator would be ordered to execute the estate and distribute the proceeds among the creditors. Based upon the information extracted from the debtor’s administration, all creditors could easily be identified and informed about the insolvency. This formed a great advantage compared to the way in which accords had previously been concluded before public notaries, such as in the case of Volckert Croock. Whether the creditors lived in Amsterdam or abroad, the Desolate Boedelskamer tried to get in touch with all of them through placards and ‘informing letters’. Especially when dealing with cross-border insolvencies of internationally operating entrepreneurs such as Abraham van Herzeele, it was important to inform and secure the rights of both local and foreign parties50.

Van Herzeele’s accord was first delivered at the Desolate Boedelskamer on 18 May 1691. In a list of creditors who opposed Van Herzeele’s accord, dated in August, we find seven Amsterdam citizens, one each for Rotterdam, Vlaardingen, and Dordrecht; one creditor resided in the East-Frisian town of Emden; two in Bordeaux, and a single name is noted for Paris, Bayonne, and Orleans each51. On 22 August, letters were sent out to creditors in Rotterdam, Dordrecht, Vlaardingen, and Emden; as well as to 11 Amsterdam citizens. It was subsequently noted that a final decision had to be postponed to 11 September52. By that date, all but three Amsterdam creditors had responded to the Boedelskamer’s earlier request. Once more, letters were sent out, and the final deadline was moved to 22 November53. Clearly, by this date the commissioners were satisfied that all interested parties had received ample opportunity to inform themselves about this insolvency and to influence the way in which it would be wrapped up. On 22 November 1691, therefore, an entry in the commissioners’ minutes indicates that an act of rehabilitation had been issued

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51 GAS, 5072: DB, inv. nr. 1747.
52 GAS, 5072: DB, inv. nr. 27, f. 45.
53 GAS, 5072: DB, inv. nr. 27, f. 54.
to Abraham van Herzeele, and that his insolvent estate had been restored to its former freedom. In a formal act that is attached to his file in the archive of the Desolate Boedelskamer, Van Herzeele’s creditors confirm that they received the 10 percent that had been agreed upon in the accord. The estate of their former debtor would be liberated from their claims (‘finalijk quiteren’), which had been handed over to the ‘damaged guarantors’. Case closed.

The simple fact that an insolvent estate was managed by an impartial public institution such as the Desolate Boedelskamer must have gone a long way to solve the creditors’ basic information problem. If they signed an accord, they could trust the Amsterdam authorities to supervise and enforce its realisation. While trust can of course not be quantified as such, my analysis of hundreds of Amsterdam accords that were concluded throughout the seventeenth century has revealed that repayment percentages concluded in such agreements steadily decreased over time. The oldest surviving accords either cover the repayment of the complete debt in a fixed number of instalments, or at the very least a high percentage supported by additional securities. By the second quarter of the century this had been reduced, probably thanks to an increased familiarity with compositions concluded before a public notary, most falling within the range between 20 and 50 percent. Subsequently, after the introduction of the Desolate Boedelskamer in 1643 and especially after majority compositions became legal in 1647, this downward trend in repayment percentages continued until most accords did not cover much more than the repayment of at most 25 percent of the debts by the 1690s. This quantitative data clearly indicates a substitution of personal trust by systemic trust.

How could what essentially is an institutionalisation of the accord-procedure from the notary to a public court support the genesis of systemic trust? Why would creditors more easily extend a ‘bet of trust’ to their insolvent debtor once a composition was arbitrated by the commissioners of the Desolate Boedelskamer, or even accept worse conditions? On the one hand, people learned to trust the professional, objective procedure of the Desolate Boedelskamer and its staff. The latter had to operate within the constraints of local ordinances, publicly available in print. On the other hand, the Desolate Boedelskamer clearly functioned as one of Sztompka’s ‘agencies of accountability’, that were able to provide derived trustworthiness to agreements such

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54 GAS, 5072: DB, inv. nr. 27, f. 54v-55r.
55 GAS, 5072: DB, inv. nr. 1747.
56 Den Hollander, Stay of execution (supra, n. 13), esp. p. 147-158. For the 1647 nader ampliatie on the original ordinance that introduced the possibility for majority compositions, see Gerard Rooseboom, Recueil (supra, n. 12), p. 310-311.
as the accord concluded by Van Herzeele and his creditors. We should briefly recall the general circumstances in which such institutions can realise their full trust-generating potential: they require (1) the trustee’s non-anonymity, (2) his vulnerability to the institution’s influence, (3) his possession of resources that might potentially be sequestered as collateral, and (4) the institution needs to be easily and broadly accessible.

Firstly, it is clear that the insolvent’s identity was known, both through the investigation and inventory carried out by the commissioners and their staff and the requirement to present himself to the court in order to validate the accord. Secondly, the fact that the Desolate Boedelskamer had full authority to appoint a curator to an estate, meant that the insolvent was materially vulnerable to its influence. If any part of the insolvent estate was located outside of Amsterdam, letters to other cities and authorities ensured its sequestration. When a debtor ran off rather than facing his creditors, absconding himself to some foreign place, he would be persecuted and dragged back into the city prison. The fraudulent bankrupt Johan Luden, for instance, was captured and arrested in Bremen in exchange for a premium issued by the Desolate Boedelskamer in 1694. Luden was subsequently transported back to Amsterdam, where his case was eventually wrapped up by the commissioners.

Thirdly, the Desolate Boedelskamer possessed a clear overview of the debts and assets that pertained to an estate, which could be executed by the curator if no agreement could be reached between the insolvent and his creditors. Fourthly, my research has indicated that the Boedelskamer catered to the needs of both international merchants and broad groups of artisans from Amsterdam’s lower middle classes. This also supports Gelderblom’s argument that Amsterdam could be so successful precisely because institutions such as its courts were easily accessible for both citizens and foreigners.

Even though an essentially private-order solution such as an accord concluded before a public notary added a degree of trust to an agreement between an insolvent and his creditors, a notary could never provide the degree of derivative trust that was generated by an institution like the Desolate Boedelskamer. Essentially accountability, or ‘institutionalised distrust’, allowed to restore interpersonal trust between an insolvent and his creditors. The derived trustworthiness provided by the commissioners and their professional and transparent procedure is shown by the creditors’ willingness to accept ever smaller repayment percentages over time, as they expected the

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58 Sztompka, Trust (supra, n. 16), p. 86-90.
60 Den Hollander, Stay of execution (supra, n. 13); Gelderblom, Cities of commerce (supra, n. 40).
advantages of extending trust to both the insolvent and the arbitrating institution to outweigh the appeal of a quick but final execution of (necessarily but a small part) of their debt. Through continuous experiences of the advantages of placing trust in the Desolate Boedelskamer and its procedure, over time Amsterdam’s legal system stimulated the formation of a ‘trust culture’ in which insolvents could much easier get a second chance to revive their business after an economic set-back. As successful former insolvents were always expected to listen to their conscience and willingly repay their old debtors, this eventually resulted in large benefits for both the interested parties themselves and Amsterdam’s economy and society as a whole. The cases of Volckert Croock and Abraham van Herzeele are, therefore, a good example of the restoration of trust through innovative governance.

4 Conclusion

Kroeger recently remarked that ‘the genesis of system trust, […] which has remained starkly under researched despite its obvious importance’, deserves more attention and analysis61. This article has sought to start filling this lack of empirical evidence for the genesis and actual functioning of trust between human actors as well as between people and social systems. As Vossius states, history is the *compendium* or treasure trove of human experience. The ways in which local authorities in seventeenth-century Amsterdam innovated existing laws and practices on the topic of insolvency are an excellent case study for the genesis of system trust. The professional, objective, and transparent Desolate Boedelskamer was widely accessible for both citizen and foreigner, international merchant and local shopkeeper. Institutionalizing distrust into this public-order institution allowed to generate derivative trust in social systems that was capable of replacing inter-personal trust to a far greater extent than what could be accomplished by, for instance, notaries. This trust through innovative governance restored the credit of numerous entrepreneurs, large and small, in a world of growing complexity. Insolvents such as Volckert Croock and Abraham van Herzeele directly benefited from this clear example of good governance, which re-enabled them to contribute to Amsterdam’s civic community. Innovative legal solutions for the problem of insolvency thus restored the reputation, credit, and economic independence of many enterprising individuals. Together, they shaped the vibrant economic and cultural efflorescence that is often called the Dutch ‘Golden Age’, an era of prosperity rooted in a trust culture that was created through innovative law and governance.