

Partnerships as Flexible and Open-Purpose Entities: Legal and Commercial Practice in Nineteenth-Century Antwerp (c.1830-c.1850)

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1. Introduction¹

It is a striking fact that during the Industrial Revolution and in the first decades of the nineteenth century, in many European countries and also in the United States, general and ordinary partnerships² were regularly chosen as vehicles for business ventures. They were often more popular than limited companies and corporations. This practice has elicited different explanations. An older view was that the start-up of corporations was closely watched over by governments and that control was strict, which resulted in entrepreneurs and traders choosing less efficient but more accessible company types. The corporation has indeed generally been considered to be most appropriate for attracting and securing capital. A corporation combines the limited liability of investors with autonomy and continuity, making the firm less vulnerable to internal and external threats (e.g. the death of partners, and claims of their personal creditors).

¹ This chapter has benefited from the support of ERC (Starting Grant 714759), FWO-Flanders, The Academy of Finland and VUB. I'd like to thank Johan Dambuyne (State Archives of Antwerp), Hilde Greefs (University of Antwerp) and participants at the workshop "The Small, Medium-Sized and Large Company in Law and Economic Practice (Middle Ages–c.1900)" (Brussels, 21–22 May 2015). I also extend my thanks to Luisa Brunori (Lille-II) for sending copies of articles and chapters on French companies in the nineteenth century. The results in this chapter, to a modest extent, correct and above all supplement those contained in Dave De ruysscher, "Handelsvennootschappen in Antwerpen (1830–1850): tussen flexibiliteit en continuïteit," *Pro Memoria. Bijdragen tot de rechtsgeschiedenis der Nederlanden* 17/2 (2015), 176–193.

² Hereafter, the notion of "general partnership" is used as a label for the academic *societas*, whereas "ordinary partnership" refers to the French *société en nom collectif* or comparable company types (e.g. the German *Offene Handelsgesellschaft*). General and ordinary partnerships are commonly considered as being the same. Indeed, they were largely comparable. However, when the French *Code de commerce* was imposed in 1808, the rules relating to general and ordinary partnerships were different, in respect of publicity requirements for example (see hereafter). "Limited partnership" hereafter refers to the French *société en commandite* or comparable company types.

Over the past decade, these opinions have been given more detailed attention, and more scholars are currently emphasizing the fact that general and ordinary partnerships were not as alien to business as has long been thought. Admittedly, partnerships could be dissolved before their planned purposes had been reached, as well as quite unexpectedly (e.g. when a partner resigned).³ Associates in mercantile partnerships were generally deemed to be jointly and severally liable for debts incurred by one of the partners, even including their own assets. Within such partnerships mutual agency applied: every associate could sign contracts on behalf of the other partners, thus binding even their own personal properties.⁴

Irrespective of these features, though, there were numerous advantages as well. General and ordinary partnerships allowed for lower transaction costs when it came to obtaining credit. Corporations were less transparent in this regard because shareholders had to authorize loans, which made lenders reluctant.⁵ In addition, on account of delegated management practices, minority oppression and moral hazards were risks that were avoided when opting for partnerships. In limited partnerships and corporations, investors and administering agents were largely separated, which could invite directors to pursue their own interests more keenly than those of the investors (moral hazard). In terms of control over the management of the firm, within corporations, majority shareholders could ignore the interests of shareholders who held fewer equity stakes (minority oppression).⁶ By contrast, partnerships allowed for the continuous and reciprocal monitoring of partners, whether they were investors, managers, or both.⁷ Moreover, partnerships were very flexible as to their structure.⁸ In line with these beneficial features, the formerly acclaimed

³ Timothy Guinnane, Ron Harris, Naomi R. Lamoreaux and Jean-Laurent Rosenthal, "Putting the Corporation in its Place," *Enterprise & Society* 8 (2007), 687–729, here 693–694; Naomi R. Lamoreaux and Jean-Laurent Rosenthal, "Organizing Middle-Size Firms in the United States and France, 1830–2000," working paper 2006, 13, <http://people.hss.caltech.edu/~jlr/Papers/NRLJLRSMES.pdf> (consulted on 17 January 2017).

⁴ E.g. Robert Cull, Lance E. Davis, Naomi R. Lamoreaux and Jean-Laurent Rosenthal, "Historical Financing of Small- and Medium-Size Enterprises," *Journal of Banking and Finance* 30 (2006), 3017–3042, here 3021.

⁵ Ryan Bubb, "Choosing the Partnership. English Business Organization Law During the Industrial Revolution," *Seattle University Law Review* 38 (2015), 337–364, here 339, 356; Lamoreaux and Rosenthal, "Organizing Middle-Size Firms," 5.

⁶ Timothy W. Guinnane and Jean-Laurent Rosenthal, "Making Do With Imperfect Law. Small Firms in France and Germany, 1890–1935," *Entreprises et Histoire* 57 (2009), 79–95, here 81; Lamoreaux and Rosenthal, "Organizing Middle-Size Firms," 14.

⁷ Among others, Jean-Pierre Hirsch, "Naissance des sociétés, personnes et capitaux à Paris, Lille et Lyon en 1846 et 1866," in Michael Moss and Philippe Jobert (eds.), *Naissance et mort des entreprises en Europe XIXe–XXe siècles* (Dijon: Université de Dijon, 1994), 141–156, here 155.

⁸ Cull, Davis, Lamoreaux and Rosenthal, "Historical Financing," 3022; Naomi R. Lamoreaux and Jean-Laurent Rosenthal, "Legal Regime and Business's Organizational Choice. A Comparison of France and the United States During the Era of Industrialization," *American Law and Economics Review* 7 (2005), 28–61, here 37–41.

attractiveness of corporations and limited companies has been differentiated to a large extent. As has been discovered, furthermore, some of the characteristics commonly associated with corporations were not always present in the first half of the nineteenth century but date, rather, from a later period.⁹

Law is considered an important variable in the choices concerning the organizing of business ventures. Since the 1990s scholars such as Naomi Lamoreaux have underlined that official law provided supporting structural schemes for commercial enterprises. This view came after a period in which it was assumed that “(official) law didn’t matter”, for it was thought that merchants circumvented legislation and adopted their own standards, which were eventually acknowledged in both case law and statutes alike. Economic development and the facilitating effects of official law have since been addressed in debates on the “New Institutional Economics”, “legal origins” and “varieties of capitalism”. As a result, legal context is now commonly deemed an *ex ante* factor influencing the economic actions of entrepreneurs. The efficiency of legal regimes is widely discussed. In these discussions, La Porta, Lopez-de-Silanes, Shleifer and Vishny have categorized France and other countries with codifications as being more resistant in their ability to change and to adapt to new economic developments, whereas the judge-made common law was more flexible according to these scholars. However, this perspective has provoked the argument that common law could be – and for company-related questions in fact was – slow in changing, and that it was thus more uncertain than codified law and laws containing organizational schemes for companies.¹⁰ Company contracts that cannot be linked to detailed provisions in laws or to fixed precedents in case law are often considered to be weak vehicles for business ventures.¹¹

In addition to the legal framework, institutional arguments must refer to the economic context as well. The aforementioned views have been combined, for instance, with assessments of the impact of variables of scale and type of industry on the organizational choices of entrepreneurs.¹² This approach came after earlier attention to

⁹ Naomi R. Lamoreaux, “Partnerships, Corporations, and the Limits on Contractual Freedom in U.S. History: An Essay in Economics, Law, and Culture,” in Kenneth Lipartito and David B. Sicilia (eds.), *Constructing Corporate America. History, Politics, Culture* (Oxford: OUP, 2004), 29–65, here 32–35.

¹⁰ Lamoreaux and Rosenthal, “Legal Regime and Business’s Organizational Choice,” 55–56.

¹¹ Guinnane, Harris, Lamoreaux and Rosenthal, “Putting the Corporation,” 7; Henry Hansmann, Reinier Kraakman and Richard Squire, “Law and the Rise of the Firm,” *Harvard Law Review* 119 (2006), 1333–1403, here 1339.

¹² Pierre Cayez, “Structures juridiques et structures économiques, Lyon 1808–1863,” in Alain Plessis (ed.), *Naissance des libertés économiques. Liberté de travail et liberté d’entreprendre, le décret d’Allarde et la loi Le Chapelier, leurs*

regional differences in nineteenth-century France regarding to company form, branches of business and economic factors.¹³ In considering the variables mentioned, this chapter therefore combines an economic-historical approach with a legal-historical perspective. In this latter regard, taking legislation as the prime mover and as the only source of law in the period of industrialization is too narrow; even though codifications were paramount in the first half of the nineteenth century, judges and lawyers interpreted legislation and addressed problems that arose in practice and that had not been solved in a straightforward way in the black-letter law.

This chapter analyses 145 company statutes that were drafted in Antwerp, in the period 1830-1850. The focus is on the essential elements of business ventures, above all, as reflected in these contracts. They include capital, agency and liability. This investigation thus examines how these elements corresponded to the sections of the French codifications of the early 1800s, which were also in force in the subsequent Belgian period; to what extent judges dealt with deficiencies and lacunae in the codes; and how contracts responded to these approaches.

Antwerp was a typical port city in this period; it excelled in services and transit rather than in industrial enterprise. Commercial activities were concerned with, foremost, wholesaling and commission sales, brokerage and insurance.¹⁴ However, manufacturing shops were not entirely absent. True, the textiles industry, which had been important in the eighteenth century, was already waning in the early nineteenth century.¹⁵ Yet in the first half of the nineteenth century, manufacturing shops still processed goods that had been imported through the port of Antwerp, including rice, sugar and tobacco.¹⁶ In the first half of the 1800s their activities remained largely preindustrial, as steam engines for example were

conséquences, 1791–fin XIXe siècle (Paris: Institut d’histoire de l’industrie, 1993), 236–241; Lamoreaux and Rosenthal, “Organizing Middle-Size Firms,” 32–41.

¹³ See the papers and books by Pierre Cayez, Jean-Pierre Hirsch, Philippe Jobert, Michel Lescure and André Straus, among others.

¹⁴ Hilde Greefs, “Foreign Entrepreneurs in Early Nineteenth-Century Antwerp,” in Clé Lesger and Leo Noordegraaf (eds.), *Entrepreneurs and Entrepreneurship in Early Modern Times. Merchants and Industrialists Within the Orbit of the Dutch Staple Market* (The Hague: Stichting Hollandse Historische Reeks, 1995), 101–117, here 106;

¹⁵ Hilde Greefs, *Zakenlieden in Antwerpen tijdens de eerste helft van de negentiende eeuw* (PhD thesis, University of Antwerp, 2004), 77–79; Catharina Lis, *Social Change and the Labouring Poor. Antwerp, 1770–1860* (New Haven: Yale University Press, 1986), 17–38.

¹⁶ Greefs, “Foreign Entrepreneurs,” 106. The Antwerp sugar industry in the first half of the nineteenth century has been analysed in Greefs, *Zakenlieden*, 79–83; Helma Houtman-De Smedt, “Korte historische schets van de suikerraffinaderij “Cels, Aerts en Co” (1760–1806) en van haar latere evolutie (1806–1951),” *Bijdragen tot de Geschiedenis* 63 (1980), 293–311; Alfons K.L. Thijs, “De geschiedenis van de suikernijverheid te Antwerpen (16de–19de eeuw): een terreinverkenning,” *Bijdragen tot de geschiedenis, bijzonderlijk van het hertogdom Brabant* 62 (1979), 23–50.

not yet widely used.¹⁷ Economic conditions were not that favourable between 1830 and 1850, and the developing Belgian state was itself endangered until 1839. As a result, the economic policy of the new government was unsettled. Tariffs could be increased from one year to the next. Trade and entrepreneurial initiatives not only suffered from threats of war, but also from international upsets in the prices of raw materials.¹⁸ However, in spite of all this uncertainty, merchants and entrepreneurs did establish firms and shops.

2. Antwerp company contracts (1830-50): some remarks on the sources and their representative qualities

2.1. Pools of sources and circuits of registration and publication

The results presented here were gathered from two series of archival sources, which are connected in some respects, and separate in others. These are the record books of the Antwerp registration offices, as well as notarial deeds. In the record books of the registration offices of Antwerp,¹⁹ several company statutes (called “*actes de société*”) can be found. Nearly all of these contracts were copied verbatim from the original,²⁰ which was either a notarial deed or a privately written agreement. Registration at the offices mentioned was compulsory for some company statutes (see below), yet optional for others. Even when registration was not required by law, it could be advisable in order to prevent that disputes would arise, for example, over the contents or date of the contract. The ledgers mentioned also contain “*actes de dissolution*”, which demonstrate fundamental modifications in the structure of firms, such as a change of partner or the demise of the company (a partial or full liquidation).²¹

¹⁷ Greefs, *Zakenlieden*, 76–77; Thijs, “De geschiedenis van de suikernijverheid,” 42–47.

¹⁸ Greefs, *Zakenlieden*, 43–85; Karel Veraghtert, “De Antwerpse bankwereld en de expansie van de haven,” *Revue de la Banque* 9 (1980), 191–203.

¹⁹ There were two registration offices (South and North) until 1835. After 1835, both were merged together.

²⁰ This convention is fortunate and relies on an established practice in registration offices, one which also concerned marriage contracts, for example. Other contracts given at the registration offices (writs of sale, for example) were not copied in full. See Théodore Vuarnier, *Traité de la manutention des employés de l’enregistrement et des domaines*, vol. 1 (Paris: Pissin, 1848) 244 (no. 800). Vuarnier mentions it with regard to “*actes publics*” (series 5), but in practice these copies were also made – at least at the Antwerp registration offices – in series 6.

²¹ *Actes de dissolution* were usually also copied in full.

In addition, company contracts can be found in notarial ledgers. If parties wanted to start up a firm they could ask a notary to draw up statutes, or they could have their privately written agreement recognized in a notarial deed. When the notary himself drafted the deed that structured a business venture, the law required that he registered the deed at a registration office.²² Furthermore, privately written contracts that were copied into or rephrased in a notarial deed could be presented at the registration offices, but this was not required by the law.²³ At the registration offices, notarial deeds concerning companies that had been drafted in their entirety by a notary were enacted in the ledgers of series 5 (*actes publics*). Privately written contracts that had acquired the form of a notarial deed were often inserted in the registration volumes of series 5, and less often in the record books of series 6 (*actes sous seing privé*).²⁴ This latter series was mainly used for private contracts that had not been brought before a notary.

When notaries submitted deeds at the registration offices, they advanced the fees and forwarded them to their clients. Fees were not high: in the 1840s, for *actes de société* the registration and clerk fees combined usually amounted to 6 (Belgian) francs 62 cents. Later, around 1850, this cost corresponded in today's prices to some 45 euros.²⁵ Fees were fixed. Company contracts and also *actes de dissolution* benefited from a fiscal exemption, which meant that the object of the contract (its capital) was not assessed, as long as no immovable properties were or had been invested in the firm.²⁶ Since privately written company statutes were provided for registration, too, notaries did not have a monopoly in assisting parties with drafting their company contracts. Advocates, translators, or "writers"

²² The notary had to have the deed concerning company statutes or dissolution registered within ten days at the office of the company's location, if this office was in his constituency.

²³ Vuarnier, *Traité de la manutention*, 1, 234 (no. 763).

²⁴ This ran counter to what was required according to doctrine, see Vuarnier, *Traité de la manutention*, 1, 234 (no. 763).

²⁵ This calculation is based on the historical development of the consumption index and a weighed consumption index coefficient for the year 1850. See Peter Scholliers, "A Century of Real Industrial Wages in Belgium, 1840–1939," in Peter Scholliers and Vera Zamagni (eds.), *Labour's Reward. Real Wages and Economic Change in 19th and 20th Century Europe* (Aldershot: Ashgate, 1995), 106–137, and 203–205.

²⁶ S. 68 § 3, 4° *loi sur l'enregistrement* 12 December 1798. See also Raymond-Théodore Troplong, *Commentaire du contrat de société en matière civile et commercial* (Brussels: Meline, Cans & Cie, 1843), 414 (no. 1067). This same section of the law referred to was considered to apply to *actes de dissolution*. See Charles François Philippe Masson de Longpré, *Code annoté de l'enregistrement. Répertoire complet des lois sur l'enregistrement, le timbre, les droits de greffe, d'hypothèque ...*, vol. 1 (Paris: Pissin, 1848), 446–448 (nos. 2696–2710). In practice, even when immovable property was invested (for example, the premises of the office location of a shop), the fixed fee was deemed sufficient. See, for example, Antwerp, State Archives (henceforth referred to as SAA), Registration offices of Antwerp, BA Noord (inventory F350) (henceforth referred to as ROA, BA), 107, fols. 182r–v (registered on 22 July 1829). However, it seems that investment in kind of immovable property was rare, and that if a house or storage facility of one of the partners was used for company purposes, it was expressed in terms of letting and renting. In that case there was no doubt that the fixed fee applied. See, for example, SAA, Registration offices of Antwerp (general inventory F349) (henceforth referred to as ROA), 565, fols. 55v–56r (reg. 2 Dec. 1837), 599, fols. 91r–v (reg. 31 Jan. 1851).

could have a part in this practice as well. Such intermediaries sometimes presented the written contract at a registration office, for enactment in series 6.²⁷

There was also a third method for enacting agreements on business ventures (besides the registration offices and notaries' ledgers). Since 1799, Antwerp had a commercial court, which, starting in 1808, was called the *tribunal de commerce*. Its judges were businessmen from the elite, who were not obliged to have any legal training.²⁸ The 1807 Napoleonic *Code de commerce*, which had come into effect in 1808, provided that summary excerpts of company contracts mentioned in the Code had to be handed in at the commercial court in the location of the company's office, within a period of two weeks after it had been created.²⁹ The excerpts had to mention the names, profession and domicile of partners, the name of the firm (*raison sociale*), the investments, and the projected duration of the venture.³⁰ These rules applied for all company agreements with commercial purposes that were mentioned in the Code, including those that were privately written and that had not been drafted or recognized by a notary or had not been enacted at a registration office. The clerks of the commercial courts were required to register these excerpts, and these summaries were put on display in the form of posters that were shown in the courtrooms for a period of three months.³¹

The goal of the aforementioned rules was publicity. In this regard, the law regarding information which was exchanged through the commercial courts was different to the legal duties of registration offices and notaries. Contracts filed with the commercial court were – at least as far as the contents mentioned in the excerpts were concerned – made known to the mercantile and industrial community within the judicature of the court. Creditors could go to the court clerk's office to check how a company was structured.³² By contrast, contracts that had been inserted into the record books of registration offices, or which had been enacted before a notary, were not public. For statutes that had been copied at the registration offices, an official request for consultation had to be filed with the First Instance

²⁷ SAA, ROA, 610, fol. 142r–v (reg. 18 Dec. 1856, “*avocat Augez*”), 611, fol. 93v–94v (reg. 9 June 1857, “*présenté par Mr Hickendorff, traducteur juré à Anvers*”). Both volumes belong to series 6.

²⁸ Greta Devos, “De rechtbank van koophandel te Antwerpen. 200 jaar ten dienste van handel en industrie,” in Greta Devos, Paul Buysse and Herman Hellenbosch (eds.), *200 jaar Rechtbank van Koophandel Antwerpen, 1798–1998* (Antwerp: s.n., 1998), 59–74.

²⁹ s. 42 *Code de commerce*.

³⁰ s. 43 *Code de commerce*.

³¹ s. 42 *Code de commerce*.

³² As suggested in Troplong, *Commentaire*, 274 (no. 693).

Court. Access could be granted only to those with a “direct interest”, which meant that the applicant had to be mentioned in the registered contract.³³ The same requirement was imposed when requests were made for disclosure of notarial deeds.³⁴ All these conditions meant that creditors could not check the notarial and registered company contracts of their debtors.

Of the three circuits of enactment mentioned, for the period under study, notarial deeds and the ledgers of the Antwerp registration offices are complete.³⁵ However, this is not the case for the excerpts submitted to the commercial court of Antwerp. Due to a fire at the Exchange in 1858 – where the commercial court was located – few court records dating from before this calamity have been preserved. Lost documents include the volumes containing the summaries of company contracts. Moreover, unlike in France, the newspaper publication of excerpts of company statutes registered at commercial courts was not in use in Antwerp during the first half of the nineteenth century.³⁶

Nonetheless, an analysis of those company contracts brought before the Antwerp registration office and Antwerp notaries does still provide a view into the practice of starting up and continuing business ventures in Antwerp during the years 1830-1850. For this paper, the notarial deeds of the four most important Antwerp notaries of this period were analysed, thus yielding 27 contracts.³⁷ Scrutiny of the record books for series 6 of the Antwerp registration offices yielded another 118 contracts.³⁸

2.2. Representativeness of the sample

³³ Vuarnier, *Traité de la manutention*, 1, 327 (nos. 1143–1144). A direct interest related to the fact that the applicant was either party to or beneficiary of the registered contract. Not even notaries were given access, unless they substantiated a mandate and direct interest on behalf of their client(s). See Vuarnier, *Traité de la manutention*, 1, 329 (no. 1149).

³⁴ Jean-Baptiste Massart, *Commentaire générale de la loi organique du notariat du 25 ventôse an XI ...* (Lessines: s.n., 1863), 278–279 (nos. 1209–1218).

³⁵ As for the notarial ledgers, address inventories of the period of 1830–1850 were consulted (*Almanach royal officiel de Belgique* (Namur: De Mortier, 1841), and *Almanach royal officiel* (Brussels: Tarlier, 1859)). They include all notaries having offices in Antwerp. The names of notaries in these lists were compared with the preserved records of Antwerp notaries in the Antwerp State Archives. This yielded the result that all notaries’ record books have been preserved. Moreover, there are no lacunae in the record series.

³⁶ For French practice, see Jean Hilaire, “L’évolution des formes. Les publicités légales,” in Jean Hilaire (ed.), *Le Droit, les Affaires et l’Histoire* (Paris: Économica, 1995), 285–291. Samples were taken from the main Antwerp newspapers: *Le Précurseur*, *Het Handelsblad*, and *Journal du Commerce d’Anvers*. They contain data on commerce, such as price lists, news on ships and stock, yet no mentions of contracts or company statutes deposited at the commercial court.

³⁷ These are Pierre Joseph Antonissen (active between 1826 and 1870), Jean François Gellynck (active in the period 1825–1850), Xavier Antoine Ghysens (active 1830–1867), and Josse Hanegraeff (for the period 1820–1849).

³⁸ See SAA, ROA, 559–599, 609–612; SAA, ROA, BA2 0000 (inventory F351, henceforth referred to as BA2), 95–99, and SAA, ROA, BA, 103–111.

With regard to these materials, two issues must be addressed initially. First, there is the question as to whether the absence of data concerning documents handed in at the Antwerp commercial court affects the representativeness of the abovementioned contracts collected. A second question relates to the proportion of contracts that remained entirely private, and which accordingly do not show up in the pools of archival sources mentioned.

As to the first question, it was perfectly lawful for mercantile company contracts – with the exception of corporations (*sociétés anonymes*) – to be registered only at the commercial court's office and not with a registration office or notary. In other words, submission to the commercial court was always required. If the contract was drafted by a notary, then it also had to be sent over to a registration office. In order to assess to what extent all this was done, one must consider the numbers of contracts that were handed in at the registration offices and at the commercial court, as well as those that were written by notaries.

As was previously mentioned, for the period up to 1858, no records of the Antwerp commercial court can be used. However, starting with 1856, the legal journal *Jurisprudence du port d'Anvers* lists the excerpts of contracts that had been turned in at the law clerk's office for this court (the journal was in fact published by the law clerk's office itself). A comparison of these published summaries – including those for the period from July 1856 until December 1857,³⁹ along with all company contracts that were registered in the registration office of Antwerp and/or with Antwerp notaries in this same period⁴⁰ – shows that company contracts enacted before notaries and/or at the registration office constituted 43.75 per cent (28/64) of all the company contracts that were brought before the commercial court. For these contracts, either registration had been solicited at the registration office, or they had the form of a notarial deed, or both. In addition, some 11 per cent (8/72) of all company contracts found in all three series of sources combined were registered by a notary and/or at a registration office, yet they did not end up at the commercial court. All this demonstrates that it was an established practice to draw up company contracts privately, and then have them published via the commercial court,

³⁹ *Jurisprudence du port d'Anvers et des autres villes commerciales et industrielles de la Belgique* (henceforth *Jur. Port d'Anvers*), 1 (1856), and 2 (1857). The official editor was Joseph Conard, chief law clerk of the Antwerp *tribunal de commerce*.

⁴⁰ See SAA, ROA, 281–289 (years 1856–1857), 610–612 (years 1856–1857). The first volumes concern series 5, the second series 6. Moreover, the inventories of ledgers of notaries working in Antwerp in 1856 and 1857 were analysed.

without intervention from notaries and without going through a registration office. Moreover, not all company contracts that were drafted were brought before the commercial court, either. If the abovementioned proportions are applied to the aforementioned materials found in registration and notarial records for the period 1830-1850, then, the estimated number of company contracts that were drawn up in writing in Antwerp in 1830-1850 amounts to 311.⁴¹

<insert fig. 1 here>

Fig. 1: Number of registered and/or published company contracts July 1856–Dec. 1857. REG: registered at the registration office; NOT: registered in a notarial deed (recognizing a private contract or containing statutes that were drafted by the notary); COMM: deposited at the Antwerp commercial court.

As for the second question, according to the prevailing law, agreements that were not registered or published in one way or another were considered legally sufficient for partnerships with a civil purpose. They were not always required to have a written form.⁴² These rules did not apply to commercial companies, though. For firms mentioned in the commercial code, a written agreement was obligated by law, irrespective of the value of the contract (s. 39 *Code de commerce*), and publicity through the commercial court was required as well (see above).

There are strong indications, however, that many contracts concerning cooperation between merchants or entrepreneurs, or for purposes of trade or manufacturing, were not presented to the commercial court, or before a notary, or for registration. Furthermore, it is very likely that a good deal of company agreements did not have the form of a written contract but were oral and informal only. Given the nature of such arrangements and their

⁴¹ 145 contracts were registered before notaries or at the registration offices. If this number is reduced by 16 (i.e. 11%, or the number of contracts that were enacted before notaries or the registration offices but not submitted to the commercial court), the number can be estimated at 129. If this is considered 43.75% of the total of contracts deposited at the commercial court, another 166 statutes were submitted there but had not been enacted before notaries or at the registration offices. The total (129+16+166) amounts to 311.

⁴² For purposes of evidence, an agreement of a civil partnership had to be drawn up in writing if the object of the contract was above 150 (first French, then Belgian) francs (s. 1341 and s. 1834 *Code civil*). If the value was less, then an oral agreement was deemed lawful, and evidence by testimony was allowed. The mentioned sections provided that any written partnership contract (also for below 150 *francs*) could not be challenged or supplemented by means of witnesses.

absence from official records, it is very difficult to provide hard data as to their numbers and contents. Even so, some cautious estimates can be made by extrapolating from the contents of registered *actes de dissolution*. For the abovementioned period of 1830-1850, some 18 of 40 *actes* (45 per cent) that concerned *dissolutions*, and which were registered at the Antwerp registration offices, do not mention a written company statute, a reference that was nonetheless compulsory.⁴³ Another nine refer to a written agreement that had not been registered and had not been deposited at the commercial court. The 18 contracts mentioned do not contain references to submittal before the commercial court, either. A *dissolution* could encompass anything from a liquidation through public sale or otherwise, a partial split-off of assets, and also a change of partner. It seems that *dissolutions* were more usually registered at registration offices than company contracts; furthermore, there are some examples of contracts being registered some time, indeed in some cases long after they had been written,⁴⁴ and shortly before the company underwent some major change, which then provoked an “*acte de dissolution*”.⁴⁵ In short, 27 out of 40 *dissolutions* registered at the Antwerp registration offices during the years 1830-1850 refer to oral agreements and privately written non-registered contracts.

Even though “*actes de dissolution*” were commonly drafted, informal contracts can still be expected to have ended up in informal liquidations and changes of partner as well. Moreover, when contracts of commercial business ventures were not written down, registered or made public, the official penalty was that the contract was null and void, though in practice – as will be detailed in the further paragraphs of this chapter – the company agreement was often honoured or maintained. The lack of differentiation in judicial practice did not provide an incentive to formalize and make arrangements public. Therefore, another method of estimating the unwritten and the written yet unregistered and unpublished contracts can be based on the proportions of contract types mentioned in

⁴³ Clerks at the registration offices were obligated to ask someone presenting a contract whether it had an impact on earlier (registered and unregistered) agreements, and these were mentioned. If the earlier contract had been registered, a reference to the volume and page of the registration ledger in which they had been enacted was added. See Vuarrier, *Traité de la manutention*, 1, 206 (no. 645). Notarial deeds and submissions to the commercial court were also mentioned.

⁴⁴ An extreme example is a contract of January 1815 that was registered in July 1846. See SAA, ROA, 587, fols. 29r–v (reg. 3 July 1846). A delay of some months was not uncommon. Sometimes the period between the signing and registration was long, and the registration was accompanied with supplements to the contract, mentioning new partners, for example. See, for example SAA, ROA, 579, fols. 52r–v (reg. 3 Aug. 1843, original contract of 21 Sept. 1840).

⁴⁵ E.g. SAA, ROA, 572, fols. 60v–61v (reg. 2 Apr. 1841), 574, fols. 24r–v (reg. 26 Sept. 1841). The first contract was an “*acte de société*” providing the introduction of a new partner, the second one an “*acte de dissolution*” referring to one partner leaving the company (which nonetheless continued to operate).

the abovementioned 40 *actes de dissolution*. In these 40 registered dissolutions, 45 per cent concerned companies with unwritten non-published agreements (18/40), 22.5 per cent related to privately written, unregistered and unpublished agreements (9/40) and 32.5 per cent dealt with registered and/or published contracts (13/40). Accordingly, these proportions can be copied onto the known numbers of registered contracts. The estimated number of contracts enacted in one way or another is 311. When projecting the aforementioned proportions onto this number, then, the total number of company agreements would be 797.⁴⁶

Given due exercise of caution, this number of 797 company agreements in Antwerp, which corresponds to a yearly average of around 40, can be compared with other cities. For Lille, for instance, it turns out that in the early 1830s, some 32 to 33 company contracts were deposited at the commercial court each year.⁴⁷ In the 1840s and 1850s, in Marseille – which was a deindustrialized port as was Antwerp, though with a larger population (c.150,000 in 1836, whereas the Antwerp population at that time was around 80,000) – between 15 and 45 company contracts were brought before the local *tribunal de commerce* annually.⁴⁸ Admittedly, these numbers only concern those *actes de société* that were submitted to the local commercial court and not those that were unwritten or unpublished. For Antwerp, during the period mentioned, the number of contracts deposited at the court can be estimated to be about 15 on average each year,⁴⁹ which in view of the figures for Marseille is not unlikely.

⁴⁶ If the proportion of written/unwritten company statutes is (maximum) 55% vs. (minimum) 45% (based on the mentioned *actes de dissolution*), if the number of contracts registered at registration offices as compared to the population of written and enacted (registered and/or published) company statutes was around 50 percent (see table 1), and considering the proportion of written vs. registered statutes at 3/2 (based on the *actes de dissolution*), then the share of statutes brought before the registration offices can be estimated a maximum of 16.06% of the total number of company contracts (both written and unwritten). From 128, one can thus infer the number of 797, of which some 438 were written and around 358 were not. The number of 797 does not include those agreements that were not put into writing, and which were ended informally as well. Please note that in De ruysscher, “Handelsvenootschappen,” 182, footnote 25, there are factual errors: for number 448 read “438”, and for 349 read “358”.

⁴⁷ Pierre Deyon and Jean-Pierre Hirsch, “Entreprise et association dans l’arrondissement de Lille 1830–1862,” in *Entreprises et entrepreneurs XIXe–XXe siècles* (Paris: Université de Paris-Sorbonne, 1983), 5–21, here 15.

⁴⁸ Michel Lescure, “Companies and Manufacturers of the First Period of Industrialization in Marseilles 1810–1860,” in Philippe Jobert and Michael Moss (eds.), *The Birth and Death of Companies. An Historical Perspective* (Carnforth: Parthenon, 1990), 105–120, here 107.

⁴⁹ A comparison of contracts brought before the commercial court and contracts registered with notaries and at registration offices has – to my knowledge – not been pursued, for France or for Belgium. In publications regarding French companies, however, many authors advise caution on the data extracted from deposited contracts. See Cayez, “Structures juridiques,” 240 (on the alternative way around construing a commercial firm as *société civile*, which was not required to publish its statutes); Michel Lescure and André Straus, “Rythmes et espaces dans la première industrialization. Une approche par les actes de société,” in Alain Plessis (ed.), *Naissance des libertés économiques. Liberté de travail et liberté d’entreprendre, le décret d’Allarde et la loi Le Chapelier, leurs conséquences, 1791–fin XIXe siècle* (Paris: Institut d’histoire

<insert fig. 2 here>

Fig. 2: Estimated numbers of company statutes, written and unwritten (yet formally dissolved) (Antwerp, 1830–1850). The circles in colour indicate written and enacted (deposited and/or registered) contracts.

3. Company types: legal and commercial approaches

3.1. The legal regime

According to the official law, as made explicit in legal doctrine, a company entailed a cooperative venture with a purpose and a contribution from partners.⁵⁰ A typology of commercial companies was more or less clearly defined in the *Code de commerce*. A *société en nom collectif* (henceforth SNC) gathered unlimitedly liable partners, all of which were held responsible for debts that had been made when the name of the firm (*raison sociale*) had been used. A *société en commandite* (henceforth SC) had one or more *gérants*, i.e. directors or working partners, who were held liable for the debts of the company, as well as *commanditaires*, who were liable for no more than their investments. The *commanditaires* were non-working associates: they were prohibited from participating in the trade for which the SC was set up. SCs could have equity that was divided in shares, which the law did not provide for the SNC. In addition to the SC and SNC, there was the *société anonyme* (henceforth SA); the SA had a structure similar to that of the SC in that directors managed the firm and paid the debts, but the firm's liability was limited to the company's capital and the directors were not personally liable. Participants (*actionnaires*) were held responsible for no more than that which they had invested. The capital was divided in shares, which were transferable and could be "to bearer". Moreover, a fundamental difference between the SA, on the one hand, and the SC and SNC, on the other, was that for the SA a governmental approval had to be obtained after enactment before a notary. A fourth type

de l'industrie, 1993), 193–211, here 202 (on the difficulty of assessing which commercial court was competent for the submittal of contracts, since many firms had a broad geographical scope).

⁵⁰ Jean-Marie Pardessus, *Cours de droit commercial*, vol. 3 (Paris: Garnery, 1815), 4–8 (nos. 969–972).

was the “*association commerciale en participation*”, which was an association that could remain informal, and which concerned one or a few commercial operations only.⁵¹

The characteristics of limited liability of investors were thus only acknowledged by law for the *actionnaires* in a SA, as well as for the *commanditaires* in a SC. For the SNC, limited liability of (some) partners went against the core elements of the contract type,⁵² whereas for the *association commerciale en participation* this obligation was not regulated in detail.

Legal personhood did not yet exist in 1807 in the same form as does today. Corporations nowadays combine autonomy with limited liability of investors; they are creditors and debtors themselves. In the first half of the nineteenth century, the company was only granted the capacity of debtor in some respects. Summonses on debts of commercial companies had to be brought “*en leurs maison sociale*” (s. 69, 6° *Code de procédure civile* of 1806), for example. This definition hints at the assimilation of a firm with its business office. However, in practice, the liabilities of *gérants* and (working) partners were still paramount, as had been the case in the Old Regime,⁵³ and a firm was largely identified with those who represented it in public (see further paragraphs below).

With the exception of the SA, continuity was hampered by the possible withdrawal or death of partners. If one of the associates passed away, the company could continue if an arrangement had been made in the statutes, such as stating that an heir would replace the deceased partner, or that the remaining partners would continue the business venture (s. 1868 *Code civil* of 1804). The resignation of associates was not allowed if the duration of the venture had been detailed in the contract, except for when the duration was unlimited. In that latter case, resignation was only lawful if due notice was given to all partners, if it was timely (e.g. not if profits were expected) and without bad intent (for example, when an associate left in order to receive as much profits as possible) (s. 1869-1870 *Code civil*).

Another corporate characteristic known as entity shielding – i.e. company assets and capital are fenced off from actions of personal creditors of partners – was not detailed in the law, but it was generally accepted for commercial companies. This feature was read in

⁵¹ s. 19–50 *Code de commerce*.

⁵² Pardessus, *Cours de droit commercial*, 3, 79–80 (no. 1013), and 92–93 (no. 1022).

⁵³ Dave De ruyscher, “A Business Trust for Partnerships? Early Conceptions of Company-Related Assets in Legal Literature, and Antwerp Forensic and Commercial Practice (Later Sixteenth–Early Seventeenth Century),” in Bram Van Hofstraeten and Wim Decock (eds.), *Companies and Company Law in Late-Medieval and Early Modern Europe* (Leuven: Peeters, 2016), 9–27.

section 529 of the *Code civil* (1804), which provided that for “*actions ou intérêts dans les compagnies de finance, de commerce ou d’industrie*” seizure was not possible by partners or their personal creditors for as long as the company lasted.⁵⁴ Rules relating thereto, which were not made explicit in legislation but which were widely acknowledged in case law and doctrine, included that creditors of commercial companies had priority over personal creditors of partners,⁵⁵ and that set-off of personal debts of partners with claims of the company, or vice versa, was impossible.⁵⁶ Sometimes it was said that summonses for company-related debts could not be brought against partners before the “*fonds social*” – i.e. the company’s equity and assets – had been addressed and/or exhausted,⁵⁷ but this was an exceptional view. Most of these characteristics had been accepted for all partnerships before 1804/7, including the civil ones. However, due to the civil/commercial divide that was enforced through the Napoleonic codifications, and following on from a growing restrictive attitude towards civil initiatives over the course of the 1840s and 1850s (in Belgium as well as in France), from the 1860s and 1870s onwards the abovementioned features were excluded for civil partnerships.⁵⁸ In the 1830s and 1840s, prior to these developments, there were fierce scholarly discussions over the distinctive characteristics of civil and commercial companies. Debates, too, took place regarding the legal status of companies that did not meet the publicity requirements of the *Code de commerce* (see hereafter).⁵⁹

⁵⁴ Until the later 1820s, it was sometimes said that this rule applied only to “large” or “substantial” companies. See, for example, Charles-Bonaventure-Marie Toullier, *Le droit civil français ...*, vol. 12 (Paris: Warée, 1823), 143–144 (no. 97), and 148 (no. 101). By the 1840s, this had unanimously been decided in favour of all companies, even for civil ones. See Alexandre Duranton, *Cours de droit civil suivant le code français*, vol. 2 (Brussels: Société belge de Librairie, 1841), 284 (no. 930); Karl Salomo Zachariae, *Cours de droit civil français*, vol. 1 (Brussels: Société belge de Librairie, 1842), 144, footnote 6.

⁵⁵ In 1821, Vincens was the first to state this position without hesitation. It became a common point of view in the years thereafter. See “Société,” in *Dalloz Répertoire* (Paris: Dalloz, 1859), 497 (no. 628); A[ntoine] Frémery, *Études de droit commercial: du droit fondé par la coutume universelle des commerçants* (Paris: Gobelet, 1833), 32; Émile Vincens, *Des sociétés par actions* (Paris: Huzard, 1837), 6; Émile Vincens, *Exposition raisonnée de la législation commerciale et examen critique du Code de commerce*, vol. 1 (Paris: Barrois, 1821), 20. There was debate as to whether this approach also applied to civil partnerships. See Edouard Richard, ““Mon nom est personne”. La construction de la personnalité morale ou les vertus de la patience,” *Entreprises et Histoire* 57 (2009), 14–44, here 35.

⁵⁶ Pardessus, *Cours de droit commercial*, 3, 17 (no. 975); Toullier, *Le droit français suivant l’ordre du Code*, vol. 7 (Paris: Renouard, 1829), 378. Also, concerning set-off between partners, see Troplong, *Commentaire*, 35 (no. 73), and 195 (no. 526).

⁵⁷ Pardessus, *Cours de droit commercial*, 3, 19 (no. 976); Troplong, *Commentaire*, 324 (no. 821).

⁵⁸ Dave De ruyscher, “Een rechtshistorische kijk op schaalgrootte in het Belgische en Franse handels- en economisch recht (vroege negentiende eeuw tot ca. 1960),” in Koen Reniers and Melissa Vanmeenen (eds.), *Regelgeving op maat van KMO’s* (Antwerp: Intersentia, 2013), 213–234, here 226–228.

⁵⁹ French doctrine on these issues has been studied in De ruyscher, “Een rechtshistorische kijk,” and Richard, ““Mon nom est personne”. Other papers provide succinct passages in this regard. See, for example, Carlo Angelici, “Discorsi di diritto societario,” in Carlo Angelici et al. (eds.), *Negozianti e imprenditori. 200 anni dal Code de commerce* (Milan: Mondadori, 2008), 141–182, here 142–147; Laura Moscati, “Dopo e al di là del *Code de commerce*: l’apporto di Jean-Marie Pardessus,”

3.2. Company types in contracts

The 145 company contracts that were found in Antwerp records for the period 1830-50, and also some other materials predating that period, allow for a nuanced view both on the acceptance of the Napoleonic legislation and on the legal rules regarding company types that were applied in practice. From the 145 statutes, it is evident that labels referring to the four types of business venture mentioned in the *Code de commerce* were very rare.

The notion of “company type” presupposes that certain features are clustered together in company statutes or that combinations of clauses are recognized as default schemes. When reading early nineteenth-century company statutes, however, it immediately becomes clear that concepts used to describe companies varied to a large extent. For Antwerp, and for the Low Countries in general, the linguistic context had some part in this divergence. Consistent Dutch (“Flemish”) legal terminology was absent. For a large part of the nineteenth century, there was no official Dutch vocabulary in Belgium for either legal or company-related matters. Only in 1898 did legislation in Belgium come to be issued in two official versions, in French and Dutch, with both having the same legal force. Dutch legal language – in fact, even the Dutch language in general – had not been standardized in Belgium before that time. This lack did not mean that only French was used in legal environments. Dutch, of course, was also the language of the region where Antwerp is located. Moreover, political changes could provoke the renewed importance of Dutch. In 1815, the Southern Netherlands were reunited with the Kingdom of the Netherlands in the North – after some 330 years of separation – into the newly established United Kingdom of the Netherlands. Hence, Dutch became a language of public administration again. Yet this revival came only after a French occupation that began in 1794/5 and lasted for twenty years, thereby pushing Dutch aside as the language for government.⁶⁰

In terms of languages known and applied, all these transitions did not pose too many problems among merchants and entrepreneurs in the South. In Antwerp, the mercantile community had always made use of several languages. In eighteenth-century Antwerp,

in Carlo Angelici et al. (eds.), *Negozianti e imprenditori. 200 anni dal Code de commerce* (Milan: Mondadori, 2008), 47–80, here 61–64.

⁶⁰ A general overview of the language situation during the French period and under the United Kingdom is provided in Roland Willemyns, *Dutch. Biography of a Language* (Oxford: OUP, 2013), 104–113.

French and Dutch had been the most common, and the municipal government had used both, too, even though the official language was Dutch (French was a language of diplomacy and for correspondence with the central government only).⁶¹ Since 1814, contracts could again be registered and be recognized as notarial deed in French, Dutch or any other language.⁶² After the Belgian Revolt of 1830 and the creation of the Kingdom of Belgium, French was again dominant in government affairs, but Dutch was still used in contracts, even when they were officially enacted. Nevertheless, despite the common usage of Dutch as a vernacular, merchants in Antwerp were, as ever, international. Their language use also reflected their attachment to elitist milieus, in which French was the standard.⁶³ Moreover, to a large extent, French was a *lingua franca* in business environments, particularly in Belgium.⁶⁴

Taking these contextual elements into consideration thus makes possible the appropriate evaluation of the language and terminology of the 145 company statutes. Of the 145 company contracts examined, only 31 are in Dutch, and all others in French. The distinction notarial/privately written is a proxy in this regard: notarial deeds were relatively more frequently drawn up in Dutch (29.6 per cent) than private contracts registered at the registration offices in series 6 (19.49 per cent). A likely explanation is that at registration offices the prevailing language of government, French, was preferred. However, the language of the contract seems not to have been a variable in relation to the types and contents of company statutes.

A detailed analysis of the contents of the Dutch statutes yields further arguments supporting the abovementioned weakness of Dutch as a legal language in the period under study. In the first half of the nineteenth century there were some (foreign) legal texts and a number of (mostly private) translations and dictionaries that listed “Dutch” transpositions of

⁶¹ See throughout Edward Poffé, *Antwerpen in de XVIIIe eeuw voor den inval der Franschen* (Ghent: Siffer, 1895).

⁶² On the 1814 regulation, see Fred Stevens, *Revolutie en notariaat. Antwerpen 1794–1814* (Leuven: Van Gorcum, 1994), 174–175. The rule that written agreements could be enacted before a notary or at a registration office in all languages was limited to those languages which the clerks or notary mastered. A regulation of 5 June 1830 confirmed this rule. See Massart, *Commentaire générale*, 609–612.

⁶³ On the gentrification processes among Antwerp merchants in the eighteenth century, see Karel Degryse, *De Antwerpse fortuinen. Kapitaalsaccumulatie, -investering en -rendement te Antwerpen in de 18de eeuw* (Antwerp: Genootschap voor Antwerpse Geschiedenis, 2005), 180–194.

⁶⁴ German immigrant entrepreneurs and bankers, who were numerous in early nineteenth-century Antwerp, used their native language within their community of compatriots. See Geert Pelckmans and Jan Van Doorslaer, *De Duitse kolonie 1796–1914* (Kapellen: Pelckmans, 2000), 23–26 (referring to a *Kaufmännische Verein*, for example). However, their notarial deeds of company contracts and privately written *actes de société* were never in German, but always in French or Dutch. In business correspondence, German immigrant traders also usually resorted to French.

French legal terms. Still, their variety was enormous. Under the United Kingdom of the Netherlands, preparations had been made to issue a commercial code in Dutch, but this project had not yet been completed when Belgium proclaimed its independence in September 1830.⁶⁵ The Dutch commercial code, which was imposed in the North in 1838, used the term “*vennootschap*” for commercial companies. However, an earlier Dutch translation of the French 1807 commercial code, made in 1808 by Johannes Van der Linden, and the 1809 draft of a Commercial code for the Kingdom of Holland, had applied the notions “*compagnieschap*” and “*societeit*”.⁶⁶ When around 1808 P.J. Lorio from Ghent made a Flemish translation of the French commercial code of 1807, he chose “*societeyt*” as label for companies,⁶⁷ and this term was also used in the contemporary official *Bulletin flamand*, which contained unofficial “Flemish” versions of French legislation.⁶⁸ Dictionaries and Dutch translations of the early nineteenth century mentioned other expressions such as “*genootschap*”, “*maatschappij*” or “*zamenleving*”.⁶⁹ In his 1841 Flemish-Dutch translation of the *Code civil*, the Flemish judge Carel Ledeganck used “*maetschap*”,⁷⁰ following the example of the Dutch Civil code of 1838. In this code, “*maetschap*” was a civil partnership, with “*vennootschap*” being reserved for commercial companies. However, “*compagnieschap*”, “*vennootschap*” and “*maetschap*” were terms that were not very well known in the South before the union with the North, and they did not survive after Belgian independence.⁷¹ By contrast, “*societeyt*” had been and remained a common translation of “*societas*”, which in the Old Regime was the academic label for a general partnership. In the eighteenth century, “*associatie*” and “*compagnie*” had been widespread terms in the Southern Low Countries as well.⁷² “*Societeyt*” remained very popular under the Belgian regime, but many other terms were also used (“*associatie*”, “*maetschappij*”,

⁶⁵ Ernst Holthöfer, “Belgien,” in Helmut Coing (ed.), *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte* vol. 3/3 (Munich: Beck, 1986), 3287–3289.

⁶⁶ Arnoldus van Gennep, Mozes S. Asser, and Joannes Van der Linden, *Wetboek van den Koophandel voor het Koninkrijk Holland* (s.l.: s.n., 1809), 6 (ch. 3); Joannes Van der Linden, *Wetboek van den Koophandel voor het Fransche Rijk* (Amsterdam: Allart, 1808), 161–170.

⁶⁷ P.J. Lorio, *Commercielen wetboek* (Ghent: Bogaet-De Clercq, c.1808), 9–16.

⁶⁸ See Dirk Heirbaut, “Inleiding,” in Dirk Heirbaut and Gustaaf Baeteman (eds.), *Cumulatieve editie van het Burgerlijk Wetboek. Édition cumulative du Code civil*, vol. 1 (Ghent, 2004), li, and vol. 2 (Ghent: Wolters Kluwer, 2004), 1797–1814.

⁶⁹ E.g. Abraham Blussé, *Dictionnaire portatif françois et hollandois, et hollandois et françois* (Dordrecht: Blussé, 1828), 872.

⁷⁰ Carel Ledeganck, *Het burgerlyk wetboek uit het Fransch vertaeld* (Ghent: Hoste, 1849), 434.

⁷¹ In Antwerp, the term “*compagnieschap*” gained some popularity in the 1820s, but it faded away after 1830. See SAA, ROA, BA2, 95, fols. 42v–44r (reg. 18 Jan. 1830); SAA, ROA, BA, 103, fol. 195r (reg. 1 Aug. 1823), 107, fols. 58v–60r (reg. 23 Aug. 1828). The last mention dates from 1844. See SAA, ROA, 582, fol. 38r (reg. 2 Oct. 1844).

⁷² See for example Houtman-De Smedt, “Korte historische schets,” 293–294.

“*genootschap*”), which was the case for the entire period from 1830-50.⁷³ In this regard, there is no difference between notarial contracts and the ones that were drawn up privately. Formulary books for notaries were equally diverse in terminology.⁷⁴

Quite surprisingly, many labels were used in French, too, and they did not often rephrase the French commercial code, even though the appropriate legal terminology was used in French-language company contracts as well. Many statutes mentioned “*l’établissement d’une maison de commerce*”⁷⁵ or a “*maison de commission*”.⁷⁶ These terms have no equivalent in the *Code de commerce*. Many contracts only stipulated that the partners “*s’associent*”, “are associated”, and nothing more, with no hints as to type of company mentioned in the commercial code.⁷⁷ Others detailed a “*société de commerce à pertes et gains*”.⁷⁸ Such generic descriptions of “*sociétés*” or “*associations*” were the most common. No less than 104 out of 160 Antwerp company statutes for the period 1830-1850 (i.e. those 145 of the sample and 15 SA statutes) defined the business venture in generalizing terms that had no basis in the commercial code (see figure 3). If legal wording was chosen, then the SNC was opted for the most. By contrast, company contracts defining partners as limitedly liable did so mostly by means of legal terminology: the ventures were then described as *sociétés en commandite* or the silent partners as *commanditaires*. However, SCs were not very popular: only 12 out of 160 contracts referred to this company type. The abovementioned proportions among company descriptions did not change much over time, even though near the end of the 1840s generic partnerships seem to have gained popularity over other company types (see figures 3 and 4). In other regards, too, references to sections of the commercial code were largely absent: only 11 of 118 registered company statutes and 3 out of 27 notarial contracts refer to a provision of the *Code de commerce*. In most cases, this citation concerned the article regarding publication at the commercial

⁷³ SAA, Notaries, 7476, deed no. 4740 (16 Nov. 1848: “*genootschap*”); SAA, ROA, 585, fols. 85v–86r (reg. 23 Dec. 1845, “*maetschappij*”), 588, fols. 5v–6r (reg. 13 Nov. 1846, “*genootschap*”), 590, fol. 15v (reg. 19 July 1847, “*associatie*”). “*Zamenleving*”, “*maetschap*”, “*vennootschap*” and “*compagnie*” were not used, however. The terms “*gemeenschap*”, “*deelgemeenschap*” or “*gemeenschappelykheit*” were only mentioned one time in the period 1830–50, but they had been more common in 1815–30. See SAA, ROA, 584, fol. 6v (reg. 17 May 1845, “*gemeenschappelykheid*”); SAA, ROA, BA, 103, fols. 38v–39r (reg. 17 June 1822, “*gemeenschap*”), and 106, fols. 56r–v (reg. 7 Apr. 1827, “*deelgemeenschap*”).

⁷⁴ E.g. *Formulier der notariële akten voor het Koninkrijk der Nederlanden. Formulaire des actes notariés pour le Royaume des Pays-Bas ...* (Brussels: Wahlen & Cie, 1823), 535–536 (“*societeit*”, “*maetschappij*”).

⁷⁵ E.g. SAA, ROA, 571, fols. 43r–v (reg. 10 Nov. 1840), fols. 74r–75v (reg. 17 Dec. 1840), 588, fol. 78v (reg. 3 Febr. 1847).

⁷⁶ SAA, Notaries, 4523, deed no. 267 (3 Sept. 1836); *Jur. Port d’Anvers 2* (1857), *renseignements commerciaux*, 13 (Oct. 1857).

⁷⁷ E.g. SAA, ROA, 569, fols. 38v–39v (reg. 13 Jan. 1840).

⁷⁸ E.g. SAA, ROA, 569, fols. 55v–56 (reg. 7 Jan. 1841).

court. Sometimes, it was said that books would be kept according to the code's requirements.⁷⁹ In regard to references to the commercial code, there was not much difference between privately written and notarial contracts.

<insert fig. 3 here>

Fig. 3: Numbers of types, as described in company statutes (Antwerp, 1830-1850). SOC refers to the generic "*société*" or "*association*", SC to "*société en commandite*", SNC to "*société en nom collectif*", PART to "*association en participation*" (meaning a temporary or silent partnership) and SA to "*société anonyme*". For the latter, data was gathered from Demeur, Greefs, Trioen and Veraghtert.⁸⁰ Remarkably, statutes of SAs were not found in the ledgers of the registration offices for the period 1830-1850, or even in the notarial deeds consulted (see also the comment under figure 11 below). The date of all statutes referred to is the date when the contract was written (not the date of registration or the starting date). For SAs, the date of governmental approval was chosen.

<insert fig. 4 here>

Fig. 4: Types of companies, according to year (Antwerp 1830-1850)

3.3. Judicial approaches and views in doctrine

The lack of distinction in commercial practice between "types" was equally prevalent in legal doctrine and in decisions of courts. It was very common, even in the 1850s, to label mercantile and manufacturing partnerships as "*société de commerce*", and not to categorize

⁷⁹ E.g. SAA, Notaries, 9754, deed no. 84 (9 Aug. 1838).

⁸⁰ Adolphe Demeur, *Les Sociétés anonymes en Belgique en 1857. Collection complète des statuts collationés sur les textes officiels avec une introduction et des notes* (Brussels: L'éditeur, 1859); Greefs, *Zakenlieden*; Julienne Laureyssens, *De naamloze vennootschappen en de ontwikkeling van het kapitalisme in België (1819–1850)* (PhD thesis, Ghent University, 1970), 4 vols.; Louis François Bernard Trioen, *Collection des statuts de toutes les sociétés anonymes et en commandite par actions de la Belgique. Recueilles et mis en ordre d'après les renseignements fournis par les sociétés elles-mêmes; suivies de tableaux synoptiques et d'une notice sur les emprunts et les fonds publics cotés dans toutes les bourses de l'Europe* (Brussels: Trioen, 1839), 2 vols.; Veraghtert, "De Antwerpse bankwereld," 191–203.

these firms as one of the types in the commercial code.⁸¹ This custom followed on from some gaps in legislation and from uncertainties relating to the official law.

In the early nineteenth century, the divide between commercial and civil law, which had been instituted by the Napoleonic codes, was very much debated and derived from a lack of clarity concerning many issues. Yet it was also more fundamental in that the legislature had poorly defined the relation between the civil and commercial code. The *Code de commerce* provided that laws as well as the 1804 Civil code could supplement its contents (s. 18). One would expect on the basis of this section that the commercial code stood largely apart from the Civil code. However, the *Code civil* contained sections on partnerships with a commercial purpose, and it was not always evident whether they had been abolished by the commercial code. Moreover, the Civil code provided that its contents applied only insofar as there were no specific laws or trade usages (s. 1873). The commercial code could be considered to be a specific law in some respects, but in others it remained unclear which of the codes prevailed.

As a result of all this inconsistency, legal scholars had to assemble sections of the two codes into a coherent legal doctrine. This had a direct impact on legal views regarding companies. In this period, French academic writings were widely read in Belgium, where they influenced court decisions and the arguments of Belgian legal scholars.⁸² Some French academics (Pardessus, Vincens) maintained that only mercantile firms had a “*personne morale*”, which meant that the capital and assets acquired during their lifespan were distinguished from personal properties of partners.⁸³ Yet others (Troplong, Delangle) acknowledged this feature, which was linked to section 529 of the Civil code, for both civil and commercial companies.⁸⁴ Another debate concerned the publicity requirements imposed by the commercial code. Some scholars maintained that disrespect for the sections of the code brought about the absolute and retroactive nullity of the company contract, whereas others (Delangle, Vincens) stated that the firm could be upheld to some extent, at least among the partners, or that it was possible that among them communal assets existed,

⁸¹ E.g. Brussels 6 July 1854, *La Belgique Judiciaire* (henceforth referred to as *BJ*) 1857, 333.

⁸² Dirk Heirbaut, “The Belgian Legal Tradition. Does it Exist?,” in Hubert Bocken and Walter De Bondt (eds.), *Introduction to Belgian Law* (Brussels: Bruylant, 2000), 10–13.

⁸³ Pardessus, *Cours de droit commercial*, 3, 17 (no. 975); Vincens, *Des sociétés par actions*, 6.

⁸⁴ Claude-Alphonse Delangle, *Commentaire sur les sociétés commerciales* (Brussels: Wahlen, 1843), 439 (nos. 14–15), and 441 (no. 20); Troplong, *Commentaire*, 29 (no. 58), and 33–34 (no. 69).

being more or less independent from their personal estate.⁸⁵ Depending on the position, it was possible to argue that partnerships that were for commercial purposes, but which had not been made public, and which did not correspond to types mentioned in the *Code de commerce*, were nonetheless lawful *sociétés*, in one way or another.

The questions that confounded legal scholars affected case law as well. The policy of the Brussels Court of Appeal, which heard appeals that were lodged against decisions of the Antwerp commercial court, was important in matters of business ventures that concerned Antwerp. First, the approach of the Brussels Court, which in practice was followed by the Antwerp commercial court, was highly relevant for companies that did not keep with the regulations (hereafter “irregular companies”). Such firms had statutes that had duly been published, but they had structural features that were contrary to the contents of the *Code de commerce*. Notwithstanding their irregularities, and irrespective of the strict wording of the code, in several decisions taken between 1815 and 1860, the Brussels Court maintained that agreements that set up companies had to be considered as a whole, based on the contents of the contract but also on facts, and that decisions for the application of sections of laws depended on those.⁸⁶

As a result, the French codes were not followed to the letter and irregular companies could still be considered to be lawful. Admittedly, in principle, the Brussels Court imposed strict criteria. Only firms with specific characteristics were defined as SNCs. The first criterion, which until the early 1860s was the only one, concerned the firm’s name (“*raison sociale*”). If no company signature specifying “& Cie” or containing the names of at least two partners had been used, then the partnership did not qualify as a SNC.⁸⁷ Another criterion, which was imposed from around 1860, was the company’s office: if it had been provided in the statutes that the firm would have a fixed “*domicile*”, then this did – together with the use of a “*raison sociale*” – entail the labelling of the firm as SNC.⁸⁸ However,

⁸⁵ Delangle, *Commentaire*, 584 (no. 512), 599–600 (no. 539) (“*communauté d’intérêts*” for the past, not for the future); Vincens, *Exposition raisonnée*, 1, 310–313 (nos. 10–13) (“*union de fait*”).

⁸⁶ Brussels 31 January 1855, *Pasicrisie* (henceforth referred to as *Pas.*) 1857, vol. 2, 82–84. This argument was also generally accepted by other Courts of Appeal. See Ghent 2 May 1853, *BJ* 1854, 691; Liège 3 June 1871, *Pas.* 1871, vol. 2, 435. This approach seems at odds with the policy of the Brussels Court to systematically repeat that non-published commercial companies were “null and void” in an absolute sense. This view did not rule out the possibility that unpublished company statutes were factually honoured at least to some extent. See, for example, Brussels 16 February 1839, *Pas.* 1839, vol. 2, 27; Brussels 26 April 1855, *BJ* 1856, 1390.

⁸⁷ Brussels 29 May 1830, *Pas.* 1830, 142; Brussels 30 November 1831, *Pas.* 1831, 320; Brussels 30 April 1842, *Pas.* 1842, vol. 2, 166; Brussels 21 July 1846, *Pas.* 1851, vol. 2, 186; Brussels 22 June 1860, *Pas.* 1860, vol. 2, 387.

⁸⁸ Brussels 16 January 1860, *Pas.* 1860, vol. 2, 377–378.

notwithstanding these categorizations, the Brussels Court of Appeal also maintained that if the two mentioned conditions were not fulfilled, the company (which then was no SNC) was considered to be an “*association en participation*”. A requirement for this default categorization of irregular companies was that the venture had been limited in duration. This condition was sufficient even when no specific project had been agreed upon between the partners, or when the cooperation encompassed several undetermined operations, sales or projects.⁸⁹ The Brussels Court of Appeal stretched the sections of the code on these *associations*, which considered them to be temporary but for one or two operations only (s. 48).

Secondly, any company statute that could be categorized as SNC, SC or SA on the basis of its contents was nonetheless considered to be an “*association en participation*” if the publicity requirements were not met.⁹⁰ The Brussels Court made use of a loophole in the official law in this respect. According to the *Code de commerce*, publicity was not required for the “*association en participation*” (henceforth AP).

The recourse to considering irregular and unpublished companies as APs allowed for maintaining some of the previously mentioned features of the “*personne morale*” for them. Even though in principle the Brussels Court did not allow the “*personne morale*” for these APs,⁹¹ it was nonetheless accepted that they entailed “common interests”,⁹² or a “community of interests”.⁹³ It seems that this referred to a modest priority of claims by creditors of the firm over those of personal creditors of partners. In general terms, according to the Brussels Court, for APs there was no separation between personal and company-related properties. However, within the personal properties of each partner the Court acknowledged a share of the so-called “*fonds commun*” of the business venture, which referred to the nominal capital of the firm. It was assumed that the capital had not been paid up, and that the investments of each associate were still part of their personal estates. The abovementioned modest priority for company-related debts meant that they

⁸⁹ Brussels 15 February 1861, *Pas.* 1861, vol. 2, 106–109; Brussels 10 May 1869, *Pas.* 1870, vol. 2, 195–196. Please note that the Brussels Court of Appeal used the term “*association en participation*” in a different sense to the usage in the commercial code. The term “*association en participation*” (abbreviated PART) in figures 3 and 4 above refers to the legislative variety, not to the one crafted by the Brussels Court.

⁹⁰ Brussels 21 July 1846, *Pas* 1851, vol. 2, 186–188.

⁹¹ Brussels 11 July 1861, *BJ* 1861, 1419.

⁹² Brussels 21 July 1846, *Pas.* 1851, vol. 2, 188 (“*attendu que, malgré la dissolution de l’association, des intérêts subsistent en commun jusqu’à la liquidation complète entre parties*”).

⁹³ Brussels 12 January 1860, *Pas.* 1860, vol. 2, 273–277. This point was raised in the first instance, and not addressed in the phase of appeal, however.

were compensated first with the “*fonds commun*” share in the personal properties of the associate that had been summoned. If this share did not suffice (or when no capital had been provided in the company statutes), personal assets were addressed. Both the “*fonds commun*” share and the liability with personal assets were limited proportionally, taking the number of partners into account.⁹⁴

Two exceptions to the “*fonds commun*” rule were acknowledged. First, in cases where the company statute appointed one partner as *gérant* (i.e. as working associate who was in charge of the firm’s funds, assets and books), then according to the Brussels Court he was considered to be the sole owner of the company’s estate.⁹⁵ As a result, a *gérant* could be held liable to pay creditors the full “*fonds*” of the company. The remainder of the debt that was not compensated could thereafter be claimed *pro rata* from the *gérant* as well as from the other associates. A second exception related to joint actions. If associates had signed together for debts, they were considered to be jointly and severally liable.⁹⁶

It is quite remarkable that for partners this understanding of irregular and unpublished *sociétés de commerce* as APs actually provided advantages vis-à-vis creditors compared to lawful and published SNCs. The latter had “*personne morale*”, but its associates were jointly and severally liable for the entire debt, and creditors were not obliged to expropriate the funds of the SNC first, before they addressed individual partners.⁹⁷ For APs as categorized by the Brussels Court there was a “*fonds commun*”, albeit within each partner’s estate only. All this meant that the creditors of an AP had to bring suit against all partners of the AP and not against one associate, as was the case with the SNC. If the creditor wanted to circumvent this procedural difficulty, he could have the summoned associate of the AP qualify as *gérant*, but then he had to provide evidence of his appointment by the other partners. However, for APs that supported undisclosed firms, with statutes not being published, this procedure was factually very difficult. As for an SNC,

⁹⁴ Brussels 10 May 1869, *Pas.* 1870, vol. 2, 196 (“... *qu’en effet, dans toute espèce de société, il y a une chose commune, dont on se propose de tirer profit; qu’il est à remarquer toutefois que, dans l’association en participation, le fonds commun reste dans le patrimoine particulier des associés, tandis que, dans les sociétés en nom collectif, il est distinct et séparé de l’avoir particulier des associés et appartient à un être moral*”).

⁹⁵ Brussels 15 February 1861, *Pas.* 1861, vol. 2, 106. See also “*Société,*” in *Dalloz Répertoire* (Paris: Dalloz, 1859), 759 (no. 1674).

⁹⁶ *Jur. Port d’Anvers*, vol. 2 (1857), 122–123 (commercial court Antwerp 29 April 1857).

⁹⁷ Brussels 14 August 1841, *Pas.* 1841, vol. 2, 379. This is remarkable, when considering the law predating the *Code de commerce*, and in view of the opinions of prominent legal scholars (Pardessus and Troplong). The ruling of the Brussels Court of Appeal was linked to the explicit provision in the code confirming the unlimited, joint and several liability of partners in a SNC. Presumably, the Court changed its position later on. See Brussels 20 June 1860, *Pas.* 1860, vol. 2, 301 (creditors of a SNC can pursue their debts against partners only after having obtained condemnation of the *société*).

one active associate could be sued for the full amount of the debt, even if there were others that were publicly known; in regard of an AP, it was best to summon all partners to court, and the fact that they were not known publicly was not considered to be a legitimate reason to claim the total debt from one of them. As for an SNC, the entirety of the company-related debt was compensated with the estate of the partner that was sued, even when it exceeded his share in the partnership. By contrast, for APs, claims of creditors against individual partners were limited to the extent of the “*fonds commun*” and the proportionate share of the partner in the debts of the firm that exceeded the “*fonds commun*”.

If, for example, two (trading) associates had set up a SNC in full accordance with the official law, providing capital of 500 francs, and the SNC had 1,000 francs of debt with one creditor, then one of the partners could be held liable to pay up 1,000 francs to the latter. If, however, the same venture were considered to be an AP, the creditor who brought suit against only one of the associates could recover no more than 500 francs (i.e. 250 as referring to the *fonds commun* and 250 as rateable share in the firm’s debts) if the associate that was addressed could not be considered *gérant*. The Court of Appeal of Brussels confirmed several times that this rule applied: APs did not entail joint and several liability.⁹⁸ In fact, this view went against the spirit of the *Code civil*, which provided that partnerships with a commercial object by law had jointly and severally liable partners (s. 1862).⁹⁹ The Brussels Court thus clearly envisaged commercial law as being entirely separate from civil law, that is, as standing beside the *Code civil*. The Court preferred to construe new solutions within the framework of the *Code de commerce*, instead of applying relevant sections of the civil code.

The *pro rata* policy of the Brussels Court of Appeal entailed a favourable attitude towards business partners who were given the opportunity to protect their personal properties from company creditors, at least to a certain extent. However, the approach of the Brussels Court did not affect all associates in the same way. Under the *pro rata* system, directors and working partners – even when they had invested sums themselves – were

⁹⁸ Brussels 18 November 1815, *Pas.* 1815, 527; Brussels 31 May 1816, *Pas.* 1816, 140; Brussels 28 July 1820, *Pas.* 1820, 203; Brussels 12 January 1822, *Pas.* 1822, 24; Brussels 16 July 1834, *Pas.* 1834, vol. 2, 189; Brussels 13 April 1848, *Pas.* 1848, vol. 2, 253.

⁹⁹ On this issue, and in regard of the AP, there was debate among legal scholars. See, for example, Eugène Persil, *Des sociétés commerciales ou commentaire sur les sociétés en général, les diverses espèces de sociétés de commerce, la manière de constater l’arbitrage forcé, la dissolution de sociétés, etc* (Paris: Nève, 1833), 229–230; Troplong, *Commentaire*, 629–631 (nos. 603–604).

better off than non-active partners who had contributed in kind (by providing expertise or labour). If the latter were known, they were held to pay *pro rata* for the firm's debts. In fact, when calculating the "*fonds commun*" only the nominal capital that was mentioned in the company statutes was taken into consideration.¹⁰⁰ A non-working partner who had invested in kind could thus face claims based on a portion of capital stock to which he had not contributed. All this proved advantageous for trading associate-directors in companies in which non-financial partners were involved, because the former saw their liabilities reduced at the expense of the latter.

Indeed, even when the company statutes stressed joint and several liability, the Brussels Court imposed *pro rata* liability for irregular and undisclosed companies. The Brussels Court of Appeal distinguished between essential and non-essential provisions in irregular and unpublished company contracts. The non-essential ones (e.g. non-competition clauses) could not be invoked,¹⁰¹ whereas the essential ones (in particular, the liability for debts) were considered to be enforceable.¹⁰² Among the non-essential provisions were those concerning joint liability and mutual agency of associates.

Furthermore, one can summarize the policy of the Brussels Court of Appeal in terms of varieties of legal personhood. The Court distinguished between legal personhood "light" (entailing priority of company-related debts over personal debts and exclusion of set-off, which was applied to lawful and published SNCs) and legal personhood "ultra light" (separation of company funds but only within the personal funds of partners, for irregular and undisclosed SNCs, SCs¹⁰³ and SAs¹⁰⁴). Joint liability of partners and mutual agency was acknowledged for the first, but not for the latter. The liability of the *gérant* in an "*association en participation*" was higher than for other associates, but for what exceeded the "*fonds commun*" was limited to a share of personal properties.

4. Organizational structures and the purpose of the firm

¹⁰⁰ It was debated among legal scholars whether an investor in kind co-owned the company assets and stock, and if so, to what extent. See "Société," in *Dalloz Répertoire* (Paris: Dalloz, 1859), 448 (no. 374).

¹⁰¹ Brussels 28 April 1852, *BJ* 1853, 522; Commercial court Antwerp 17 December 1875, *Jur. Port d'Anvers* 1876, vol. 1, 51. Perhaps the Brussels Court changed its position later on. See Brussels 8 June 1870, *BJ* 1870, 1143 (the liquidation of the community of interests "*doit être opérée conformément à l'intention commune des parties*", i.e. has to be done according to the shared intentions of those involved).

¹⁰² Brussels 3 May 1823, *Pas.* 1823, 402; Brussels 13 February 1830, *Pas.* 1830, 42. See also Commercial court Antwerp 26 November 1869, *Jur. Port d'Anvers* 1870, vol. 1, 21.

¹⁰³ Brussels 22 February 1875, *Pas.* 1875, vol. 2, 100.

¹⁰⁴ Brussels 16 February 1839, *Pas.* 1839, vol. 2, 27.

The policy that was set out by the Brussels and Antwerp judges is important when analysing the functionality of Antwerp company statutes. First, many of the contracts in the sample of 145 firms using indistinct labels such as *société* or *association* were to be considered “*associations en participation*” in the sense given by the Brussels Court of Appeal because they did not have a proper “*raison sociale*” (firm name). In at least 13.79 per cent of the statutes in the sample of 145 (i.e. 20/145), only some of the partners were mentioned in the signature of the company – moreover, without the addition “& Cie”. Secondly, many contracts for partnerships were not published via the commercial court (some 45 per cent of company agreements remained unwritten, see above). As a result of all these divergent designations, the judicial tactics of the Brussels and Antwerp courts were highly relevant. In cases where a lawsuit was brought against a business venture, the features and form of the company determined the extent of the associates’ liabilities. This section will analyse the purposes for which partnerships, which were often unpublished or irregular, were used (under 4.1). Moreover, it will examine to what extent the approaches of judges and entrepreneurs connected with each other (under 4.2).

4.1. To what extent were partnerships used for corporate finance?

For Belgium, arguments as to the inherent advantages of partnerships, also in legal terms, have not been raised thus far, for a number of reasons. First among them is that scholarly interest in company structures and their relative impact has faded over the past three decades, meaning that the debates over English, American and French counterparts have not been linked to the Belgian situation. The focus in earlier scholarly literature is much more orientated towards corporations and limited partnerships.¹⁰⁵ A second reason is that Belgium was an early leader in the Industrial Revolution, and that the share of corporations in this process was more significant than it was in France.¹⁰⁶ This level of industrialization means that the country aligns with the traditional assumption that industry needed capital,

¹⁰⁵ Laureyssens, *De naamloze vennootschappen*; Julienne Laureyssens, “*L’Esprit d’Association* and the *Société Anonyme* in Early 19th–Century Belgium,” *Revue belge de philologie et d’histoire* 2002, 517–530; Fred Stevens, “Vie et mort des sociétés commerciales en Belgique. Évolution du cadre légal, XIXe–XXe siècles,” in Michael Moss and Philippe Jobert (eds.), *Naissance et mort des entreprises en Europe XIXe–XXe siècles* (Dijon: Université de Dijon, 1994), 3–16.

¹⁰⁶ Laureyssens, “*L’Esprit d’Association*,” 519–521.

which could be pursued and secured by means of corporations. However, general and ordinary partnerships were very abundant in Belgium, as elsewhere. For the entire Kingdom of Belgium, numbers based on *actes de société* brought before commercial courts are available from 1845 onwards. They show that between August 1845 and January 1852 a vast majority of submitted *actes* concerned SNCs (511, designated as such) and that SCs (110) were also widely in use.¹⁰⁷ Even though in Belgium SAs in industry were more common than they were in France, the numbers were rather restricted; admittedly, the corporations were core players in their business sector, but even by 1850 most of them were not concerned with industrial activities.¹⁰⁸

There are some indications that the traditional arguments regarding the limited access of the SA-acknowledgment by the government, upon request of authorization, as well as those concerning the characteristics of the SA vis-à-vis general and ordinary partnerships, do not entirely correspond with views of contemporaries. For example, in his *De l'état de l'industrie et du commerce en Belgique* (1861), Clerfeyt refers to SNCs. He states:

“This form of company (*société*) [meaning the SNC] provides third parties [i.e. creditors] with an energetic and efficient security (*garantie*), but it is not – one has to admit – fit for undertakings that are more significant (such as the construction of a railroad). It is feasible only for a restricted number of partners and does not provide for attracting modest investors. Moreover, it is very difficult to find people having so much confidence in one another that they are willing to risk their entire estate to rely on their individual behaviours. This company form is too rigid, and it oversteps its purpose. Moreover, it is incomplete and insufficient [for the purpose of significant ventures].”¹⁰⁹

On the SC, he noted the following:

“With these companies, the capital can be high, low or divided, and the number of silent partners can be significant; but, on the other hand, disadvantages are present

¹⁰⁷ François-Xavier-Théodore Heuschling, *Résumé de la statistique générale de la Belgique ... pour la période décennale de 1841 à 1850* (Brussels: Hayez, 1852), 256.

¹⁰⁸ Laureyssens, *De naamloze vennootschappen*, 1, 25–40, 60–62; Laureyssens, “L’Esprit d’Association,” 519–521; Ginette Kurgan Van Hentenryk, “L’apport des actes de société à l’histoire des entreprises en Belgique,” in *Entreprises et entrepreneurs, XIXe–XXe siècles* (Paris: Université de Paris-Sorbonne, 1983), 32–45, here 32–34.

¹⁰⁹ J. Clerfeyt, *De l'état de l'industrie et du commerce en Belgique et des institutions qui s’y rattachent* (Brussels: Lesigne, 1863), 244.

as well. The unlimited and discretionary powers of the directors, the threat of unlimited liability for the silent partner when he participates in the business, the impossibility for the investor to halt damaging transactions of directors, and the common antagonism of those who should work together in their common interests, are the main disadvantages of these sorts of companies”¹¹⁰

SAs, too, were criticized. In his *De l'industrie en Belgique* from 1839, Natalis Briavoine emphasized that many SAs, as well as SCs, had gone bankrupt in the preceding years, because “money cannot be a substitute for expertise and work”. Briavoine suggested that directors had held concurrent positions in many SAs and as a result had not monitored these businesses thoroughly. The same was said of SCs, which according to Briavoine were for a large part to be considered as non-authorized SAs.¹¹¹ Briavoine’s remarks hint at corporate governance problems. Flawed selection processes seem to have been an issue. Directors were appointed not for their ability to administer the firm but for other reasons. One can presume that they were mostly bankers or that they belonged to the elitist networks of the corporation founders.

Furthermore, the abovementioned opinions are only partially corroborated by the 145 company statutes. The distinction capital-based (SC, SA) vs. non-capital-based companies (SNC) fits with the situation in Antwerp only to a certain extent. It is true that a significant number of *sociétés* and SNCs were founded without any nominal capital, and that most of their founders purported to build up capital by ploughing back profits (see figure 5).¹¹² Moreover, SAs had high nominal capital. However, the general partnership was also often used for locking in funds before the firm started its activities. The *société en commandite*, which was mostly devised as without shares (only 1 out of 12 was *par actions*), was used not only to draw in large amounts but also to attract smaller capital investments.

<insert fig. 5 here>

¹¹⁰ *Ib.*

¹¹¹ Natalis Briavoine, *De l'industrie en Belgique. Causes de décadence et de prospérité. Sa situation actuelle*, vol. 2 (Brussels: Wahlen, 1839), 237–241.

¹¹² This was demonstrated for other contemporary cities, as well as for the SNC. See Cayez, “Structures juridiques,” 229–230; Hirsch, “Naissance des sociétés,” 143; André Straus and Pierre Verley, “Parisian Industries and National Capitalism in the First Half of the Nineteenth Century (1830–1850),” in Philippe Jobert and Michael Moss (eds.), *The Birth and Death of Companies. An Historical Perspective*, (Carnforth: Parthenon, 1990), 89–103, here 99.

Fig. 5: Nominal capital (in Belgian francs) mentioned in company contracts, divided over company type (Antwerp 1830-1850).

It is evident that many company contracts were used to confirm plans for cooperating rather than to make arrangements on capital. One can distinguish between company contracts that were collaborative structures and those that contained provisions on corporate finance, either with the specification of a nominal capital or with deliberately vague descriptions (e.g. “the capital will be raised when necessary,”¹¹³ “the partners will pay up according to the needs of the firm”¹¹⁴). For both, a difference arises between contracts that served the purpose of establishing or continuing a firm, and those that were aimed to attract expertise (in that case one partner was an expert, and his participation was typically in kind; other partners provided infrastructure or capital) (see figure 6).

<insert fig. 6 here>

Fig. 6: Purpose of companies (Antwerp 1830–1850). NCF: no corporate finance, BUS: establishment of a business venture, BUSCON: consolidation of a functioning business venture, BUSEX: running of a business in combination with attracting expertise, CF: corporate finance purpose.

These numbers show that for *sociétés* 44.23 per cent (46/104) of contracts had the purpose of locking in capital investments. For other types, this share is higher (somewhat higher for SNCs: 46.15 per cent (12/26)). Indeed it is very pronounced for the SA and SC: both 100 per cent ((12/12) and (15/15)). However, Clerfeyt’s opinion that the SNC (and *a fortiori* the general partnership) was not fit for “larger undertakings” does not entirely correspond with the data. The *société* was used for starting up business ventures for which capital was collected.

Some 30.77 per cent of *sociétés* (32/104, see figure 7) were for manufacturing firms; for SNCs this percentage was 19.23 per cent (5/26); for SCs 8.5 per cent (1/12) and for SAs it

¹¹³ E.g. SAA, Notaries, 9749, deed no. 160 (6 Dec. 1833).

¹¹⁴ E.g. SAA, Notaries, 9754, deed no. 84 (9 Aug. 1838).

was 13.33 per cent (2/15). As was mentioned above, in the period under examination the appetite for investments in manufacturing shops and industry in Antwerp was generally limited. Nonetheless, the mainly preindustrial processing shops that were set up in Antwerp during the first half of the nineteenth century required financing as well.¹¹⁵ The raw materials of sugar refineries and tobacco shops were also expensive because of import tariffs,¹¹⁶ and when new locations were used, the installation of mills and chimneys was often necessary.¹¹⁷

What was true for manufacturing ventures did not apply to trading houses. In practice, new ventures in insurance, brokerage and commission business sectors did generally require less starting capital than manufacturing firms.¹¹⁸ The predominant use of SAs for insurance and banking must be analysed with care in this regard. The nominal capital of these companies was devised as a public offering: it was a projection rather than a reflection of a presence of funds. Shareholders were invited to buy stock, and only when all shares were bought was the purported capital acquired. Even though for other company types such projections were possible as well, they were less common.¹¹⁹ The general partnership was popular for general trading companies (30.77 per cent, 32/104, see figure 7), but the SNC (57.69 per cent, 15/26) and SC (58.33 per cent, 7/12) were used relatively more often. SNC contracts for general wholesale and commission ventures often provided for ploughed-back profits and lacked provisions on nominal capital. By contrast, SCs and SAs always served the purpose of finance. Clerfeyt was correct in stating that the SC and SA were combined with higher capital than were other company types. Yet SCs and SAs were used more generally for commercial services and trading houses, though seldom in ventures of industry or manufacturing shops.

¹¹⁵ Please note that in De ruysscher, "Handelsvennootschappen" the labels of "manufacturing" and "industry" were largely combined. However, a more subtle distinction between the nature of activity, size of the business and corporate finance purposes is fruitful for the present argument. Even though manufacturing shops were largely preindustrial (in terms of size and methods of processing and production), the purpose of drawing in capital, which has mainly been linked to industry, could be vital for them as well.

¹¹⁶ Greefs, *Zakenlieden*, 79; Thijs, "De geschiedenis van de suikernijverheid," 43–44.

¹¹⁷ Thijs, "De geschiedenis van de suikernijverheid," 42–43.

¹¹⁸ Hilde Greefs, "Enkele zwaartepunten in het onderzoek naar ondernemerschap en ondernemersstrategieën te Antwerpen gedurende de periode 1794–1870," *Revue belge de philologie et d'histoire* 76 (1998), 419–442, here 433–434.

¹¹⁹ If company statutes provided the nominal capital they usually also mentioned the date on which it had to be paid. See SAA, ROA, 571, fols. 59v–61r (SNC, reg. 26 Nov. 1840), 576, fols. 91v–92v (SNC, reg. 3 Oct. 1842), 579, fols. 84r–85r (SNC, reg. 2 Oct. 1843).

<insert fig. 7 here>

Fig. 7: Type of industry, per company type (Antwerp 1830–1850); these numbers are based on the description of the purpose of the company in the contract. “General trade” encompasses wholesale activities, commissioning and/or financial services, which were usually not strictly separated from each other. Manufacturing firms were defined as those enterprises that the parties at the company contract labelled “*fabrique*”, or which involved production activities with specialized infrastructure (sugar refineries, leather shops).

The abovementioned results correspond to data from other nineteenth-century cities, including Paris, Marseille, Lille, and Lyon. The fact that many general partnerships and SNCs were also used for manufacturing has been explained in terms of family relations and close monitoring (henceforth referred to as the “monitoring” argument).¹²⁰ It has also been stated that they served as start-up instruments for enterprises, which when they became more successful were switched to the SC or SA-type (henceforth referred to as the “maturing” argument).¹²¹ For Paris, for example, it has been found out that the SNC was used not only between relatives, however, but also to a large extent between non-relatives. SNCs of this type included companies established for the sale of manufactured products in a wider region around the city and for cooperative ventures between craftsmen.¹²²

For Antwerp, previous research by Hilde Greefs has pointed out to what extent non-relatives were working in business together during the first half of the nineteenth century. In a population of 234 merchants and entrepreneurs, only 45 worked with non-relatives; the family venture, consisting of at least two family members, was dominant (56 per cent of firms).¹²³ The majority of these family firms had not been established as such but had evolved into one, when children were made partners after some time, for example, or when heirs and/or the widow of deceased founders continued the business.¹²⁴ Most of this

¹²⁰ Pierre Caron, “Commerçants et industriels de la Côte-d’Or au XIXe siècle vus à travers les actes de société,” *Annales de Bourgogne* 1982, 89–121, here 105–106, 120; Cayez, “Structures juridiques,” 235; Hirsch, “Naissance des sociétés,” 154–155.

¹²¹ Cayez, “Structures juridiques,” 240–241; Lescure, “Companies and Manufacturers,” 111–112.

¹²² Straus and Verley, “Parisian Industries,” 100–101.

¹²³ Greefs, *Zakenlieden*, 294.

¹²⁴ Greefs, *Zakenlieden*, 300.

information was based on practice-related documents that show collaborative undertakings and contacts. The data from the sample of 145 firms yield a less significant number of family businesses. The criterion used to label companies in the sample of 145 as family firms is the presence of two or more associates who have the same family name or who are named as spouses. Using this benchmark, at least 67.61 per cent (96/142, see figure 8) of the 145 company contracts concerned ventures that were not family firms. This lower share of family firms is most probably due to the fact that collaboration was not always structured in the form of a company contract. It can thus be presumed that many unwritten and unregistered agreements on business ventures involved family members, and that enactment of company statutes was more common when non-relatives were involved. Nonetheless, it is remarkable that the relationship between associates did not influence the choice of company type even when statutes were written, enacted and published. Distribution of company types over firms of relatives and non-relatives largely corresponds to the proportions in the general population of company statutes. SCs are excepted because they were used relatively more often for collaboration between relatives than other company types.¹²⁵

<insert fig. 8 here>

Fig. 8: Relations between partners, per company type (Antwerp 1830–1850). SAs were not included because they served to draw in capital mostly from outsiders.

Manufacturing firms could be structured as general and ordinary partnerships when they purported to delegate the management to an agent-director. However, in a substantial share of general partnerships for manufacturing firms, partners – who were typically investors of capital as well as craftsmen or experts investing in kind – were considered as equals (8/32, 25 per cent, see figure 9). This was less the case when capital was invested from the start and was not devised as an accrual of ploughed-back profits. Typically, in such “management firms” one or more financial investors were the directors. Most *sociétés* for manufacturing firms entailed unequal investments in combination with agency restrictions

¹²⁵ These findings have also been obtained for Lyon. See Cayez, “Structures juridiques,” 235; Lescure and Straus, “Rythmes et espaces,” 204. Please note the error of “68.75%” for “68.57%” in De ruysscher, “Handelsvennootschappen,” 189.

(12/32, 37.5 per cent). For trading associations general partnership contracts were more conventionally egalitarian than for manufacturing firms (13/32, 40.63 per cent vs 25 per cent), because they more often lacked provisions on capital or had associates who all invested financial sums and not labour or expertise.

<insert fig. 9 here>

Fig. 9: Company statutes for manufacturing firms, per company type (Antwerp 1830–1850); these numbers are based on the agency provisions in the statutes. EQINV: partners invested the same share of capital in money or the statutes do not provide capital. UNEQINV: partners invested a different share of capital or some contributed in kind whereas others invested financial sums – in cases where the statutes did not provide any nominal capital and when investment in kind was not made by all partners, the company was categorized under this label. EQAG: all partners had mutual agency. UNEQAG: the statutes may or may not provide restrictions on agency of partners, though they contain a firm name that does not include all partners' names (or the addition “& Cie”). SAs are not included because they always combined unequal investments with unequal agency.

<insert fig. 10>

Fig. 10: Company statutes for trading associations, per company type (Antwerp 1830–1850); these numbers are based on the description of the purpose of the firm in the contract. For abbreviations, see the notes below figure 9. SAs were not included for the same reason as mentioned under figure 9.

4.2. Mercantile strategies responding to legal requirements and judicial approaches

Did partners avoid publication in order to profit from the *pro rata* approach of the Brussels and Antwerp judges? It is possible that managing partners avoided the proper publication of statutes in order to reduce their external liabilities vis-à-vis creditors. This option may have been linked to the fact that trading and administering partners, in particular, took the

initiative of having a contract drafted and published. Another possible trend may have been that associates arranged factual limited liability when the statutes mentioned some partners that were not included in the company's signature and remained unpublished. As a result, they were "hidden" from the creditors of the firm. When partners were not publicly known, they could not be sued for company-related debts. Publishing the statutes of a firm meant that all names of partners were made known publicly.

The proportions of company types over the population of published, enacted and privately written contracts can be inferred to a large extent from the 1856-1857 sample. It yields the finding that some types of companies are more prominent among the statutes exclusively published via the commercial court than were others. For SNCs and general partnerships many statutes were brought before the commercial court only, and these had not already been registered (43.48 per cent, 20/46, see figure 11). If contracts of SNCs and *sociétés* were registered before being submitted at the court, then in the majority of cases it was done at the registration office alone, and not with a notary (72.73 per cent (16/22) v. 27.27 per cent (6/22)). For SCs, too, there was a tradition of submitting private contracts directly to the court without any registration one way or another (50 per cent, 4/8). For SCs, however, registration before a notary was more popular than for the *société* and SNC (25 per cent (2/8) vs. 15.22 per cent (7/46)). When considering all this, it can be assumed that in 1830-1850 there were many more contracts of *sociétés* and SNCs than those in the sample of 145. Within this same period, moreover, the number of *sociétés en commandite* must have been more significant than can be deduced from the 1830-1850 sample. When considering this data, it cannot be ruled out that higher numbers of generic *sociétés* in the population of unpublished statutes reflect a tendency to manage partners to circumvent joint and full liability, or of devising factual limited liability.

<insert fig. 11 here>

Fig. 11: Proportions of company contracts in the sample of July 1856-Dec. 1857 (see above), per type and method of registration and publicity. Note that the SNC and *société* (general partnership) cannot be distinguished on the basis of the mentions in *Jurisprudence du Port d'Anvers*. The numbers for SAs must be interpreted with care. In particular the number of statutes brought before the commercial court, though without a counterpart in the ledgers of the registration offices or in notarial deeds (in italics), can be biased because of the timing of administrative formalities. Presumably governmental approval and publicity were solicited before (full) notarial registration.¹²⁶

However, the aforementioned question also touches upon the contents of company statutes, and considering the problem from that perspective largely rules out the above explanations. Counter-indications for liability reduction in favour of directors are found in those company statutes that were duly published. They contain incomplete company signatures as well, even though they were not functional. The 1856-1857 sample shows that 16.67 per cent (9/54) of excerpts of published statutes contained unlawful company names. This proportion is largely comparable to the share of registered statutes with incomplete “*raisons sociales*” (13.79 per cent, 20/145). The deficient company names in these samples cannot have been devised so as to opt for the *pro rata* regime, because the statutes were made public and contained the names of all partners. In a published SNC, a director-associate was jointly and severally liable, as were all associates.¹²⁷ Moreover, those contracts with unlawful firm names that were registered at the registration offices – of which most were published in the commercial court – were signed by all associates, as well as by those who invested in kind.

Furthermore, the data of figures 9 and 10 do not demonstrate any systematic director-managed opting-in for the liability regime that was instituted by the Brussels Court

¹²⁶ In De ruysscher, “Handelsvennootschappen,” 187 it is presumed that all SA statutes were notarial from the start. The data there corresponds to the 145-sample. The 1856–1857 sample invites for nuances at this point.

¹²⁷ s. 22 *Code de commerce*

of Appeal and the Antwerp commercial court. Since manufacturing firms had a shop and equipment, the personal liability of partners and directors for these ventures may have posed less of a problem than for trading associations, which worked with merchandise that was often not present or which had intangible assets. If assets were easily found, they could be seized. This was more likely the case for manufacturing firms than in respect of trading ventures. However, associations for trade that provided equal agency of partners in their statutes were more common than manufacturing shops that treated associates on the same footing. One would expect attempts at shielding administrators within the company statutes when personal liability was an issue, but this was not the case.

Another explanation for the high numbers of unpublished partnership contracts may be that lack of publication was *de facto* a limitation of liability. However, when considering the 1856-1857 sample, the share of non-published (written) statutes does not reflect a higher number of companies having incomplete firm names or unequal agency compared to the published ones. It is possible that unwritten contracts were mostly devised in such terms, but that cannot be proved. There are some indications that firm names could remain private; they were not always communicated to the outside world.¹²⁸ Another possible hint that unwritten statutes more often served to shield investors is the higher number of family firms mentioned in documents stemming from practice, as compared to (written and enacted) company statutes. But then again, if limited liability was an important problem, why was the safest option (a SC), even among the unpublished (yet written) statutes, so unpopular?

The abovementioned arrangements of incomplete company signatures in published statutes were more likely chosen to appoint some or one of the partners as administrators. These agents were not comparable to *gérants*, who were liable with their personal properties but to the extent of the "*fonds commun*" and a surplus share only. By contrast, administrators were fully liable with their personal properties. It would have been an advantage for associates delegating powers to an agent to publish the statutes (the agent was then unlimitedly liable), rather than keep the statutes unpublished (meaning that

¹²⁸ Some address books of merchants and shopkeepers list their names with mention of their firm's name. It seems that not all of them revealed that they were representing a company. See, for example, Léonard Van den Wijngaert, *Almanach. Indicateur commercial de la ville d'Anvers* (Antwerp: Van den Wijngaert, 1828), 149 (Fr. J. Ferd. Theunissen, general trader), and 169 (Pierre Michel Ergo, sugar refiner). Both were involved in a company for their listed profession at that time. See SAA, ROA, B2, 96, fo. 26v–27r (reg. 8 Febr. 1831) and SAA, ROA, BA, 108, fo. 101 r–103v. (reg. 1 July 1830).

personal liability of the *gérant* was capped). But, as the abovementioned sample of 1856-1857 shows, the unpublished and published statutes do not differ much in regards of incomplete company signatures. The choice for agents was thus a matter of administration rather than liability. Associates who were not active in trade accepted their liabilities, but they appointed administrators who would answer first for the debts of the company.

In summary, therefore, there are few indications that the judicial approaches of the Brussels Court and Antwerp commercial court fundamentally determined contractual provisions on agency restrictions. It is more likely that there was a general path dependence in commercial practice, irrespective of the contents of the French codes and interpretation of judges, while building on the traditions of the Old Regime. Courts did not merely corroborate irregular and unpublished statutes but did go a long way in upholding them. The differences between judicial strategies and associates' views were limited overall. Path dependence is evident in the continuity of designations for companies between the eighteenth and nineteenth century. Moreover, path dependence among entrepreneurs explains why notaries also drafted company statutes without having support in the official law, or even in judicial policies. It was judges who adapted the legal framework on the basis of contractual practice, rather than the other way round.

5. Conclusion

The data analysed above is rather counter-intuitive. Company structures typically associated with small business could be used for activities of manufacturing. *Sociétés* and SNCs were chosen often even when capital was locked in. *Sociétés en commandite*, typically considered as vehicles for large companies with outside investors, were mainly used to structure family firms, even though they always encompassed invested capital. Moreover, company contracts were not, to a large extent, used to finance commercial activities, even when they were written down and registered. The arguments mentioned as to monitoring and maturing thus invite further reflection when considering the Antwerp case. The maturing argument cannot explain why both new and consolidated businesses were typically structured as *sociétés* and SNCs. Similarly, the monitoring argument does not support the relatively frequent use of SCs among family members, although only if family ties are taken as supplementing the contents of the company contract. Indeed, SCs separated investment

from control, as Clerfeyt rightly stated. Moreover, there were not more partnerships for collaboration with non-relatives, which one could infer from the monitoring argument. As a result, the functionalities and intended uses of partnerships were much broader than has often been thought.

The abovementioned legal approaches, by jurists and courts, lowered the bar for considering business ventures to be valid, even when they had not been formalized in a contract. A likely reason was the balancing of creditors' and associates' interests. In this regard, "absolute nullity" of unpublished and irregular companies, which was proposed by some legal scholars on the basis of sections in the *Code de commerce*, was a blunt concept. If a company agreement was pronounced as being null and void in this sense, the contracts that had been signed on its behalf were also affected. Retroactivity in categorizing irregular and undisclosed firms as non-existent technically deprived creditors of their guarantee, which lay in the joint and several liabilities of the associates mentioned in the firm's name. Moreover, in cases where a winding up occurred on account of retroactive nullity, associates lost what they had built up (reputation, capital). As a result, the Brussels Court of Appeal, and the Antwerp commercial court in its wake, accepted an intermediate form between joint and limited liability of associates in irregular and unpublished companies.

Another conclusion following on from the combined analysis of commercial and legal practices in this particular period of 1830-1850 is that limited liability was not yet a fundamental feature of companies. The approaches of the Antwerp and Brussels courts technically opened up the possibility of bringing "hidden" partners into general partnerships. In theory, such outsiders could be sued for the debts of the firm, but in practice – when the contract had not been deposited at the commercial court, and the firm's name did not mention them – who could know that they were involved? "Hidden" partners in undisclosed partnerships could be better off than silent partners in officialised *sociétés en commandite*. The latter could be sued for their share in the capital, if it had not been paid up,¹²⁹ whereas the former could remain under the creditors' radar. However, when considering the numbers of company statutes, it is not likely that deliberate tactics to

¹²⁹ Brussels 31 Oct. 1871, *Pas.* 1872, vol. 2, 55.

avoid publication in order to protect associates from creditors were widespread, perhaps with the exception of unwritten company agreements. Furthermore, in terms of liability and agency in judicial and contractual practice, company types, as mentioned in the *Code de commerce*, were largely interchangeable, if not altogether ignored. It seems that parties to company agreements of any form could devise more or less full liability of some associates in combination with restricted liability of others.

It is likely that path dependence in commercial practice explains the lasting popularity of these general partnerships that were not in line with the commercial code. Judges in the Antwerp and Brussels courts bridged the gap between the official law and mercantile practices to a large extent. In any case, and considering that judicial approaches and mercantile practice did not entirely overlap, the former did not provide any significant incentive for the business community to adjust agreements of company. Considering all this, the activity of organizing and structuring enterprises must be reappraised. For example, in view of the above, the alleged “weak” structure of many large associations of dockers and transporters in the Antwerp port poses less of a problem.¹³⁰ Moreover, the legal-economic history of the era of industrialization can be reconsidered: networks and informal constraints were undoubtedly important, but collaboration was also based on support from legal actors, even though the incentives for change came from below, including from local courts, rather than from within the spheres of government.¹³¹

In view of a large factual comparability of company types, one possible method of further explaining differences in choices of entrepreneurs as to the structure of their business ventures would be to detail the social strata to which partners and directors belonged. Presumably the social profile of associates not only determined the type of business in

¹³⁰ The “maturing” argument and respect for tradition are commonly brought forward in debates concerning the “*naties*” (i.e. associations) in the Antwerp port. However, they often deliberately opted for the structure of *société* or SNC. See H. Bosmans, “De Antwerpse naties,” in *Liber amicorum Tricot* (Antwerp: Kluwer, 1988), 95–105; Greta Devos, “Het juridisch statuut van de Antwerpse naties – 19de–20ste eeuw,” in *Publiek recht ruim bekeken. Opstellen aangeboden aan prof. J. Gijssels* (Deurne: Kluwer, 1994), 230–240; Hugo van Driel and Greta Devos, “Path Dependence in Ports. The Persistence of Cooperative Forms,” *Business History Review* 81 (2007), 681–708, here 691, and 704–705.

¹³¹ Many authors have emphasized that commercial credit was in crisis in mid-nineteenth century Antwerp, especially from the end of the 1830s onwards. See Bernard S. Chlepnier, *La Banque en Belgique. Étude historique et économique*, vol. 1 (Brussels: Lamertin, 1926), 80–85; Veraghtert, “De Antwerpse bankwereld,” 196–203. However, this crisis mostly concerned bank loans and advances on deliveries. The authors mentioned have not considered the widespread use of letters of credit, order notes and private current accounts. Moreover, they have not taken the flexible legal approaches towards security and cooperation into account.

which they engaged, but also the methods used to organize their undertakings. Would a banker who wanted to set up a family firm use the same tactics and methods as a shopkeeper who intended to introduce his son or daughter into his business? Maybe the former would go to a notary and set up a SC, whereas the latter would draw up a private contract of general partnership or SNC that was immediately brought before the commercial court. From these perspectives, further scrutiny of the sample of 145 contracts might provide answers to these questions in future.