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# The Scribe and the Witnesses: The Drafting of Witness Lists in the Charters of the Counts of Flanders (1071–1191)

## Introduction

The material drafting of witness lists in the 11th and 12th centuries—and that of archival documents more broadly—is an eminently complex subject. Studies on the documentary practices of writing and the redaction of charters have focussed on a range of different issues such as the decision to put legal action into writing,<sup>1</sup> or the identity and scriptural habits of the writers of these acts.<sup>2</sup> Historiography, particularly in France, has also explored matters relating to the life of the document after its redaction, conservation practices, and the perpetuation of the legal action contained within, particularly in relation to cartularies.<sup>3</sup> Indeed, only B.-M. Tock's major work on scribes and subscribers of French records between the 7th and early 12th centuries discusses the drawing up of lists of witnesses, with special emphasis on the autography of the scribe or subscribers.<sup>4</sup> This chapter is an attempt to uncover this understudied aspect of witness lists. It will focus exclusively on aspects pertaining to the material drafting of witness lists and the way in which these were conceived by the scribes. In addition to the intrinsic features related to their preparation, this topic is of major interest for many historical investigations for which witness lists are fundamental sources.<sup>5</sup>

First of all, it is necessary to contextualise what is both the object of this study and its main source: the lists of witnesses. In continuity with late Roman law, these lists constitute a legal guarantee by providing the names of several people, who, in the event of litigation, can certify that the donation reported by the charter or notice is real.<sup>6</sup> In short, the role of witnesses is to keep a record of the legal action that they witnessed so as to attest to its reality and validity—and thus to the authenticity of the material act established on this occasion—in case

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<sup>1</sup> Morelle 2009, 41–74, esp. 51–52. For the British Isles, see Broun 2000, 113–131.

<sup>2</sup> Postles 2000, 27–42; Tock 2005, 110–125.

<sup>3</sup> This was recently noted by Tock 2009, 379. See also Chastang 2006, 21–31; Chastang 2016, 24–44. Refer to the more general studies of Guyotjeannin/Morelle 2007, 367–403; Chastang 2008, 245–268.

<sup>4</sup> Tock 2005, 369–411.

<sup>5</sup> Since the classic work of Lemarignier 1965, studies and prosopographical research on royal, episcopal and princely *curiae* have flourished. To cite just a few key references, see Guillot 1972; Depreux 1997; Croenen 1999; Macé 2000; Marchandise/Kupper 2003; Fondazione Centro italiano di studi sull'alto medioevo 2015.

<sup>6</sup> Tock 1991, 86–87. According to Fichtenau 1986, 329 followed by Roach 2013, 27–29, late Roman law required private transactions to be attested by witnesses.

of contestation.<sup>7</sup> Moreover, witnesses give legal legitimacy to the act by their mere presence, showing their support for the author's decision and actively participating in the recorded legal action; they also draw attention to the author's network of influence.<sup>8</sup> The drafting of these lists of witness lists, which had high political and legal stakes for both the issuer of the act and its beneficiary, was probably not left to chance. Historiography has long debated this reality, although it agrees on the fluctuating, even arbitrary, nature of the work of drawing up witness lists. Some researchers dismiss the value of these lists as a simple 'presence list' and stress the scribe's free choice to choose specific individuals among those present.<sup>9</sup> Though it is unlikely that a person with a high social status would be omitted, other researchers affirm that individuals were carefully chosen for inclusion in the final act, the product of negotiations between the two parties.<sup>10</sup> Should we therefore question whether the witnesses entered at the bottom of the charter were a true reflection of all those present, or should we assume there was a systematic selection from the audience? The objective here is to determine when and especially how the scribes of these diplomatic documents recorded the witnesses during the drafting process.

To carry out this investigation, it is first necessary to define an appropriate set of documents. The charters of the counts of Flanders drafted between 1071 and 1191 provide an edited corpus of 987 acts that is sufficiently large, rich, and coherent for study of the execution of witness lists. Our study will also benefit from the expertise of the publishers, particularly on certain aspects relating to writing practices.<sup>11</sup> For these reasons, this twelfth-century Flemish charters constitutes the ideal material for this study.

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<sup>7</sup> Guillot 1972, 12–20; Tock 2005, 259–270. Despite acknowledging the primordial role played by the written word in transmitting the memory of the legal act that it records, Morelle 2009a, 52–55 argues that it should not be reduced to a 'vector of memory'. See also Morelle 2009b, 124–126. This view is also expressed by Tock 2009, 381.

<sup>8</sup> Gawlik 1970; Schneidmüller 2009, 16–18; Sirantoine/Escalona Monge 2014, 19; McNair, 2017, 10–12.

<sup>9</sup> Tock 1991, 94; Ehlers 2003, 99; Plassmann 2019, 44–45. The existence of fictitious witness lists is well attested in somewhat later corpora. However, it is beyond the scope of this chapter to enter into this debate. See Tessier 1962, 222; Croenen 2003, 281–282.

<sup>10</sup> Broun 2011, 263–264. See also Tock 2005, 229.

<sup>11</sup> The corpus studied here is essentially composed of charters published in *Actes des comtes de Flandre (1071–1128)* (= Vercauteren) and *De oorkonden der graven van Vlaanderen, juli 1128–september 1191* (= DH). This collection was completed with another 20 documents drafted on behalf of the Counts and Countesses of Flanders or in which they were evidently implicated: de Coussemaker 1860, 65–66, n° VIII; Van Drival 1875, 289–290, 297–298; Haigneré 1886, 53, n° 137; Hautcoeur 1894, vol. 1, 28–29, n° 20; Bernard and Bruel 1894, vol. 5, 836–838, n° 3733bis; Gysseling/Koch 1950, vol. 1, 251, n° 142 and 301, n° 172bis; Huyghebaert 1951, 150–152; Koch 1957, 261–278; Platelle 1960, 77–82; Morelle 1988, 610–612, n° 134; Gerzagnet 2005, 124–125, n° 28; Nieuws 2008, 87, n° 4; Vanderputten 2011, 281. Two *deperdita*, which mention the list of witnesses of the corresponding lost act, are also added to the corpus: Vercauteren XXXII; DH XCI. Of these 987 acts, 174 do not include a list of witnesses for various reasons.

Even with such a well-defined and dense corpus, this investigation encounters several challenges, which are not insurmountable, but complicate the historian's task. The acts that provide a glimpse into the scribes' work are incomplete and little in number. The information that can be gleaned is difficult to interpret, even ambiguous, and is not amenable to any quantitative analysis. On the one hand, the analysis relies almost exclusively on external elements such as changes in hand, letter size or ink colour, which point to interruptions in the writing process. These variations may indeed reflect the delayed writing of the witness list, although this is not always the case. The same scribe may, for example, simply choose to change the ink or letter size to draw attention to a particular part of the document such as the witness list. Similarly, a change in the ink colour sometimes occurs in the same sentence or even the same word, when the scribe redipped his pen in ink for instance, but this is not significant.<sup>12</sup> Palaeographic examination may also prove difficult. A change of hand when transcribing witnesses does not automatically mean a different scribe. The remarkable ability of medieval scribes to imitate the handwriting of one of their peers or to deliberately modify their own style to give the illusion of an autograph subscription, for example, has already been demonstrated.<sup>13</sup> Some charters are even penned by two scribes, with one attempting to reproduce the hand of the other. On the other hand, the few charters that contain clues about their redaction in their main text are also problematic. In most cases, they were drawn up in important cases of contentious jurisdiction, which still required a detailed description of the legal proceedings and the evidence given in addition to the witness lists. These are often exceptional documents in the primary sense of the word. This raises the question about generalising these conclusions to deeds of gift, which became slightly more standardised in the twelfth century.

Despite these difficulties, this chapter endeavours to shed light on the scriptural practices of archive scribes in the county of Flanders in the twelfth century by focusing on the way in which they drafted witness lists and their relationship with their material support. Indeed, the materiality of the charter as an object and the associated constraints in terms of its production—from an administrative and political perspective, as well as from a purely technical standpoint—compelled medieval scribes to be inventive. The chapter will be divided into two parts. Firstly, it will look at the practical conditions in which the scribes drew up the lists of witnesses as part of the process of writing the count's acts. Secondly, it will examine their rigour and

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<sup>12</sup> Tock 2005, 310–315 and 369–377.

<sup>13</sup> See Tock 2005, 315–324.

professionalism when recording the witnesses who attested to the legal action or the promulgation of the act that preserves its memory.

### **The drafting procedures of witness lists**

The way in which scribes drew up a charter in the twelfth century immediately raises the question about the timing of the drafting of the witness list. Indeed, the petitioner—the person or institution requesting the charter—could not simply appear in front of an authority and immediately receive a document in due form with all the official signs of validation. Once the request for a favour or arbitration was submitted and the legal action carried out, the text was prepared, drafted and then engrossed, most often by the beneficiary of the act himself. After verifying these operations, the issuing authority validated the act with a list of witnesses and/or a seal and then delivered it to its recipient.<sup>14</sup> Nevertheless, it is well known that the drafting of the document and its witness list could take place at different moments during this process. The document may have been drawn up entirely after the completion of the legal action mentioned therein or prepared beforehand and finalised during or after its execution with specific information that the scribe could not know in advance, such as the date or the witnesses present.<sup>15</sup> Moreover, these witnesses (as well as the date) may relate to the legal action itself or its promulgation, with a period of a few days or even weeks generally elapsing between the two stages.<sup>16</sup> Bearing these issues in mind, some interesting conclusions can be drawn from the Flemish corpus.

Among the 333 extant originals, in 324 cases, the charter and its list of witnesses appear—with a high degree of certainty—to have been transcribed by the same hand and with the same ink. The act was thus materially drawn up in a single stroke. Although it is not impossible that the legal action and its writing took place simultaneously, it is more likely that the material composition of the act occurred at a later stage.<sup>17</sup> It is then necessary to postulate that a draft

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<sup>14</sup> Guyotjeannin/Pycke/Tock 2006, 227–237.

<sup>15</sup> Tock 2005, 305–307, 369. For these considerations, see also Broun 2000, 258–265.

<sup>16</sup> A well-known example is the famous charter of Count Robert II for St Donatian in Bruges, whose legal action took place on 18 October 1089 and was promulgated not before 31 October of the same year. See Nieus 2015, 11. This was also common in the chancery practices of the counts of Champagne in the second half of the 12th century, see Benton 1959, 284–286. For an overview of the complex debate between the witnesses of the legal act and its promulgation, see Tock 1991, 89–93; Tock 2005; 267–270.

<sup>17</sup> There are many different views on this issue, with the main problem relating to the time needed to draw up the charter. Tock 2005, 307 considers it unlikely that the witnesses had the patience to wait for the scribe to write the charter after the legal action had taken place. Broun 2000, 258–261 is much less categorical and envisages this possibility, although he suggests that the quality of the scribe's writing would decline as the document was written. Prell 1997, 209–211 finds this eventuality to be completely conceivable. Although it may be imaginable that short routine charters were drafted at the place where the legal action took place, it is much less plausible for more

listing the names of the witnesses present was drawn up at the time of the *actio* to serve as a model for the engrossment of the final document, which was then sealed and delivered.<sup>18</sup> The Flemish corpus includes a record by Philip of Alsace to the leprosarium of Ghent (1183–1184) for which two preparatory versions survive. These, however, take the objective case — indicating that they were drafted by the beneficiary —, whereas the final charter uses the traditional subjective case and contains neither the corroboration formula announcing the sealing nor the list of witnesses. These are not, strictly speaking, drafts but rather “working documents”, preliminary to the drafting of the final text. Some of the clauses were deleted or reworked, certainly following the negotiations between the representatives of the leprosarium and the count when the legal action was carried out. It is therefore logical that the names of the witnesses are not given.<sup>19</sup> Thereafter, the ‘standard’ drafting process must have resumed: either the act was prepared in its entirety at the time of the legal action, or a draft was drawn up with the names of the witnesses present and then engrossed.

An exceptional charter of Thierry of Alsace, dated 1146 in Bruges, provides much information about how it was composed and delivered to its recipient, the Abbey St Nicolas in Tournai. After outlining the details of the legal action, the count orders the names of his followers to be included in the list of witnesses to the charter. The text then specifies that the charter was delivered “written and signed” into the hands of Abbot Gerard through the intermediary of Baldwin, the count’s son.<sup>20</sup> The original shows the identical handwriting used for the list of witnesses and the main part of the document, indicating that the act was written in a single stroke.<sup>21</sup> The count of Flanders therefore had the ability to send his charters to have them validated “remotely” via an intermediary: either he had them composed in his own chancery, recognised by his followers and validated (in this case, using his monogram) before sending them to the recipient, or the recipient drafted the original document and sent it for validation to the count who then returned it to him.

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important documents that required careful writing and formatting. The Flemish charters themselves do not contribute any additional elements to this debate.

<sup>18</sup> In his study of the drafts of the St Gall charters from the Carolingian period, Bruckner (1931, 297–315, esp. 301–304) observes that in most cases, the witnesses listed in the preparatory version correspond in number and order to those named in the final document. On drafts in general, see Guyotjeannin/Pycke/Tock 2006, 230, 233; Gawlik 1991, col. 1427.

<sup>19</sup> DH 675. On this particular case, see Verhulst 1959, 9–11.

<sup>20</sup> DH 93: ‘[...] *meisque fidelibus asscriptis eorum nominibus huius constitutionis atque mandati mei testimonium iussi perhibere [...] Balduinus filius comitis qui hanc kartam, precepto patris scriptam et signatam, Gerardo prefate ecclesie abbati manu sua tradidit*’.

<sup>21</sup> The original of this act is now lost, although a facsimile was made at the beginning of the last century: Pirenne 1909, plate 13B.

In contrast, the Flemish corpus preserves nine charters in which the witnesses were seemingly added after the writing of the body of the text. An interesting act of Count Thierry of Alsace for the Abbey of Oudenburg, dated 27 May 1130, was undoubtedly drafted by two distinct hands: the first scribe dealt with the protocol and the main text on the upper part of the parchment, and the second with the list of witnesses in two columns and the eschatocol on the lower part. For some unknown reason, the second scribe wrote in a third column the obits of the counts of Flanders from Baldwin V of Lille to William Clito, while omitting the principates of Baldwin VI and Arnould III. The legal action or its promulgation—it is difficult to determine to which the witnesses attest—probably took place during a public ceremony in the Church of Oudenburg. For the purposes of the ceremony, the body of the text was probably written in advance and then completed by another scribe. The second scribe made a few mistakes in the dating formula, lending support to the hypothesis that the text was written on the spot. He made a mistake, perhaps caught up in time, in his calculation of the indiction (nine instead of eight) and the regnal year of the French King Louis VI (23 instead of 22).<sup>22</sup> Another clear precedent is found in the Flemish corpus. In a charter of Count Robert for St Peter's in Lille dated 1096, a first scribe wrote the main body of the text, but the name of the witnesses (in four columns) and the dating formula are evidently the work of a second scribe (possibly the cantor Raimbert who subscribed this act), probably at the time of the *actio*.<sup>23</sup> There is no error in the calculation of the date here, but the change of hand and ink is obvious, supported by the different formatting of the text. Two other examples suggest a similar situation wherein a second scribe writes the subscribers (and possibly the dating formula) at the time of the legal action or its promulgation.<sup>24</sup> These acts were probably prepared in advance and then completed at the time of the legal action or its promulgation with the names of the witnesses present, as the scribe obviously could not know the attendees in advance.

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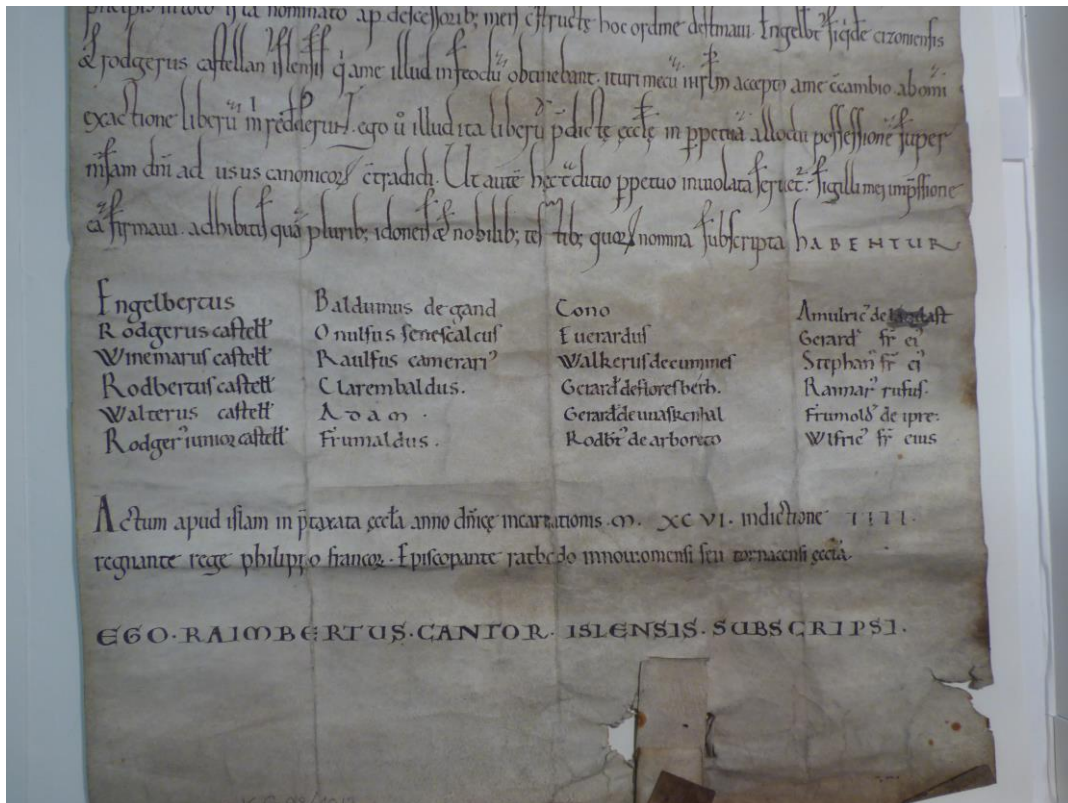
<sup>22</sup> DH 10. See the photographic reproduction of this document (Charter 1).

<sup>23</sup> Vercauteren 20 (Charter 2). It is possible, though not certain, that the dating formula was written by a third scribe.

<sup>24</sup> There is an early example of a charter of Robert I the Frisian for Etrun Abbey (1085–1093) in which the handwriting gives the impression that the scribe has added the subscribers in a hurry at the bottom of the act: Gysseling/Koch 1950, n° 172bis. Another example is an act of Count Thierry for the Abbey of Marchiennes, dated 1157 (DH 168).







Charter 2: Lille, Archives départementale du Nord, 16G98/1012 (Vercauteren 20)

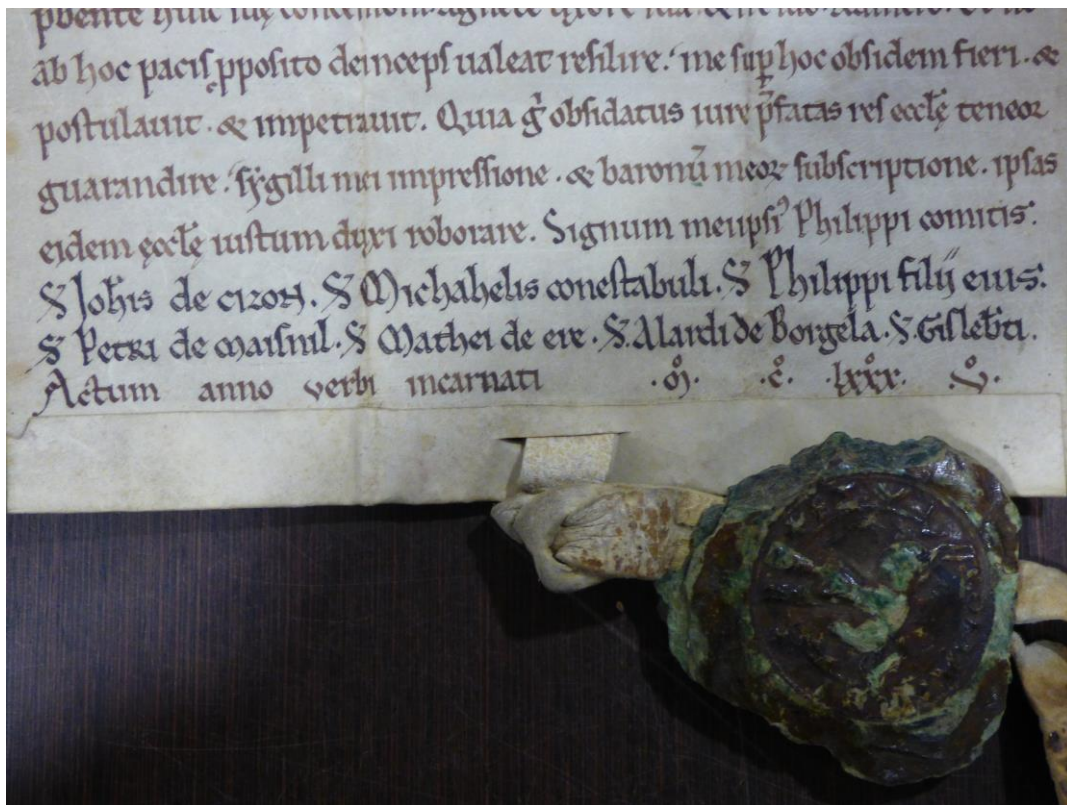
A charter of Philip of Alsace for the Abbey of Anchin, dated 1185, presents a different problem. The text was clearly written by one hand, but with changes in the ink colour. The list of subscribers is written in a darker ink before returning to the initial ink of the main body of the text for the dating formula.<sup>25</sup> There are three similar acts with a distinct change in the ink colour for the witness list, although it is almost impossible to determine whether they were written by one or two hands. Nevertheless, the use of a different ink to transcribe the subscribers and the date does not in itself confirm a two-stage redaction.<sup>26</sup> In an act of Thierry of Alsace for the Collegiate Church of St Donatian (1155–1157), the scribe probably changed the ink, and possibly also the pen, when transcribing the list of subscribers, which was written in the same hand.<sup>27</sup> As comital charters were often produced by the beneficiary, it is plausible that the same scribe prepared the main text and the dating formula of the record in advance while leaving a space between the two, and then when personally present at the legal action or its promulgation,

<sup>25</sup> DH 689 (Charter 3).

<sup>26</sup> Vercauteren 121 (Auchy Abbey, 1126; Charter 4), Vercauteren 123 (Saint-Vaast Abbey of Arras, 1119–1127), and DH 563 (Anchin Abbey, 1180; Charter 5).

<sup>27</sup> DH 166. While the editors remain cautious about the scriptural continuity of the text, there is no convincing palaeographic evidence for the existence of a second hand.

he filled it in himself with the names of the witnesses. Nevertheless, a difference in the colour of the ink that cannot be linked to a change of hand does not definitively exclude the possibility of a single hand, as the scribe may simply have encountered a technical problem or an issue which caused a pause in the writing during the engrossment of the document.<sup>28</sup> Considering that he was writing the charter while the legal action was taking place, the scribe could also have interrupted his work after writing the *dispositio* to wait for the parties involved in the act to choose the witnesses from among the individuals present.<sup>29</sup> This issue of choosing the witnesses listed at the bottom of the count's charters—whether independent of the scribe or not—is addressed next.



Charter 1: Lille, Archives départementale du Nord, 1H42/477 (DH689)

<sup>28</sup> Tock 2005, 310. For instance, Zimmermann 2003, 63 notes the example of a scribe who indicated his use of several inks and several pens to write a single document.

<sup>29</sup> Broun 2000, 263–264.



lucemq; concedat utre phennid. Patrat q; omnibus quod ego karol & Anselm  
 hildinensis consul. terram Sci Siluini in qua mathildis comitissa olim ccedente  
 abbe hofredo & fratrib; de capitulo manentiam suam edificauit. ea scilicet condi  
 tione ut post discessum ipsius terra eadem cu omni edificio ad ecclesiam ut pri  
 erat absoq; calumpnia reuerteret. quam ualiter hildinensis expulsa mathilde  
 ab ecclesia iniuste & uiolente abstulisse agnoscat. solute & libere dominio eidē  
 ecclesie libenter reddim; & ut id pacum & inconuulsum eternitate maneat.  
 presentib; militib; nris deuote confirmam;. Balduino dapifero. Sigero de ponte  
 frumol do castillano pprenti. Willelmo filio uillelmi castillani de sco audomaro.  
 Eustachio de staintort. Melmo petran. Varino filio Alardi. Waltero de bernelis. et aliis.  
 Actū Anno Incarnati uerbi millelmo. centesimo. xxi.

Charter 2: Arras, Archives départementale du Pas-de-Calais, 2H6 (Vercauteren 121)

sibi remanent. Addiderunt etiam. q; nāquā homo in quacūq; pte huius  
 bitandum uenerit. ad usus & consuetudines hominū ibi manentium remanebit. & ecclesia preter antiqua cur  
 tilla. nullum curiale dabit. nisi de uoluntate sua hoc facere uoluerit. Additam est insup. qd homines & fem  
 ne ipsius uille. se p fce ecclie libere possunt reddere. & omnia mobilia sua in elemosinam dare. Si autem  
 terram eidem ecclie dederint uel uendiderint. ecclia p annum & diem eam libere & pacifice tenebit. ultra uero  
 uel p ipsos remanebit. uel tali conferet. qui assignationem predictam ipsis psoluet. Ut q; compositio ista ab utraq;  
 parte firmiter in ppetuum teneatur. pree utriusq; partis me obsidem dedi. & psem scripto sigilli mei in  
 pressionem signato confirmaui. testumq; subter signato. amoratione corroborau. S me ipsius Philippi com  
 tis. S Elizabeth comitisse coniugis mee. ad quam hereditario iure terra syromandensis ptnet. que compositi  
 onem istam in pntia sua. a fratrib; Aquicinctensib;. & Godfrido filio q; eius Burchardo rogantem & approbatā.  
 sigilli sui appositione confirmauit. S Jacobi de Auefins. S Gerardi de sco Aubro. S Onibaelis constabularij.  
 S Wualteri de Atrebaro. S Petri de bussis. S Gerardi de pugnens. S Gerardi de seguencur  
 Actum Anno uerbi incarnati

Charter 3: Lille, Archives départementale du Nord, 1H42/472 (DH563)

## A Selection of Witnesses?

In 1139, on his return from his first trip to the Holy Land, Thierry of Alsace confirmed an act given a year earlier by his wife to the Abbey of Ter Duinen. The scribe of the count's charters copied Sibyl of Anjou's record verbatim, including the dating formula and the list of witnesses, although replacing the name of the countess with that of the count. The only other change was the addition of Michel I of Harnes, castellan of Cassel, among the witnesses, inserted between Yvan of Alost and Anselme of Bailleul; otherwise, the original witnesses are written in the same order and with the same spelling. How can the addition of the Lord of Harnes be explained? Perhaps he was present with Sibyl of Anjou, and the scribe, intentionally or not, forgot to write down his name when the countess' charter was engrossed, with this error only being corrected on the count's return. In this case, it would be necessary to imagine that the memory of his presence persisted. An examination of the originals shows that the two acts are clearly not written in the same hand, although they are similar in style (perhaps because they were written in the scriptorium of Ter Duinen). Another possibility is that the count's charters were drawn up from a no longer extant draft kept at the abbey that mentioned the presence of Michel of Harnes, whom the scribe of Sibyl's version simply overlooked in his transcription of the final text. Although it is clear that the scribe of Thierry's charter used a previous version of the document, given the perfect reproduction of the spelling of the witnesses' names, it would be more logical that the scribe used the final version in the name of the countess Sibyl, which omitted the castellan.<sup>30</sup> One hypothesis that cannot be excluded is that the Lord of Harnes was present with Count Thierry when he confirmed his wife's act and that the scribe then added his name to the list of witnesses that he was copying. This example nevertheless calls into question the presence of Michel of Harnes at one of the legal actions and the way in which the scribes recorded the names of the witnesses attesting to the *actio*.

In three notable examples, two comital acts given on the same day, in the same place and for the benefit of the same institution contain significant differences in their respective witness lists.<sup>31</sup> The choice of witnesses is difficult to explain, if not by a careless mistake, then by the

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<sup>30</sup> DH 46 and 53.

<sup>31</sup> DH 254–255: three witnesses (Gauthier monk of Zomergem, Jean of Boisleaux and Robert of Gondecourt) are added to DH 255 (Marchiennes Abbey, Lille, 16 February 1166). DH 369 and 370: significant differences between the two lists, with the addition of the abbots of Lieu-Restauré and Saint-Denis of Paris in DH 370 (Abbey of Valsery, Villers-Cotterêts, 1 December 1174). DH 642–643: six additional witnesses (Gauthier III of Nevele, Siger II of Poeke-Viggezele, the count clerk Joseph and three canons of St Donatian) in DH 642 compared to DH 643 (Collegiate Church of St Donatian in Bruges, Male, 25 March 1183).

scribe's desire to deliberately record (or not) certain individuals present during the legal action. In other cases, there are chronological constraints that are sometimes difficult to determine. For example, two charters of Thierry of Alsace for the Abbey of Saint Peter's in Ghent, given in 1150, appear to be identical in their conception, transcribed by the same scribe with an identical form and broadly similar witness lists save for a few additional individuals in the first charter.<sup>32</sup> However, the charters could not have been produced on the same day. Indeed, it is difficult to conceive that the scribe would have omitted from one of the witness lists important figures such as the count's son or two eminent abbots in the region. Therefore, it is probable that a short period of time, a few days at most, separated these two acts, which were passed during the count's stay in Ghent, thus allowing the different witnesses to come and go depending on their occupations. A similar observation can be made in a pair of charters intended for the Abbey of Ename, drafted a decade earlier in Aalschoot, regarding properties located in Langebeke.<sup>33</sup> This thesis is also supported by the examination of two other charters of Thierry of Alsace for the Abbey of St Peter in Oudenburg, given in Bruges in the count's house and dated to 20 and 22 February 1161. The documents have several similarities in their notification and dating formulas.<sup>34</sup> From a palaeographic perspective, the two hands are similar, suggesting that they were made by the same scribe. Regarding the witnesses, most are common to both charters, although the second act sees the addition of a certain magister Gauthier, John of Esen and the aldermen of Bruges. The abbot of Oudenburg, Herman, certainly visited Count Thierry in his home in Bruges in order to obtain both a charter of exemption and a charter of confirmation (of an act of Charles the Good). The witnesses are all from the Bruges region and were probably summoned by the count to attest to these two legal actions. Perhaps faced with an unexpected request from the abbot of Oudenburg, Thierry of Alsace was only able to call on vassals located near the city of Bruges, some of whom, like Jean d'Esen, perhaps could only arrive in time for the second act on 22 February. It is also possible that the confirmation act required, for one

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<sup>32</sup> DH 121–122. The following people only appear in DH 121: Baldwin, the son of Thierry of Alsace, the abbots of St Bavo and Ename, Rainier of Zwijnaarde and three monks from the Abbey of St Peter in Ghent. On the scribe who wrote these documents, see Huyghebaert 1982, 59, n. 172.

<sup>33</sup> DH 54–55. These acts show mutual borrowings and common formulas such as their dating (“*Actum est hoc anno uerbi incarnati M° C° XL°*, in Alescot, *ubi tunc temporis comes cum suis, uenationi intendens, morabatur*”). They are both intended for the abbot of Ename, who has requested them from the count. Although the hand is fundamentally different, eight of the nine witnesses of DH55 are also present in DH54, which leads us to compare them. It is probable that DH54 is somewhat later than DH55 and that the other witnesses of this charter were added to those of the first one. In contrast, DH54 may have been given shortly and some of the witnesses may have left before the legal action of DH55.

<sup>34</sup> DH 191–192.

reason or another, the presence of several Bruges aldermen, who were only able to join the count and his entourage on that date.<sup>35</sup>

These examples illustrate the fluctuating nature of witness lists in twelfth-century Flemish count diplomacy.<sup>36</sup> Witnesses, often of high social standing, would regularly come and go from the count's court, which would explain these variations.<sup>37</sup> To justify the disparities between two contemporary witness lists, could the hour of day have influenced their composition? The available evidence rather suggests that in some cases, the scribe intentionally selected specific witnesses for reasons that largely escape us. Indeed, 73 witness lists (i.e., 9% of the Flemish charters containing such lists) conclude with sentences that indicate that the scribe did not record all the individuals present at the legal action or promulgation: "*et alii quamplures*" (32 occurrences), "*et alii multi*" (17 occurrences), "*et aliorum plurimorum*" (18 occurrences), "*et ceteri multi*" (1 occurrence), "*cum aliis*" (4 occurrences), "*et alii fideles*" (2 occurrences) and so on.<sup>38</sup> Moreover, witnesses of low origin are not the only ones to be omitted, as the great vassals of the count's court were also occasionally overlooked.<sup>39</sup> Sometimes the scribe simply states that too many people were present and that it would take far too long to list all their names.<sup>40</sup> Is the laziness of an indolent scribe before a large assembly to blame here? This is a

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<sup>35</sup> This notion of summoning witnesses is assumed by the importance of their testimony as a power issue for the author or recipient but is never clearly stated in the sources. Some, like Prell 2003, 214, even cast doubt on it, arguing that the presence of a particular witness is only a "matter of circumstance, even of chance", which in some cases cannot be fundamentally ruled out.

<sup>36</sup> Six other cases of this type exist in the Flemish corpus. Two charters dated 1175 for the cathedral Notre-Dame in Paris, respectively from Count Philip of Alsace and Countess Elisabeth of Vermandois, have a strictly identical *dispositio*. Only the list of witnesses is modified. In Philip's charter, the witnesses are introduced by '*Huius rei testes sunt*', while those in the countess' charter are subscribers. The greatest difference is the replacement of Gauthier of Arras by Raas IV of Gavere in the list. The place of promulgation of the countess' charter is not specified, unlike the count's charter (Arras). Some graphical variants in the names of the witnesses are also present, suggesting that the two documents were not written by the same scribe. In any case, it may be assumed that a short period of time elapsed between the charters of the count and countess, which would have allowed enough time for the departure of Gauthier of Arras and the arrival of Raas of Gavere, with one perhaps accompanying the count and the other the countess (DH 384–385). Similar cases are found in DH 780–781 (between 1184 and 1190), where the same judgment is confirmed successively by Countess Matilda and then by Count Philip before a similar, but not completely identical, assembly, and DH 801–802 (1190), when the same individual, Thierry of Rubroek, carries out two transactions with two different beneficiaries before the same witnesses with only one exception.

<sup>37</sup> Bates 1997, 100–101; Green 1997, 254.

<sup>38</sup> Vercauteren 63, 66, 71, 73, 76, 83, 121, 125. DH 14, 19, 23, 185, 189, 228, 230, 243, 244, 248, 252, 253, 264, 265, 267, 270, 271, 274, 275, 290, 302, 310, 311, 333, 348, 352, 398bis, 399, 401, 404, 405, 422, 425, 431, 443, 449, 458, 460, 564, 576, 580, 584, 588, 589, 590, 621, 631, 640, 641, 649, 655, 667, 672, 673, 682, 692, 713, 715, 723, 728, 757, 759, 824, 841 and 843. One scribe uses a biblical quotation (John, 20–30) to indicate that not all the witnesses are listed in the charter (DH 69: '*alii que quorum nomina non sunt scripta in libro hoc*').

<sup>39</sup> Vercauteren 12: '*multisque aliis de optimatibus nostris*'; Vercauteren 75: '*et plures de curia comitis primates*'; DH 96: '*et ceteris nobilibus quos enumerare longum est*'; DH 431: '*ceterisque probabilibus viris quam pluribus*'; DH 641: '*Et plures alii homines comitis*'; DH 824: '*Et plures alii de meis hominibus*'.

<sup>40</sup> DH 96: '*et ceteris nobilibus quos enumerare longum est*'; DH 97: '*ceterisque quos dinumerare longum est*'; DH 126: '*et ceteri quos enumerare longum est*'.

possibility, although material constraints also seem to be at play. An investigation of the extant originals shows that in some cases, the scribe did not have enough space on the parchment to record all the names of the witnesses. He thus interrupts his enumeration and adds the appropriate “and others” formula. These documents confirm a selection—involuntary and unavoidable, but undeniable—of witnesses from the audience.<sup>41</sup> Nevertheless, some scribes end their enumeration when there is still space available on the parchment.<sup>42</sup> This selection can only be voluntary, although it is possible that the piece of parchment used as a draft at the time of the legal action was too small to contain all the witnesses. On the contrary, it is conceivable that the draft of a charter may have contained more witnesses than the final version, because the scribe did not have a piece of parchment large enough to transcribe all the names recorded at the time of the *actio*. In practice, these cases do not modify my argument. The selection of witnesses was made either at the time of the legal action (or its promulgation) or during the drafting of the final text in which case the scribe took full responsibility for his choices. In these situations, the materiality of the charter as an object has a significant influence on the scribe’s scriptural practice, although this does not call into question its purpose as a vehicle of memory.

On what criteria was this selection based? Unfortunately, the Flemish documentation contains no relevant evidence. Was it, as mentioned above, the outcome of a negotiation between the participants in the act or an arbitrary decision made by the scribe? Could the Count of Flanders himself influence the choice of names transcribed on the parchment? And how random was this selection? These questions remain unanswered, especially as other considerations complexify the problem. Studies of Anglo-Saxon charters have stressed the importance of the order of witnesses as a mirror of the social hierarchy, based on the principle that the scribes transcribed the names of the individuals according to an order governed by social rank, with the first witness situated at the top of the ladder.<sup>43</sup>

In Flanders, the witnesses are usually organised according to the following model. Firstly, the members of the clergy headed by the bishops and archbishops, followed by the abbots and provosts, and then the rest of the clergy. Then come the laity with the count’s family in the leading positions, followed by the great aristocrats of the county, the princely officers, and the castellans, who often come from these important lordly families, and finally, the urban

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<sup>41</sup> Vercauteren 63, 71, 73, 76 and 121. DH 23, 69, 185, 189, 244, 265, 405, 641, 649 and 715.

<sup>42</sup> Vercauteren 66, 75 and 125. DH 14, 352, 404, 584, 589, 590, 631 and 757.

<sup>43</sup> Russell 1937, 319–329; Benton 1959, 291–293; Keefe 1997, 93–109; Vincent 2007, 325. See also Tock 2005, 254–258.

bourgeoisie and aldermen. In the case of a larger assembly, a cohort of individuals from different social backgrounds (small local lords, members of village communities, etc.) may be listed between the last two categories.<sup>44</sup> Nevertheless, exceptions do exist. The list of witnesses included in an act of Count Robert II for the Abbey of Saint-Amand is not organised hierarchically.<sup>45</sup> Sometimes, secular witnesses are listed before the clergy or the two orders are mixed, with the names of the abbots being placed at the end of the list.<sup>46</sup> In the majority of cases, however, the scribe puts the most eminent people at the top of the witness list, and because it is generally accepted that such lists also served to emphasize the author's network of influence, it would be very surprising indeed if he did not mention their names.<sup>47</sup>

## Conclusion

Before concluding, let me once again reiterate the critical precautions to be taken in relation to the observations made in this chapter. The interpretation of data relating to the materiality of the sources and particularly their palaeographic examination can indeed be ambiguous and illustrates the limitations of a strictly materialist approach to the subject. Despite this broadening of perspectives, the corpus of the acts of the counts of Flanders offers few certainties—though logically limited to the Flemish area—regarding the questions raised in the introduction. Nevertheless, some convincing elements can be highlighted. The general tendency—it is impossible to speak of a norm in the context studied here—involves the material composition of the charter in one piece made by a single scribe either at the same time as the legal action or its promulgation, or after their completion. In the latter case, the memory of the witnesses was probably preserved in a draft, which was then engrossed by the scribe. However, the way in which Flemish archival documents were drawn up seems to have been so varied (e.g., multiple preparatory versions, validation of the record “remotely”) that it is difficult to

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<sup>44</sup> These general observations are based on a close and careful reading of the witness lists of the Flemish corpus. It is nevertheless difficult to provide solid quantitative evidence to support this statement. It seems futile to indicate the average position of a witness in all the lists in which he appears, as this criterion is too closely correlated with the numerical importance of the lists.

<sup>45</sup> Vercauteren 50 (5 Augustus 1111). The original has been lost. It is possible that the witness list was organised in columns, although this form was not preserved in the surviving copies.

<sup>46</sup> Vercauteren 26 (1101), 31 (14 October 1104), 32 (1105); DH 101 (1139–1147), 153 (1156), 198 (1161), 226 (1163). Again, the possibility of having a list of witnesses organised in columns cannot be ruled out for charters where the original is missing. Fortunately, this order can be confirmed in the originals of Vercauteren 31, 32 and DH 198.

<sup>47</sup> See the studies cited above in fn. 8.



imagine their complete standardisation. A few rare charters show a clear break in their writing, whether it be a change of hand or ink, which would suggest that they were written in several stages. This implies an initial preparation, with the scribe leaving an empty space to later add the names of the witnesses based on the individuals who attended the legal action or its promulgation. While some examples are ambiguous, others seem to support the hypothesis that the recording of witnesses was chosen on the spot from those present at the assembly.

The selection of witnesses seems to be a relatively frequent phenomenon in Flemish charters, even if it is far from systematic. The choice is sometimes involuntary such as when the scribe is subject to technical constraints in the case when the materiality of the support influences the scriptural practice. However, sometimes the process can be quite deliberate. The criteria for selecting witnesses are not apparent from the documentation and must certainly be multiple. The choice was probably made at the time of the ceremony relating to the legal action, although it could also take place afterwards when the charters were engrossed. The scribes were certainly responsible in this operation, although this is impossible to prove. To sum up, between 1071 and 1191, the lists of witnesses in the count's charters provide a faithful but partial picture of the individuals present with the count of Flanders when he made his acts, especially regarding those of lower social rank. As indispensable as charters are to many historical investigations, they must be handled with care, bearing in mind that their creation is the outcome of a complex process that is far from being standardised and rationalised.

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