The Anatomy of a Medico-Legal System. Medical Practitioners and the Investigation of Suspicious Deaths in Early Modern Flanders

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Résumé :

Pendant l'époque moderne, des experts médicaux commencèrent à jouer un rôle de plus en plus important dans les poursuites criminelles à travers l'Europe continentale. Pourtant, les procédures médico-légales aux Pays-Bas méridionaux ou habsbourgeois n'ont reçu que peu d'attention de la part des historiens de la médecine légale. Le présent article vise à combler cette lacune en étudiant comment les morts suspectes étaient investiguées au comté de Flandre à l'époque moderne. Plus précisément, trois éléments principaux du système médico-légal flamand sont analysés : la composition du corps d'experts médicaux auquel les autorités judiciaires faisaient appel pour effectuer des examens post-mortem, le contenu des rapports post-mortem, et finalement les modalités de rémunération des experts. Bien que les chirurgiens constituaient initialement le principal groupe d'experts médicaux, au cours des XVII^{e} et XVIII^{e} siècles les médecins diplômés étaient de plus en plus appelés à participer à des enquêtes sur des morts suspectes. De plus, cette période vit également une augmentation du nombre d'ouvertures de cadavres. Cependant, les dispositions relatives au payement des experts médicaux restèrent pratiquement inchangées à travers l'époque moderne.

Mots-clés : Justice criminelle, comté de Flandre, médecine légale, examens post-mortem, époque moderne

Abstract :

During the early modern period, medical practitioners came to play an increasingly important role in criminal proceedings throughout continental Europe. Nevertheless, medico-legal procedures in the Southern or Habsburg Netherlands have hardly received any attention from historians of forensic medicine. The present article aims to address this issue by studying how suspicious deaths were investigated in the early modern County of Flanders. More specifically, three major aspects of the Flemish medico-legal death investigation system are analysed: the composition of the corps of medical practitioners on which the judicial authorities relied to conduct post-mortem examinations, the content of post-mortem reports, and arrangements for the remuneration of medical experts. Although surgeons initially constituted the principal group of medical examiners, university-trained physicians were increasingly required to participate in death investigations over the course of the seventeenth and eighteenth centuries. Furthermore, this period also witnessed a gradual increase in the number of internal autopsies. However, arrangements for the payment of medical experts remained largely unchanged throughout the early modern period.

Keywords : Criminal justice, County of Flanders, forensic medicine, post-mortem examinations, early modern period

1. Introduction

The early modern era is often regarded as a key period in the history of forensic medicine. From the later Middle Ages onwards, criminal courts throughout continental Europe increasingly adopted the precepts of the Roman-canon inquisitorial procedure. Under the inquisitorial system, judges could only convict a suspect after they had established the truth of the alleged facts by means of a rational investigation of the available evidence. The very stringent evidentiary rules that had to be observed during such investigations encouraged judicial officials to solicit expert testimony in a growing number of cases[1]. Since medical knowledge could be applied to a wide variety of forensic issues, ranging from the examination of physical injuries and traces of sexual violence to ascertaining pregnancy and insanity, health professionals were the most frequently consulted category of expert witness in late medieval and early modern criminal proceedings[2]. While criminal judges in Italy and parts of France had relied extensively on expert medical testimony in homicide and assault cases since at least the thirteenth and fourteenth centuries, legislators and judicial officials in the Low Countries and the German territories only demonstrated a significant interest in medico-legal expertise from the sixteenth century onwards. Furthermore, the early modern period also witnessed the first attempts by medical authors to develop a theoretical framework for the nascent discipline of forensic medicine[3].

The County of Flanders – a principality comprising the present-day Belgian provinces of West and East Flanders together with parts of northern France and the Dutch province of Zeeland – was no exception to the continental trend towards the increasing “medicalisation” of criminal proceedings. During the second half of the sixteenth century and the first half of the seventeenth century, for instance, several normative texts were promulgated in the county with the aim of regulating medico-legal practice. The majority of these texts focused on what was probably the most important forensic duty of early modern medical practitioners: the examination of the corpses of individuals who had died a sudden or unnatural death. Nevertheless, historians of forensic medicine have paid almost no attention to medico-legal procedures in Flanders and other parts of the Southern or Habsburg Netherlands[4].

The present article aims to address this historiographical lacuna by offering an in-depth analysis of the medico-legal investigation of suspicious deaths in early modern Flanders. The first part of this contribution will discuss the normative provisions that regulated forensic post-mortem examinations in the county. Each of the three subsequent sections will then examine a particular aspect of the medico-legal death investigation system that was established in Flanders over the course of the early modern period: the corps of medical practitioners on which the judicial authorities relied to conduct post-mortem examinations; the content of post-mortem reports; and arrangements for the remuneration of medical experts. In these sections, evidence from legal texts will be confronted with sources documenting actual forensic practice, such as post-mortem reports and other court records. These documents mainly derive from the judicial archives of the *Raad van Vlaanderen* or Council of Flanders (the provincial judicial council of the County of Flanders), the benches of aldermen (*schepenbanken*) of the cities of Ghent and Bruges, the feudal court (*leenhof*) of the *Land van Waas* (a castellany, or rural district, situated to the north-east of Ghent), and the bench of aldermen of the castellany of Ypres.

2. The legal framework

In 1532, Emperor Charles V enacted a criminal code for the Holy Roman Empire known as the *Constitutio Criminalis Carolina*. The *Carolina*, as it is often called, contained a number of medico-legal provisions requiring criminal judges to consult surgeons in potential homicide cases and midwives in cases of alleged infanticide. The promulgation of this criminal code is therefore generally regarded as an important milestone in the history of forensic medicine[5]. Although the *Carolina* did not enjoy any legal validity in the Habsburg Netherlands, most historians of forensic medicine tend to assume that the medico-legal provisions of this law code exerted a significant influence on forensic procedures throughout continental Europe[6]. Consequently, it is probably not a coincidence that the first Flemish legal text arguing for the systematic involvement of medical practitioners in homicide investigations appeared only a few decades after the promulgation of Charles V's criminal code. In 1555, the jurist Joos de Damhouder (1507-1581) – a native of the city of Bruges – published his *Practycke ende handbouck in criminele zaeken*, a handbook of criminal law and criminal procedure intended for local judges and judicial officers. This work included a short chapter on post-mortem examinations in which Damhouder stated that the corpses of alleged homicide victims should be inspected by one or two sworn surgeons and/or physicians[7]. Although he did not explicitly refer to the *Carolina* in the chapter in question, it can be surmised that a learned Flemish jurist such as Damhouder would have been familiar with the medico-legal provisions of this criminal code. During the years 1550 and 1551, Damhouder had been criminal clerk (*griffier-crimineel*) to the aldermen of the city of Bruges[8]. Although this former medieval trade hub had lost much of its splendour by that time, the city still remained an important commercial centre where goods and ideas continued to circulate[9]. In 1552, Damhouder became a member of Charles V's Council of Finances (*Raad van Financiën*) in Brussels, which meant that by the time he published his *Practycke*, this Flemish jurist was a prominent government official with strong ties to the emperor and his court. Finally, the *Carolina* had full legal validity in the Prince-Bishopric of Liège, a principality that had close economic, political, and cultural relations with the Habsburg Netherlands[10].

The first princely ordinance containing provisions on post-mortem examinations was only promulgated in the late sixteenth century. An ordinance on homicide enacted in the name of Philip II of Spain in 1589 stated that whenever a fatal act of violence had taken place within their jurisdiction, local judicial officers (who were usually called *baljuws*, or bailiffs, in Flanders[11]) were required to inspect the corpse of the deceased together with two local judges and a clerk or secretary[12]. This requirement was repeated in a second homicide ordinance promulgated by Philip's successors, the Archdukes Albert and Isabella, in 1616[13]. Although the relevant articles of these ordinances constituted the first proper domestic legislation on the investigation of violent deaths, the texts in question left two major issues unresolved. First, neither of these ordinances explicitly states that the bodies of potential homicide victims should be examined by medical practitioners. Second, they do not explain what a proper post-mortem report should look like and what kind of information it should contain.

The first issue was addressed by an ordinance enacted by the Council of Flanders in 1626, which stated that post-mortem examinations should be performed by one or two properly trained and licensed surgeons[14]. The second matter was tackled in a different way. The ordinances of 1589 and 1616 both stipulated that each time a homicide had taken place within their jurisdiction, local judicial officers were required to submit a copy of both the post-mortem report and the records of the accompanying preliminary judicial inquiry (*informatie preparatoire*) to the *procureur-generaal*,

or attorney-general, of the provincial judicial council within fourteen days of the victim's demise. In this way, the attorney-general could verify whether local judicial officials properly investigated violent deaths. According to the ordinance of 1616, judicial officers who did not submit the relevant records within the prescribed time limit, or did not submit these documents at all, would be fined fifty guilders[15]. Although this procedure could potentially have served as a very effective means for monitoring both the requirement to conduct post-mortem examinations and the quality of the medico-legal reports produced on behalf of local judicial officers, relatively few traces of actual prosecutions and condemnations of negligent bailiffs survive in the archives of the Council of Flanders[16].

The ordinances of 1589, 1616, and 1626 constituted the principal legal framework for the investigation of sudden and unnatural deaths until the very end of the *ancien régime*. Nevertheless, these ordinances were certainly not the only normative texts that regulated the process of investigating deaths in early modern Flanders. Since the administration of criminal justice was primarily regarded as a local governance issue, in which the provincial judicial councils and the central government in Brussels only sporadically intervened, legal provisions pertaining to forensic post-mortem examinations can also be found in compilations of local customary law (*costumen*). In 1531, Charles V enacted an ordinance urging the local bodies of government in the Habsburg Netherlands to deliver to the central government, within six months, a written compilation of the customary law that they observed in their respective jurisdictions. After the provincial judicial councils and the prince's Privy Council (*Geheime Raad*) had examined the texts in question and the necessary adjustments had been made, these compilations would finally be "homologated", or enacted as princely law. Although this enterprise was never completed[17], it nevertheless resulted in the homologation of the customary law of thirty-seven Flemish cities, towns, seigneuries, and other localities[18]. Fifteen of these compilations contain stipulations on the investigation of suspicious deaths or the closely related topic of medico-legal examinations of the injuries of assault victims[19]. Furthermore, provisions concerning post-mortem examinations also appear in the *Concessio Carolina*, a civic constitution for the city of Ghent promulgated by Charles V in 1540. Although the *Concessio* is, strictly speaking, not a compilation of customary law, it was often included in printed editions of the city's official *costumen*, which were homologated in 1563[20]. The level of detail of the relevant stipulations varies greatly from text to text. While the customary law of the princely feudal court of Dendermonde (which was homologated in 1628), for instance, devotes four separate articles to the investigation of "unforeseen deaths"[21], the *costumen* of the town of Roeselare (homologated in 1624) only contain one modest article referring to post-mortems, in which these examinations are lumped together with inspections of streets, public works, and waterways[22].

3. Skilled surgeons and learned physicians. A typology of Flemish medical examiners

During the later Middle Ages and much of the sixteenth century, Flemish criminal judges and judicial officers did not deem it necessary to involve medical practitioners in the process of death investigation. The corpse of an individual who had died a sudden or unnatural death was usually examined by the judicial officer and a deputation from the criminal court of the locality where the person in question had expired or where his or her body was found[23]. This procedure was still presented as the norm in most of the aforementioned compilations of customary law. Their provisions pertaining to post-mortems usually contain detailed information on the number of judges and other judicial officials who had to be present to conduct a valid examination, but only rarely

state that corpses should be inspected by medical experts. Only the *costumen* of the towns of Lille, Poperinge, Veurne, and Nieuwpoort, together with the very detailed stipulations in the customary law of the princely feudal court of Dendermonde, explicitly refer to the involvement of medical practitioners in forensic investigations[24].

From the second half of the sixteenth century onwards, however, the old medieval procedure gradually fell into disuse. Following the publication of Damhouder's *Practycke* in 1555 and the promulgation of the first princely ordinance containing provisions on post-mortem examinations in 1589, judges and judicial officers throughout the County of Flanders increasingly began to involve medical practitioners in death investigations. Nevertheless, the old procedure proved quite resilient. In the castellany of Ypres, for instance, post-mortem examinations both with and without medical practitioners took place during the second half of the sixteenth century. While surgeons and physicians were frequently required to inspect the bodies of alleged homicide victims, the judicial authorities of the castellany usually deemed a summary examination without medical experts sufficient in cases of accidental death[25]. Similar arrangements were followed in the cities of Ghent and Bruges, where the local aldermen (who acted as judges in civil and criminal cases) at first mainly sought expert medical testimony in particularly complex potential homicide cases in which there was a substantial time interval between the infliction of one or more injuries and the subsequent demise of a victim. In such cases, only medical practitioners could clearly establish whether the deceased person had died from the inflicted wounds. Medical experts eventually became involved in all urban homicide investigations during the first years of the seventeenth century. At the same time, the aldermen of Ghent and Bruges also started to consult medical practitioners in a growing number of suicide investigations and inquiries into accidental deaths. From the final years of the first decade of the seventeenth century onwards, the city physicians and city surgeons of Ghent were required to examine the corpses of all those who had died a sudden or unnatural death within the city's territorial jurisdiction. A similar shift occurred in Bruges between 1606 and 1622[26].

In 1626, the Council of Flanders issued an ordinance on post-mortem examinations that was the first normative text to apply to the entire county that explicitly required that corpses should be inspected by medical experts. By that time, however, nearly all Flemish criminal courts had already definitively abandoned the old medieval procedure. The provincial judicial council was clearly aware of this, since the ordinance of 1626 primarily addressed the problem of judges and judicial officers in rural jurisdictions too often relying upon surgeons with doubtful qualifications or little practical experience. Therefore, the council ordered that all forensic post-mortem examinations should be conducted by practitioners who were officially recognised and sufficiently competent[27].

As the above paragraphs have demonstrated, medical practitioners came to play an increasingly important role in death investigations over the course of the second half of the sixteenth century and the early decades of the seventeenth century. But to which professional groups – physicians, surgeons, apothecaries, or midwives – did most early modern Flemish medical examiners belong? Although it was possible for all these practitioners to be required to provide expert testimony in criminal proceedings, only physicians and surgeons played a significant role in death investigations[28]. Physicians (*geneesheren*) were university-trained doctors who were essentially responsible for diagnosing and treating internal ailments. Surgeons (*chirurgijns*), by contrast, usually received their training within the framework of local surgeons' guilds. After an apprenticeship of a few years and the successful completion of a number of theoretical and practical examinations, a candidate was admitted into a local guild and received the title of "master surgeon"[29]. Since surgeons were

primarily responsible for treating physical injuries and conducting manual operations (such as bloodletting, amputations, and caesarean sections), these medical practitioners were particularly suited to the task of examining corpses for marks of violence. Therefore, it is not surprising that the Council of Flanders's ordinance of 1626 explicitly stated that forensic post-mortems should be conducted by one or two surgeons.

Although Flemish physicians had sporadically participated in death investigations since at least the second half of the sixteenth century, their presence at post-mortem examinations was never made mandatory by any ordinance or compilation of local customary law. Gradually, however, judges and judicial officers throughout the County of Flanders increasingly started to involve learned doctors in such examinations. From the 1620s onwards, for instance, nearly all post-mortems ordered by the aldermen of the city of Bruges were conducted by at least one physician and one surgeon30. Over the course of the seventeenth and eighteenth centuries, this example was followed by many other Flemish criminal courts31. In Ghent, however, university-trained doctors were only consulted in particularly complex or remarkable cases throughout most of the early modern period. In 1591, for instance, two physicians and two surgeons had to establish whether the death of a certain Jan Roete had been caused by a superficial head injury that he had received two weeks before his demise. After opening the deceased's head, the four medical experts judged that the wound in question had not been fatal32. Sixty-three years later, a physician participated in the post-mortem examinations of two noblemen who had been killed in a sword fight33. Although there was a steady increase in the number of cases in which learned doctors were consulted during the early decades of the eighteenth century, the city physicians of Ghent only systematically participated in post-mortem examinations from the late 1740s onwards34.

The growing involvement of university-trained doctors in death investigations was fostered by the fact that early modern physicians progressively came to adopt a more empirical approach to the study of normal and pathological anatomy. The dissection of corpses was increasingly seen as the primary means of obtaining new insights into the workings of the healthy human body and the causes and effects of diseases35. This development had two important consequences for death investigation practices. First, learned physicians became increasingly interested in medico-legal issues pertaining to establishing causes of death, such as how to distinguish a suicide by hanging from a murder disguised as a suicide36. Such issues eventually became the subject of a steadily expanding body of forensic medical literature (see below). Second, criminal judges and jurists gradually came to see the added value of consulting university-trained doctors in cases of suspicious death. This shift can be clearly observed in legal texts on the investigation of sudden and unnatural deaths. The earliest texts on this topic, such as the Council of Flanders's ordinance of 1626, several Flemish compilations of customary law, and the relevant chapter in Damhouder's *Practycke*, generally suggested it was enough to have a body examined by one or two surgeons. An eighteenth-century treatise on post-mortem examinations written by the Dutch jurist Johan Jacob van Hasselt (1717-1783), however, strongly recommended that the corpses of individuals who had died an unnatural death should be inspected by both a surgeon and a physician. Nevertheless, this text also stated that if no physicians were available in the immediate vicinity, the judicial authorities were still allowed to rely exclusively on the observations and judgments of surgeons37. This concession clearly highlights the major impediment to the systematic involvement of university-trained doctors in early modern death investigations. Since physicians tended to settle in densely populated urban and rural centres, where there were enough affluent patients who could afford their services, it was often too expensive and time-consuming for judges and judicial officers in

more remote areas to call a learned doctor to a potential crime scene.

4. Medical evidence and its impact

On 3 August 1562, the surgeon Jacob De Francke of Ypres was summoned to a house in the village of Boezinge. There, the bailiff and aldermen of the castellany of Ypres ordered him to examine the corpse of the miller Pieter Pauwels, who had allegedly been stabbed to death by a certain Jacob Ysaac. The surgeon's report mentions that he discovered three wounds on the body: one in the right shoulder, "reaching to the vertebrae and very dangerous" (*tenderende tot de vertebren zeer periculues*); a second one right above the left nipple, "very superficial" (*zeer ondiepe*); and a third one between the left nipple and the breastbone, which penetrated the heart, "from which wound the aforementioned [Pieter Pauwels] died, since such penetrating wounds are necessarily fatal"38. Although the report in question is relatively brief, it nevertheless offers a remarkable insight into sixteenth-century Flemish medico-legal practice. First, it is noteworthy that while the judicial authorities no longer considered themselves competent enough to establish the cause of Pauwels's death and therefore entrusted this task to a surgeon, the medical examination was actually very summary. The post-mortem report only gives a short account of the locations of the three injuries and an assessment of their (potential) lethality. Such assessments were usually based on the perceived depth of wounds and whether vital organs or major blood vessels had been penetrated. Furthermore, surgeon De Francke did not deem it necessary to open the deceased's corpse in order to examine the damage to the interior parts of the body. Although the report mentions that the third wound penetrated the heart, this should not necessarily be taken as evidence that an internal autopsy had been conducted. Since the surgeon did not explicitly mention that he had opened the deceased's thoracic cavity, it is much more likely that he had inserted a probe (or another surgical instrument) into the wound in question to measure its depth and to establish whether any vital organs or major arteries or veins had been damaged39.

The concise nature of the early Flemish post-mortem reports was entirely in line with the expectations of contemporary judicial officials. According to the sixteenth-century jurist Joos de Damhouder, the essential task of the judicial authorities and their medical experts was to "diligently consider" a deceased person's "wounds, blows, and injuries, and to faithfully record and write, which were mortal, which were not, and whether he died from his injuries or from another cause"40. As Joël Chandelier and Marilyn Nicoud have pointed out in their research on medico-legal practice in late medieval Bologna, criminal judges were usually satisfied with a short medical report containing an enumeration and a classification (as mortal or non-mortal) of the injuries discovered on the corpse. This information allowed them to assess the severity of a particular violent act and to initiate further judicial proceedings against the aggressor(s)41.

On 12 September 1644, the surgeon Christiaen Cathelijnssuene of Ypres was called to Boezinge to examine the corpse of Jan Allewaert, who had purportedly been stabbed to death during a tavern brawl. During the examination, the surgeon discovered three wounds on the body. Two injuries on the deceased's left hand were considered of relatively little importance, while a third wound near the left shoulder was found to have penetrated the thoracic cavity. After opening the thorax, Cathelijnssuene noticed that the second rib below the left clavicle had been cut. Furthermore, he also remarked that the stab wound in question had penetrated the lungs, the pericardium, and the heart itself. The surgeon therefore concluded that there could be no doubt that Allewaert had instantly died from this injury42. A comparison of the post-mortem reports written by the

sixteenth-century surgeon Jacob De Francke and his seventeenth-century colleague Christiaen Cathelijnssuene clearly illustrates the major developments in medico-legal procedures that took place in Flanders from the first half of the seventeenth century onwards. While De Francke mainly limited himself to an external examination of the corpse of Pieter Pauwels, Cathelijnssuene deemed it necessary to open Jan Allewaert's thorax to investigate the internal damage caused by the fatal stab wound.

Although sixteenth-century Flemish surgeons and physicians sporadically opened corpses, the number of internal autopsies steadily increased during the seventeenth and eighteenth centuries. Initially, medical experts primarily focussed on dissecting the skulls and brains of individuals who had died after receiving one or more head injuries[43]. This is not surprising given that it was considered particularly difficult to establish the lethality of head wounds, since there is not always a clear link between the external appearance of such injuries and the amount of internal damage that they might have caused[44]. In 1644, for instance, the city surgeons of Ghent examined the corpse of a certain Jean Barbieu, who had received a head injury. Since there was no visible fracturing of the skull, the medical experts decided to remove a portion of the cranium, whereupon they discovered an aposteme under the pia mater that had caused Barbieu's death[45]. Internal examinations also gradually became more common in cases involving individuals who had been injured in the chest or abdomen. Nevertheless, purely external examinations of the corpses of homicide victims continued to be undertaken until the very end of the eighteenth century[46].

By conducting internal autopsies, Flemish medico-legal experts were able to offer increasingly nuanced assessments of the lethality of wounds. More specifically, seventeenth- and eighteenth-century surgeons and physicians systematically attempted to establish whether there was a clear causal relationship between the injuries inflicted upon an individual and his or her subsequent death. This approach demonstrated its usefulness in the case of Dominicq Fabreel, a thirty-year-old inhabitant of the village of Berchem (near Ronse) who had been stabbed in the left shoulder by a certain Joseph Maes on 29 September 1773 and had expired at the beginning of November of that year. Although this substantial time interval between injury and death could have given rise to serious doubt about the actual cause of the victim's demise, the physician and the surgeon who examined Fabreel's corpse convincingly established that he had indeed died from the stab wound inflicted by Maes. In the post-mortem report, the medical experts explained that the suspect's knife had cut the axillary artery, resulting in a massive accumulation of blood under the teguments and in the muscles that had led to the degeneration of the neighbouring body parts. Since a haemorrhage from such a major artery was almost impossible to stop, it was quite evident to the experts that the stab wound had been the direct cause of Fabreel's death[47].

The aforementioned developments in medico-legal practice were fostered by several factors. The most important of these was the gradual improvement in anatomical knowledge amongst Flemish physicians and surgeons. The increasing availability of vernacular anatomy handbooks and the introduction of theoretical and practical anatomy courses in the curricula of medical students and surgical apprentices gave potential medico-legal experts more confidence to open corpses and improved their ability to make correct assessments of the lethality of injuries[48]. Furthermore, the seventeenth and eighteenth centuries witnessed the emergence of an expanding corpus of vernacular forensic medical literature that aimed to explain to surgeons and physicians how proper post-mortem examinations should be conducted and how medico-legal observations should be reported to the judicial authorities[49]. Finally, jurists and criminal judges made increasingly strict demands on medical practitioners who had to examine corpses. Whereas the sixteenth-century

jurist Joos de Damhouder only required medical experts to indicate whether the injuries discovered on the body of a deceased person had been the cause of death, his eighteenth-century colleague Johan Jacob van Hasselt stated that they also had to explain why the inflicted wounds should be considered mortal or harmless. Furthermore, both authors held a different attitude towards the usefulness of internal autopsies. While Damhouder did not even discuss the opening of corpses in his chapter on post-mortems, Van Hasselt strongly recommended internal examinations. Nevertheless, the latter also instructed medical experts to open only those parts of the body on which injuries were present50. This last guideline was closely followed by most Flemish surgeons and physicians, since “complete” autopsies in which the three major body cavities (i.e. the cranial, thoracic, and abdominal cavities) were opened remained extremely rare throughout the early modern period51. Furthermore, not all corpses were subjected to internal examination. While the bodies of alleged homicide casualties and newborn infants52 were routinely opened in eighteenth-century Flanders, the corpses of the many men and women who drowned in the myriad of waterways running through the Flemish towns and countryside were usually not. Internal examinations were primarily conducted in cases where the experts’ findings could have a real impact on the fate of an accused individual.

As the previous remark indicates, the observations and judgments of surgeons and physicians could greatly influence the sentences pronounced against defendants in homicide trials. If the medical experts who had conducted a post-mortem declared that none of the victim’s injuries were definitively fatal, the judicial authorities would have to punish the accused for assault rather than for manslaughter or murder, which usually implied that he or she could not be sentenced to death53. On 22 April 1640, for instance, a certain Jan de Loraine attacked Richard Lamorael – a fellow inmate in the prison of Kortrijk – with a candle, inflicting two injuries on his head. When Lamorael died sixteen days later, de Loraine had to stand trial before the Council of Flanders, which was responsible for judging crimes committed in prisons. Since the injuries, however, were judged not to be fatal, the defendant was only sentenced to appear before the Council – bare-headed and on his knees – to beg God and the judicial authorities for forgiveness54. Five years later, a woman named Adriaenne Le Riche stabbed the soldier Niclaeys Moutton in the chest with a knife during a tavern brawl in Ghent. The victim was brought to the hospital of the Bijloke Abbey, where he eventually died a month and a half later. Since the surgeon who inspected the corpse could not unequivocally establish that the stab wound had necessarily been fatal, the aldermen of Ghent condemned Le Riche to a public whipping and banishment from the County of Flanders for ten years instead of imposing the death penalty55. In 1730, François Mollacq, an Austrian immigrant living in Ghent, was granted a princely pardon because the physicians and surgeons who had examined the corpse of Paul De Meyer, who had died five days after having been punched and kicked in the chest and belly by Mollacq, had not discovered any mortal injuries and had finally judged that death was probably due to an excessive consumption of brandy56.

The case of François Mollacq clearly illustrates that medical testimony could play an important role in the decision of whether to grant a suspect a princely pardon. From the sixteenth century onwards, alleged killers therefore regularly added attestations written by medical practitioners to their pardon petitions in an attempt to strengthen their cases. Such attestations usually aimed to demonstrate that the victim’s injuries had not been fatal in themselves and that death should rather be ascribed to disease, medical malpractice, or negligence on the part of the deceased. Pauwels Luytens, for instance, an inhabitant of Ghent who in 1643 had stabbed a certain Geeraert Goetgebuer with a knife below the left nipple, added to his pardon request a declaration signed

by a physician and four surgeons stating that the injury would have been curable if Goetgebuer had not been suffering from a deadly catarrh[57]. The Privy Council in Brussels, which handled pardon requests from throughout the Habsburg Netherlands, generally favoured the granting of a pardon when such claims proved plausible. This was especially the case when the medical evidence contained in the attestation(s) provided by the petitioner matched the findings in the official post-mortem report. Medical testimony could thus literally save alleged killers from the gallows.

5. The remuneration of medical experts

Conducting a post-mortem examination could be a quite expensive enterprise. In 1773, for instance, the high bailiff (*hoogbaljuw*) of the town of Menen calculated how much the post-mortem of a certain Monfils, a customs official who had been mortally injured in a fight with a band of smugglers, had cost him. He finally reckoned it to be thirty-seven guilders and sixteen *stuivers*[58]. This was equal to approximately sixty-three times the daily summer wage of an unskilled labourer living in the nearest major city, Bruges, around that time[59]. The sum in question included, among other expenses, the fees of the physician and the surgeon who had conducted the post-mortem (ten guilders for the physician and five guilders for the surgeon) and the remuneration of the judges and other judicial officials who had attended the examination[60].

In early modern Flanders, there were two major arrangements for the remuneration of medico-legal experts. Many Flemish towns and cities employed salaried surgeons and/or physicians who received a “pension”, or wage, for their services to the local authorities. Such pensions sometimes included remuneration for their medico-legal duties[61]. Most Flemish criminal courts, however, paid medical experts a fixed fee for each post-mortem examination they conducted. The size of this fee was determined by several factors. An extract from a register maintained by the authorities of the castellany of Ypres, recording payments made to their sworn physicians and sworn surgeons for medico-legal examinations conducted between the years 1733 and 1765, offers valuable insight into these determinants[62]. First, the amount usually depended on the type of expert consulted. University-trained physicians often, but not always[63], received higher fees than surgeons. For examining the corpse of a newborn infant on 30 May 1736, for instance, the then sworn physician of the castellany of Ypres received twelve Parisian pounds, while the sworn surgeon only received six pounds[64]. Second, the fee could also depend on the type of examination. If an internal autopsy had been conducted, fees were sometimes doubled. In 1746, for instance, when Ypres and its surroundings were occupied by France, the sum paid to the surgeon who had opened a drowned corpse found in the village of Boezinge was increased from four to eight “French” pounds[65]. The princely feudal court of Dendermonde also doubled fees when incisions had to be made[66].

Finally, the size of the fee was sometimes determined by the location where the post-mortem had been conducted. When medical experts had to travel to a location near or outside the limits of the town or area where they practised, they often received higher fees. In the 1750s, for instance, the sworn physician and the sworn surgeon of the castellany of Ypres conducted a medico-legal examination in the village of Koolskamp and another in the seigneury of Meesegem. Since both localities were situated on the fringes of the castellany, the experts in question were paid thirty-six Parisian pounds for each of the two examinations instead of the usual fee of eighteen pounds[67]. In Ghent, a distinction was made between post-mortems conducted inside and outside the city limits. If a corpse was examined within the city, the two city surgeons were each paid 0.5 Flemish pounds. For a post-mortem conducted outside the city limits, they each received one pound[68]. In the coastal

town of Ostend, fees were doubled when the examination took place at a location outside the gates or on a ship in the harbour[69].

However, this discussion of the different arrangements and factors that could determine the remuneration of Flemish medico-legal experts leaves a major question unanswered: Who was responsible for paying the costs of a post-mortem examination? Quite surprisingly, the answer to this question greatly depended on the nature of the death concerned. If the deceased had been killed by another person, whether deliberately or unintentionally, the costs of the post-mortem had to be paid by the killer[70]. A similar arrangement applied to suicides. In early modern Flanders, the bodies of individuals who had deliberately taken their own lives were posthumously desecrated by being dragged to the local gallows field, where they were hanged from a forked gallows. Furthermore, the judicial authorities usually confiscated the possessions of suicides[71]. The court costs, including those of the post-mortem, were subtracted from the total value of the confiscated goods[72]. Even after suicide was officially decriminalised in 1782, Flemish criminal judges continued to require the suicide victim's "curator" to pay the costs of the judicial inquiry. This individual, who represented and defended the suicide during legal proceedings, could subtract the sum in question from the deceased's estate[73]. If death had been caused by an accident for which no one could be held accountable, the costs of the post-mortem examination had to be paid by the deceased's heirs or relatives[74]. In 1754, for instance, Philippus and Pieter Jacobus Hoentjens requested that the aldermen of Ghent hand over the body of their drowned brother Livinus, so he could receive a proper burial. The aldermen granted this request after the two men promised to pay the costs of the post-mortem[75].

The arrangement that was followed in cases of accidental death was obviously not very popular, since it put a substantial financial burden on the grieving relatives of the deceased. Therefore, it is not surprising that relatives sometimes did their utmost best to get out of the obligation to pay the costs of the post-mortem. When the bailiff and two aldermen of the seigneury of Eksaarde asked Joos Van Brussele whether they should order a medico-legal examination of the corpse of his son Jacques, who in 1628 was accidentally shot to death during a religious procession, he immediately inquired how much this would cost. After the aldermen informed him of the exact amount, Van Brussele exclaimed that "the man is dead. In what way does this cost or burden help us?"[76] In 1754, a local judicial officer went to the home of Jan Baptiste Arckens, an inhabitant of the village of Zwevegem, to ask whether he was prepared to cover the costs of the post-mortem of his seventeen-year-old son Eugenius, whose corpse had been found in a large pit filled with water. Arckens replied that he would not pay, "even if you came ten times"[77]. Nine years later, the parents of four-year-old Marie Françoise Vaerewyck, who drowned in a ditch while picking flowers, secretly buried their daughter's body in the parish church of the village of Nokere. This was done not only "to avert all commotion and gossip that could have resulted from this [accident]", but also to avoid the financial burden of a post-mortem examination and an accompanying judicial inquiry[78]. In 1737, the widow of Salamon Van Oudendycke was prosecuted by the bailiff of the castellany of Ypres because she had buried her son, whose corpse had been found in a cesspit, without informing the authorities of his death[79].

Furthermore, the financial arrangements discussed above contained a remarkable lacuna, since sudden deaths caused by heart disease or apoplexy, which also frequently gave rise to forensic post-mortem examinations, did not really fit within the tripartite division between homicides, suicides, and accidental deaths. This legal hiatus was eagerly exploited by the nephews of Carel De Lanssusere, who in the early 1770s successfully contested the financial claims of the bailiff of the

town of Eeklo by referring to the fact that their uncle's sudden death had been ascribed to "apoplexy or another internal disease". Therefore, one could, in their opinion, not say that the deceased had, "because of any culpability or imprudence", given cause for the examination of his corpse. The aldermen of Eeklo concurred with this reasoning and finally rejected the bailiff's claims80.

6. Conclusion

Drawing on a combination of normative texts and court records, this article aimed to analyse the development of the early modern Flemish death investigation system. During the second half of the sixteenth century and the first decades of the seventeenth century, a steady stream of legal texts (such as the writings of the jurist Joos de Damhouder, compilations of local customary law, and princely and provincial ordinances) gradually fostered the increased involvement of medical practitioners in the investigation of suspicious deaths. While the earliest medico-legal post-mortems were predominantly conducted by surgeons and usually only entailed an external examination of the corpse, the seventeenth and eighteenth centuries were characterised by a steady rise in the number of internal autopsies and the growing participation of university-trained physicians in death investigations. Evidence from post-mortem examinations offered the judicial authorities a more nuanced assessment of the causal relationship between the injuries of an alleged homicide victim and his or her eventual death, which allowed criminal judges to adapt their judgments to the lethality of the deceased's wounds and to legitimise the granting of pardons to suspects who had inflicted injuries that were not judged definitively fatal. Nevertheless, a study of the financial arrangements that were followed has made clear that the Flemish system of death investigation had its flaws. Paying for a post-mortem examination was essentially the responsibility of the individual(s) accountable for the death in question (in homicide and suicide cases) or the heirs or relatives of the deceased (not only in cases of accidental death, but actually also in suicide cases, since the confiscation of a suicide's possessions directly affected his or her heirs). One might reasonably assume that the last arrangement did not encourage the proper reporting of accidental fatalities and may have given rise to attempts to conceal such deaths. Furthermore, the absence of legal provisions for the payment of the costs of post-mortems of individuals who had died from natural ailments created opportunities for protracted legal fights between judicial officials and the deceased's heirs.

Notes

1 C. Crawford, *Medicine and the Law*, in *Companion Encyclopedia of the History of Medicine. Volume 2*, eds. W. F. Bynum and R. Porter, London, Routledge, 2001, p. 1626-1627; M. Porret, *La preuve du corps*, in *Revue d'histoire des sciences humaines*, 22, 2010, p. 46-49; K. D. Watson, *Forensic Medicine in Western Society. A History*, New York, Routledge, 2011, p. 9-44.

2 S. De Renzi, *Medical Expertise, Bodies, and the Law in Early Modern Courts*, in *Isis*, 98, 2007, no. 2, p. 316; S. Landsman, *One Hundred Years of Rectitude. Medical Witnesses at the Old Bailey, 1717-1817*, in *Law and History Review*, 16, 1998, no. 3, p. 448.

3 On the question of whether "forensic medicine" should be regarded as a practice that originated in the later Middle Ages or as a specific scientific doctrine that only emerged in the early modern period, see J. Chandelier and M. Nicoud, *Entre droit et médecine. Les origines de la médecine légale en Italie (XIII^{e}-XIV^{e} siècles)*, in *Frontières des savoirs en Italie à l'époque des premières*

universités (XIII^e^-XV^e^ siècle), eds. J. Chandelier and A. Robert, Rome, École française de Rome, 2015, p. 233-293.

4 Medico-legal procedures in the Northern Netherlands/Dutch Republic have also received relatively little attention from medical and legal historians. The most notable study on this topic is Anne Hallema's article on death investigation in sixteenth-century Amsterdam: A. Hallema, *Ontwikkelingsgang van de lijkschouwingsrapporten te Amsterdam, voornamelijk in de tweede helft van de 16e eeuw*, in *Nederlands Tijdschrift voor Geneeskunde*, 107, 1963, p. 1922-1930.

5 R. P. Brittain, *Origins of Legal Medicine. Constitutio Criminalis Carolina*, in *Medico-Legal Journal*, 33, 1965, no. 3, p. 124-127; K. D. Watson, *Forensic Medicine, op. cit.*, p. 20-22. The German text of the relevant stipulations can be found in G. Radbruch (ed.), *Die Peinliche Gerichtsordnung Kaiser Karls V. von 1532 (Carolina)*, Stuttgart, Reclam, 1962, p. 46 (articles 35 and 36) and p. 94-95 (articles 147 and 149).

6 C. Crawford, *Medicine and the Law, op. cit.*, p. 1623; A. Pastore, *Médecine et droit, compétition ou collaboration? À propos de deux répertoires de pratique criminelle du XVII^e^ siècle*, in *Histoire, médecine et santé*, 11, 2017, p. 22.

7 J. de Damhouder, *Practycke ende handbouck in criminele zaeken, verchiert met zommeghe schoone figuren ende beilden ter materie dienende*, eds. J. Dauwe and J. Monballyu, Roeselare, Den Wijngaert, 1981, p. 104-108 (chapter 75).

8 See the biographical information in J. Monballyu, *Joos de Damhouder, an Internationally Influential Jurist from Bruges*, in *The Art of Law. Three Centuries of Justice Depicted*, eds. S. Huygebaert, G. Martyn, V. Paumen, and T. Van Poucke, Tielt, Lannoo, 2016, p. 107-119.

9 See in this respect L. Vandamme, P. Stabel, J. Dumolyn, A. Brown, M. P. J. Martens, N. Gabriëls, and J. Oosterman, *Bruges in the Sixteenth Century: A 'Return to Normalcy'*, in *Medieval Bruges, c. 850-1550*, eds. A. Brown and J. Dumolyn, Cambridge, Cambridge University Press, 2018, p. 445-484.

10 R. C. Van Caenegem, *La preuve dans l'ancien droit belge, des origines à la fin du XVIII^e^ siècle*, in *Recueils de la Société Jean Bodin pour l'histoire comparative des institutions*. *Tome XVII*: *La preuve (moyen âge et temps modernes)*, Brussels, Les Éditions de la Librairie Encyclopédique, 1965, p. 417.

11 A *baljuw* was an official, appointed by the prince or local lord, who acted as head of police, public prosecutor, and investigative judge within a particular territorial jurisdiction, such as a seigneury or a town.

12 *Tweeden deel vanden placcaert-boeck inhoudende diverse ordonnantien, edicten, ende placcaerten vande koninclycke maiesteyten ende haere deurluchtighe hoogheden graven van Vlaendren mitsgaeders van heurliederen provincialen raede aldaer, gepubliceert inden voornoemden lande van Vlaendren t'zedert den iaere vijfthien-hondert t'zestich tot ende met den iaere zesthien hondert negen-en-twintich*, Antwerp, Hendrick Aertssens, 1662, p. 173 (ordinance of 22 June 1589, article 14).

13 *Ibid.*, p. 183 (ordinance of 1 July 1616, article 12).

14 *Ibid*., p. 778-779 (ordinance of 13 June 1626).

15 *Ibid*., p. 175 (ordinance of 22 June 1589, article 24) and p. 185-186 (ordinance of 1 July 1616, article 25).

16 Records of disciplinary proceedings against negligent judicial officials can be found in Rijksarchief Gent (RAG), Raad van Vlaanderen (RVV), no. 22012 (the bailiff and aldermen of Eksaarde, 1628-1630), no. 22600 (the bailiff and the lieutenant bailiff of the *Land van Schorisse*, 1697-1699), no. 23150 (the bailiff of the seigneury of *Kleef* in Langemark, 1737-1740), no. 23174 (the high bailiff of Ninove, 1739-1744), and no. 23559 (the bailiff of Ruddervoorde, 1781). Examples of condemnations can be found in RAG, RVV, no. 169, fols. 137v-138r (the bailiff of the *Land van Gavere*, 1713), no. 8594, fols. 89v-90r (the lieutenant bailiff of Dottignies, 1607), and no. 23150 (the bailiff of the seigneury *vanden Hove* in Passendale, Schage, and Helminge, 1737).

17 On the homologation of customary law in the Habsburg Netherlands, see J. GILISSEN, *Les phases de la codification et de l'homologation des coutumes dans les XVII provinces des Pays-Bas*, in *Tijdschrift voor Rechtsgeschiedenis*, 18, 1950, no. 1, p. 36-67, and no. 2, p. 239-290.

18 My total slightly differs from the one given in the article by John Gilissen (see the previous note). This difference is essentially due to the fact that I am not interested in the total number of homologated compilations, but in the number of localities that had their customary law homologated. Therefore, I have regarded the two versions of the *costumen* of the town of Cassel (homologated in 1534 and 1613) as one corpus of local customary law. I have done the same for the localities that possessed a separate compilation of customary feudal law in addition to their ordinary customary law.

19 More specifically the *costumen* of Lille (1533), Ostend (1611), Broekburg/Bourbourg (1615), Veurne (1615), Nieuwpoort (1616), Sint-Winoksbergen/Bergues (1617), Ekelsbeke-Ledringem (1617), Hondschoote (1617), Pitgam (1617), the seigneury of the Provostry of Saint Donatian of Bruges in the castellany of Sint-Winoksbergen (1617), Bruges (1619), Ypres (1619), Poperinge (1620), Roeselare (1624), and the princely feudal court of Dendermonde (1628): L. VANDEN HANE, *Vlaemsch recht dat is costumen ende wetten ghedecreteert by de graven ende gravinnen van Vlaenderen met d'interpretatien, Concessien Caroline, ordonnantien politique, hanseryen, &c.*, Antwerp, Michiel Knobbaert, 1676 ("Generale tafel vande costumen van Vlaenderen", entry "Criem: doodt-slagh, schauwinghe &c.").

20 *Costumen ende wetten der stadt Gendt, gedecreteert by de graven en gravinnen van Vlaenderen, met de Concessien Caroline, decreten, reglementen ende ordonnantien politique*, Ghent, Petrus de Goesin, 1779, p. 442 (article 38).

21 *Costumen vanden princelycken leenhove ende huyse van Dendermonde*, Dendermonde, Joos Van Langhenhove, 1629, p. 15 (chapter 1, article 9), p. 24-25 (chapter 2, articles 7-8), and p. 88-89 (chapter 11, article 20).

22 *Costumen, wetten ende statuten, der stede ende poorterye van Rousselaere*, Ghent, Petrus de Goesin, 1777, p. 4 (chapter 1, article 14).

23 In 1497, for instance, the corpse of a certain Kaerle Herman – who had been injured in the chest – was examined by four members of the bench of aldermen and two members of the feudal

court of the castellany of Ypres: Stadsarchief Ieper (SAI), Kasselrij Ieper (KAS), series 5, no. 562. In 1541, two aldermen of the city of Bruges inspected the body of Andries Van Peenen, who had been stabbed to death by a certain Aernoudt Van Langhemeersch: RAG, RVV, no. 31105 (16 May 1541). The same file also contains reports of similar examinations in the villages of Moorslede (by six aldermen, 18 November 1542) and Eine (by four local judges, 9 July 1543). An identical procedure was followed in Amsterdam during most of the sixteenth century: A. Hallema, *Ontwikkelingsgang, op. cit.*, p. 1922-1930.

24 F. 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. Tome troisième,* Lille, Dumortier, 1790, p. 625-626 (chapter 30, articles 1-2); *Costumen ende usantien van de stede, keure ende jurisdictie van Poperinge*, Ghent, Petrus de Goesin, 1774, p. 84 (chapter 26, article 7); *Wetten, costumen, ende statuten der stede, ende casselrye van Veurne*, Ghent, Gautier Manilius, 1615, p. 463-464 (chapter 64, article 2); *Costumen der stede van Nieupoort*, Bruges, Guilliame De Neve, 1637, p. 84 (chapter 9, article 18); *Costumen vanden princelycken leenhove…, op. cit.*, p. 25 (chapter 2, article 8). Four of the five relevant compilations were homologated in the first half of the seventeenth century, when post-mortems conducted by medical practitioners had already largely become standard procedure. However, most of the compilations that do not refer to medical experts were also homologated in this period. This observation seems to suggest that the local authorities in the latter cases probably drew on older stipulations that did not faithfully reflect actual forensic procedures. The early reference to medical experts in the customary law of Lille (which was homologated in 1533) can be explained by the fact that the relevant provisions concern the examination of living individuals' injuries. While medieval and sixteenth-century criminal judges often considered themselves competent enough to examine corpses without the assistance of surgeons or physicians, they were quicker to acknowledge that they did not possess sufficient medical knowledge to make prognoses on the potential consequences (such as death or mutilation) of injuries to living persons. See in this respect J. Carraway Vitiello, *Forensic Evidence, Lay Witnesses and Medical Expertise in the Criminal Courts of Late Medieval Italy*, in *Medicine and the Law in the Middle Ages*, eds. W. J. Turner and S. M. Butler, Leiden, Brill, 2014, p. 133-156.

25 In SAI, KAS, series 10, I have found reports of twenty-four post-mortem examinations ordered by the authorities of the castellany during the 1550s, 1560s, and 1570s. Medical practitioners were consulted in thirteen cases: eight homicides, four accidental deaths, and the death of a prisoner from disease.

26 Stadsarchief Gent (SAG), Oud Archief (OA), series 218, no. 1 (register of post-mortem reports, 1588-1614); Stadsarchief Brugge (SAB), Oud Archief (OA), series 191, nos. 1-3 (registers of post-mortem reports, 1554-1633). Due to a gap in the surviving records, it was not possible to establish the exact moment when this shift occurred in Bruges.

27 *Tweeden deel vanden placcaert-boeck , op. cit.*, p. 778-779.

28 Midwives primarily examined living persons, such as rape victims, women suspected of infanticide, and female criminals attempting to escape execution or corporal punishment by claiming that they were pregnant. The legal historian Jos Monballyu asserts that early modern Flemish apothecaries were sporadically required to examine suspicious substances found in the viscera of alleged poisoning victims. However, I have not encountered any poisoning cases in

which apothecaries acted as expert witnesses in the court records I have studied: J. MONBALLYU, *Zes eeuwen strafrecht. De geschiedenis van het Belgische strafrecht (1400-2000)*, Leuven, Acco, 2006, p. 352.

29 P. LENDERS, *Overheid en geneeskunde in de Habsburgse Nederlanden en het prinsbisdom Luik*, Kortrijk-Heule, UGA, 2001, p. 12-18.

30 SAB, OA, series 191, nos. 3-5 (registers of post-mortem reports, 1622-1690).

31 This assertion is based on a study of post-mortem reports from the following archival series: RAG, RVV, nos. 165-170 (resolutions of the Council of Flanders, 1585-1785), nos. 6828-7086 (judicial inquiries of subaltern courts, 1460-1793), nos. 31105-31166 (post-mortem reports, 1540-1786), and RAG, Vreemde Archieven Land van Waas (VALW), nos. 238-256 (archives of the feudal court of the *Land van Waas*, eighteenth century).

32 SAG, OA, series 218, no. 1 (23 November 1591).

33 SAG, OA, series 218, no. 2, fols. 93r-94r (13 March 1654).

34 SAG, OA, series 218, nos. 4-7 (registers of post-mortem reports, 1692-1794).

35 See the contributions in S. DE RENZI, M. BRESADOLA, and M. CONFORTI (eds.), *Pathology in Practice. Diseases and Dissections in Early Modern Europe*, London, Routledge, 2018.

36 See for instance A. LOUIS, *Verhandeling over een ontleedkundig geschil, tot de rechtsgeleerdheid betrekkelyk. Waar in de grondregelen om, op het aanschouwen van een hangend gevonden dood lichaam, de kenmerken van zelfsmoord, van die van manslag te onderscheiden, ter neder gesteld worden*, transl. I. LE ROY, Amsterdam, Petrus Conradi, 1775, and C. G. LUDWIG, *Gerechtelyke geneeskunde, door den heere Christian Gottlieb Ludwig, deken van de medicynsche faculteit op de hooge-schoole te Leipsig*, trans. J. DUPONT, Utrecht, G. van den Brink, Jansz., 1774, p. 169.

37 J. J. VAN HASSELT, *Rechtsgeleerde verhandeling, over de noodzaakelykheid van het schouwen der doode lighamen, en wat daaromtrent moet in acht genomen worden*, Amsterdam, Pieter Jan Entrop, 1772, p. 11-12.

38 SAI, KAS, series 10, no. 2393: “van de welke wonde den voornoemden [blank space in the text] de doot ghestorven is, want zulke penetrante wonden necessaerlic dootlic zijn”.

39 The use of probes is mentioned in SAG, OA, series 218, no. 1 (29 March and 27 August 1589, 9 May and 1 November 1591) and SAB, OA, series 191, no. 4, fol. 170r (11 August 1645).

40 J. DE DAMHOUDER, *Practycke, op. cit.*, p. 104-105: “neerstelick considereren alle zijn wonden, slaeghen, ende quetsueren, ende die ghetrauwelick teekenen ende scriven, welcke doodelick waeren, welcke niet, ende of hy ghestorven es uuter quetseuren oft andersins.”

41 J. CHANDELIER and M. NICOUD, *Les médecins en justice (Bologne, XIII^{e}-XIV^{e} siècles)*, in *Experts et expertise au Moyen Âge. Consilium quaeritur a perito. XLII^{e} Congrès de la SHMESP (Oxford, 31 mars-3 avril 2011)*, Paris, Publications de la Sorbonne, 2012, p. 155.

42 SAI, KAS, series 11, no. 1551 (12 September 1644).

43 For some early examples, see SAI, KAS, series 10, no. 2397 (Westrozebeke, 27 July 1560); SAB, OA, series 191, no. 2, fol. 97r (11 May 1595); and SAG, OA, series 218, no. 1 (23 November 1591 and 21 October 1605).

44 See for instance C. G. Ludwig, *Gerechtelyke geneeskunde, op. cit.*, 117; J. C. Huart, *Korte verhandeling over de heelkundige berigten, in twee deeltjens verdeeld*, Ghent, E. J. t'Servrancx, 1794, p. 18; and S. M. Butler, *Forensic Medicine and Death Investigation in Medieval England*, New York, Routledge, 2015, p. 186.

45 SAG, OA, series 218, no. 3, fol. 7v (2 July 1644).

46 E.g. RAG, RVV, no. 31164 (Lokeren, 11 June 1784: multiple injuries caused by sharp and blunt instruments; Lovendegem, 12 August 1784: strangulation).

47 RAG, RVV, no. 31151 (5 November 1773).

48 On anatomical publications in the sixteenth-century Low Countries, see R. Van Hee, *Andreas Vesalius en zijn leerlingen. De doorbraak van de anatomie*, in *Ziek of gezond ten tijde van Keizer Karel. Vesalius en de gezondheidszorg in de 16de eeuw*, ed. R. Van Hee, Ghent, Academia Press, 2000, p. 29-56. In 1675, the surgeons' guild of Bruges established mandatory theoretical and practical anatomy courses for surgical apprentices: I. J. De Meyer, *Analectes médicaux ou recueil de faits qui ont rapport à l'art de guérir et qui se sont passés dans le ressort de la ville et du Franc de Bruges*, Bruges, Vanhee-Wante, 1851, p. 209-210. The *Collegium Medicum* (medical college) of Ghent organised similar courses from the 1680s onwards: A. Van der Eeken, *De uitbouw van de medische sector te Gent in de achttiende eeuw*, Master's dissertation in History, Ghent, Ghent University, 1984, p. 94-100.

49 The *Traité des rapports* (1575) by the French surgeon Ambroise Paré (ca. 1510-1590) is generally considered the first vernacular European treatise on forensic medicine. In 1592, the Dordrecht physician Carel Baten (ca. 1540-1617) published a Dutch edition of Paré's collected works that included a translation of this text: Ambroise Paré, *De Chirurgie, ende alle de opera, ofte wercken van mr. Ambrosius Paré, raedt, ende opperste chirurgijn van vier coninghen in Vranckerijcke*, ed. Carel Baten, Dordrecht, Jan Canin, 1592, p. 1082-1092. During the eighteenth century, a substantial number of vernacular medico-legal books and treatises were published in the Dutch Republic. A list of relevant titles is given in E. C. J. von Siebold, *Handboek der geregtelijke geneeskunde. Ten grondslag bij academische voorlezingen en ten gebruike voor geregtelijke geneesheeren en regtsgeleerden*, trans. G. Rombouts, Tiel, C. Campagne, 1847, xiii-xiv. In 1774, the surgeon Joannes Carolus Huart (1715-1785) of Tienen (a town in the Duchy of Brabant) published a medico-legal handbook that is, as far as I know, the first original contribution to the field of forensic medicine by a medical practitioner from the Habsburg Netherlands: J. C. Huart, *Korte verhandeling, op. cit.* Flemish surgeons and physicians who understood French could also draw on the extensive medico-legal literature emanating from Paris. This literature is discussed in J. Lecuir, *La médicalisation de la société française dans la deuxième moitié du XVIII^{e} siècle en France. Aux origines des premiers traités de médecine légale*, in *Annales de Bretagne et des pays de l'Ouest*, 86, 1979, no. 2, p. 231-250.

50 J. J. van Hasselt, *Rechtsgeleerde verhandeling, op. cit.*, p. 14-15.

51 A notable exception is the autopsy of a certain Jan – or Joannes – Fobé, who was hit on the head

with a stone by Jan Weyn. After the physician and the surgeon who conducted the post-mortem examination had inspected the deceased's cranial cavity, they decided to open the thorax and abdomen, where they did not discover any substantial visceral lesions. The unusual thoroughness of this examination was probably due to the fact that the head injury inflicted by Weyn was not considered definitively mortal by the experts. The report in question is also peculiar in the sense that the medical examiners refer to the authority of "very renowned authors" (whose names are not mentioned) to substantiate their final conclusion that the wound was only "accidentally" (*per accidens*) mortal: RAG, RVV, no. 31163 (Beveren, 28 May 1783).

52 This was essentially due to the fact that the lungs of newborn infants were subjected to the so-called *docimasia pulmonum hydrostatica* or hydrostatic test. This medico-legal test, which was developed in the second half of the seventeenth century, consisted of immersing an infant's lungs in water to assess whether they contained air, which would make them float. A positive result was considered an indicator of live birth, while sinking of the lungs pointed to stillbirth. Doubts about the reliability of the test immediately sparked fierce controversy among medico-legal theorists: R. P. BRITTAIN, *The Hydrostatic and Similar Test of Live Birth. A Historical Review*, in *Medico-Legal Journal*, 31, 1963, no. 4, p. 189-194.

53 J. DE DAMHOUDER, *Practycke, op. cit.*, p. 105-106; J. J. VAN HASSELT, *Rechtsgeleerde verhandeling, op. cit.*, p. 18-19.

54 RAG, RVV, no. 8594, fols. 389v-390v (sentence of 7 July 1640).

55 SAG, OA, series 215, no. 1 (sentence of 9 December 1645).

56 Algemeen Rijksarchief Brussel, Geheime Raad, Registers, no. 358, fols. 191r-193r (21 June 1730).

57 SAG, OA, series 213, no. 8 (documents concerning the pardon request of Pauwels Luytens, 1643-1645). For a number of sixteenth-century examples, see M. VROLIJK, *Recht door gratie. Gratie bij doodslagen en andere delicten in Vlaanderen, Holland en Zeeland (1531-1567)*, Hilversum, Verloren, 2004, p. 220-225.

58 A *stuiver* is 1/20 of a guilder.

59 According to Yvan Vanden Berghe, who cited the author of *Le voyageur dans les Pays-Bas autrichiens* (1782-1784) as his source, an unskilled labourer in late eighteenth-century Bruges earned twelve *stuivers* a day in summer and ten *stuivers* a day during winter: Y. VANDEN BERGHE, *De sociale en politieke reacties van de Brugse volksmassa op het einde van het Ancien Régime* (*1770-1794*), in *Belgisch Tijdschrift voor Nieuwste Geschiedenis*, 3, 1972, no. 1-2, p. 142. Since the post-mortem in question took place in July, I have made the calculation on the basis of the wage during the summer months. If calculated using the salary during the winter months, the costs of the post-mortem would roughly equal 75.5 times the wage of an unskilled labourer.

60 RAG, RVV, no. 31151 ("Oncosten ter causen de schauwinge van het cadavre vanden geemployeerden Monfils, opden 23 july 1773 overleden in d'herberge De Swaene op Meenen Buyten").

61 This was the case, for instance, in the town of Diksmuide. The town physician received a yearly salary of 174 Parisian pounds (or 87 guilders) covering all his services to the local government,

such as providing free medical care to the local poor, conducting post-mortems, and examining the injuries of assault victims: J. B. H. Serruys, *Eerste deel van den zesden placcaert-boek van Vlaenderen, behelzende alle de placcaerten, reglementen, edicten, ordonnantien, decreten, declaratien en tractaeten, geëmaneerd voor de provincie van Vlaenderen, zedert de leste verzaemelinge danof gedaen ende uytgegeven ten jaere 1763, mitsgaeders verscheyde andere die by obmissie in de voorgaende placcaert-boeken zyn uytgebleven*, Ghent, Petrus de Goesin and sons, 1786, p. 584 (regulations for the town of Diksmuide, 22 April 1773, article 28).

62 SAI, KAS, series 5, no. 1841 (“Extrait uyt het registre van ordonnantien gehouden ter casselrie van Ipre, ende onder ander van de gonne verleent aen de medecyns ende chirurgyns jurés soo volgt”).

63 In 1783, for instance, a local physician and a local surgeon who conducted a post-mortem in the village of Waasmunster each received one Flemish pound (or six guilders), while a second surgeon who came over from Sint-Niklaas to assist in the examination received 1.5 pounds: RAG, VALW, no. 238 (1 January 1783).

64 SAI, KAS, series 5, no. 1841. Twelve Parisian pounds equalled one Flemish pound.

65 SAI, KAS, series 5, no. 1841.

66 *Costumen vanden princelycken leenhove, op. cit.*, p. 88-89 (chapter 11, article 20). The tariffs laid down in customary law (three Parisian pounds for a purely external examination of a body and six Parisian pounds if the corpse was opened) were rigorously applied when the skull of Jan De Deckere had to be opened on 2 October 1635. The physician and the surgeon who conducted the examination in question each received 0.5 Flemish pounds, which equalled six Parisian pounds: RAG, RVV, no. 6914.

67 SAI, KAS, series 5, no. 1841.

68 SAG, OA, series 218, no. 7 (“Extraict uyt seker bescheet ofte notitie van aude tyden geschreven, mentie maeckende vande rechten dependerende aen d’anschauwen van doode lichaemen soo binnen als buyten dese stadt”, undated).

69 J. B. H. Serruys, *Eerste deel van den zesden placcaert-boek, op. cit.*, p. 272 (regulations concerning the administration of justice in Ostend, 20 September 1775).

70 *Costumen vanden princelycken leenhove, op. cit.*, p. 88-89 (chapter 11, article 20). If the accused had no financial means, the costs of the post-mortem had to be paid by the local judicial officer.

71 J. de Damhouder, *Practycke, op. cit.*, p. 143-144.

72 Individuals who had killed themselves by accident or who had taken their own lives while not of sound mind were usually not subjected to posthumous corporal or financial punishments and were generally granted burial in consecrated ground. Nevertheless, Flemish criminal courts frequently ruled that the heirs or relatives of suicides whose possessions had not been confiscated were required to pay the costs of the judicial inquiry into the death and the subsequent trial against the corpse. See for instance SAG, OA, series 213, no. 2 (sentence of 7 April 1627) and RAG, VALW, no. 236 (sentence of 29 July 1748).

73 J. MONBALLYU, *De decriminalisering van de zelfdoding in de Oostenrijkse Nederlanden*, in *Belgisch Tijdschrift voor Filologie en Geschiedenis*, 78, 2000, no. 2, p. 450-459. After two judges of the feudal court of the *Land van Waas* had investigated the death of Gillis De Rop, a farmer from the village of Vrasene who had hanged himself in his barn on 24 December 1793, they allowed the corpse to be buried in consecrated ground while ordering the deceased's brother, who acted as curator, to pay the court costs: RAG, VALW, no. 239, fols. 136r-142v (25 December 1793).

74 *Costumen vanden princelycken leenhove, op. cit.*, p. 88-89 (chapter 11, article 20); *Costumen der stede, casselrye, ende vassalryen van Berghen Sinte Winnocx*, Ghent, Jan Vanden Steene, 1617, p. 4 (Sint-Winoksbergen, chapter 1, article 6), p. 233-234 (Pitgam, chapter 1, article 2), and p. 279 [the editor erroneously numbered this page as p. 269] (Hondschoote, chapter 1, article 13). If the heirs or relatives had no financial means, the costs of the post-mortem had to be paid by the local judicial officer.

75 SAG, OA, series 218, no. 7, fols. 39v-40r (15-18 November 1754).

76 RAG, RVV, no. 22012 (deposition of the bailiff and two aldermen of Eksaarde, 15 July 1628): "den man is doot. Wat help (sic) ons desen cost ofte last?" The attorney-general of the Council of Flanders nevertheless prosecuted the bailiff and aldermen of Eksaarde because they had not ordered a post-mortem. The defendants claimed that it had not been their duty to order an examination of the corpse, since Jacques Van Brussele had died in the village of Sinaai, which lay outside their jurisdiction.

77 RAG, RVV, no. 31130 (20 May 1754): "al of ghij thienmael quaemt".

78 RAG, RVV, no. 31141 (inquiry into the death of Marie Françoise Vaerewyck, 5 April 1763): "om alsoo dien aengaende te ontgaen alle roer ende clap die daer over soude conen (sic) gheresulteert hebben, midtsgaeders te prevenieren alle ontcosten, soo van het aenschauw, informaetie als andersints".

79 SAI, KAS, series 13, no. 1365.

80 RAG, RVV, no. 27172 (1771-1773): "dat den voornoemden sieur Carel De Lanssusere subitelijck overleden sijnde van eene apoplexie ofte andere inwendighe sieckte, waer aen men alomme gheexponneert is. Vervolghens niet geseijdt en can woorden door eenige culpe ofte imprudentie veroorsaeckt te hebben de gemelde devoiren aengaende sijn doodt lichaem ofte cadaver verricht".