

The Organization of Mercantile Capitalism in the Low Countries

*Private Partnerships in Early Modern Antwerp (1480-1620)*¹

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Abstract

By means of an in-depth analysis of 132 partnership agreements, which had been notarized in the city of Antwerp between 1480 and 1620, the present article aspires to provide a substantiated narrative on the use as well as legal features of private partnerships in the early modern Low Countries. In so doing, it became apparent that such small-scale partnerships constituted an effective means in the hands of, mostly non-related, merchants and craftsmen who were looking for legal certainty. Moreover, the examination of these partnership agreements demonstrated the wide-ranging contractual freedom that contracting parties in sixteenth-century Antwerp could dispose of and that therefore historical reality not necessarily complies with legal ideas and concepts provided for by legislative or statutory documents.

1 Introduction

Economic historians, dealing with the exceptional growth and subsequent stagnation of the Antwerp market during the sixteenth century, usually address the significance of modestly-organized private partnerships during the city's Golden Age, more specifically as a means to combine finance and agency functions, diversify risks, reduce operational and monitoring costs, and guarantee the continuity of the firm. Wilfrid Brulez, for example, em-

¹ I wish to express my sincere gratitude to the editorial board of the TSEG and the anonymous reviewers in particular for proofreading and commenting upon an earlier version of this article. Their remarks and suggestions definitely lifted its scientific quality to a higher level.

phasized that, in opposition to the large, centralized ‘family companies’ with branches in various European cities, like the Fugger, Medici and Affaitadi companies, the sixteenth century constituted the pivotal breakthrough period as regards small-scale commercial and artisanal enterprises established by a few, not necessarily related, entrepreneurs for a fixed period of time. Such modestly-organized, but most flexible, partnerships were to dominate and fuel Antwerp’s Golden Age.²

Most recently, Jeroen Puttevils devoted an entire chapter of his doctoral dissertation to the structure and idiosyncrasies of private partnerships in sixteenth-century Antwerp.³ Like many of his peers, Puttevils was primarily interested in the role of kinship in the governance of trade, but he also addressed various other partnership-related issues like capital inputs, duration, the division of tasks, the accumulation of partnerships and the external liability of partners.⁴ In opposition to Jan Goris, who stressed the importance of family ties in establishing commercial partnerships in sixteenth-century Antwerp, Puttevils observed a manifest level of ‘mutual unfamiliarity’ among contracting parties.⁵ The author attributed his observation to the essential nature of notarized documents. As being supported and enforced by Antwerp law, notarized partnership agreements accommodated the need of non-related contracting parties for legal certainty.

Unfortunately, Puttevils’ research sample was sketchy and constituted of merely 27 equity contracts, most of them dated between 1530 and 1563,

2 W. Brulez, *De firma della Faille en de internationale handel van Vlaamse firma’s in de 16e eeuw* (Brussels 1959) 363-365. In order to safeguard the present article from an overload of bibliographical references, I refer to the comprehensive bibliography – as far as Antwerp’s Golden Age is concerned – in the recent publication of Jeroen Puttevils’ doctoral dissertation: J. Puttevils, *Merchants and trading in the sixteenth century* (New York 2015).

3 J. Puttevils, *The ascent of merchants from the southern Low Countries: from Antwerp to Europe (1480-1585)* (Unpublished doctoral dissertation, History Department, University of Antwerp) (Antwerp 2012) 191-238.

4 With regard to the use of private partnerships in other economic centres belonging to the early modern Low Countries, one may refer to the work of Jean Lejeune on the rise of capitalism in the sixteenth-century Prince-Bishopric of Liège as well as Milja van Tielhof’s study on the Baltic grain trade in Amsterdam during the early modern period (J. Lejeune, *La formation du capitalisme moderne dans la principauté de Liège au XVIe siècle* (Liège-Paris 1939); M. van Tielhof, *The ‘Mother of all Trades’. The Baltic grain trade in Amsterdam from the late 16th to the early 19th century* (Leiden-Boston-Cologne 2002) 118-142).

5 J. Goris, *Étude sur les colonies marchandes méridionales (portugais, espagnols, italiens) à Anvers de 1488 à 1567* (Louvain 1925) 101-108; Puttevils, *The ascent of merchants*, 200. Van Tielhof too observed a heavy reliance on family and kinsfolk as far as choosing one’s partner(s) and agent (s) is concerned.

whereas Goris only made reference to a handful of notarized partnership agreements. Therefore, the present article aspires to provide a more substantiated narrative on the use and characteristics of private partnerships in sixteenth-century Antwerp. In so doing, it makes use of a much more comprehensive set of data, namely all partnerships agreements which had been notarized in the city between 1480 and 1620 and which are still being preserved in the Antwerp City and State Archives.⁶

In addition to Antwerp's economic growth during the sixteenth century and its attested acquaintance with private partnerships, there is another reason why the city has been chosen to serve as the object of a case study on equity capital organization. No other city or region in the early modern

6 Whereas the study of private partnerships in the early modern Low Countries on the basis of (notarized) partnership agreements hardly received scholarly attention so far, such approach has been used more frequently and successfully with regard to various other late medieval and early modern economic centres located outside the Low Countries. I will restrict myself here to the most significant studies: H. Lévy-Bruhl, *Histoire juridique des sociétés de commerce en France aux XVIIe et XVIIIe siècles* (Paris 1938); Ph. Wolff, *Commerces et marchands de Toulouse (vers 1350 – vers 1450)* (Paris 1954); Ph. Didier, 'Le contrat de société en Bourgogne aux XIVe et XVe siècles d'après les archives notariales', *The Legal History Review* 41 (1973) 101-117; R. Noguera de Guzman, *La compañía mercantil en Barcelona durante los siglos XV y XVI y las "commendas" del siglo XIV* (Valencia 1967); C. Petit, *Compañías mercantiles en Bilbao (1737-1829)* (Seville 1980); F.H. Abed Al-Hussein, *Trade and business community in old Castile: Medina del Campo 1500-1575* (Unpublished doctoral dissertation, University of East Anglia, School of Modern Languages and European History) (Norwich 1982); A. Garcia I Sanz and J.M. Madurell I Marimon, *Societats mercantils medieval a Barcelona* (Barcelona 1986); F.J. Lorenzo Pinar, 'La formación de compañías comerciales en Zamora en el siglo XVI (1575-1600)', *Studia historica. Historia moderna* 35 (2013) 307-342; Idem, 'La formación de compañías comerciales en Salamanca en el siglo XVI', *Obradoiro de Historia Moderna* 22 (2013) 283-314. As regards late medieval and early modern Florence, some interesting, yet merely generic, remarks can be found in: R.A. Goldthwaite, *The economy of Renaissance Florence* (Baltimore 2009) 64-79 and 298-307. Another study of sixteenth- and seventeenth-century partnership agreements is set in Florence and Lucca: M. Carmona, 'Aspects du capitalisme toscan aux XVIe et XVIIe siècles. Les sociétés en commandite à Florence et à Lucques', *Revue d'Histoire Modern et Contemporaine* 11 (1964) 81-108. Yet, this study restricts itself to so-called limited partnerships. More literature on early modern Italy can be found in: Goldthwaite, *The economy of Renaissance Florence*, 67. As far as the Hanseatic territories are concerned, see: A. Cordes, *Spätmittelalterlicher Gesellschaftshandel im Hanseraum* (Cologne 1998) 109-174, as well as the extensive bibliography on pages xvi-xxxii.

Low Countries recorded its commercial practices as often and extensive as the city of Antwerp did.⁷ The customary compilations of 1582 (*Consuetudines impressae*) and 1608 (*Consuetudines compilatae*) each comprised hundreds of articles on commercial practices.⁸ Whereas the 1582 compilation did not distinguish between various types of private partnerships yet, its 1608 successor demonstrates some initial attempts of categorization.⁹ The compilation distinguishes between general partnerships with and without a contractually authorized administrator (articles 4.9.4 and 4.9.6), the anonymous partnership (article 4.9.7), and the so-called *contractus trinus*, i.e. a combination of three contracts (partnership, sale and insurance) as a means to circumvent the obligation on usury (article 4.9.9). Article 4.9.8 postulated the limited liability of a so-called *deelhebber*. The article states that he who merely participates in a company's business by means of a certain amount of money in order to share in the profits and losses of the company cannot be held accountable personally for the debts of the company, nor can he lose more than the actual size of his initial investment, as long as he is not a

7 On the recording process and history of the Antwerp customary compilations, see: D. De ruysscher, *Naer het Romeinsch recht alsmede den stiel mercantiel'. Handel en recht in de Antwerpse rechtbank (16de-17de eeuw)* (Kortrijk 2009) 31-98; B. van Hofstraeten, *Juridisch Humanisme en Costumiere Acculturatie. Inhouds- en vormbepalende factoren van de Antwerpse Consuetudines compilatae (1608) en het Gelderse Land- en Stadsrecht (1620)* (Maastricht 2008); M. Gotzen, 'De costumiere bronnen voor de studie van het Oud-Antwerpsch burgerlijk recht', *Rechtskundig Tijdschrift voor België* (1949) 3-16, 105-124 and 191-208.

8 Through the process of 'customary acculturation' various titles regarding commercial topics, among which the one on company law, were incorporated in the registered customs of Roermond (*Gelderse Land en Stadsrecht*, 1620). (B. van Hofstraeten, 'Costumiere acculturatie. De Antwerpse *Consuetudines compilatae* (1608) als model voor het *Gelderse Land- en Stadsrecht* (1620)', *Publications de la société historique et archéologique dans le Limbourg* 144 (2009) 9-56; Idem, 'Het vennootschapsrecht in het Gelderse Land- en Stadsrecht van het Overkwartier van Roermond (1620)', in: A.M.J.A. Berkvens and Th.J. van Rensch (eds.), *In hoede van rechte gekeerd. Opstellen ter gelegenheid van dertig jaar Werkgroep Limburgse Rechtsgeschiedenis* (Maastricht 2010) 131-150). Besides Antwerp and Roermond, stipulations on private partnerships in early modern customary compilations in the Low Countries can only be identified in the respective collections of Oudenaarde in Flanders (*Costumen der stede, vryhede ende casselbrye van Aude-narde*, 1584) and the old Hanseatic city of Kampen in the province of Overijssel (mid-sixteenth century), the *Landrecht van Over-Isel* (1630), and the statutes of the city of Tiel in Gelders (1659). (*Recueil des anciennes coutumes de la Belgique* I. Th. de Limburg-Stirum (ed.) (Brussels 1882); O. Moorman van Kappen, 'Historisch-vennootschapsrechtelijke sprokkelingen in het oude Overijssel en Gelderland', in: E.A.A. Luijten (ed.), *Goed en trouw. Opstellen aangeboden aan Prof. mr. W.C.L. van der Grinten ter gelegenheid van zijn afscheid als hoogleraar aan de Katholieke Universiteit Nijmegen* (Zwolle 1984) 153-171, here 161-164).

9 Antwerp City Archives (hereafter ACA), Vierschaar (hereafter V), inv. nr. 43, *Novissimae consuetudines Antverpienses*, book 4, title 9.

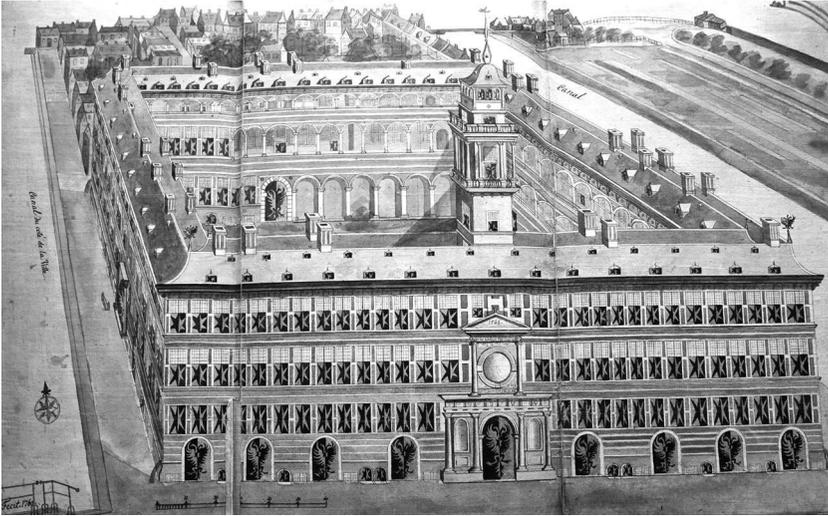


Illustration 1: Coloured drawing of the Antwerp kontor of the Hanseatic League, the largest Hanseatic building of all times and a material manifestation of the city's prosperity during the sixteenth century; Stadtarchiv Hansestadt Lübeck, ASA Externa Batavica (Niederlande und Flandern).

medegesel or full partner, nor mentioned as such in the partnership agreement.¹⁰ From a legal point of view, such participation appears to be more reminiscent of a pure *'Kapitaleinlage zum Gewinn und Verlust'*, as dealt with in the sixteenth-century statutes of various German merchant cities (Nürnberg, Frankfurt, Lüneburg), as well as of the Genoese *participatio* explicated in the city's statutes of 1588, than the *accomandita*-partnership or limited partnership as described in numerous early modern examples of Italian statutory legislation (Florence, Bologna, Lucca, Rome).¹¹

These categories, provided for by contemporaneous legislation and jurisprudence, are used frequently by legal as well as economic historians in order to describe corporate structures in early modern Antwerp. However, recent research has demonstrated that municipal statutes – at least those

¹⁰ *Ibidem*, 200–201.

¹¹ On the fundamental differences between the *participatio* and the *accomandita*, see: R. Mehr, *Societas und universitas: Römischrechtliche Institute im Unternehmensgesellschaftsrecht vor 1800* (Cologne 2008) 167–182; W. Endemann, *Studien in der romanisch-kanonistischen Wirtschafts- und Rechtslehre bis gegen Ende des siebenzehnten Jahrhunderts*, (Berlin 1874) 399–408.

concerning private partnerships – ought to be approached with a reasonable deal of reserve as far as their reliability, as a source for our knowledge of early modern commercial practices in the Low Countries, is concerned.¹² Often, the content of these recorded customs – mostly collected and drafted by jurists primarily trained in Roman law – differed significantly from the genuine commercial practices that were actually in use on the Antwerp market during the sixteenth century. An exhaustive examination of the corporate structures presented to us by the preserved partnership agreements therefore allows for a comparison with the ideal-type categories described in the *Consuetudines compilatae*. Did their manifest presence in the 1608 compilation match their actual significance in sixteenth-century Antwerp?¹³ Likewise, the present article will further scrutinise the appropriateness of municipal statutes as a means for economic historians to identify actual mercantile practices.¹⁴

These research questions will be addressed by means of an in-depth analysis of those partnership types that can be identified in sixteenth-

12 B. van Hofstraeten, 'Jurisdictional complexity and the Antwerp *ius proprium* about 1600', in: S.P. Donlan and D. Heirbaut (eds.), *The Laws' Many Bodies. Studies in Legal Hybridity and Jurisdictional Complexity, c1600-1900* (Berlin 2015) 57-80.

14 In addition to economic historians, such assessment will serve legal historians too. Whereas the outset of the twenty-first century experienced an increased interest in the history of early modern private partnerships and its corresponding company law, these studies - as their predecessors in the twentieth century - largely relied on legislative and jurisprudential sources, instead of sources directly produced by mercantile practice, in order to describe corporate practices in the early modern Low Countries: D. De ruysscher, 'A Business Trust for Partnerships? Early Conceptions of Company-Related Assets in Legal Literature and Antwerp Forensic and Commercial Practice (Late Sixteenth-Early Seventeenth Century)', in: B. van Hofstraeten and W. Decock (eds.), *Companies and Company Law in Late Medieval and Early Modern Europe* (Louvain 2016) 9-27; W. Decock, 'In Defense of Commercial Capitalism: Lessius, Partnerships and the Contractus Trinus', in: B. van Hofstraeten and W. Decock (eds.), *Companies and Company Law in Late Medieval and Early Modern Europe* (Louvain 2016) 55-90; H.M. Punt, *Het vennootschapsrecht van Holland: het vennootschapsrecht van Holland, Zeeland en West-Friesland in de rechtspraak van de Hoge Raad van Holland, Zeeland en West-Friesland* (Deventer 2010); W.D.H. Asser, *In solidum of pro parte: een onderzoek naar de ontwikkelingsgeschiedenis van de hoofdelijke en gedeelde aansprakelijkheid van vennoten tegenover derden* (Leiden 1983); W.F. Lichtenauer, *Geschiedenis van de wetenschap van het handelsrecht in Nederland tot 1809* (Amsterdam 1956); F.J.F.M. Duynstee, *Commanditaire vraagstukken* (Zwolle 1940). Only Simon Van Brakel showed, at the outset of the twentieth century, some interest in notarized partnership agreements by means of which private companies had been established in sixteenth- and seventeenth-century Amsterdam and Rotterdam (S. van Brakel, 'Ontbrekende schakels in de ontwikkeling van ons vennootschapsrecht', in: *Rechtshistorische opstellen aangeboden aan Mr. S. J. Fockema Andreae, hoogleraar aan de Rijksuniversiteit te Leiden* (Haarlem 1914) 153-194; Idem, 'Een tiental vennootschapsacten uit de 17de eeuw', *Bijdragen en Mededeelingen van het Historisch Genootschap* 37 (1916) 182-231). Unfortunately, his contributions remained above all very concise.

century Antwerp, supplemented by a thorough examination of the way in which these private partnerships were used as well as the manner in which they were designed contractually.

2 Methodology

Besides the personal and professional archives of individual merchants which are currently preserved in the *UNESCO Memory of the World* archive of the *Insolvente Boedelkamer*, the Antwerp *Certificatieboeken*, as well as the registers of the city's aldermen (*Schepenregisters*), the surviving protocol books of those notaries active in Antwerp during the long sixteenth century (1480-1620) constitute a quintessential source in reconstructing the application mode as well as the organizational features of early modern private partnerships. More specifically, the research's main interest lies in notarized partnership agreements by means of which private partnerships were established in an official manner. These contracts provide numerous details on the identities of the contracting parties, the organizational structure of the partnership, and various legal aspects of corporate structures as well as the mechanisms these partners devised in order to anticipate and overcome those difficulties and disagreements that partners might run into in the course of the partnership.

In total, 272 protocol books, produced by 47 different notaries and containing approximately 81.600 notarial deeds, have been consulted in an exhaustive manner.¹⁵ All notarial deeds have been sifted through, and finally, this quest for needles in a haystack resulted in the identification of 139 notarial deeds by means of which a private partnership was created. Five other contracts could be retrieved by means of references in the available literature.¹⁶ As opposed to prolongations and modifications of existing

15 All surviving protocol books, produced in Antwerp between 1480 and 1620, have been analysed. The names of the respective notaries can be retrieved in: C. Laenens and L. Leemans, *De geschiedenis van het Antwerps gerecht* (Antwerp 1953). A complete list of all extant partnership agreements can be found in: B. van Hofstraeten, 'Limited partnerships in early modern Antwerp', *Forum Historiae Iuris*, 5th of November 2015, <http://www.forhistiur.de/en/2015-11-van-hofstraeten/>.

16 ACA, Schepenregisters, inv. nr. 145, *Schepenregister 1514 GC*, fo. 63r (Beeckman - Decker); J. Strieder, *Aus Antwerpener Notariatsarchiven: Quellen zur deutschen Wirtschaftsgeschichte des 16. Jahrhunderts* (Stuttgart 1930) 413-420 (Rietwieser - Pruner); ACA, Vierschaar (hereafter V), inv. nr. 322/4, *Zaak Schetz-Pruynen* (Schetz - van Hilst - Pruynen); ACA, *Certificatieboeken*, inv. nr. 18, *Certificatieboek 1562*, fo. 119v-120r (Molinel - Couvreur); M. Rooses, *Christophe Plantin, imprimeur anversois* (Antwerp 1882) 400-403 (Plantijn - de Bomberghen - Bekanus - de Scotti).

private partnerships, which do not always repeat all original arrangements that had been made in the first partnership agreement, 135 of all 144 partnership agreements can be typified as standard partnership agreements.¹⁷ Three agreements, however, are examples of the so-called *commenda*-contract, whereby a non-active capital provider, or *socius stans*, entrusted goods or money to an active merchant, or *tractator*, who had to fructify them in a distinct place in exchange for one fourth of the generated profits, i.e. the so-called *quartum proficui*.¹⁸ Despite the fact that these contracts apply the Middle-Dutch terminological equivalents for the word 'partnership', i.e. *societeit*, *compaignie* and/or *geselschap*, they cannot be retained in the research sample at hand, since they merely consisted of '*eine reine Innengesellschaft*', and thus lacked the quintessential feature of a true private partnership, namely external liability. The *tractator* could only bind himself in contracts with third parties.¹⁹

As a result, the present research sample consists of 132 partnership agreements in total. Chart 1 provides a chronological overview of the number of notarized partnership agreements that could be discovered per period of five years. The dotted line represents the evolution of the notarial activity per five years, i.e. the sum of the numbers of notaries active during each year for a period of five years, and whose protocol books are still being preserved.

Notwithstanding the considerable amount of partnership agreements, one has to keep in mind a potential bias because of two phenomena. First and foremost, the notarial archives in Antwerp are not comprehensive. There are various notaries whose protocol books did not survive. This becomes apparent through the numerous references in the preserved notarial registers to documents that had been registered in protocol books of other notaries whose registers did not withstand the test of time. Secondly, notarized equity contracts merely constitute a fraction of all private part-

17 The following partnership agreements were categorised as prolongations and modifications: Nos. 6, 37, 42, 51, 55, 63, 84, 105, and 114. (Cf. van Hofstraeten, 'Limited partnerships', Annex 1).

18 ACA, Notariaat (hereafter N), inv. nr. 3132, *Willem Stryt 1535*, fo. 60r-61r (van Vlassendonck - de Vos - van Damme - Schoutert); ACA, N, inv. nr. 2071, *Zeger sHertoghen Senior 1543*, fo. 97r-97v (Verjuys - Deem); ACA, N, inv. nr. 2072, *Zeger sHertoghen Senior 1545*, fo. 178v-179r (Gheldolf - Jansen). These examples date from the years 1535, 1543, and 1545. Afterwards no other *commenda*-contracts could be identified, which is in accordance with Albrecht Cordes' conclusion that, after the breakthrough of the general and limited partnership in the late medieval period, there was no longer need for a *commenda*-like contract. (A. Cordes, 'Nord- und süddeutsche Handelsgesellschaften vor 1800', in: S. Kalss and F.-S. Meissel (eds.), *Zur Geschichte des Gesellschaftsrechts in Europa* (Vienna 2003) 27-41, here 35-36).

19 *Ibidem*.

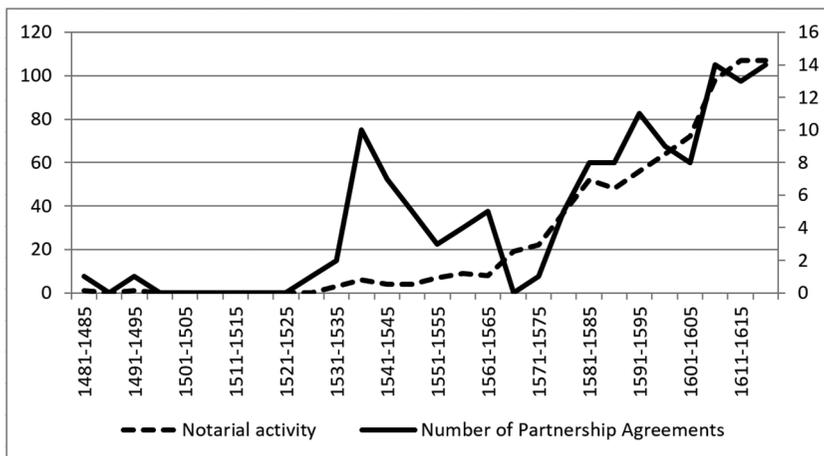


Figure 1: Number of notarized partnership agreements in sixteenth-century Antwerp per five years, and notarial activity per five years.

nerships which had been established and operational in sixteenth-century Antwerp.²⁰ After all, most commercial and financial transactions continued to be registered in the personal accounts of merchants.²¹ At the same time it is generally assumed that, because of trust-related motivations, especially strangers, as opposed to related contracting parties, resorted to a notarial registration of their equity contract. Moreover, in addition to notarized and privately drafted partnership agreements, the use of oral contracts was still a common practice among early modern merchants.²²

Because of the continued use of privately drafted and oral contracts, one might object the representativeness of notarized partnership agree-

20 The total number of 132 partnership agreements, on which this analysis is based, for the entire long sixteenth century (1480-1620) corresponds with the creation of one partnership per year. Taken into account an average duration of 5,5 years per partnership, this implies a simultaneous co-existence in Antwerp of approximately five partnerships during each year of the long sixteenth century. It goes without saying that this number does not tally with the city's economic importance at the same time.

21 O. Gelderblom, *Cities of commerce. The institutional foundations of international trade in the Low Countries, 1250-1650* (Princeton-Oxford 2013) 94. The continued popularity of privately drafted partnership agreements also becomes apparent in the sixteenth-century notarial archives of Antwerp. These registers contain numerous documents by means of which earlier established private partnerships were liquidated officially. As regards their initial establishment, however, no notarial deeds could be retrieved.

22 B. van Hofstraeten, 'Private Partnerships in Seventeenth-Century Maastricht', in: B. van Hofstraeten and W. Decock (eds.), *Companies and Company Law in Late Medieval and Early Modern Europe* (Louvain 2016) 115-148, here 125.

ments with regard to standard corporate usages, for one may presume that those contracting parties who considered an official registration necessary were actually deviating from the commonly accepted rules and practices. If such a motivation was applicable to all extant partnership agreements, this would indeed impede the use of notarized equity contracts as a means to describe corporate usages. This is, however, not the case. Among the available set of partnership agreements, notarized in sixteenth-century Antwerp, a large majority was drafted along the lines of traditional contract design while at the same time reproducing non-exceptional interpretations of or variations on sixteenth-century corporate issues.²³ So, whereas deviations from the commonly accepted commercial practices could have been a motivation to register an agreement officially, they were not the only reason for notarizing contracts. Other grounds, like, for example, an insufficient degree of acquaintance or trust between the contracting parties at hand, may have incited them to take recourse to a notarized agreement, without making arrangements that were contradicting those corporate practices prevailing at that time. For these reasons, notarized partnership agreements do not necessarily reflect non-standard corporate usages.

3 Private partnership types in sixteenth-century Antwerp

True private partnerships require external liability, i.e. the possibility to bind the other partners for debts concluded with third parties. Based on the respective boundaries of such external liability, one can observe two major types of private partnerships in late medieval and early modern Europe: the *compagnia* or 'general partnership' and the *accomandita* or 'limited partnership', whereby the latter is a derivative of the former.²⁴ In the *compagnia* the partners bore full, i.e. joint and several, liability for *all* the debts that had been made by *any* other partner. Thus, the partners of a general partnership were all partners *ad infinitum* and *in solidum*. By the end of the fourteenth century, Italian cities, like Florence, allowed the participation of limitedly liable partners in these *compagniae*, hence, creating a new form of partnership, the so-called *società in accomandita*. Opposed to the partners of a

²³ This observation is based on a comparative analysis of contractual clauses in early modern notarized partnership agreements which had been recorded in the cities Antwerp, Maastricht, Liège, Amsterdam and Rotterdam: B. van Hofstraeten, 'Historiographical opportunities of notarized partnership agreements recorded in the early modern Low Countries', in: Heikki Pihlajamäki c.s. (eds.) *Historiography and sources of commercial law*, (Leiden-Boston, forthcoming).

²⁴ Cordes, 'Nord- und süddeutsche Handelsgesellschaften', 27-41.

general partnership, the external liability of these 'silent partners' was limited to the amount of their initial investment in the partnership.

The aforementioned dichotomy is primarily based on the respective measures of external liability of the partners within a partnership. However, early modern contracting parties appeared to be primarily concerned about internal relationships and much less about external liabilities. Therefore, qualifying and categorizing the 132 partnership structures of the research sample by means of the external-liability-criterion, was not a straight-forward exercise.²⁵ Furthermore, looking for well-defined categories among the available partnership agreements is impeded because of the terminology used in the latter. Antwerp notaries did not distinguish terminologically between partnership types. Every kind of private partnership was called a *compaignie*, *sociëteyt*, or *geselschap*, irrespective of the presence of fundamentally distinguishing features.²⁶ Despite such problems related to the categorization effort, it is possible to observe numerous examples of the general and limited partnership in sixteenth-century Antwerp practice. In addition, other types of private partnerships, like the anonymous partnership and the so-called *contractus trinus* or triple contract, existed on the Antwerp market as well. Chart 2 gives a chronological overview of the frequency and importance of the respective types of partnerships. Partnerships that incorporated so-called *deelhebbbers* by means of a participation closely resembling the South German *Kapitaleinlage zum Gewinn und Verlust* and the Genoese *participation*, could not be identified on the basis of the available research sample.

The most common type was the general partnership. In total, 103 agreements could be qualified as documents establishing a similar kind of partnership. Within this category, sixteenth-century Antwerp practice proved to be utterly creative, yet, the group can be abstracted as follows: two or more contracting parties combining their physical (labour, craftsmanship), intellectual (inventions, business secrets) and/or budgetary (cash, goods) means in order to increase their respective profits. All of them participated actively in the administration and management of the business activities and could be obliged to redeem the totality of the debts incurred by one of the other partners with third parties. Here, general or full partners distin-

25 A substantiated attempt can be found at: van Hofstraeten, 'Limited partnerships'.

26 These terms did correlate to a specific period of time. Until 1560, Antwerp private partnerships were primarily designated as *sociëteyt* and/or *geselschap*. Afterwards, these denominations encountered a dramatic downturn in favour of the term *compa(i)gnie*, which made its appearance in more than ninety percent of all partnership agreements from that decade onwards. (See also: Wolff, *Commerces et marchands*, 483, n. 1).

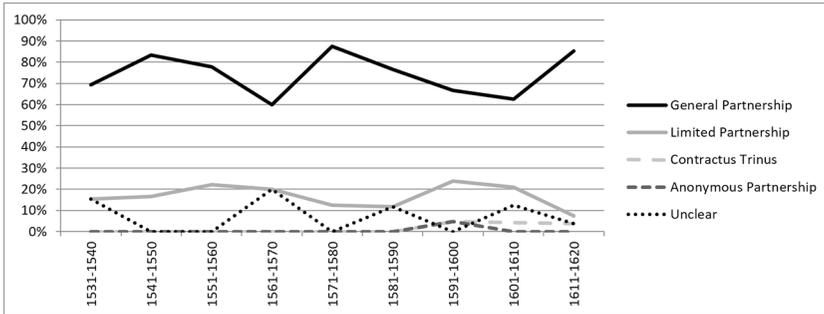


Figure 2: Frequency of the respective partnership types in sixteenth-century Antwerp per decade (in percentage).²⁷

guished themselves from their ‘silent’ counterparts in a limited partnership. In principle, the latter were not to interfere actively in the corporate activities. Their involvement in the partnership remained limited to a purely financial one. Despite the existence of various obstacles impeding the identification of limited partnerships within the research sample, it has become possible to qualify at least 25 partnership agreements as contracts creating a limited partnership.²⁸

In order to obligate one’s co-partners to redeem the totality of the debts incurred with third parties, the contract had to be concluded ‘*in nomine societatis*’, i.e. while using the name of the partnership.²⁹ Likewise, the third party was aware of his contracting party’s membership to a partnership. Such awareness was not provided for when one was contracting with a partner of an anonymous partnership. Here, all the partners were free to conclude contracts with third parties ‘in their own name’ without exposing the existence of the partnership to the third party. In order to guarantee the joint and several liability of such-like partners, the anonymous partnership had to be agreed upon explicitly in an officially registered partnership

27 This chart is based on all 144 partnership agreements listed and categorized in: van Hofstraeten, ‘Limited partnerships’, Annex 1.

28 Van Hofstraeten, ‘Limited partnerships’. Only two partnership agreements could be identified in which the external liability of the silent partners was limited explicitly. (Cf. *Ibidem*, Annex 1: n° 34a-c (Melchior, Gaspar, Balthasar, and Koenraad Schetz, Christoffel Pruyne, Adriaen van Hilst, Jan Vleminckx) and n° 100 (Giovanni Francesco, Bartolomeo and Jeronimo Balbi, Lorenzo Maggioli)). As regards nine other partnerships, it appeared to be impossible to decide, with a reasonable deal of certainty, whether all constituting partners were to be considered as active partners, or that some of them were merely passively involved in the partnership. (Cf. *Ibidem*, Annex 1).

29 ACA, V, inv. nr. 43, *Novissimae*, 198-200 (articles 4.9.4/6).



Illustration 2: Lies and deceit disturb a transaction between two merchants. In the center a blindfolded notary records their agreement. Hendrick Goltzius (1558-1617). Rijksmuseum RP-P-OB-10.262.

agreement.³⁰ Despite its manifest presence, as a distinct type of partnership, in the Antwerp *Consuetudines compilatae*, only one example could be identified among the 132 partnership agreements at our disposal. On the 18th of June 1596, three Antwerp merchants, Jacques Wynman, Cornelis Rogiers and Cornelis van Uffele, associated themselves in a trading company for an undetermined period of time.³¹ They respectively provided £500, £700 and £500 in order to trade in ‘all kinds of merchandise’ that they considered most profitable. The contract stipulated, however, that the purchase of the trading goods would be executed by the three partners separately, and that such activities were to be performed ‘in their own name and at their personal expense’. Likewise, the partnership would remain invisible to third parties. Nevertheless, the partnership agreement prescribed the joint and several liability of all three partners for each other’s obligations with third parties:

30 Cf. *Ibidem*, 200 (article 4.9.7).

31 ACA, N, inv. nr. 3568, *Gillis van den Bossche 1596*, fo. 187r-189r.

..., soe selen de voors. compaignons gehouden [...] tot de betalinghe ende vol-
doeninghe van alles sulcx dat elck heurer alsoe sal coopen ende innecoopen
by expresse elck heurer een voor al ende als principael van alle alsulcke inne-
gecochte ende inne te coopene goeden ende coopmanschappen, jae ende
evenwel oft die by hun dryen tsamen ende gelycker handt onder een handt-
schrifte waeren ende wierdden innegecocht.

Almost as rare as the anonymous partnership, were the concrete examples of the so-called *contractus trinus* or triple contract. Basically, it is a combination of three separate contracts (a partnership contract, an insurance contract and a purchase contract) in order to circumnavigate the ecclesiastical prohibition on usury. Whereas sixteenth-century Antwerp only admitted loans between merchants at a maximum interest rate of twelve percent, private individuals were not allowed to invest their money with a capital guarantee and a fixed return rate.³² At the beginning of the seventeenth century, however, the Antwerp *Consuetudines compilatae* were the first European, municipal statutes that officially acknowledged the lawfulness of the much disputed and contested triple contract.³³ From then on, ordinary citizens could resort to the *contractus trinus* if they aspired to fructify their surplus capital in a commercial but safe way. Firstly, person x concluded a partnership agreement with merchant y, whereby x would participate in the trading activities of y for a certain amount of money.³⁴ The presumptive profit was estimated at fifteen percent of his initial investment, but as a full partner x would part in the losses of the company as well. Consequently, x and y concluded an insurance contract by means of which x insured his investment against all possible

32 Cf. the ordinance published by Charles V on the 4th of October 1540. (*Recueil des anciennes ordonnances de la Belgique. Deuxième Série. 1506-1700* IV. M.M.J. Lameere and H. Simont (eds.) (Brussels 1907) 235). The 1582 *Consuetudines impressae*, however, allowed both merchants as well as private persons to lend their money to merchants at a maximum interest rate of 6.25 percent. (*Coutumes du pays et duché de Brabant. Quartier d'Anvers. Coutumes de la ville d'Anvers* II. G. de Longé (ed.) (Brussels 1871) 392). In 1608, the *Consuetudines compilatae* reapproved the regulations set forward in the 1540 ordinance.

33 ACA, V, inv. nr. 43, *Novissimae*, 5-6 and 201 (articles 4.1.9-10 and 4.9.9). Previously, the contract had caused a great deal of controversy and it had been repeatedly prohibited by the church authorities from the 1580s onwards. On the development of the debate, see: J. Noonan, *The scholastic analysis of usury* (Cambridge 1957) 206-225; B. Löber, *Das spanische Gesellschaftsrecht im 16. Jahrhundert* (Freiburg-im-Breisgau 1965) 38-51; E. van Roey, 'Le contractus germanicus ou les controverses sur le 5% au XVIe siècle en Allemagne', *Revue d'Histoire Ecclésiastique* (1902) 901-946; W. Decock, 'In defense of commercial capitalism'.

34 This description is based upon: Goris, *Étude*, 107.

losses. In exchange for five percent of the presumptive profits of x, y took over x's risk of losing his initial investment if the enterprise appeared to be unsuccessful (=capital guarantee). Still, x was not sure that his investment would become a success. Therefore, both partners concluded a purchase contract by means of which x sold all of his remaining, presumptive profits, i.e. ten percent, to y in exchange for a smaller but assured profit of five percent (=fixed return rate). Hence, the participation of x was without risk, for both the recovery of his initial investment and his five percent profit were guaranteed. The *Consuetudines compilatae* limited the fixed return rate of a triple contract to a maximum of 6.25 percent. Three examples of the so-called *contractus trinus* could be identified. The partnership concluded between Jacques de Paige and Francis Johnson is the most illustrative.³⁵ Both parties appeared on the 10th of October 1609 - shortly after the official recognition of the contract's lawfulness in the 1608 *Consuetudines compilatae* - before the Antwerp notary, Gillis vander Donck, in order to establish a two-men trading company. Jacques and Francis agreed to contribute 1.000 guilders each to the nominal capital of the partnership, while the potential profits or losses were to be divided equally. Thus far, the agreement is a regular partnership agreement. However, the contract stipulated that, as soon as it turned out that Francis Johnson would be unable to leave his 'private trading activities' in London in order to join Jacques de Paige in Antwerp and participate actively in the partnership they were establishing, Francis was supposed to swap, or 'sell', his original fifty percent share in the uncertain profits of the partnership to Jacques in exchange for an annual fixed return of eight percent. Furthermore, it was agreed upon that de Paige was to guarantee the reimbursement of Johnson's initial investment after two years, as well as the annual supply of the latter's fixed return of eight percent. In order to ensure these payments, as well as the safety of Johnson's investment, de Paige offered one of his houses as a warranty. Clearly, all three contracts, constituting a triple contract, are present in this agreement.³⁶

35 ACA, N, inv. nr. 3827, *Gielis vander Donck 1609*, s.fo.

36 As regards another example, see: ACA, N, inv. nr. 4844, *Peter Wouters 1591*, fo. 48r-48v.

4 The use and characteristics of private partnerships in sixteenth-century Antwerp

In Antwerp, during its long and partly golden sixteenth century, notarized partnership agreements were primarily an instrument in the hands of merchants and craftsmen.³⁷ Ninety percent of all extant partnership agreements dealt with trade and commerce, on the one hand, and artisanal production or small-scale industrial activities, on the other hand. Still, one has to emphasize that most partnerships constituting the latter category also took care of the sale of those goods they had been producing. Whereas the combined share of commercial and industrial companies remained unaltered from 1530 until 1620, table 1 displays a modest shift, from the 1590s onwards, in favour of the latter category, whereas purely commercial partnerships experienced a decline of more than ten percent.

Table 1. Respective shares of commercial and industrial private partnerships in Antwerp in the course of the sixteenth century (in numbers and percentage)³⁸

	1530s	1540s	1550s	1560s	1570s	1580s	1590s	1600s	1610s
Commercial Companies	7 (58%)	8 (67%)	6 (86%)	2 (40%)	3 (50%)	12 (75%)	12 (60%)	12 (54%)	15 (56%)
Industrial Enterprises	3 (25%)	3 (25%)	1 (14%)	2 (40%)	2 (33%)	4 (25%)	7 (35%)	7 (32%)	9 (33%)
Varia	2 (17%)	1 (8%)	0 (0%)	1 (20%)	1 (17%)	0 (0%)	1 (5%)	3 (14%)	3 (11%)

If one observes the respective categories of trade and craftsmanship more closely (table 2), it becomes apparent that the activities of the private partnerships coincide with the city's traditional importance in textile trade and production. In sixteenth-century Antwerp, commercial companies primarily dealt with the trade in textiles or in commodities that were

³⁷ The same is true as regards seventeenth- and eighteenth-century France. (Lévy-Bruhl, *Histoire juridique*, 68). In seventeenth-century Maastricht, private partnerships appeared to be a desirable means to run a tax farm. (Cf. van Hofstraeten, 'Private partnerships', 127-129).

³⁸ Due to the small number of available data, table 1 doesn't include the decades between 1480 and 1530. The same is true as regards the 1560s. The category 'Miscellaneous' comprises partnerships dealing with the following activities: transportation, fiscal and territorial farming, infrastructure, entertainment, and labour.

related to textile production (26 percent). The same is true as regards the group of artisanal enterprises. The share of textile producing companies in the total amount of industrial enterprises amounts to almost 32 percent.³⁹ Nevertheless, about 48 percent of the partnership agreements did not specify these merchandises, but limited themselves to a more abstract designation of the trading goods as 'all kinds of merchandise' (*alderhande koopmanschappen*).⁴⁰

Table 2. Trading merchandises and products of industry of sixteenth-century private partnerships in Antwerp⁴¹

Trading Merchandises			Products of Industry		
	Number	%		Number	%
'All kinds of merchandise'	37	48,1	Textile	12	31,6
Textile	20	26	Beer	7	18,4
Madder	2	2,6	Books	3	7,9
Brokerage	2	2,6	Metals	2	5,3
Jewellery & Gemstones	2	2,6	Sugar	2	5,3
Fur	2	2,6	Jewellery & Gemstones	2	5,3
Miscellaneous	12 x 1	12 x 1,3	Fur & Leather	2	5,3
Total	77		Belts	2	5,3
			Caldrons & Tubs	2	5,3
			Undefined Products	2	5,3
			Wood	1	2,6
			Wine	1	2,6
			Total	38	

As regards the geographical orientation of these trading activities, it has become clear that merchants in Antwerp acted against a global background: England (London), France (Calais), Holy Roman Empire (Nurnberg, Leipzig, Cologne), Spain (Seville), Low Countries (Amsterdam, 's-Hertogenbosch),

39 Despite their considerable share within the group of industrial companies established in Antwerp during the sixteenth century, Alfons Thijs pointed out that textile producing artisans were not eager to resort to the concept of private partnerships in order to expand their industrial activities. (A.K.L. Thijs, *Van "werkwinkel" tot "fabriek". De textielnijverheid te Antwerpen (einde 15de - begin 19de eeuw)*, (Brussels 1987) 327-335).

40 Van Tielhof too observed that Dutch merchants didn't specialize their trading activities in a strict sense. Although a certain degree of specialization was undeniable, most entrepreneurs engaged in trade on different regions and in different commodities. (Van Tielhof, *The 'Mother of all Trades'*, 132-133).

41 The category 'Miscellaneous' contains those trading merchandises that only occurred once: fish, oxen, tapestries, spices, insurances, coal, paper, etc.

Latin America (Peru), the Middle East (Aleppo) and (the area around) the Baltic Sea.

In establishing the 132 private partnerships of the research sample, 346 partners were involved. The actual number of constituting partners fluctuated between two and seven. The average number of partners per partnership amounts to 2.6. Only 13.6 percent of the companies associated four or more partners. Likewise, Antwerp doesn't distinguish itself from other contemporaneous European cities.⁴² According to Goldthwaite, the relative low number of constituting partners is to be attributed to the risks inherent to joint and several liability: every extra partner increases the risk that a partner's debts might afflict his co-partners.⁴³ However, such explanation goes in against the generally accepted risk-reducing feature of private partnerships. Therefore, Van Tielhof's explanation that there were simply no commercial advantages in establishing partnerships of many more constituting partners, seems more plausible.⁴⁴ According to the author, enlarging the scale of an enterprise would never result in a substantial improvement of contemporary market conditions and prices, since it could never eliminate all competition and consequently dominate the market.

Although it has been generally assumed that notarizing a partnership agreement was more or less restricted to the field of partnerships between non-relatives, whereas businesses based upon a family unit primarily resorted to oral agreements or privately drafted contracts, the Antwerp data, as presented in table 3, show that, during the second half of the sixteenth century, notarized partnership agreements gained importance among related partners as well. By 1600, more than one third of all notarized partnership agreements had been concluded between family members exclusively: father and son(s), brothers, mother and son(s), father and daughter(s), mother and son-in-law, cousins, etcetera. Again, the Antwerp data are

42 P.D. McLean and J.F. Padgett, 'Obligation, risk and opportunity in the Renaissance economy: beyond social embeddedness to network co-constitution', in: F. Dobbin (ed.), *The sociology of the economy* (New York 2004) 193-227, here 200; Van Tielhof, *The 'Mother of all Trades'*, 127-128. The Antwerp and Amsterdam partnerships that traded with Russia and the Baltic area comprised, on average, one partner extra (3.7). (Puttevils, *The ascent of merchants*, 200; E.H. Wijnroks, *Handel tussen Rusland en de Nederlanden, 1560-1640. Een netwerkanalyse van de Antwerpse en Amsterdamse kooplieden, handelend op Rusland*, (Hilversum 2003)).

43 Goldthwaite, *The economy of Renaissance Florence*, 467.

44 Van Tielhof, *The 'Mother of all Trades'*, 127-128.

in line with those available to us on other commercial centres in late medieval and early modern Europe.⁴⁵ Despite a growing number of family-based partnership agreements in the sixteenth century, one cannot ignore that almost two thirds of the contracts still established partnerships between non-related contracting parties. As already suggested by Puttevels, this observation is most likely to be explained by the essential nature of notarized documents. As being supported and enforced by Antwerp law, notarized partnership agreements accommodated the need of non-related contracting parties for more certainty and trust because of the absence of familiarity.⁴⁶

Table 3. Partnership agreements (PAs) between family members exclusively per decade

	PAs between relatives (number)	PAs (number)		PAs (percentage)
1481-1490	0	1	1481-1490	0
1491-1500	0	1	1491-1500	0
1501-1510	0	0	1501-1510	0
1511-1520	0	1	1511-1520	0
1521-1530	0	2	1521-1530	0
1531-1540	2	14	1531-1540	14,3
1541-1550	3	14	1541-1550	21,4
1551-1560	2	9	1551-1560	22,2
1561-1570	1	5	1561-1570	20
1571-1580	3	8	1571-1580	37,5
1581-1590	5	17	1581-1590	29,4
1591-1600	8	21	1591-1600	38,1
1601-1610	8	24	1601-1610	33,3
1611-1620	4	27	1611-1620	14,8

Mostly, equity contracts were agreed upon for a contractually determined period of time. Three quarters of the Antwerp companies, established in

⁴⁵ A similar share of family-based partnerships could be observed in sixteenth-century Medina del Campo and Florence in 1427. (Abed Al-Hussein, *Trade and business community*, 229; McLean and Padgett, 'Obligation, risk and opportunity' 203-204). In addition, Padgett and McLean point out that, in late medieval Florence, besides kinship, *vicinanza* or neighbourhood was an important determinant in recruiting partners as well. Yet, the actual importance of both determinants differed from social group to social group as well as between various industries. Cf. the personal bond, shared by partners in eighteenth-century France, as a defining feature of private partnerships. (A.D. Kessler, *A revolution in commerce. The Parisian merchant court and the rise of commercial society in eighteenth-century France* (New Haven and London 2007) 142. See also: Lévy-Bruhl, *Histoire juridique*, 54).

⁴⁶ Puttevels, *The ascent of merchants*, 200.

the long sixteenth century, had been conceived for a fixed term that varied between one and twenty years. The median was six years.⁴⁷ The overall average duration was 5.5 years.

As shown in chart 3, the share of these 'fixed' private partnerships increased gradually, in the course of the second half of the sixteenth century, at the expense of private partnerships that had been established for an undetermined period of time. After all, a contractually determined duration eliminated the risk of time- and money-consuming disputes, arbitration procedures and/or court cases over the question whether someone was belonging to a certain company or not, and consequently, whether one could be held accountable for the obligations of his partners with third parties. During the whole sixteenth century, the number of one-venture-partnerships remained constantly low.⁴⁸

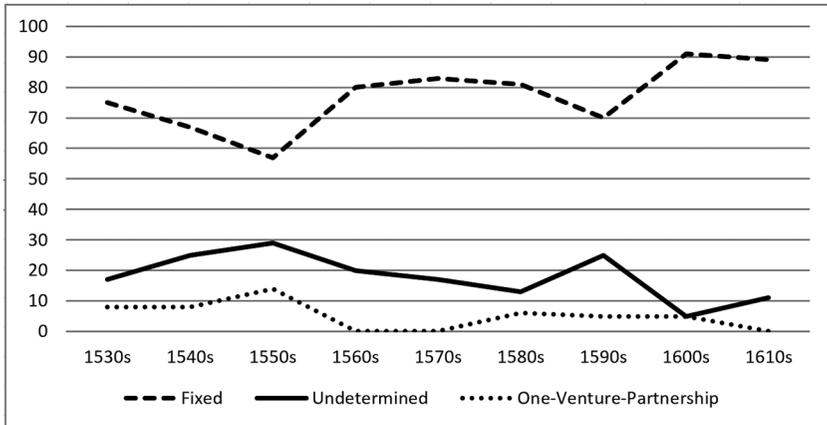


Figure 3: Fixed, undetermined and one-venture-partnerships per decade (in percentage).

47 In late medieval Florence, a business partnership lasted usually from three to five years. (Goldthwaite, *The economy of Renaissance Florence*, 65). In sixteenth-century Medina del Campo, 73 percent of the partnerships lasted between one and four years, and only 6,25 percent of all preserved partnership agreements had been concluded for an unspecified period of time. (Abed Al-Hussein, *Trade and business community*, 225).

48 ACA, N, inv. nr. 2070, *Zeger sHertoghen Senior 1535*, fo. 76v-80r (Papenbruch - Odeur van Eldere - Ronsee - Pauwels - van Marretsen); ACA, N, inv. nr. 1480, *Pieter Fabri 1587*, fo. 123r (Botmer - Strader - vanden Berghe); ACA, N, inv. nr. 865 *Jacob de Kimpe 1598*, fo. 63r-63v (Lance-loots - Smit - de Wyse - Peeters - van Yperen - Quaeribbe); ACA, N, inv. nr. 3446, *Bartolomeus vanden Berghe Senior 1609*, fo. 49r-50v (de Smidt - de Nollet - Desmarez).

As the pursuit of profit was the prime goal of private partnerships, it is obvious that clauses on the respective inputs of the various partners, operational costs and the eventual division of profits or losses were standard stock, and thus, omnipresent in all extant partnership agreements.⁴⁹ The same is true as regards stipulations on the planned duration of the partnership, since such clauses provided for the official, chronological demarcation of the external liability of its members. In addition to this set of indispensable clauses, contracts could also contain case-specific stipulations by means of which the specific circumstances, goals and needs that the partnership was created in and for were taken into account. Additionally, there is a set of clauses to be identified which are neither ultra-specific nor omnipresent, but which contain stipulations that can be observed in a considerable number of contracts. So, half of the partnership agreements comprised a clause in which the operating partners were urged to provide for intermediate settlements of the company's accounts in order to keep a close watch on the company's profitability and the respective partners' devotion and entrepreneurial aptitude.

Three other types of clauses occurred in about one third of all contracts at our disposal. First of all, there is the requirement to refrain from the conduct of private business activities in addition to the corporate activities at hand, i.e. the prohibition for some or all participating partners to conduct business on an individual basis or within the framework of another partnership. Often, this prohibition was limited to such activities that were similar to those the partnership at hand was involved in. Secondly, more than one third of all partnership agreements contained measures to be taken in case of a premature death of one of the partners. Sometimes the partnership would cease to exist immediately, sometimes it wouldn't. In the latter case, the heirs of the prematurely deceased partner could be offered the possibility to take over his share as well as his tasks in the company, or they could be required to remain a passive investor. The

49 In late medieval Florence, Richard Goldthwaite observed that the following elements were rather standard in the preserved partnership agreements: each partner's contribution to the partnership's primary capital or *corpo*, the division of profits or losses, the name of the company or *firma*, its duration and location, its object of commerce or line of industry in rather generic terms, a clause prohibiting partners to execute business activities privately during the existence of the partnership, and a prohibition on the withdrawal of capital from the company's assets before its liquidation. (Goldthwaite, *The economy of Renaissance Florence*, 65). As regards partnership agreements in late medieval Toulouse, Philippe Wolff emphasized the presence of the following elements: identities of the contracting parties, composition of the nominal capital, goal and scheduled duration of a partnership, division of profits, losses and operational costs, and the settlement of the accounts. (Wolff, *Commerces et marchands*, 493).

variety of possible measures to be taken in these matters is again a clear manifestation of the contractual freedom that contracting partners in Antwerp could dispose of. Thirdly, 29 percent of the contracts incorporated articles on the manner by which one was allowed to leave a partnership prematurely despite the fact that it had been concluded for a fixed term. Mostly, one was obliged to comply with a contractually determined period of notice. Nevertheless, Antwerp contracting parties appeared to be rather reluctant towards prematurely leaving partners.⁵⁰

Besides the respective contributions of the partners to the nominal capital of the company, late medieval and early modern partners often made use of credit facilities to increase the financial assets of the partnership.⁵¹ In addition to loans, partners accepted deposits from outsiders in return for a fixed interest. In sixteenth-century Antwerp, such interest-bearing deposits were accepted from mere outsiders, but also from members of the family or the firm's personnel as well as constituting partners themselves.⁵² In late medieval Florence, the latter type of deposits was referred to as *fuori del corpo*, i.e. an extra financial investment in the company at hand by one of its constituting partners, without altering the original mutual relationships between the constituting partners as regards the division of the profits and everyone's responsibility as regards the costs and potential losses of the partnership.⁵³ Moreover, such *fuori del corpo* had to be reimbursed to the partner who had delivered it, before the payment of the company's creditors and before the division of the actual profits.⁵⁴ In sixteenth-century Antwerp, such investment opportunities were offered to some or all partners in about ten percent of all extant partnership agreements from the 1550s onwards.⁵⁵

50 A similar kind of reluctance could be observed in sixteenth-century Medina del Campo. (Abed Al-Hussein, *Trade and business community*, 225).

51 *Ibidem*, 221.

52 Puttevils, *The ascent of merchants*, 193-194.

53 Goldthwaite, *The economy of Renaissance Florence*, 66.

54 This practice of funding was also known and quite popular in sixteenth-century Medina del Campo. (Abed Al-Hussein, *Trade and business community*, 222). Abed Al-Hussein points out that the practice can also be interpreted as a compensation for the prohibition on private business activities, since it allowed the partners to fructify their 'surplus capital' by means of a relatively safe investment.

55 See for example: ACA, N, inv. nr. 2077, *Zeger sHertoghen Senior 1561*, fo. 45r-46r (Borremans - Verheyden).

5 Conclusion

As regards the use of private partnerships, Antwerp contracting parties did not differ much from their sixteenth-century colleagues in other European merchant cities. Partnership agreements were primarily an instrument in the hands of merchants and craftsmen and at least 85 percent of them had been concluded between two or three partners, while only one third of the partnerships consisted of family members exclusively. Clearly, notarized partnership agreements were an effective means in the hands of non-related contracting parties to compensate for the lack of familiarity and trust between them. In the course of the second half of the sixteenth century, a constantly growing majority of companies had been established for a fixed period of time with an overall average duration of 5.5 years. As such, contracting parties eliminated the risk of interpersonal conflicts over the questions whether and when someone was actually belonging to a partnership, and thus, whether and when one could be held accountable for the debts incurred by one of the other partners with a third party. In addition to standard stock stipulations on the planned duration of a partnership agreement, the respective inputs of the various partners as well as their share in the profits or losses of the company, numerous Antwerp partnership agreements urged their members to provide for intermediate settlements of the company's accounts on a regularly basis, imposed a prohibition on the conduct of private business activities during the existence of the company, contained regulations on the ways one could leave the partnership prematurely, and agreed upon measures to be taken in case of a premature death of one of the constituting partners. All these clauses gave proof of the wide-ranging contractual freedom that contracting parties in sixteenth-century Antwerp could dispose of.

Nevertheless, only seven partnership agreements contained an explicit stipulation on the external liabilities of its constituting partners. Likewise, categorizing the surviving partnership agreements, on the basis of the external-liability-criterion and along the lines of legislative and jurisprudential ideal-types of private partnerships, is being hindered in a significant manner. Clearly, sixteenth-century merchants and craftsmen in Antwerp did not think in terms of legal categories. Still, by means of an in-depth contract analysis, it has become possible to identify examples of most jurisprudential categories of private partnerships that had been incorporated in the 1608 *Consuetudines compilatae*. Whereas illustrations of partnership types like the anonymous partnership and the triple contract remained limited to a minimum, the sixteenth-century Antwerp market ap-

peared to be – on the basis of the present research sample – populated by general partnerships in the first place. As far as the legal concept of the participation of a *deelhebber* is concerned, the research sample was unable to provide convincing evidence of its reception and application by Antwerp merchants. In turn, the notarized partnership agreements at our disposal did evidence a significant acquaintance of the latter with the idea of a limited partnership. Likewise, the research shows that legal ideas and concepts presented in legislative or statutory documents not always comply with actual historical reality. This is also demonstrated by the existence of a two-contracts-variant of the triple contract on the Antwerp market during the sixteenth century. Therefore, a better understanding of the organization of merchant capitalism in the early modern Low Countries originates in a study of sources produced by mercantile practice in the first place.

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