The Legal Foundations of Post-Mortem Examinations in Early Modern Flanders. Princely Legislation, Custom, Doctrine and Judicial Practice.

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Summary

Because of its manifold references to the consultation of medical experts in homicide and infanticide cases, the *Constitutio Criminalis Carolina* of Holy Roman Emperor Charles V (1532) is often regarded as an important milestone in the development of early modern forensic medicine. During the sixteenth and seventeenth centuries the County of Flanders, a principality within the Habsburg Netherlands, witnessed a similar upsurge in the production of normative and doctrinal texts aiming to regulate forensic activities. Drawing on princely legislation, local customary law and the writings of the jurists Filips Wielant and Joos de Damhouder, this contribution will compare the corpus of Flemish legal texts with its practical application by the myriad of law courts operating within the county. As the princely legislation only laid out a general framework, the regulation of the forensic post-mortem was essentially an issue of local governance. The local nature of forensic practices should however not be overestimated. Evidence from preserved post-mortem reports demonstrates that there were more similarities between towns and regions within the county than actual differences.

Keywords

Criminal law - customary law - expertise - Filips Wielant - forensic medicine - Joos de Damhouder - post-mortem examinations.

Introduction

On the 16th of May 1541, Michiel Van Omthelberghe and Daniel Van Eede, aldermen of the city of Bruges, transported themselves to the house of the widow of Jan Vander Plaetse. There they found the body of Andries Van Peenen, who had been stabbed by Aernout Van Langhemeersch the night before. The aldermen noticed that the body had a "gruesome" wound on the left side above the umbilicus and subsequently interrogated a number of witnesses[1]. More than 120 years later, the judges of the feudal court of the seigneury of Foosse, situated in the parish of Eke, started an inquiry into the death of Jan De Coster, who had been hit on the head by Jacob Monet the Elder and finally died after a long illness. While the judges immediately started to hear every eyewitness they could find, they also ordered the surgeon Pieter De Coninck to perform a post-mortem examination of the body. Furthermore, the physician, apothecary and two surgeons who had treated the victim during his illness were required to

[1] Rijksarchief Gent (State Archives Ghent, henceforth RAG), *Raad van Vlaanderen* (Council of Flanders, henceforth RVV), n° 31105: Inspection of the body of Andries Van Peenen by two aldermen (Bruges, 16 May 1541).

give a lengthy deposition on De Coster's medical condition in the days following the assault and on the treatments they applied[2].

What distinguishes these two cases is, of course, the importance attached to medical expertise. While the aldermen of Bruges limited themselves to a short description of the wound, the seventeenth-century judges extensively relied on the testimony of medical experts in order to reconstruct the violent death of Jan De Coster. This difference is not a matter of coincidence. Many historians have already pointed to the rising importance of forensic medical expertise from the sixteenth century onwards[3]. Charles V's famous ordinance on criminal justice for the Holy Roman Empire, the so-called *Constitutio Criminalis Carolina* (1532), contained no fewer than five articles making the consultation of medical experts in homicide and infanticide cases mandatory[4]. While the forensic medical provisions of the Carolina have been studied extensively, similar normative texts originating in the neighbouring Habsburg Netherlands, another part of Charles's vast possessions, have received nearly no attention from historians of early modern forensic medicine.

The County of Flanders, one of the many principalities within this dynastic conglomerate, witnessed during the sixteenth and seventeenth centuries a clear upsurge in the production of legal texts aiming to regulate medical expertise in cases of criminal law. Drawing on princely legislation, local customary law and the writings of the sixteenth-century legal scholars Filips Wielant and Joos De Damhouder, this contribution aims to offer an analysis of this corpus of normative and doctrinal texts. Furthermore, the increasing regulation of post-mortem examinations will be compared with its practical application by the myriad of law courts operating within the Flemish towns and countryside, largely on the basis of a study of post-mortem reports preserved in the archives of the Council of Flanders (*Raad van Vlaanderen*), the major civil and criminal court of the county.

First, I will give a brief overview of the debate concerning the link between the rise of the inquisitorial procedure as the dominant mode of prosecuting crime from the sixteenth century onwards, and the concomitant expansion of forensic medical expertise. Secondly, I will point out the different objectives envisaged by the princely legislation and local customary law concerning the regulation of post-mortem examinations. Finally, the provisions laid out in the corpus of normative and doctrinal texts will be compared with the legal practices of Flemish law courts, focusing on four key aspects: the medical experts involved, the typology of cases, the content of post-mortem reports and the payment of medical experts.

The inquisitorial procedure and the rise of forensic medical expertise: an overview

[2] RAG, *RVV*, n° 31111: Post-mortem of Jan De Coster by the surgeon Pieter De Coninck (30 August 1668), depositions of the apothecary Franchois Wautier, physician Philips Coppijn and surgeon Nicolays Lamere (12 October 1668) & depositions of the surgeon Pieter Goetghebeur and apothecary Franchois Wautier (12 November 1668).

[3] To give only a few examples: C. Crawford, *Medicine and the Law*, in: Companion Encyclopedia of the History of Medicine, eds. W. F. Bynum & R. Porter, London 2001, p. 1626-1628; M. Porret, *La preuve du corps*, Revue d'Histoire des Sciences Humaines, 22 (2010), p. 44-49; K. Watson, *Forensic Medicine in Western Society: A History*, New York 2011, p. 32-33.

[4] For a more detailed analysis of these articles, see: Watson, *Forensic Medicine in Western Society* (*supra*, n. 3), p. 19-20; Crawford, *Medicine and the Law* (*supra*, n. 3), p. 1623.

The link between the growing impact of Roman-canon inquisitorial tenets throughout large parts of continental Europe during the sixteenth century and the concomitant expansion of forensic medical expertise in the same era can rightly be considered as a common thread throughout the literature on early modern legal medicine[5]. As Catherine Crawford clearly stated, the inquisitorial insistence on the prosecution of crime by government officials acting *ex officio* and the search for the objective truth of the case by means of a rational investigation of the facts by the penal judge, implied an adherence to new and stricter standards of proof than pre-inquisitorial judges could ever have envisaged. This, in turn, meant that judges increasingly needed to rely on the specific knowledge of experts, who became recognized as ancillaries to the court and were remunerated according to this status[6]. Following this line of thought, it should not really come as a surprise that thirteenth-century Bologna, with its eminent tradition of Roman law, was the location of the first proper forensic medical examinations in Western European history[7]. Because of the broad applicability of medical expertise to different types of cases, medical experts quickly became the most frequently consulted category of ancillaries to the court[8].

Considering the County of Flanders, however, the link between the rise of the inquisitorial procedure and forensic medical expertise does not seem to be that strong. While features of the inquisitorial procedure such as the prosecution *ex officio* were thoroughly established within Flemish criminal justice by the end of the thirteenth century[9], there is no evidence that medical experts were consulted on a regular basis before the sixteenth century. A fourteenth-century sentence of the aldermen of Ghent mentions that the body of a man, found in one of the many waterways of the city, was "visited" (*dedene scauwene*, during the early modern period the common Flemish terminology for a post-mortem was *aenschauw*, derived from the verb *aenschauwen* = to see, to observe) on behalf of the local aldermen and bailiff[10]. The sentence does not mention the presence of a surgeon or physician at the examination,

[5] See the works mentioned in footnote 3.

[6] Crawford, *Medicine and the Law* (*supra*, n. 3), p. 1626-1627. This does not mean that medical expertise was entirely absent from more adversarial systems of justice, such as early modern English criminal justice. Within such systems, however, the initiative to consult medical experts resided with the parties. This created a situation which was entirely different from its counterpart on the continent, where experts were officially recognized as non-partisan collaborators of the court. Furthermore, the insistence on the finding of truth by the jury (instead of through a rational investigation by the judges) and the persistence of the office of the coroner seriously hampered the rise of English forensic medicine.

[7] L.S. King & M.C. Meehan, *A History of the Autopsy. A Review*, American Journal of Pathology, 73 (1973), p. 520. As the literature on early forensic medicine in Bologna is quite extensive, it will suffice to mention two key contributions: A. Simili, *The Beginnings of Forensic Medicine in Bologna*, in: International Symposium on Society, Medicine and Law, ed. H. Karplus, Amsterdam 1973, p. 91-100 is primarily concerned with Bolognese forensic statutes; K. Park, *The Criminal and the Saintly Body. Autopsy and Dissection in Renaissance Italy*, Renaissance Quarterly, 47 (1994), p. 1-33 situates early Bolognese forensic medicine within a broader scientific and religious framework.

[8] S. De Renzi, *Medical Expertise, Bodies, and the Law in Early Modern Courts*, Isis, 98 (2007), p. 316-318. As noteworthy examples De Renzi mentions the role of medical expertise in paternity disputes, the assessment of alleged illnesses in pleas for exemption of certain duties and even canonization trials.

[9] The authoritative work in this respect remains R.C. Van Caenegem, *Geschiedenis van het strafprocesrecht in Vlaanderen van de XIe tot de XIVe eeuw*, Brussels 1956, p. 59-68 & p. 123-228.

[10] Van Caenegem, *Geschiedenis van het strafprocesrecht* (*supra*, n. 9), p. 19 (footnote 15). Whereas the body was found in the water, the aldermen quickly discovered that the man was murdered by his wife. The aldermen or *schepenen* were the main governing body of the Flemish towns and cities, and also acted as judges in civil and criminal cases. The bailiff or *baljuw* was an official appointed by the monarch or local lord in order to maintain public order and prosecute crime within a particular jurisdiction. Bailiff and aldermen were mutually dependent on each other when investigating and prosecuting crime. The bailiff could not inquire into crimes without the

and while this information might have been omitted from the text, I do not believe that the aldermen consulted any medical experts in this case[11]. What seems to be more plausible, is that the aldermen inspected the body themselves, without any medical assistance, as some Flemish judges still did during the sixteenth century[12]. In this respect, the situation in late medieval Flanders would have been identical to that in Freiburg im Breisgau before 1407-1417[13] and Amsterdam before the second half of the sixteenth century[14]. When examining the body of homicide victims without any medical assistance, the Flemish aldermen came very close to the activities of English coroners[15]. While the Flemish jurist Filips Wielant referred to the consultation of medical experts in homicide cases during the 1510's, I have not

assistance of a delegation from the bench of aldermen, while the aldermen depended on the bailiff to execute their sentences.

[11] When discussing criminal procedure in fourteenth-century Ghent, David Nicholas states that the collection of physical evidence at the crime scene and the inspection of wounds were undertaken by a deputation from the bench of aldermen. According to Nicholas, the presence of three aldermen was necessary to attest wounds, while seven aldermen were required to attest that death had resulted from a wound. Nowhere does he mention the presence of surgeons or physicians at inquiries of this kind: D.M. Nicholas, *Crime and Punishment in Fourteenth-Century Ghent (first part*), Belgisch Tijdschrift voor Filologie en Geschiedenis, 48 (1970), p. 319. A study of the financial accounts of the aldermen of Bruges for the years 1418-1422 leads to a similar conclusion: H. Lowagie, *Par desperacion: zelfmoord in het graafschap Vlaanderen tijdens de Bourgondische periode (1385-1500). Een sociologische aanpak*, Master's thesis Ghent University 2007, p. 125-126. Attestations of physicians and surgeons concerning the injuries suffered by assault victims seem however to be relatively common in fourteenth-century proceedings of the Ghent *paysierders*, a court whose primary objective was to work out reconciliations between the parties to a conflict. On the basis of this qualification of wounds, the judges calculated the amount of reconciliation money that the offender had to pay his victim. See in this respect: D.M. Nicholas, *Crime and Punishment in Fourteenth-Century Ghent (second part)*, Belgisch Tijdschrift voor Filologie en Geschiedenis, 48 (1970), p. 1142-1143 & H. Van Hamme, *Stedelijk particularisme versus vorstelijke centralisatie en hun impact op de bestraffing van criminaliteit in het vijftiende-eeuwse Gent (ca. 1419-ca. 1480)*, Handelingen der Maatschappij voor Geschiedenis en Oudheidkunde te Gent, 55 (2001), p. 152-154.

[12] RAG, *RVV*, n° 31105: Inspection of the body of Andries Van Peenen by two aldermen (Bruges, 16 May 1541) & Inspection of the body of Hannekin Soenen by six aldermen (Moorslede, 18 November 1542).

[13] P. Volk & J. Warlo, *The Role of Medical Experts in Court Proceedings in the Medieval Town*, in: International Symposium on Society, Medicine and Law, ed. H. Karplus, Amsterdam 1973, p. 103-104. In 1220 the physical examination of homicide victims was entrusted to a court of twenty-four members. From 1275 onwards a deputation of two members from the aforementioned court was deemed sufficient to conduct the examination. Between 1407 and 1417, the local government required the presence of one or more surgeons, which made Freiburg the first jurisdiction within the Holy Roman Empire that required forensic medical expertise in homicide cases, more than a hundred years before the promulgation of the *Constitutio Criminalis Carolina*.

[14] A. Hallema, *Ontwikkelingsgang van de lijkschouwingsrapporten te Amsterdam, voornamelijk in de tweede helft van de 16e eeuw*, Tijdschrift voor Geneeskunde, 107 (1963), p. 1922-1930. According to Hallema, the aldermen of Amsterdam had an excessive trust in their own medical knowledge, often making far-reaching conclusions without consulting any medical expert. While the aldermen consulted surgeons and midwives in particularly difficult cases, the presence of surgeons at all post-mortems was only required from 1589 onwards.

[15] T.R. Forbes, *Surgeons at the Bailey. English Forensic Medicine to 1878*, New Haven 1985, p. 11-14. Created in 1194, the office of coroner implied the investigation of all suspicious deaths within a certain jurisdiction. As most coroners were recruited from among the local gentry, legal or medical knowledge was not a requirement for service. Furthermore, coroners were not obliged to consult medical experts, and only systematically started to do so from the mid-eighteenth century onwards. Provisions for an eventual reimbursement of the costs stemming from the consultation of surgeons, physicians, midwives or apothecaries were only made in 1836 and still depended on a decision by the competent court.

found Flemish post-mortem reports dating from the years before 1540 in order to substantiate the claim that his recommendations were widely adopted[16].

How to explain the (relatively late) adoption of medical expertise in sixteenth-century Flemish criminal justice? A possible explanation might be the influence of the *Constitutio Criminalis Carolina*. As no fewer than five articles of the ordinance were concerned with the consultation of medical experts in certain types of criminal cases (articles 35 and 36: consultation of midwives in cases of presumed infanticide; articles 147, 148 and 149: consultation of surgeons in cases of violent death), the *Carolina* is genuinely considered as a milestone in the history of early modern forensic medicine[17]. While the *Carolina* never enjoyed any legal validity in the Habsburg Netherlands (contrary to the neighbouring Prince-Bishopric of Liège)[18], it might be possible that the influence and authority enjoyed by the *Carolina* (together with the fact that Charles V was at the same time Holy Roman Emperor and Count of Flanders) led to a gradual incorporation of its forensic medical provisions in Flemish criminal procedure. While this is nothing more than an educated guess, the aforementioned theory is quite compatible with the fact that the oldest preserved reports of forensic medical examinations date from the 1540's, about a decade after the promulgation of the *Carolina*.

Another possible influence might have been exerted by the promulgation of Charles V's ordinance of 1541, which settled a number of issues of criminal procedure within the County of Flanders. The ordinance required local judicial officers to hold a preliminary inquiry whenever a homicide took place within their jurisdiction[19]. While this provision was essentially designed to limit the practice of *compositie* (the conclusion of a financial arrangement between the judicial officer and a suspect) and to allow the monarch's Privy Council to compare the narrative of pardon letters with the text of the judicial inquiry, it might also have had a stimulating impact on the performance of post-mortems. As judicial officers were expected to investigate every homicide thoroughly, they might have ordered the consultation of medical experts in more cases than before.

Another important evolution which should be taken into account, is the transformation of criminal justice from an oral into a written procedure during the sixteenth century[20]. When courts increasingly began to rely on written documents as their main sources of information, surgeons and physicians were more and more expected to express their observations, which they previously might have given in an oral and informal way, through the means of the official judicial report. Drawing on normative and doctrinal texts produced throughout the sixteenth and seventeenth centuries, the following sections aim to reconstruct the workings of early Flemish forensic medicine.

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[16] Filips Wielant, *Corte instructie in materie criminele*, ed. J. Monballyu, Brussels 1995, p. 201-202: second edition of 1515-1516, chapter 78, paragraphs 8, 9 & 13.

[17] Watson, *Forensic Medicine in Western Society* (*supra*, n. 3), p. 19-20; Crawford, "Medicine and the Law" (*supra*, n. 3), p. 1623.

[18] R.C. Van Caenegem, *La preuve dans l'ancien droit belge, des origines à la fin du XVIIIe siècle*, Recueils de la Société Jean Bodin, 17 (1965), p. 417.

[19] J.P.A. Lameere & H. Simont. *Recueil des Ordonnances des Pays-Bas. Deuxième série 1506-1700. Tome Quatrième contenant les ordonnances du 9 janvier 1536 (1537, N. ST.) au 24 décembre 1543*, Brussels 1907, p. 325-329.

[20] Van Caenegem, *La preuve dans l'ancien droit belge* (*supra*, n. 18), p. 418; J. Monballyu, *Het gerecht in de kasselrij Kortrijk (1515-1621)*, PhD dissertation Catholic University of Leuven 1976, p. 732.

Laying out a general framework: central and provincial legislation

Quite surprisingly, the necessity to consult medical experts in cases of suspicious death is totally absent from Philip II's notorious criminal ordinances of 1570[21], which John Langbein, together with the *Carolina* and the French *Ordonnance de Villers-Cotterêts* of 1539, considered to be one of the main representative texts of the Roman-canon inquisitorial procedure[22].

This omission is, however, not as surprising as it may seem. In contrast to the *Carolina*, the criminal ordinances of 1570 were not envisaged as a comprehensive handbook aimed at instructing lay judges on criminal law and criminal procedure[23]. The ordinances of Philip II were primarily aimed at solving a rather limited number of specific procedural issues, such as the conditions for applying torture or the prohibition to local bailiffs to make financial arrangements with criminals[24]. The regulation of forensic medical activities did, at that moment, not seem to be a primary concern of the monarch and his legal advisors.

Philip II finally tackled the subject of post-mortem examinations in his "ordinance on the fact and prevention of homicides" (*Ordonnantie ende Placcaet sConcinx op tfaict ende verhoeden vande Dootslaeghen*) of 22 June 1589, in which he ordered the local judicial officers, as soon as they were informed that a homicide had taken place within their jurisdiction, to examine the slain body in the presence of two local judges and a clerk or secretary. Furthermore, they should inform themselves as diligently as possible on the circumstances of the case[25]. This provision was almost entirely copied by Philip's successors, the archdukes Albert and Isabella, in their *Edit perpétuel pour la prévention et la répression des meurtres* of 1 July 1616. The edict only added the obligation for the local judges to produce a written report of the examination of the dead body[26]. Surprisingly, this provision did not

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[21] Bavius Voorda, *De crimineele ordonnantien van koning Philips van Spanje, laatsten graaf van Holland, ten dienste van zijne Nederlanden uitgegeven*, Leiden 1792. The text in fact consisted of three separate, but interlinked, ordinances: An ordinance on the administration of criminal justice (*Ordinancie, Edict ende Gebot Onss Heeren des Conincx op t'stuck van de criminele justicie in dese zyne Nederlanden*), an ordinance on criminal procedure (*Ordinancie Onss Heeren des Conincx aengaende den styl general diemen voirtaen sal onderhouden ende observeren inde procedueren vande criminele zaken ende materien, in dese zyne Nederlanden*) and an ordinance concerning the functions and duties of prison guards (*Ordinancie, Regel ende Instructie op t'stuck vande cypiers ende bewaerders van vangenissen)*.

[22] J.H. Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France*, Cambridge (Mass.) 1974, p. 129.

[23] On the educational purposes of the Carolina, see: Langbein, *Prosecuting Crime* (*supra*, n. 22), p. 207.

[24] J. Monballyu, *De hoofdlijnen van de criminele strafprocedure in het graafschap Vlaanderen (16de tot 18de eeuw)*, in: Voortschrijdend procesrecht. Een historische verkenning, eds. E. Persoons, F. Stevens & C.H. van Rhee, Leuven 2001, p. 69-70. Through the remedy of these abuses in the local administration of criminal justice, Philip II and his advisors fostered the centralist aim of neutralizing local customary law in criminal cases. This objective only partially succeeded, as the Pacification of Ghent (1576) de facto abolished the provisions of the ordinances of 1570. Most provisions continued, however, to exert a strong influence on the administration of criminal justice in the Habsburg Netherlands until the very end of the Ancien Régime.

[25] *Tweeden Deel van den Placcaert-Boeck inhoudende diverse Ordonnantien, Edicten ende Placcaerten vande Koninckclycke Maiesteyten ende Haere Duerluchtighe Hoogheden Graven van Vlaenderen, mitsgaeders van huerliederen Provincialen Raede aldaer*, Antwerp 1662, p. 173. The original text runs as follows: "De voornomde dootslaeghen gheschiet zijnde, ordonneren wy aen allen Officieren, soo van ons als onse Vasallen, terstont ende also haest alst feyt tot hunne kennisse ghecomen sal wesen, met toedoen van twee van dien vander Wet oft Justitie vander plaetsen, ende eenen Greffier, Secretaris oft Clerck, daertoe geordonneert, het doot lichaem te visiteren ende schauwen, ende goede ende zorchfuldige informatie op t'stuck ende alle circonstantien te nemen."

[26] V. Brants, *Recueil des Ordonnances des Pays-Bas. Règne d'Albert et Isabelle: 1597-1621, vol. 2*, Brussels 1912, p. 290. "De voornomde dootslaghen gheschiet zijnde, ordonneren wij aen alle officieren soo wel van ons als van

constitute a part of the typological forerunner of the ordinances of 1589 and 1616, Charles V's ordinance on criminal procedure of 20 October 1541[27], although other evidence points out that medical examinations of homicide victims started to become relatively common at that time[28].

Although they were the first princely normative texts regulating the physical examination of dead bodies, the ordinances of 1589 and 1616 remain extremely vague on its practical organization. First, they only mention the local judicial officer, the local judges and their secretaries or clerks as participants in the process of examining a homicide victim's body. Nowhere do the ordinances demand the presence of a surgeon or physician at the inspection. Secondly, the ordinances give no instructions on the specific form and content of the post-mortem reports.

An answer to the first question was given by the ordinance of the Council of Flanders proclaimed on 13 June 1626. Referring to the ordinance of 1616, the Council noticed that since its publication many abuses had taken place, which were essentially caused by the lack of experience of the surgeons who had been consulted by the local courts. Therefore, the Council ordered that from now on every visitation of dead or injured persons should be performed by at least one or two properly admitted surgeons. Post-mortems and visitations which were not performed in compliance with these provisions, would be considered as of no legal value. The negligent judicial officers and judges would be fined with the amend of fifty guilders prescribed in the ordinance of 1616[29].

The supervision of the quality of the reports was realized through a very different channel. Both the ordinance of 1589 and its successor of 1616 entail the provision that the local judicial officer had to send, within a term of two weeks after a homicide had taken place, a copy of the post-mortem report and preliminary hearing of witnesses to the attorney-general (*procureur-generaal*) of the Council of Flanders[30]. In 1713 the bailiff of the Land van Gavere was effectively fined fifty guilders for not having sent his files within the prescribed period, as was the bailiff of the seigneury of the Court of Passendale in 1737[31]. While this system could potentially have been a very powerful instrument for the professionalization and harmonization of medical expertise, the attorney-general adopted in practice a rather restrained attitude, which will be proved by following examples, collected from a sample of 379 post-mortem reports sent to the Council. In 1723 the attorney-general criticized the surgeon who had examined the wounds of Jacobus Bauwens, a lesser judicial officer living in the village of Baaigem, stating that the report produced by the surgeon contained no information on the cause of Bauwens's wounds. As there were no direct witnesses to the violence inflicted on Bauwens (and therefore no proof of the fact), the attorney-general requested the Council to organize a second inquiry[32]. Sixteen years later the attorney-general started proceedings against the bailiff of the parish of Tiegem, who had not

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onse vassallen, terstont naer de gheschiedenisse vanden faicte, met assistentie van twee vande weth, eenen greffier, secretaris oft clerck, het doode lichaem te visiteren en schauwen, ende daeraf pertinente acte te maecken."

[27] See footnote 19. It remains a mystery why Charles V did not use the opportunity of this ordinance to institute the forensic medical system prescribed in the *Carolina*.

[28] Provisions regarding the examination of the corpses of homicide victims can be found in the Caroline Concession for Ghent (1540) and the customary law of the town of Warneton (1524), which will be discussed below. For examples of forensic medical examinations from the 1540's, see: RAG, *RVV*, n° 31105.

[29] *Tweeden Deel van den Placcaert-Boeck* (*supra*, n. 25), p. 778-779.

[30] *Tweeden Deel van den Placcaert-Boeck* (*supra*, n. 25), p. 175; Brants, *Recueil des Ordonnances des Pays-Bas. Règne d'Albert et Isabelle* (*supra*, n. 26), p. 290. The provision to send over the post-mortem report within the term of two weeks was copied in the customary law of the Princely Feudal Court of Dendermonde, homologated in 1628: *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde*, Dendermonde 1631, p. 24-25: chapter 2, article 7.

[31] RAG, *RVV*, n° 169, f° 137v-138r: Sentence of the Council of Flanders (20 September 1713) & n° 23150: Sentence of the Council of Flanders (13 December 1737).

[32] RAG, *RVV*, n° 7024: Letter of the attorney-general to the Council of Flanders (16 November 1723).

undertaken a preliminary inquiry (*information préparatoire*) into the suspicious death of Jan De Cock[33]. Furthermore, the attorney-general started at least five disciplinary proceedings against bailiffs who failed to uphold the provisions of the ordinances of 1589, 1616 and 1626[34]. The total level of interference by the attorney-general seems to be very minimal, certainly when considering the fact that only three of the 379 reports studied can be linked to mentions of procedural irregularities (The cases of Bauwens and De Cock, as well as the post-mortem report from the 1697-1699 case in footnote 34, which also features in the sample of 379 reports).

The total amount of central and provincial legislation regulating post-mortem examinations did not exceed three relatively sparse texts[35]. The statutes were primarily concerned with creating a general framework for medical examinations of homicide victims (the ordinances of 1589 and 1616) and combatting the most flagrant abuses (the ordinance of 1626). The supervisory role of the attorney-general in this respect was, however, fairly limited. This should not really surprise scholars of early modern Flemish criminal justice. Notwithstanding the centralist attempts of Charles V and Philip II, the administration of criminal justice essentially remained a matter of local governance, with each jurisdiction adhering to its own procedural style, based to a large extent on local custom[36]. Therefore, the following section will be devoted to a discussion of forensic medical provisions in local customary law.

Filling in the particulars: local customary law

In October 1531 Charles V proclaimed an ordinance urging the local bodies of government within the Habsburg Netherlands to deliver him, within a term of six months, a written version of the customary law that they observed within their respective jurisdictions. After examination and amendments by the provincial judicial councils (for Flanders the Council of Flanders) and the monarch's Privy Council, the reworked documents would be proclaimed as princely law. While this operation, commonly designated

[33] RAG, *RVV*, n° 31119: Letter of Joannes Josephus Seghers, bailiff of Tiegem, to the attorney-general. According to the bailiff, the attorney-general was badly informed about the case. As De Cock did not die a violent death, but succumbed to an internal disease, he did not deem it necessary to inquire further into the case. In order to appease the attorney-general, the bailiff sent him the post-mortem report in attachment to this letter.

[34] RAG, *RVV*, n° 22012: Against the bailiff and aldermen of Eksaarde (1629-1630); n° 22600: Against the bailiff of Schorisse (1697-1699); n° 23150: Against the bailiff of the seigneury of Kleef in Langemark (1737-1740); n° 23174: Against the bailiff of the town of Ninove (1739-1744); n° 23559: Against the bailiff of Ruddervoorde (1781). These files, which can be found among the vast amount of case files of the Council of Flanders, probably do not represent all disciplinary proceedings undertaken against judicial officers who failed to perform a post-mortem when required. As the litigating parties had the right to recover their files at the end of the proceedings, a substantial number of bailiffs might have opted to take their court files home.

[35] In 1695 the Privy Council in Brussels issued a directive regarding the exhumation and examination of corpses buried in sacred ground, largely as a reaction to a conflict between the aldermen of the castellany of the Franc of Bruges and the bishop of Bruges. As this directive primarily aimed to solve this particular conflict and was not concerned with the practical organization of post-mortems, I have not deemed this text to be suitable to this analysis: Judocus Alphonsus Varenberg, *Vierden placcaet-boeck van Vlaenderen, behelsende alle de placcaeten, ordonnantien ende decreten, geëmaneert voor de Provincie van Vlaenderen, sedert 't jaer 1684 tot ende met 1739*, Brussels 1740, p. 90-91.

[36] J. Monballyu, *Het onderscheid tussen de civiele en de criminele en de ordinaire en de extraordinaire strafrechtspleging in het Vlaamse recht van de 16e eeuw*, in: Misdaad, zoen en straf. Aspekten van de middeleeuwse strafrechtsgeschiedenis in de Nederlanden, eds. H.A. Diederiks & H.W. Roodenburg, Hilversum 1991, p. 122.

as the "homologation of customary law", did not have the effects it was aimed to achieve[37], and the respective ordinance had to be repeated at various times (the last time in 1611, eighty years after the initial proclamation), the efforts of Charles and his successors resulted in the homologation and publication of the customary law of thirty-seven Flemish localities[38]. Out of these thirty-seven compilations, sixteen contain information concerning the inspection of the bodies of dead or injured persons. The following table gives a chronological overview, based on the year of homologation.

Lille (1533)	Seigneury of Pitgam (1617)
Ghent (1540)[39]	Seigneury of the Cathedral Chapter of Saint Donatian within the Castellany of Bergues (1617)
Ostend (1611)	Sint-Winoksbergen/Bergues (1617)
Broekburg/Bourbourg (1615)	Bruges (1619)
Veurne (1615)	Ypres (1619)
Nieuwpoort (1616)	Poperinge (1620)
Barony of Ekelsbeke and Seigneury of Ledringhem (1617)	Roeselare (1624)
Hondschote (1617)	Princely Feudal Court of Dendermonde (1628)

Table 1 – Overview of compilations of customary law containing provisions on the examination of the bodies of dead or injured persons.

As Table 1 clearly demonstrates, most of the relevant compilations of customary law date from the period after 1611, when the last major effort of homologation took place. As will be explained below, the performance of forensic post-mortems had already become quite common throughout the county at that time. Furthermore, the provisions in the different compilations display a large diversity in size and quality. While the customary law of the feudal court of Dendermonde devotes four articles to the performance of post-mortems[40], its counterpart for the town of Roeselare treats post-mortems together

[37] The primary aim of the operation was to eliminate contradictions within customary law in order to increase legal certainty. Furthermore, Charles V and his successors envisaged the homologation of customary law as a means of strengthening their control over the forces of local government, thereby furthering their centralizing agenda. For a detailed overview of procedure and chronology, see: J. Gilissen, *Les phases de la codification et de l'homologation des coutumes dans les XVII provinces des Pays-Bas*, Tijdschrift voor Rechtsgeschiedenis, 18 (1950): p. 36-67 & p. 239-290.

[38] I have disregarded the homologated customary law of the town of Dendermonde, which was proclaimed before the ordinance of 1531 and only concerned inheritance and marriage law. Furthermore, I have counted the two homologated versions of the customary law of the town of Cassel (1534 and 1613) as one homologation: Gilissen, *Les phases de la codification et de l'homologation des coutumes* (*supra*, n. 37), p. 52-61.

[39] The customary law of Ghent was officially homologated in 1563. The provisions on the examination of homicide victims, however, were part of the Caroline Concession of 1540, promulgated by Charles V after his suppression of the great revolt of 1539-1540. The provisions of the Caroline Concession were published together with the homologated customary law of 1563 in *Costumen ende wetten der stadt Gendt, met de concessien Caroline, decreten, reglementen ende ordonhantien politique, mitsgaeders verscheyde interpretatien verryckt met de notulen van Laureyns Vanden Hane*, Ghent 1779.

[40] *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde* (*supra*, n. 30), p. 15: chapter 1, article 9; p. 24-25: chapter 2, articles 7 & 8; p. 88-89: chapter 11, article 20.

with the inspection of streets, waterways and public works in one modest article[41]. The twenty-one remaining Flemish compilations contain no provisions on post-mortems. This does not mean, however, that post-mortems and other forensic medical examinations were not organized in these localities, or that the local governing bodies adopted medical expertise at a later date. While the customary law of the small town of Ronse (homologation in 1552) does not mention medical examinations, a 1542 document informs us of the fact that the local bailiff and aldermen consulted two surgeons in order to ascertain the cause of death of Jan Catthrijn, who was stabbed in the head by Danneel Deluic[42].

Together with the sixteen homologated compilations, I have also considered two examples of local customary law that were not homologated, but whose texts were nevertheless published by present-day legal historians: those of the town of Warneton (1524)[43] and the Land of Bornem (1643)[44]. In the following sections, these documents will be used, together with the works of the sixteenth-century legal scholars Filips Wielant and Joos De Damhouder and the central and provincial legislation mentioned above, in order to explore the practical organization of early modern Flemish legal medicine.

Flemish forensic medical expertise in the early modern period: theory and practice

Drawing on the aforementioned texts, the following sections aim to paint an image of the organization of forensic medical expertise within the early modern County of Flanders. The focus will be on four different, but interlinked, aspects: Which medical experts were consulted by the courts? In what kind of cases? What kind of information did the reports, which the medical experts had to write for the courts, contain? Who was responsible for the payment of the experts? The information delivered by the legal texts will be compared as much as possible with the content of post-mortem reports preserved in the archives of the Council of Flanders.

Before continuing this analysis, a few remarks concerning the reports consulted might be in order. The archives of the Council of Flanders, the main provincial civil and criminal court residing in Ghent, contain a large number of post-mortem reports produced between the 1540's and the 1780's[45]. Most of these reports were not produced by the Council itself, whose criminal jurisdiction was relatively limited[46], but by the myriad of local feudal courts and benches of aldermen throughout the county. There

[41] *Costumen, Wetten ende Statuten der Stede ende Poorterye van Rousselaere*, Ghent 1777, p. 4: chapter 1, article 14.

[42] RAG, *RVV*, n° 31105: Deposition of the surgeons Jan Pagen and Loys Bartan before bailiff, aldermen and vassals of the seigneury of Ronse (9 October 1542). At about the same time, the aldermen of Bruges still deemed themselves competent enough to examine the wounds of a homicide victim without any medical assistance: RAG, *RVV*, n° 31105: Inspection of the body of Andries Van Peenen by two aldermen (16 May 1541).

[43] *Coutumes de 1524*, eds. Eg.I. Strubbe & P. De Simpel, available online at: https://www.kuleuven-kulak.be/facult/rechten/Monballyu/Rechtlagelanden/Vlaamsrecht/Waasten/costum1524.html (accessed 8 April 2018). While the provisions of this document were never officially recognized as princely law, the fact that they have been written down implies that they were considered as locally valid law at the time of writing or that the local government aimed to introduce them as valid law.

[44] *Ontwerpcostumen Bornem (1643)*, ed. J. Monballyu, available online at: https://www.kuleuven-kulak.be/facult/rechten/Monballyu/Rechtlagelanden/Vlaamsrecht/Bornem/costumenbornem.htm (accessed 8 April 2018). According to this document, the Land of Bornem consisted of the barony of Bornem, the parish and seigneury of Mariekerke and the parish and seigneury of Hingene, all situated on the border of the present-day Belgian provinces of East-Flanders and Antwerp.

[45] Especially the numbers 6828-7086 (inquiries of subaltern courts) & 31105-31166 (post-mortem reports).

[46] As a court of first instance, the Council of Flanders treated the so-called reserved cases (*casus reservati*), a rather heterogeneous category of crimes and infractions which were reserved for treatment by the monarch and his courts and could not be treated by local courts (e.g. lese majesty, forgery of money, revolts, crimes committed by judicial

is, however, a remarkable difference between the reports from the sixteenth and seventeenth centuries, and those produced in the eighteenth century. The earlier reports were sent to the Council within the context of the procedure for obtaining a princely pardon[47] and therefore only concern homicide cases, while the reports from the 1730's onwards are of a more heterogeneous nature (homicides, suicides, accidents…). The reason behind the presence of such a great variety of eighteenth-century reports in the Council's archives remains however obscure. Possibly this practice developed as a logical consequence of the ordinances of 1589 and 1616 (see above), which required local judicial officers to send over the files of their preliminary inquiries in homicide cases. In order to make sure that no homicide would go undetected, and to prove that they did their proper duty, local judicial officers might have started to send over the reports produced in other cases of non-natural death as well.

As the number of reports preserved dramatically increases from the 1730's onwards, I have chosen to work with samples for the period 1730-1790, studying the reports of two years per decade. The total number of reports studied amounts to 412, of which thirty-three were produced by the Council itself.

From laymen to surgeons: the medicalization of the post-mortem

As mentioned above, late medieval examinations of homicide victims were predominantly performed by the local judges, without any medical assistance. Most texts of customary law reflect this longstanding tradition, which still had a certain adherence during the first half of the sixteenth century[48]. In the customary law of the city of Ypres, homologated in 1619, one can find the following provision:

> Als iemant binnen de Stede ofte Schependom aflyvigh ghemaeckt is, soo gaen twee Schepenen met den Heere ende den Greffier van de Vierschaere het doode lichaem schouwen, henlieden informerende wie ende waer den perpetrant is, in wat manieren 't feyt ghebeurt is, ende voorts van alle de circumstantien van 't selve[49].

officers, infractions against persons and institutions under the protection of the monarch such as judicial officers, religious institutions and personnel of the Council…). Compared to the total volume of criminal justice, this category represented only a small minority of cases. Furthermore, the Council of Flanders also functioned as an appellate court in civil cases. Appeal to the Council in criminal cases was very uncommon. For a more detailed overview of the Council's criminal jurisdiction, see: J. Buntinx, *Inventaris van het archief van de Raad van Vlaanderen*, Brussels 1964-1979, volume 1, p. 17 & J. Monballyu, *De gerechtelijke bevoegdheid van de Raad van Vlaanderen in vergelijking met de andere 'wetten' (1515-1621)*, in: Hoven en banken in Noord en Zuid. Derde colloquium Raad van Brabant, Tilburg, 30 en 31 januari 1993, eds. B.C.M. Jacobs & P.L. Nève, Assen 1994, p. 7-13.

[47] The Council of Flanders played an important role in this procedure, as it was responsible for the *interinement* or ratification of pardon letters obtained by Flemish applicants. Within a period of six months after obtaining his pardon letter, the applicant was expected to present his letter before the Council. The Council compared the narrative of the events in the letter (which was in most cases a literal copy of the narrative in the request for pardon) with the text of the preliminary inquiry held by the local judicial officer, in order to ascertain if the applicant had not tried to misrepresent the facts. Furthermore, the attorney-general of the Council, the local judicial officer and the kinsmen of the victim could raise objections against the grant of the pardon. If no objections were raised, the pardon letter was ratified after payment of a fine which was called the *amende civiel*. For a more detailed overview of the procedure: M. Vrolijk, *Recht door gratie. Gratie bij doodslagen en andere delicten in Vlaanderen, Holland en Zeeland (1531-1567)*, Hilversum 2004, p. 46-48.

[48] See footnote 12.

[49] *Wetten, Costumen, Keuren ende Usantien van de Zale ende Casselrye van Ipre*, Ghent 1769, p. 66: chapter 4, article 56. English translation: "Whenever someone is killed within this City or within its jurisdiction, two

Similar provisions can be found in most compilations of customary law, only varying in the number of aldermen that were required to attend the examination. Out of eighteen compilations studied, only five (feudal court of Dendermonde[50], Nieuwpoort[51], Poperinge[52], Veurne[53] and Lille[54]) mention medical experts, in most cases surgeons. With the exception of Lille (1533), all texts date from the last round of homologation after 1611. The customary law of Lille is, however, not as much concerned with post-mortems as with examinations of the wounds of assault victims by surgeons and physicians, in order to ascertain whether the inflicted wound was lethal or not. If the experts did not consider the wound to be lethal, the perpetrator of the act of aggression could not be persecuted for manslaughter, even if the victim eventually died[55]. Therefore, we only possess four texts that explicitly prescribe the presence of surgeons at post-mortems. Furthermore, the provisions of the customary law of Veurne are conditional: the presence of a surgeon is only required when really needed, without giving any precision on what "really needed" means[56].

At first glance, one could only be confused when noticing the archaism and conservatism of most Flemish customary law in this regard. Customary law, however, does not equal legal practice in this respect. While the *Concessio Carolina* of Ghent only requires the presence of a bailiff, two aldermen and a clerk at examinations of homicide victims[57], a 1542 case demonstrates that surgeons and physicians were asked to express their opinion on the cause of death of one Joos De Munc[58]. The situation in Bruges gives a quite bizarre impression. While the homologated customary law of 1619[59] does not mention the presence of medical experts, Joos De Damhouder's description of the procedure in the 1550's considers the consultation of one or two surgeons to be the common procedure in Bruges[60].

Every possible doubt regarding the necessity to consult medical experts was finally dispelled by the Council of Flanders' ordinance of 1626, which made the presence of one or two properly admitted

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Aldermen will go, together with the Lord [i.e. the bailiff] and Clerk of the Court, to inspect the dead body, informing themselves who the perpetrator is and where he is, in what manner the fact happened, and further of all circumstances of the case."

[50] *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde* (*supra*, n. 30), p. 25: chapter 2, article 8.

[51] *Costumen der Stede van Nieupoort*, Bruges 1637, p. 84: chapter 9, article 18.

[52] *Costumen ende Usantien vande Stede, Keure ende Jurisdictie van Poperinge*, Ghent 1774, p. 84: chapter 26, article 7.

[53] *Wetten, Costumen ende Statuten der Stede ende Casselrye van Veurne*, Ghent 1615, p. 463: chapter 64, article 2.

[54] François Patou, *Commentaire sur les coutumes de la ville de Lille et de sa châtellenie, et conférences de ces coutumes avec celles voisines et le droit commun, vol. 3*, Lille 1790, p. 625.

[55] Patou, *Commentaire sur les coutumes de la ville de Lille* (*supra*, n. 54), p. 625. This provision in the customary law of Lille bears a striking resemblance to Filips Wielant's treatment of the same problem in the second edition of his *Corte instructie in materie criminele*: Wielant, *Corte instructie* (*supra*, n. 16), p. 202: second edition of 1515-1516, chapter 78, paragraphs 13 & 14.

[56] *Wetten, Costumen ende Statuten der Stede ende Casselrye van Veurne* (*supra*, n. 53), p. 463: chapter 64, article 2.

[57] *Costumen ende wetten der stadt Gendt* (*supra*, n. 39), p. 442: article 39.

[58] RAG, *RVV*, n° 31105: Inquiry held on 13 June 1542 concerning the homicide of Joos De Munc, killed by Jan Carlyer.

[59] *Wetten ende Costumen der Stadt Brugghe, verryckt met de notulen van Meestre Laureyns Vanden Hane, Advocaet van den Raede in Vlaenderen*, Ghent 1767, p. 85: chapter 31, article 1.

[60] Joos De Damhouder, *Practycke ende handbouck in criminele zaeken, verchiert met zommeghe schoone figuren en beilde ter materie dienende*, eds. J. Monballyu & J. Dauwe, Roeselare 1981, p. 106 (Reprint of the first Dutch edition of 1555). Damhouder's description is highly trustworthy, as he was, as criminal clerk of the aldermen of Bruges from 1550 onwards, responsible for writing down the post-mortem reports in a separate register.

surgeons a *conditio sine qua non* for a proper post-mortem (see above). Evidence from the archives of the Council of Flanders demonstrates however that the presence of medical experts at post-mortems was already thoroughly established during the preceding decade[61]. Most likely, the consultation of surgeons became an established practice throughout Flanders in the course of the second half of the sixteenth century[62]. The provision requiring the consultation of "properly admitted surgeons" should therefore rather be interpreted as directed against judicial officers who employed inadequately trained surgeons or outright quacks, rather than against the already defunct medieval procedures.

While the role of surgeons as medical experts was relatively well established, only four texts mention the presence of university-trained physicians[63], namely the customary law of Lille and the feudal court of Dendermonde[64], Wielant's *Corte instructie in materie criminele*[65] and Damhouder's *Practycke ende handbouck in criminele zaeken*[66]. Furthermore, none of these texts make their presence compulsory. The ordinance of 1626 even totally ignored the possibility that physicians could participate in post-mortems and other forensic examinations. The relative absence of physicians from the legal texts

[61] A large number of reports dating from the years 1613 to 1619, produced by a variety of courts throughout the county, can be found in: RAG, *RVV*, n° 6894-6899.

[62] In contrast to the seventeenth and eighteenth centuries, the evidence for the sixteenth century is very limited. For the 1540's a number of reports are preserved in the archives of the Council of Flanders, which represent a mix of examinations undertaken by aldermen and by surgeons: RAG, *RVV*, n° 31105. A report produced in 1561 in the parish of Moerbeke-Waas mentions the presence of a surgeon: RAG, *RVV*, n° 6855: Post-mortem of Jan De Vogelere by the surgeon Anthuenis De Brune (15 April 1561). The official registers of post-mortem examinations performed on behalf of the aldermen of Ghent and Bruges respectively start in 1588 and 1554: J. Decavele & J. Vannieuwenhuyse, *Stadsarchief van Gent. Archiefgids. 1: Oud archief*, Ghent 1983, p. 147; A. Vandewalle, *Beknopte inventaris van het stadsarchief van Brugge*, Bruges 1979, p. 91. Focusing on the castellany of Kortrijk, Jos Monballyu claims that local judges started to consult surgeons and physicians in a systematic manner from the end of the sixteenth century onwards: J. Monballyu, *Het gerecht in de kasselrij Kortrijk* (*supra*, n. 20), p. 701-702.

[63] Within the Flemish context, the term "surgeons" (*chirurgijns*) should be understood as referring to medical experts who enjoyed their training within a corporative framework, in contrast to the university-trained physicians. Physicians were essentially consulted for the treatment of internal diseases, while surgeons performed manual operations such as bloodletting and trepanation, and treated wounds and contusions. On the division of competences between surgeons and physicians, see: P. Lenders, *Overheid en geneeskunde in de Habsburgse Nederlanden en het prinsbisdom Luik*, Heule 2001, p. 12-14.

[64] Patou, *Commentaire sur les coutumes de la ville de Lille* (*supra*, n. 54), p. 625; *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde* (*supra*, n. 30), p. 25: chapter 2, article 8.

[65] Wielant did not express a specific preference for surgeons or physicians, but required the presence of at least two medical experts if possible: Wielant, *Corte instructie* (*supra*, n. 16), p. 201: second edition of 1515-1516, chapter 78, paragraph 9: "Ende een medecin alleene en es niet ghenouch om van zulcken saken te jugierene. Maer daer moeter twee zyn ten minsten, ten waere dat men maer eenen vinden en conste."

[66] Damhouder, *Practycke ende handbouck in criminele zaeken* (*supra*, n. 60), p. 104. Notwithstanding the fact that Damhouder's work was largely a plagiarized version of Philips Wielant's writings on criminal law and criminal procedure, the chapter on post-mortems does not have a counterpart in Wielant and can therefore be considered as an original contribution of Damhouder. Again, this comparison points to an important shift in forensic practices from the 1540's and 1550's onwards.

is quite peculiar, as the consultation of university-trained doctors was made compulsory in for instance France[67] and Guelders[68].

How to explain the relative absence of legal provisions on the consultation of physicians? A partial answer may lie in the legal practice of the Council of Flanders itself, which often exclusively relied on surgeons when performing its own post-mortems[69]. If even the provincial court did not deem it necessary to consult physicians in all of its cases, why should a local court in the countryside bother? Because of their focus on manual operations and the treatment of wounds (in contrast to physicians and their preoccupations with internal diseases), surgeons might moreover have seemed to be the most logical category of medical professionals to consult in order to assess causes of death and the lethality of wounds.

When considering the legal practices of local courts within the County of Flanders, the aforementioned conclusions need to be nuanced. While the consultation of physicians was never made legally mandatory, local courts relied on them on a very frequent basis from the early seventeenth century onwards. The following table gives an overview of the experts mentioned in post-mortem reports, preserved in the archives of the Council of Flanders, for four periods: the first[70] and second[71] halves of the seventeenth century, the years 1738-1739[72] and 1773-1774[73].

Consulted experts	**1613-1647 (n = 29)**	**1652-1694 (n = 22)**	**1738-1739 (n = 63)**	**1773-1774 (n = 46)**
One surgeon	10 (34.5 %)	10 (45.5 %)	17 (27 %)	28 (61 %)
Two surgeons	8 (27.5 %)	4 (18 %)	2 (3 %)	0 (0 %)
One physician	0 (0 %)	0 (0 %)	0 (0 %)	1 (2 %)
One physician and one surgeon	7 (24 %)	6 (27.5 %)	44 (70 %)	15 (32.5 %)
One physician and two surgeons	4 (14 %)	2 (9 %)	0 (0 %)	1 (2 %)
Two physicians and one surgeon	0 (0 %)	0 (0 %)	0 (0 %)	1 (2 %)

[67] C. McClive, *Witnesses of the Hands and Eyes: Surgeons as Medico-Legal Experts in the Claudine Rouge Affair, Lyon, 1767*, Journal for Eighteenth-Century Studies, 35 (2012), p. 492-493. The Criminal Ordinance of Saint-Germain-en-Laye of 1670 and succeeding legislation made the presence of a physician at forensic medical inquiries mandatory. As most rural jurisdictions did not possess a proper physician, many local courts continued to rely exclusively on surgeons, making them the dominant French medical experts.

[68] D.A.J. Overdijk, *De gewoonte is de beste uitleg van de wet. Een onderzoek naar de invloed van het Hof van Gelre en Zutphen op de rechtspleging in criminele zaken in het Kwartier van Nijmegen in de zeventiende en achttiende eeuw*, Nijmegen 1999, p. 78-80. The provincial court of Guelders strongly insisted on the presence of physicians at post-mortems in its correspondence with subaltern courts. As in France, this requirement was often ignored by courts in rural areas.

[69] This was particularly the case during the late seventeenth and early eighteenth centuries, see for instance: RAG, *RVV*, n° 169, f° 42r: Post-mortem of Carel Horry by the surgeon Judocus Hergauts (30 December 1690); f° 106v-107r: Post-mortem of the nobleman Joseph Tayaert by the surgeons Simoen Rousseels and Gillis Le Bacq (15 January 1706); f° 113: Post-mortem of Anthone Beys by the surgeon Gillis Le Bacq (22 September 1707); f° 140v-141r: Post-mortem of Jacques De Man by the surgeon Gillis Le Bacq (22 January 1706).

[70] RAG, *RVV*, n° 6894-6914 & n° 31106-31109.

[71] RAG, *RVV*, n° 6935-6991 & n° 31110-31113.

[72] RAG, *RVV*, n° 31118-31119.

[73] RAG, *RVV*, n° 31150-31156.

Table 2 – Overview of medical experts consulted in four sample periods

While the comparison of these figures across the sample periods poses some problems[74], one immediately notices that during the first half of the seventeenth century physicians were consulted in more than a third of the cases studied, a number which even rises to 70 % during the years 1738-1739. During the later eighteenth century, the share of physicians fell back to 38.5 %, which might be explained by the revaluation and increasing professionalization of surgery during this period[75]. Even without an explicit legal obligation to consult physicians, local Flemish judges seem to have made regular use of their specific expertise.

Surprisingly, none of the legal texts mentions the two other main categories of medical experts which were consulted by early modern Flemish judges, namely apothecaries (in poisoning cases) and midwives (in rape cases)[76]. In the reports studied, only one deposition of an apothecary could be found, while depositions of midwives were entirely absent from the corpus[77]. Focussing on eighteenth-century Geneva, Michel Porret and his collaborators admitted that the total number of cases in which apothecaries or midwives were consulted was indeed fairly limited, about 4 % of the total number of cases with medical expertise[78].

A typology of cases

In her overview of the history of forensic medicine in Western society, Katherine Watson defined forensic medicine as "the application of medical knowledge in the broadest sense to help solve legal problems or satisfy legal requirements"[79]. But how broad was the terrain of early modern Flemish forensic medicine? As mentioned above, the focus will be on the use of medical expertise in cases of criminal law.

As the forensic post-mortem is essentially concerned with answering the question if a person died in a violent or non-violent way, it is not really surprising that nearly all relevant legal texts stress its importance in homicide cases. Most legal texts, however, limit themselves exclusively to this type of cases, thereby implying that post-mortems should in fact only be performed in cases in which there was a clear presumption of homicide. This is particularly the case for the ordinances of 1589, 1616 and 1626, as well as the works of Wielant and Damhouder. Local customary law reveals however that the terrain of Flemish forensic medicine was much broader than princely legislation and legal treatises might suggest. While some compilations of customary law limit themselves to prescribing post-mortems in homicide cases, others provide a more detailed typology.

[74] As mentioned above, the cases from the seventeenth century are predominantly concerned with homicides and other acts of violence, while the reports for the years 1738-1739 and 1773-1774 show a larger typological variety.
[75] Lenders, *Overheid en geneeskunde* (*supra*, n. 63), p. 50-86.
[76] Monballyu, *De hoofdlijnen van de criminele strafprocedure* (*supra*, n. 24), p. 79-80.
[77] The deposition of the apothecary, however not related to poisoning, can be found in the case of Jan De Coster mentioned in footnote 2. The numbers are probably distorted by the fact that no poisoning cases, and only two rape cases (in which surgeons and physicians examined the victim's body) found their way into the corpus of the reports studied.
[78] M. Porret, F. Brandli, F. Borda d'Água & S. Vernhes Rappaz, *Les corps meurtris. Investigations judiciaires et expertises médico-légales au XVIIIe siècle*, Rennes 2014, p. 53.
[79] Watson, *Forensic Medicine in Western Society* (*supra*, n. 3), p. 3.

The compilations of customary law of the towns of Veurne[80] and Warneton[81] prescribe a post-mortem examination whenever someone is presumed to have killed him- or herself. In their response to a questionnaire on customary law in criminal cases, delivered in 1570, the aldermen of Ghent explained to the central government in Brussels that the bodies of those who had committed suicide were inspected in the presence of a bailiff and aldermen[82], a fact which was not acknowledged in the Caroline Concession of 1540 nor in the homologated customary law of 1563. As suicide was considered to be a very grave crime with a corresponding harsh punishment (the body being dragged to the gallows, where it was condemned to hang, and all goods of the deceased confiscated)[83], certainty was needed on the question if a person had really killed himself, a certainty which could only be provided by a thorough investigation of wounds and contusions.

Next to homicides and suicides, a large number of compilations of customary law (nine out of eighteen)[84] prescribe post-mortems in cases where an accident might be presumed to be the cause of death. The customary law of the town of Poperinge gives an extremely detailed account of possible accidents: drownings, people falling of trees, houses or ladders and persons who were bitten by animals[85]. Because of this enormous diversity, it is easily understandable that similar cases account for the large majority of post-mortems performed on behalf of Flemish judges. Studying eighteenth-century post-mortem reports produced on behalf of the aldermen of the city of Lille (originally Flemish, but conquered by Louis XIV in 1667), Catherine Denys concluded that 758 out of the 1,015 reports produced

[80] *Wetten, Costumen ende Statuten der Stede ende Casselrye van Veurne* (*supra*, n. 53), p. 463: chapter 64, article 2.

[81] *Coutumes de 1524* (*supra*, n. 43), article 32.

[82] *Answer of Ghent regarding the customary law observed in criminal cases, delivered on 6 March 1570*, ed. J. Monballyu, available online at: https://www.kuleuvenkulak.be/facult/rechten/Monballyu/Rechtlagelanden /Vlaamsrecht/Varia/15701.html (accessed 24 April 2018), paragraph 4. As suicide was at the time considered as the "homicide of oneself", the performance of post-mortems in suicide cases could to a certain extent already have been implied in the provisions on homicide cases. The silence of most compilations of customary law on suicide is therefore not really surprising.

[83] Wielant, *Corte instructie* (*supra*, n. 16), p. 214: second edition of 1515-1516, chapter 89, paragraph 4; Damhouder, *Practycke ende handbouck in criminele zaeken* (*supra*, n. 60), p. 143-144.

[84] *Costumen der Stede ende Casselrye van Brouckburch*, Ghent 1632, p. 8: chapter 2, article 1 (Broekburg); *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde* (*supra*, n. 30), p. 25: chapter 2, article 8 (feudal court of Dendermonde); *Costumen der Stede, Casselrye ende Vassalryen van Berghen S. Winocx*, Ghent 1617, p. 3-4: chapter 1, article 5 (Sint-Winoksbergen); p. 221: chapter 1, article 9 (Seigneury of the Cathedral Chapter of Saint Donatian); p. 246: chapter 2, article 3 (Ekelsbeke) & p. 269: chapter 1, article 13 (Hondschote); *Costumen der Stede van Nieupoort* (*supra*, n. 51), p. 84: chapter 9, article 18 (Nieuwpoort); *Costumen ende Usantien vande Stede, Keure ende Jurisdictie van Poperinge* (*supra*, n. 52), p. 85: chapter 26, article 8 (Poperinge); *Coutumes de 1524* (*supra*, n. 43), article 32 (Warneton).

[85] *Costumen ende Usantien vande Stede, Keure ende Jurisdictie van Poperinge* (*supra*, n. 52), p. 85: chapter 26, article 8.

between 1713 and 1791 refer to an accident as the cause of death[86]. Focussing on Ghent, Anne-Marie Roets calculated shares of 37 % between 1650 and 1656 and 75 % between 1755 and 1764[87].

These findings can be confirmed on the basis of my own samples from the archives of the Council of Flanders (Table 3). During the years 1738 and 1739, the combination of drownings and other types of accidents accounts for 52.5 % of the expert's verdicts, a share which slightly rose to 56.5 % during the years 1773 and 1774. Remarkable are the steep decline in the share of homicides and the rise in post-mortems which present an internal disease (catarrh, sudden death) as the cause of death[88].

Cause of death	**1738-1739 (n = 63)**	**1773-1774 (n = 46)**
Drowning	22 (35 %)	20 (43.5 %)
Traffic, work or domestic accident	11 (17.5 %)	6 (13 %)
Internal disease	3 (5 %)	5 (11 %)
Homicide	20 (31.5 %)	5 (11 %)
Suicide	2 (3 %)	4 (8.5 %)
Unclear	3 (5 %)	3 (6.5 %)
Expertise on a living person	2 (3 %)	3 (6.5 %)

Table 3 – Causes of death mentioned in eighteenth-century forensic medical reports

It might be that this rise in the share of non-violent deaths only partially resulted from a decline in the number of homicides. Certain preferences in criminal policy might also play an important role, as Boomgaard analysed for early sixteenth-century Amsterdam. Before 1538, for instance, the local aldermen did not deem it necessary to order a post-mortem when somebody died following an accident[89].

[86] C. Denys, *La mort accidentelle à Lille et Douai au XVIIIe siècle. Mesure du risque et apparition d'une politique de prévention*, Histoire Urbaine, 1 (2000), p. 100. Nonetheless, Denys provides us with a clear warning. According to her, post-mortem reports constituted a genre that was particularly inclined to classify deaths as accidents rather than homicides. The share of about 75 % accidents might thus hide a number of homicides. The tendency of surgeons and physicians to argue for a natural cause of death in unclear cases was an aspect of forensic medical expertise that was strongly criticized by the seventeenth-century Florentine judge Antonio Maria Cospi, who advised his colleagues to develop their own knowledge of medicine in order to stand up against the pretentions of medical experts: S. De Renzi, *Witnesses of the Body. Medico-Legal Cases in Seventeenth-Century Rome*, Studies in History and Philosophy of Science, 33 (2002), p. 225.

[87] A.M. Roets, *'Rudessen, dieften ende andere crimen'. Misdadigheid in Gent in de zeventiende en achttiende eeuw: een kwantitatieve en kwalitatieve analyse*, PhD dissertation Ghent University 1987, p. 274. The percentages have been calculated by subtracting the share of deaths caused by disease or poverty from the share of non-violent deaths.

[88] RAG, *RVV*, n° 31118-31119 & 31150-31156. As the reports from the sixteenth and seventeenth centuries exclusively concern homicide cases, it was not possible to calculate shares for earlier periods on the basis of this material.

[89] J.E.A. Boomgaard, *Misdaad en straf in Amsterdam. Een onderzoek naar de strafrechtspleging van de Amsterdamse schepenbank 1490-1552*, Zwolle 1992, p. 81.

While acknowledging the importance of medical expertise in homicide and suicide cases, as well as in case of accidents, the legal texts consulted remain silent on other types of cases in which medical experts were frequently consulted, such as rape[90] and infanticide[91].

The content of the reports

While most ordinances and compilations of customary law contain information on when post-mortems should be performed and who should attend them, only two texts provide guidelines on the information that a proper report should contain.

Among the compilations of customary law, only that of the relatively modest town of Poperinge gives some details for homicide cases. According to this text, a proper report should contain the name of the deceased, the location and size of his or her wounds, the time and location of the act of aggression and the name(s) of the person(s) who was/were considered to be responsible for the death[92]. These elements can indeed be discerned in a report produced on behalf of the local aldermen in 1629, only nine years after the homologation of the local customary law[93].

While the customary law of Poperinge only enjoyed local validity, the works of Joos De Damhouder offer a more influential account of the content of post-mortem reports[94]. When writing reports in homicide cases, Damhouder advised criminal judges to mention the following information: as much personal information on the victim as possible, the context of the homicide (time and location), a description of all wounds with an assessment of their lethality, a description of the weapon or instrument that was used to inflict the wounds, and finally the name(s) of the perpetrator(s)[95].

When comparing Damhouder's account with the text of a report produced in his hometown Bruges in 1625, seventy years after the publication of the *Practycke ende handbouck in criminele zaeken*, one immediately notices the gap between theory and practice:

> Beschauwt het doode lichaem van Valentijn De Meyne, soldaet vande ceurlijnghen van de compagnie van Audenarde onder den heere van Rolleghem, ligghende in garnisoene binnen deser stede, doot ligghende int hospitael van Sint-Jan binnen deser stede, hebbende een grooten leelicken houw boven in zijn hooft inde slijncker zijde, welcke wonde ghevisiteert gheweest

[90] RAG, *RVV*, n° 170, f° 240v: Deposition of the physician Charles Alexander De Bisschop and the surgeon Andries Haerelbeeke concerning the signs of rape found on the body of fifteen-year old Joanna Clara Vande Putte (Nieuwpoort, 5 November 1781) & n° 31119: Deposition of the surgeon Arnout Beckers concerning the signs of rape found on the body of eight-year old Isabelle D'Hulstere (Rumbeke, 14 May 1739).

[91] RAG, *RVV*, n° 7012: Inspection of the body of a male infant by the physician Petrus Vander Weerden and surgeon Nicolaes Maes (Sombeke, 20 April 1712). The physician and surgeon concluded that the infant's throat was cut. Again, the silence of the legal texts on infanticide is not really surprising, as infanticide could be considered a particular instance of homicide.

[92] *Costumen ende Usantien vande Stede, Keure ende Jurisdictie van Poperinge* (*supra*, n. 52), p. 84: chapter 26, article 7.

[93] RAG, *RVV*, n° 6907: Post-mortem of Jean Le Dour by the surgeon Philips Winnebroodt (Poperinge, 25 May 1629). On the 13th of May, Jean was attacked by Pieter Verschote and Jacques Le Cocq near the Overdam. During the fight, one of the two assailants stabbed him in the right arm. Jean finally died on the 24th of May. The report mentions a large wound in the right arm as the cause of death.

[94] On Damhouder's influence on the administration of criminal justice in eighteenth-century Antwerp, see: L.T. Maes, *De criminaliteit te Antwerpen in de achttiende eeuw*, Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden, 93 (1978), p. 327.

[95] Damhouder, *Practycke ende handbouck in criminele zaeken* (*supra*, n. 60), p. 106.

> zijnde bij doctor Matthias Rodius, midtsgaders meester Jan De Jode chirurgien, beede stadts pensione, ende meester Silvester De Schildere, ten pensione van t'voornoomde hospitael, verclaeren op eedt de zelfve wonde in haer zelfven te wesen letael, ter causen dat het beckemeel met de twee vliesen die de hersenen decken tot inde substantie vande hersenen waeren doorhauwen[96].

While the report offers a concise but clear account of the inflicted wound, no mention is made of the time and location of the assault, the name of the perpetrator and the weapon that was used to inflict the blow. This information, which Damhouder considered to be an essential element of any proper post-mortem report, was removed from the report to the accompanying preliminary hearing of witnesses.

In this respect, it might be relevant to present some remarks on the changes in the content of the reports, from their first appearance around the middle of the sixteenth century until the end of the Ancien Régime. A comparison of two representative reports might suffice in gaining an impression of the developments in early modern Flemish forensic medicine. The report from a 1561 post-mortem in the rural parish of Moerbeke-Waas reads as follows:

> Upden XVen dach van aprille XV^{C} ende LXI naer Paesschen es bij Adriaen De Caluwe, meyere van Moerbeke, uuijt laste vanden hoochbailliu, aenschaut t'doode lichaem van Jan De Vogelere, ontrent ten II hueren naerden noene, present Gillis Treintur, Anthuenis De Brune, Lieven Vanden Vyvere ende Joos De Brauwere, schepenen, aldaer bevonden es bij meester Anthuenis De Brune chirurgijn, een wonde letael ende doodelick zijnde ghesteken upde rechte burst boven d'mammekin ende noch een cleen wondeken in zijn slijncker been aende knie niet letael noch periculeus[97].

In many ways, this case is highly illustrative of forensic medical practices during the second half of the sixteenth century. While the aldermen no longer deemed themselves competent enough to inspect a dead body without the assistance of a medical practitioner, the examination remained of a very cursory nature. First, the surgeon did not open the body, but merely relied upon an external examination, looking for such signs (wounds, contusions, fractures…) that could indicate the cause of death. Secondly, the report remained limited to an enumeration (and localization) of the wounds, together with an assessment of their lethality, which was based on the depth of the wounds and the extent to which

[96] RAG, *RVV*, n° 31107: Post-mortem of Valentijn De Meyne by the physician Matthias Rodius and surgeons Jan De Jode and Silvester De Schildere (Bruges, 29 April 1625). English translation: "Inspection of the dead body of Valentijn de Meyne, soldier of the company of Oudenaarde under the Lord of Rolleghem, lying in garrison within this city, lying dead in Saint-John's hospital within this city, having a large and ugly blow in the head on the left side, which wound having been visited by doctor Matthias Rodius together with master Jan De Jode, surgeon, both pensioners of this city, and master Silvester De Schildere, pensioner of the aforementioned hospital, [they] declare on oath that the same wound was in itself lethal, as the cranium with its two membranes, which cover the brain, were hewed through as far as the substance of the brains." According to the deposition of an eyewitness, Valentijn was attacked by Guillaume De Keerle, another soldier of his regiment, seven days before. Guillaume drew a rapier and inflicted Valentijn a blow in the head.

[97] RAG, *RVV*, n° 6855: Post-mortem of Jan De Vogelere by the surgeon Anthuenis De Brune (Moerbeke-Waas, 15 April 1561). English translation: "On the 15th day of April 1561 after Easter was by Adriaen De Caluwe, *meier* [a judicial office comparable to that of a bailiff] of Moerbeke, by order of the high bailiff [of the castellany of the Land van Waas] examined the dead body of Jan De Vogelere around 2 pm, in the presence of Gillis Treintur, Anthuenis De Brune, Lieven Vanden Vyvere and Joos De Brauwere, aldermen, during which master Anthuenis De Brune, surgeon, has found a lethal and deadly wound inflicted upon the right breast above the nipple, and another small wound in his left leg near the knee, not lethal or perilous."

they penetrated certain vital parts of the body, which could be assessed through the use of surgical instruments such as probes[98].

It was only over the course of the seventeenth century that anatomical dissection started to become an increasingly common forensic practice, in addition to which experts attempted to offer more elaborate explanations of the lethality of wounds. The following 1635 report, produced in the small town of Tielt, is a representative example of this evolution:

> Op heden desen VIIIen meije 1635 soo hebbe ick Johannes Van Dale, licentiaet inde medicinen, gheassisteert met meester Jan Huusman, ghesworen chirurgien der stede van Thielt, ghevisiteert ende gheschaut in presentie van mijn heere den amman ende d'heeren leenmannen van den Princelijcken Leenhove van Thielt, het doode lichaem van Balthasar Vanden Berghe, officier van Heeghem, in wiens hooft bevonden twee conkesien, d'eene boven den musschel temporael, waer onder het cranium ofte de schotel met een groote borste ende scheure bevonden hebben, ja bovendien het cranium openende hebben duram matrem door gattich ende met een groote quantiteijt van bloet overlast ghevonden, soo dat door het selfste gat van durem matris opde hersenen een groote menichte van bloet gheloopen es, d'ander contusie es in d'ander sijde van het hooft gheweest, meest up den musschel temporael maer meer naer den neckeput treckende, waer onder het cranium luttel oft niet gheoffencheert es ghevonden, van welcke twee contusien affirmeere d'eerste de principaelste oorsaecke gheweest te hebben van de subite doot, niet te min d'ander seer periculeus, jae dickwils letael es, daerom ghetuijghen dat d'eerste contusie met alle sijn dependentien doodelick es gheweest[99].

The eighteenth century witnessed a further elaboration upon the approach sketched above, resulting in an increasing length and complexity of the reports. This evolution in the content of the medical reports can be linked to two important, and to a certain extent interconnected, developments in early modern medical knowledge. Firstly, the improvements in anatomical knowledge which were sparked of by the publication of Andreas Vesalius' *De humani corporis fabrica libri septem* in 1543 (which received its first Dutch translations in the 1560's) exerted a strong influence on forensic practices. Provided with a more profound knowledge of normal human anatomy, experts might have felt more confident in dissecting the bodies of homicide victims in order to study their pathologies. Secondly, these developments in the field of anatomy were accompanied by the publication of vernacular treatises devoted to the art of medical report writing. In 1575, for instance, the French surgeon Ambroise Paré published a treatise on judicial reports, fashioned not as an erudite scholarly work, but

[98] The use of probes is attested in RAG, *RVV*, n° 31105: Inspection of the body of Lievin De Brugom by the surgeon Anthuenis Pyngoesse (Assenede, 25-26 June 1543).

[99] RAG, *RVV*, n° 6914: Post-mortem of Balthasar Vanden Berghe (Tielt, 8 May 1635). English translation: "Today the 8th of May 1635, I Johannes Van Dale, physician, assisted by master Jan Huusman, sworn surgeon of the town of Tielt, have visited and inspected, in the presence of my lord the *amman* [the local judicial officer] and the vassals of the Princely Feudal Court of Tielt, the dead body of Balthasar Vanden Berghe, officer of the parish of Egem, in whose head we have found two contusions, one above the temporal muscle, under which we have discovered the cranium or skull with a large burst and rift. Furthermore, opening the cranium, we have found the dura mater with holes and covered with a large quantity of blood, so that through the hole in the dura mater a large quantity of blood had fallen on the brains. The other contusion was situated on the other side of the head, mostly upon the temporal muscle, but closer to the occiput, under which the cranium was only slightly or even totally not found to be damaged, of which two contusions we affirm the first has been the principal cause of the victim's sudden death, although the other one was also very perilous, yes sometimes even lethal, therefore we depose that the first contusion with all its dependencies has been lethal."

rather as a practical guidebook for surgeons, and it is generally recognised as being the first vernacular treatise on forensic medicine[100].

Notwithstanding the advances in medical knowledge and forensic practices, experts were frequently confronted with the limits of their expertise. As Table 3 clearly illustrates, eighteenth-century experts could not reach a verdict on the exact cause of death in about 5 % (and for the years 1773-1774 even 6.5 %) of all post-mortems. Corpses in an advanced state of putrefaction remained, and in fact still remain, particularly difficult to interpret[101].

Financial aspects of medical expertise

Conducting a post-mortem could be a very costly enterprise. After having completed the preliminary inquiry into the death of a customs official in 1773, the bailiff of the small town of Menen calculated that the post-mortem had cost him nearly thirty-eight guilders[102], or sixty-three times the daily wage of a contemporary unskilled labourer living in the city of Bruges[103].

The customary law of the feudal court of Dendermonde provides a quite detailed overview of the fees that medical experts received when performing post-mortems. A surgeon earned three Parisian pounds (or 1.5 guilders) for an external examination of a dead body, but received six pounds (3 guilders) if he had to make an incision in order to examine the interior parts of the body[104]. According to the

[100] The pioneering character of Paré's work has been highlighted by Thomas Rodger Forbes: Forbes, *Surgeons at the Bailey* (*supra*, n. 15), p. 37-38. In contrast to France, the early modern Habsburg Netherlands did not develop their own corpus of forensic medical literature. The most frequently used guidebooks were the French originals, or Dutch translations of the French authors printed in the Dutch Republic. The first Dutch translation of Paré appeared in Dordrecht in 1592. Its author was Carel Baten, a native of Ghent: F.A. Sondervorst, *Geschiedenis van de geneeskunde in België*, Brussels 1981, p. 86. For an overview of the French forensic medical treatises: J. Lecuir, *La médicalisation de la société française dans la deuxième moitié du XVIIIe siècle en France. Aux origines des premiers traités de médecine légale*, Annales de Bretagne et des pays de l'Ouest, 2 (1979), p. 231-250.

[101] In 1751 a physician and a surgeon were required to examine the body of an infant, found dead in a bush in the parish of Bornem. The experts stated, however, that "as the principal external and internal parts were already eaten by birds or vermin, and partially rotten, they cannot judge whether the child was born alive or not": RAG, RVV, n° 31129: Post-mortem of the body of a female infant by the physician Petrus Vincentius Durieux and the surgeon Jaspar Vanden Brouck (Bornem, 25 February 1751).

[102] RAG, *RVV*, n° 31151: Calculation of the costs of the post-mortem of a certain Monfils by the physician Jean Baptiste Voisin and the surgeon Nicolas François Derbeek (Menen, 23 July 1773).

[103] Y. Vanden Berghe, *De sociale en politieke reacties van de Brugse volksmassa op het einde van het Ancien Régime (1770-1794)*, Belgisch Tijdschrift voor Nieuwste Geschiedenis, 3 (1972), p. 142. According to Vanden Berghe, an unskilled labourer in late eighteenth-century Bruges earned twelve *stuivers* (one *stuiver* equalling 1/20 of a guilder) a day during summer and ten *stuivers* a day during winter. As the post-mortem took place in July, I have made the calculation on the basis of the wage during summer. The relations between the different types of coinage in use in early modern Flanders are as follows: 1 Flemish pound = 12 Parisian pounds = 6 guilders. A *stuiver* is 1/20 of a guilder, while a *schelling* is 1/20 of a Flemish pound: A. Wyffels, *Maten en gewichten – Poids et mesures employés*, in: Dokumenten voor de Geschiedenis van prijzen en lonen in Vlaanderen en Brabant (XVe-XVIIIe eeuw) vol. 1, eds. C. Verlinden & J. Craeybeckx, Bruges 1959, p. 14-15.

[104] *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde* (*supra*, n. 30), p. 88-89: chapter 11, article 20. That this provision did not remain a dead letter, can be discerned from the calculations made by the clerk of the feudal court in a 1635 case. The physician and surgeon involved each received ten *schellingen* of Flemish pounds, which equalled six Parisian pounds. While the customary law does not mention the fee for the consultation of a physician, this document suggests that the judges of the feudal court did not make a monetary distinction between different types of experts: RAG, *RVV*, n° 6914: Post-mortem of Jan De Deckere by the physician Jacques Van Wichelen and surgeon Jan De Smet (Dendermonde, 2 October 1635).

regulations of 1775, the town surgeons of Ostend received one guilder and ten *stuivers* for inspections of dead or wounded persons, while the town physician earned three guilders and four *stuivers* for similar investigations. The bailiff received one guilder and four *stuivers*, while each alderman present got twelve *stuivers*. Fees should be doubled if the corpse was found on a ship or outside the city limits[105]. The town physician of Diksmuide, however, received no fees for taking part in autopsies. Performing post-mortems was considered as a part of his duties to the local government, for which he received a yearly pension of 174 Flemish pounds (1,044 guilders)[106].

While the height of the fees can be relatively easily discerned from legal texts and marginal notes in the reports[107], the question who had to pay for a post-mortem is less easy to answer. Depending on the cause of death (homicide, suicide or accident), different regulations were provided in customary law and legal practice.

Not surprisingly, the costs for the examination of a homicide victim were recovered from the assets of the culprit[108]. The payment of the judicial costs was after all a traditional provision of each criminal sentence, even if the suspect was condemned in absentia[109]. Some forward-looking suspects even made arrangements for the payment of the post-mortem immediately after the homicide, primarily in order to increase their chances of obtaining a pardon. Jacques Schipman instructed his mother and brother to pay for the medical treatment of his victim, and finally ordered his uncle to pay for the post-mortem after the man had succumbed to his wounds[110]. While making a reconciliation with the kinsmen of his victim, Anthone Papegay promised to pay the surgeon who performed the post-mortem[111].

If a person died following an accident, and no one could be held accountable for having caused the accident[112], the costs of the post-mortem were, according to some compilations of customary law,

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[105] Jean Baptiste Hubert Serruys, *Zesden placcaert-boek van Vlaenderen, behelzende alle de Placcaerten, Reglementen, Edicten, Ordonnantien, Decreten, Declaratien en Tractaeten, geëmaneerd voor de provincie van Vlaenderen*, Ghent 1786, p. 271-272.

[106] Serruys, *Zesden placcaert-boek van Vlaenderen* (*supra*, n. 105), p. 584.

[107] To give only two examples: RAG, *RVV*, n° 31150: A physician and a surgeon respectively received one Flemish pound and ten schellingen and fifteen schellingen for performing a post-mortem in the parish of Pittem (29 January 1773) & n° 31156: A physician and two surgeons respectively received one Flemish pound (for the physician) and ten schellingen (each surgeon) for performing a post-mortem in the parish of Winkelkapelle (29 January 1774).

[108] *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde* (*supra*, n. 30), p. 88-89: chapter 11, article 20. If the culprit had no possessions, the costs had to be paid by the bailiff.

[109] For an example: RAG, *RVV*, n° 169, f° 226v-228v: The aldermen of Veurne condemned Francois De Keyser to a public whipping, branding and eternal banishment from the County of Flanders, together with the payment of all judicial costs, for having killed a prison guard during an attempt to escape prison (23 December 1733). For a condemnation in absentia: RAG, *RVV*, n° 6897: Sentence of the feudal court of the Barony of Wakken (15 November 1617): Nicolas Le Grand was banished from the County of Flanders for fifty years and one day for having killed Joos Buyse. All his assets were confiscated in favour of the monarch, minus the judicial costs.

[110] RAG, *RVV*, n° 6906: Post-mortem of Adam Mieren by the physician Chaerles Budtsien and surgeon Pieter Francqs (Pollinkhove, 25 April 1628).

[111] RAG, *RVV*, n° 31112: Agreement of reconciliation signed by both parties in the presence of the bailiff and aldermen of the parishes of Thiennes and Steenbeke (4 December 1670). Reconciliation with the kinsmen of the victim was a prerequisite for obtaining a pardon: Vrolijk, *Recht door gratie* (*supra*, n. 47), p. 36.

[112] If someone could be held accountable for the accident, the same arrangement was applied as if he or she had killed the victim. See for instance: Algemeen Rijksarchief Brussel (General State Archives Brussels), *Geheime Raad - Oostenrijkse periode* (Privy Council – Austrian Period), n° 588A: Documents concerning the petition for pardon of Jan Baptiste Vander Borcht. On the 25th of August 1763, Jan Baptiste had accidentally run over a child while driving the coach of the procurator of the abbey of Baudelo through the town of Sint-Niklaas. He received a pardon on the condition that he compensated the parents of the child and paid the costs of the preliminary inquiry and post-mortem.

recovered from the assets of the victim[113]. Legal practice demonstrates that similar provisions were maintained throughout large parts of Flanders. When the coach driver of the widow Sersanders, wife to a former president of the Council of Flanders, drowned in 1743, the aldermen of Ghent subtracted the costs of his post-mortem (thirty guilders) from his personal effects[114]. That arrangements of this kind did not enjoy a great popularity can be proved by following examples. After the examination of the drowned body of Eugenius Arckens, a judicial officer was sent to the home of his father to collect the payment of the post-mortem. The father replied that he would never pay, "even if they came ten times to ask"[115]. When hearing about the estimated cost of his son's post-mortem, Joos Van Brussele exclaimed: "The man is dead, in what way would this cost or burden help us"[116]. The parents of four-year old Marie Francoise Vaerewijck even secretly buried their drowned child because they wanted to avoid paying the costs of a judicial inquiry[117]. One might logically suspect that an arrangement of this kind was not very advantageous to reporting accidental deaths.

As suicide was defined as a "homicide of oneself", the arrangement observed in homicide cases could equally be applied to this type of cases. The traditional punishment of suicides consisted of a public hanging of the dead body, together with a confiscation of his or her goods in favour of the monarch[118]. The costs of the judicial proceedings were subtracted from the total value of the confiscated goods[119]. Even after the de facto decriminalization of suicide in 1782, Flemish judges continued to condemn the bodies of dead persons to pay the costs of the post-mortem and other investigative acts[120].

Conclusions

Looking back on the history of his own profession, the French pathologist Jean Planques considered "the period of Francis I and Charles V" to announce the dawn of modern forensic medicine[121]. While

[113] *Costumen vanden Princelycken Leenhove ende Huyse van Dendermonde* (*supra*, n. 30), p. 88-89: chapter 11, article 20; *Costumen der Stede, Casselrye ende Vassalryen van Berghen S. Winocx* (*supra*, n. 84), p. 4: chapter 1, article 6 (Sint-Winoksbergen); p. 233-234: chapter 1, article 2 (Pitgam) & p. 269: chapter 1, article 13 (Hondschote). If the victim had no possessions, the bailiff had to pay for the post-mortem.

[114] RAG, *RVV*, n° 170, f° 42r: Post-mortem of Jacobus Snick by two surgeons (Ghent, 5 August 1743).

[115] RAG, *RVV*, n° 31130: Post-mortem of Eugenius Arckens by the surgeon Joseph Crommelynck (Zwevegem, 20 May 1754).

[116] RAG, *RVV*, n° 22012: Deposition of the bailiff and aldermen of Eksaarde (15 July 1628). His son Jacques Van Brussele, a soldier, was accidentally shot by a colleague.

[117] RAG, *RVV*, n° 31141: Inquiry into the death of Marie Francoise Vaerewijck (Nokere, 5 April 1763). As the child was buried in the local parish church, the parents seem to have counted on the complicity of the priest.

[118] Wielant, *Corte instructie* (supra, n. 16), p. 214: second edition of 1515-1516, chapter 89, paragraph 4; Damhouder, *Practycke ende handbouck in criminele zaeken* (*supra*, n. 60), p. 143-144. Compared to the situation in the Holy Roman Empire, the practice in Flanders was considered to be particularly cruel: S. Deschrijver, *From Sin to Insanity? Suicide Trials in the Spanish Netherlands, Sixteenth and Seventeenth Centuries*, Sixteenth Century Journal, 42 (2011), p. 985.

[119] For instance: RAG, *RVV*, n° 31119: Sentence of the feudal court of Petegem near Oudenaarde (17 February 1739). The judges convicted the dead body of Gillis Tavernier to be hanged and ordered a confiscation of his goods, of which the judicial costs should be subtracted.

[120] RAG, *RVV*, n° 3116: Inquiry into the death of a certain Everaerts, who hanged himself in a tavern (Zwijndrecht, 16-22 March 1784). In his letter to the attorney-general of the Council of Flanders, the bailiff referred to the instruction of 18 October 1782 concerning the decriminalization of suicide. On the process of decriminalization, see: J. Monballyu, *De decriminalisering van zelfdoding in de Oostenrijkse Nederlanden*, Belgisch Tijdschrift voor Filologie en Geschiedenis, 78 (2000), p. 445-469.

[121] J. Planques, *La médecine légale judiciaire*, Paris 1959, p. 12.

there is some scant evidence for the 1540's that Flemish criminal judges consulted medical experts in order to inquire into causes of death, the main body of normative and doctrinal texts on medical expertise primarily dates from the rules of Charles's successors, Philip II and the archdukes Albert and Isabella.

The factors which prompted the development from the late medieval and early sixteenth-century summary inspections of deceased bodies to the more elaborate post-mortems of the seventeenth and eighteenth centuries remain however obscure. Some suggestions (the influence of the Carolina and Charles's ordinance of 1541, the rise of the written criminal procedure during the sixteenth century) have been presented, but further research on late medieval and sixteenth-century homicide inquiries is necessary to enlarge our understanding of this crucial development.

When considering the total amount of princely legislation on forensic medical expertise, one can only conclude that the involvement with forensic medical activities remained quite limited. Only three edicts and ordinances were proclaimed on this topic within a relatively short span of time (1589 to 1626). The legislation furthermore only laid out a very general framework, making post-mortem examinations mandatory in homicide cases (edicts of 1589 and 1616) and requiring the presence of properly trained surgeons (ordinance of 1626).

More detailed information is provided by the compilations of local customary law and Damhouder's description of the procedure in Bruges. This should not really surprise us, as the administration of criminal justice essentially remained an issue of local governance in which the central government only sporadically intervened. Flemish customary law informs us of the fact that surgeons were the most frequently consulted medical experts, that post-mortems were performed in a wide array of cases, and that the payment of forensic medical services was essentially considered to be a duty of the perpetrators of violent crime (in homicide and suicide cases) or the victim's family (in case of accidents).

On the other hand, the study of contemporary post-mortem reports has warned us of the danger of too great a reliance on legal texts as our sole sources. While the ordinance of 1626 was the first text which made the presence of surgeons mandatory at post-mortems throughout the entire county, reports from the decades immediately preceding this ordinance prove that the old practice of examinations undertaken by the local judges, without any medical assistance, had clearly disappeared during the second half of the sixteenth century. The ordinance of 1626 should therefore rather be interpreted as aimed against inexperienced surgeons and outright quacks than against the old medieval procedures[122]. Furthermore, the evidence of the reports proves that physicians were consulted in a large number of cases from an early time on, while no legal provision ever made their presence at post-mortems mandatory. In this sense, courts of different towns and regions often show more similarities in forensic practices than their respective customary law might suggest. Finally, the reports demonstrate that the variety in forensic medical cases was far greater than the short and dry provisions of certain compilations of customary law might imply[123].

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[122] This interpretation of the 1626 ordinance was also put forward in an undated file in the case of the widow of Pieter Vanden Abbeele, who in 1656 filed a complaint against the bailiff and aldermen of the parish of Teralfene before the Council of Flanders. After having examined the body of her murdered son, the bailiff confiscated and sold one of the widow's cows in order to pay the post-mortem. Her lawyer contested this arrangement on the basis of the 1626 ordinance, of which he wrote that it was primarily intended to protect the parties against the employment of unexperienced physicians and/or surgeons by bailiffs and other judicial officers: RAG, *RVV*, n° 13571.

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