

## **Urban privileges ('keuren') in medieval Flanders: charters or dynamic legal documents?**

### **An approach based on diplomatics and pragmatic literacy**

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From 1100 or so onwards, the counts of Flanders began to grant privileges to the urban communities in their realm. These privileges constitute the legal basis for the autonomy of the Flemish towns. They convey liberties to its inhabitants, regulate the structure of municipal government and determine the way in which criminal law had to be administered<sup>1</sup>. Many of these privileges – among them the oldest ones that are preserved – are drafted in the form of a charter, i.e. a legal document issued as a statement in writing by an individual which begins and ends with stereotyped formulae and which was authenticated by a seal. There is among these Flemish privileges, however, also a distinct and quite numerous group of documents which are devoid of all these formal characteristics. They open with a heading as “This is the law and custom which Philip, the illustrious count of Flanders and Vermandois, ordered the people of Ghent to observe”, and consist solely of a list of legal articles drafted in the third person. In Flanders, such formless law texts are traditionally known as ‘keuren’ (singular ‘keure’), a vernacular word that comes from the verb ‘kiezen’, to choose. Etymologically it thus implies a customary law chosen by the people themselves. In

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<sup>1</sup> R.C. Van Caenegem, *Coutumes et législation en Flandre aux XI<sup>e</sup> et XII<sup>e</sup> siècles*, in: *Les libertés urbaines et rurales du XI<sup>e</sup> au XIV<sup>e</sup> siècle*, Brussels 1968, p. 245–279 (with on p. 269–279 a list of privileges until 1200).

reality, though, it can also be a law that was imposed by the count or another lord, with little or no consultation of the people concerned<sup>2</sup>. These documents without diplomatic form have in the past attracted the attention of scholars such as François-Louis Ganshof and Raoul C. Van Caenegem. The former was inclined to compare them to records of customary law<sup>3</sup>, while the latter thought that they recorded in writing new law that had been promulgated orally by the count<sup>4</sup>. In this paper I will propose a new hypothesis. I will argue more in particular that the formless privileges are dynamic legal documents which could be updated whenever this was necessary. They should therefore not be labelled as some sort of charters, but rather as a type of legal records in their own right. My approach is twofold: on the one hand it is based on diplomatics, one of the traditional auxiliary sciences of history, which studies the form of medieval charters and acts; on the other, it also takes into account the more recent research field of pragmatic literacy ('pragmatische Schriftlichkeit' in German), which focuses on the role played by written records in medieval society, and more in particular on the ways documents were made, used, kept and transmitted<sup>5</sup>.

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<sup>2</sup> On the term 'keuren', see R.C. Van Caenegem – L. Milis, *Kritische uitgave van de 'Grote Keure' van Filips van de Elzas, graaf van Vlaanderen, voor Gent en Brugge (1165-1177)*, Bulletin de la Commission royale d'histoire, CXLIII (1977), p. 215–217.

<sup>3</sup> F.-L. Ganshof, *Note sur les deux chartes de Philippe d'Alsace pour la ville d'Arras*, Revue du Nord, XXX (1948), p. 99. He follows here a suggestion of Henri Pirenne in an unpublished paper presented at Brussels on 12 May 1929; see the summary: H. Pirenne, *Keures de la fin du XII<sup>e</sup> siècle*, Revue belge de philologie et d'histoire, VIII (1929), p. 664.

<sup>4</sup> Van Caenegem, *Coutumes* (*supra* n. 1), p. 267–268.

<sup>5</sup> The classic work in the field is M.T. Clanchy, *From Memory to Written Record. England 1066-1307*, 3rd ed., Chichester 2013.

## **From formal charters to law texts without diplomatic form**

The type of privilege without diplomatic form appears in the 1160s and 1170s. Before this period, the privileges granted by the Flemish counts were always formal charters. A well-known example is the privilege granted by Count William Clito to the town of Saint-Omer in 1127<sup>6</sup>. It is preserved in the form of the two original parts of a chirograph, a charter written out in duplicate on a sheet of parchment and then cut in half. Both originals are still sealed with the equestrian seal of the count in red wax. One copy was for the sworn commune of the town, the other for the bench of comital aldermen (*scabini*). The text opens with the so-called ‘intitulatio’ or style, the descriptive formula in which the count is named with his full title: “I William, by the grace of God, count of the Flemings” (“*Ego Guillelmus, Dei gratia Flandrensium comes*”). This is followed immediately by a short narrative introduction in which the count announces that, at the request of the citizens of Saint-Omer, he grants them the laws and customs that are written below and orders those laws to remain inviolate forever (“*petitioni burgensium Sancti Audomari ... lagas seu consuetudines subscriptas perpetuo eis iure concedo et ratas permanere precipio*”). The central part of the text is, in the terminology of medieval diplomatics, the dispositive clause, which contains the laws and rights that were granted. It is a list of 21 articles, drafted partly in the first person, partly in the third. After this list there is a clause announcing that King Louis (VI) of France, Count William and 24 barons who are mentioned by name have

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<sup>6</sup> The best edition is that of G. Espinas, *Le privilège de Saint-Omer de 1127*, *Revue du Nord*, XXIX (1947), p. 43–48.

promised to observe these customs and have confirmed their promise with an oath (“*has supradictas consuetudines et conventiones esse observandas fide promiserunt et sacramento confirmaverunt*”). The charter finally ends with the dating clause, in which the date, 14 April 1127, is once again preceded by the solemn statement that Count William and the abovementioned barons have sealed this privilege with an oath (“*Confirmatum est hoc privilegium et a comite Guillelmo et predictis baronibus isti fide et sacramento sancitum et collaudatum anno...*”). Solemn privileges like this are known in considerable number. For Saint-Omer there is a series of twelfth-century confirmations by Count Thierry of Alsace (1128), his son Philippe of Alsace (two privileges of 1164, respectively for the aldermen and for the sworn commune) and Count Baldwin IX (1199), all preserved in the original<sup>7</sup>. For Ghent, we have solemn privileges by Queen Mathilda, the widow of Philip of Alsace (1191), and Count Baldwin VIII (1191)<sup>8</sup>. Similar privileges of Count Philip of Alsace have also been preserved for the small towns of Geraardsbergen (1190) and Aire-sur-la-Lys (1188) and for the new port-town of Nieuwpoort (1163), which was founded by him<sup>9</sup>.

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<sup>7</sup> Th. de Hemptinne – A. Verhulst (with the collaboration of L. De Mey), *De oorkonden der graven van Vlaanderen (juli 1128 – september 1191). II. Uitgave. 1. Regering van Diederik van de Elzas (juli 1128 – 17 januari 1168)*, Brussels 1988, no. 2, p. 14–17, no. 231, p. 360–363 and no. 233, p. 365–370; W. Prevenier, *De oorkonden der graven van Vlaanderen (1191 – aanvang 1206)*, II, Brussels 1964, no. 87, p. 189–196.

<sup>8</sup> Prevenier, *De oorkonden (supra n. 7)*, II, no. 1, p. 1–16 and no. 4, p. 21–31.

<sup>9</sup> Th. de Hemptinne – A. Verhulst (with the collaboration of L. De Mey), *De oorkonden der graven van Vlaanderen (juli 1128 – september 1191). II. Uitgave. 3. Regering van Filips van de Elzas (Tweede deel: 1178–1191)*, Brussels 2009, no. 740, p. 308–311 (Aire) and no. 789, p. 375–379 (Geraardsbergen); de Hemptinne – Verhulst, *De oorkonden (supra n. 7)*, II, 1, no. 222, p. 344–348.

The first privilege devoid of formal elements probably dates from 1163, the same year as the solemn charter for Nieuwpoort. It is the so-called first privilege of Count Philip of Alsace for the city of Arras<sup>10</sup>. The text lacks all formal elements and is not dated. Even the name of the count is not mentioned in the text. At the beginning of the text there is the heading “This is the law and custom which the citizens of Arras follow” (“*Talis est lex et consuetudo quam cives Attrebatenses tenent*”). The text properly speaking is solely a list of 24 articles in the third person, mainly concerning criminal law. The only copy dates from the fifteenth century and a note in the margin indicates that the seal of Count Philip (with the legend “*Philippus comes Flandrie*”) was attached to the original which apparently still existed at the time. Given its title, this text appears at first sight to be a record of existing customary law, as Ganshof and Van Caenegem have remarked<sup>11</sup>. The heading is misleading, however, for in reality this text is an enactment by which the young count introduced a new and severe penal law in one of the major towns of the county, even though a few articles do contain elements of customary law, as the reference to “their law” (art. 1: “*quoniam talis est lex eorum*”) or to “the law of the city” (art. 18: “*quoniam lex talis est in civitate*”) shows. Among the innovations is the introduction of the heavy fine of 60 £ and the creation of a new system of proof based on an inquest by the aldermen (*veritas scabinorum*). The text can be dated to between 1157 and 1163, but dates – as Van Caenegem has convincingly shown – probably from the latter year<sup>12</sup>. It was apparently a kind of experiment, for a

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<sup>10</sup> de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 7), II, 1, no. 214, p. 333–335.

<sup>11</sup> Ganshof, *Note* (*supra* n. 3), p. 99; Van Caenegem, *Coutumes* (*supra* n. 1), p. 257.

<sup>12</sup> R. Van Caenegem, *Note sur la date de la première charte de Philippe d’Alsace pour la ville d’Arras*, *Revue belge de philologie et d’histoire*, XXIX (1951), p. 481–486.

few years later – between 1165 and 1175<sup>13</sup> – Philip of Alsace would introduce a revised and even sterner version of this privilege in the seven major towns of the county, including Arras.

### **The ‘Grote Keure’ of Count Philip of Alsace**

This new version, known as the ‘Grote Keure’ in Dutch, is often described in English as the Great Borough Charter of Count Philip of Alsace. This name is rather unfortunate, though, because it too lacks all characteristics proper to a formal charter: there is no protocol nor eschatocol (as the standardized opening and closing formulae of a charter are called in medieval diplomatics) and no dating clause either. It is a piece of real legislation and is therefore better called an ordinance. I will call it the ‘Grote Keure’ and will come back on this name further on. As Van Caenegem has stated, this document “created a modernized and uniform law for dealing with crime in the main towns of

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<sup>13</sup> The departure of Philip of Alsace to the Holy Land on 12 June 1177 is generally accepted as terminus ante quem: Van Caenegem, *Coutumes* (*supra* n. 1), p. 260; Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 209–212. It should however be shifted to 1175; in that year the heavy fine of 60 £, first introduced by Count Philip in Arras, is already attested in the town of Saint-Omer: Th. de Hemptinne – A. Verhulst (with the collaboration of L. De Mey), *De oorkonden der graven van Vlaanderen (juli 1128 – september 1191). II. Uitgave. 2. Regering van Filips van de Elzas (Eerste deel: 1168–1177)*, Brussels 2001, no. 387, p. 174 (“Qui vero iudicio scabinorum in ea piscatus fuisse convictus fuerit ... LX librarum mihi reus erit”).

Flanders”<sup>14</sup>. Instead of issuing a general ordinance, Philip of Alsace granted this new and uniform law to each town separately. The transmission of this important document is all but ideal. The Latin text is only known for Ghent and Bruges: the Ghent version survives in two independent early copies (and in numerous copies from the late middle ages and the early modern period), the first dating from around 1200 is the work of a monk of the local St Peter’s Abbey, the second was written down in the oldest municipal cartulary compiled in 1237 or shortly thereafter (before 1240)<sup>15</sup>. The text for Bruges has come down to us through three copies from the count’s archives, all dating from the thirteenth century<sup>16</sup>. At Ypres there were in 1914 still three French translations

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<sup>14</sup> R.C. Van Caenegem, *Criminal Law in England and Flanders under King Henry II and Count Philippe of Alsace*, in: *Diritto e potere nella storia Europea: atti in onore di Bruno Paradisi. Quarto congresso internazionale della Società Italiana di Storia del Diritto*, I, Florence 1982, p. 235.

<sup>15</sup> Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 221–225 and 229–230; de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 435, p. 243–246. The two copies are: Ghent, State Archives, fonds Sint-Pietersabdij, II, 28, f° 11r°–13r°; Ghent, State Archives, fonds Stad Gent, 6, f° 21r°–23r°.

<sup>16</sup> Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 239–243 and 246; de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 433, p. 236–237. Two copies were used for both editions: Ghent, State Archives, fonds de Saint-Genois, 6; Lille, Archives départementales du Nord, B 1345/237. The first of these copies (a roll from the first half of the thirteenth century, which also contains the ‘keure’ of Count Philip for the castellany of Bruges) is erroneously dated to 1193 in both editions, on the basis of the wrong interpretation of a note from 1303 (not 1193) inscribed on this roll; see L.-A. Warnkoenig – A.-E. Gheldolf, *Histoire de la Flandre et de ses institutions civiles et politiques jusqu’à l’année 1305*, IV, Brussels 1851, p. 167 note 2; cf. the correction of the error in de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 9), II, 3, p. 426–427 note 1. The third copy was only used for the second edition: Bruges, State Archives, fonds Stad Brugge, 802 (formerly Ghent, State Archives, 2<sup>de</sup> Varia, 1669, f° 9r°–13r°).

from the late thirteenth and early fourteenth centuries<sup>17</sup>. For Saint-Omer, where the archives are otherwise rather well preserved, we only have two small extracts of a French translation, which were copied in the fourteenth century in two municipal registers<sup>18</sup>. As for the other towns which are known to have received the ‘Grote Keure’ (Arras, Douai and Lille), its existence can only be deduced indirectly from later confirmations or other documents<sup>19</sup>.

With the exception of the delimitation of the urban territory in the first article<sup>20</sup>, the text of the ‘Grote Keure’ is identical in the three versions which we can verify (Ghent, Bruges and Ypres). It consists of 28 or 31 articles, depending on the different numbering and division of the articles in the modern editions (Ghent and Bruges: 28, Ypres: 31). The most striking difference with the initial 1163 version for Arras is the appearance of a new judicial agent of the count (“*iusticia comitis*”), who later, from the

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<sup>17</sup> R.C. Van Caenegem – L. Milis, *Édition critique des versions françaises de la ‘Grande Keure’ de Philippe d’Alsace, comte de Flandre, pour la ville d’Ypres*, Bulletin de la Commission royale d’histoire, CXLVII (1981), p. 2–5 et 13.

<sup>18</sup> Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 208 note 1; de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 438, p. 260–261.

<sup>19</sup> de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 432, p. 236 (Arras), no. 434, p. 242–243 (Douai) and no. 437, p. 260 (Lille); for Arras, see in particular Ganshof, *Note* (*supra* n. 3), p. 105–112.

<sup>20</sup> For a comparison of this clause in the different versions (and some later texts based on the ‘Grote Keure’), cf. H. Van Werveke, *La banlieue primitive des villes flamandes*, in: *Études d’histoire dédiées à la mémoire de Henri Pirenne par ses anciens élèves*, Brussels 1937, p. 389–401. The clause also occurs in the extracts of the version for Saint-Omer which was unknown to Van Werveke: de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 438, p. 261.

beginning of the thirteenth century onwards, will become known as the bailiff<sup>21</sup>.

Although the text itself is identical in the different versions, the wording is sometimes slightly different. This is also the case in the heading which opens the ‘Grote Keure’:

- Ghent: “This is the law and custom which Philip, the illustrious count of Flanders and Vermandois, ordered the people of Ghent to observe” (“*Hec est lex et consuetudo quam Philippus illustris Flandrie et Viromandie comes Gandensibus instituit observandam*”)<sup>22</sup>;
- Bruges: “This is the law and custom established by Count Philip, which the people of Bruges have to follow” (“*Hec est lex et consuetudo quam Brugenses tenere debent, a comite Philippo instituta*”)<sup>23</sup>;
- Ypres: “This is the law and custom of the burghers of Ypres, established by Philip, count of Flanders and Vermandois” (“*C’est la loys et la costume des borgois d’Ypre, establie de Phelippe conte de Flandres et de Vermendoys*”)<sup>24</sup>;
- Saint-Omer: “This is the law and custom which Philip, the noble count of Flanders and Vermandois, established and granted to the burghers of Saint-

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<sup>21</sup> The term “iusticia comitis” occurs twice in text (art. 19 and 20); in other clauses he is called “minister comitis” (art. 26), simply “iusticia” (art. 2 and 12), or “illius quem loco suo ad iusticiam tenendam instituerit” (art. 27 and 28). See L.M. de Gryse, *Some observations on the origin of the Flemish bailiff (bailli): the reign of Philip of Alsace*, Viator. Medieval and Renaissance Studies, 7 (1976), p. 244–294, esp. p. 265–267 and 286–287.

<sup>22</sup> Van Caenegem – Milis, *Kritische uitgave* (supra n. 2), p. 232–239; de Hemptinne – Verhulst, *De oorkonden* (supra n. 13), II, 2, no. 435, p. 247–253.

<sup>23</sup> Van Caenegem – Milis, *Kritische uitgave* (supra n. 2), p. 248–257; de Hemptinne – Verhulst, *De oorkonden* (supra n. 13), II, 2, no. 433, p. 237–242.

<sup>24</sup> Van Caenegem – Milis, *Édition critique* (supra n. 17), p. 15–40 (recensio 1); de Hemptinne – Verhulst, *De oorkonden* (supra n. 13), II, 2, 436, p. 254–259.

Omer” (“*Tele est li loys et li coustume que Ph. li nobles quens de Flandres et de Vermendois estauli et ottria as bourgeois de Saint Omer*”, or “*C’est li loys et li coustume que Philippe li nobles contes de Flandres et de Vermendois establi et ottroia aux bourgeois de Saint Aumer*”)<sup>25</sup>.

It seems likely that the introduction of the ‘Grote Keure’ in the seven towns was a more or less simultaneous operation. The reference to “the aldermen of Arras and those of the other towns that follow the same law” in art. 26 (“*scabinorum Atrebatensium sive aliorum qui eandem legem tenent*”) is clearly an indication in this direction<sup>26</sup>. How this exactly happened is open to speculation. Henri Pirenne thought that it was the result of negotiations between the count and delegates of the different towns<sup>27</sup>. This also seems to have been the point of view of François-Louis Ganshof, who describes the text as a compromise with a strong emphasis on the rights of the count<sup>28</sup>. Raoul Van Caenegem admits “that it is hardly conceivable that” the towns “were in no way consulted”, but he stresses at the same time that Count Philip acted here as a ruler whose power was uppermost: “the count wielded the death penalty, he introduced the heavy 60 £ fine, whose proceeds went entirely into his coffers, he legislated for his main towns, treated as a collective unit where judges whom he had freely appointed spoke in his name and were summoned by his bailiffs”<sup>29</sup>. There seems indeed to have been little room for

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<sup>25</sup> de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 438, p. 261; cf. Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 208 note 1.

<sup>26</sup> Cf. Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 13), p. 212 note 2, and de Gryse, *Some observations* (*supra* n. 21), p. 287.

<sup>27</sup> Pirenne, *Keures* (*supra* n. 3), p. 664.

<sup>28</sup> Ganshof, *Note* (*supra* n. 3), p. 98.

<sup>29</sup> Van Caenegem, *Criminal Law* (*supra* n. 14), p. 240 and 252.

negotiation at that time and it is therefore not surprising that there are virtually no communal elements in the text of ‘Grote Keure’. It contains on the contrary a sharpened definition of the count’s authority over the main towns. More than a century ago, Léon Vanderkindere already considered this text, which imposed a new administrative and judicial regime on the large towns of Flanders, not without reason as the end of the communal phase in their development<sup>30</sup>.

### **The Latin text of the ‘Grote Keure’ and the translations in the vernacular**

The copies of the Latin text of the ‘Grote Keure’ (Bruges, Ghent) show a number of slight differences. This is even more so if we look at the translations in the vernacular, which exist for Ypres (French) and Ghent (Dutch). In itself this is not abnormal, as absolute literal accuracy was unknown in a manuscript culture. However, the differences we can observe in this case go beyond what might normally be expected. They show that the text was adapted whenever scribes or translators deemed it necessary: obsolete clauses were omitted, other passages were updated and new articles were added. Take for instance the Latin text for Bruges, which exists in the form of three copies from the count’s archives, all dating from the thirteenth century. Two copies seem to reproduce the text almost verbatim<sup>31</sup>. The third, though, clearly

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<sup>30</sup> L. Vanderkindere, *Choix d’études historiques*, Brussels 1909, p. 309–315.

<sup>31</sup> Ghent, State Archives, fonds de Saint-Genois, 6; Bruges, State Archives, fonds Stad Brugge, 802 (formerly Ghent, State Archives, 2<sup>de</sup> Varia, 1669, f<sup>o</sup> 9r<sup>o</sup>–13r<sup>o</sup>). In the editions the text of these copies can be found in the left column: Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 248–257 (only the Ghent copy); de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 433, p. 237–242.

doesn't<sup>32</sup>. The scribe of this copy edited the text by adding titles or rubrics above each article (e.g. art. 2: "*De assultu domus*", "on the assault of a house", or art. 23: "*De falso testimonio coram scabinis*", "on a false testimony before the aldermen"), thus greatly improving the legibility of the text and especially its consultation, for the other copies (also those of the Ghent version) present the 'Grote Keure' as a continuous text. He also changed words, modified the word order and shortened some articles. Among the most striking interventions by this scribe are the replacement in art. 2 of the word 'justice of the count' (*iustitia*, the term used for the judicial official of the count, who in 1163–1175 had as yet no name) by 'bailiff' (*ballivus*, the term introduced for this official around 1200), and the omission of the castellan, who in the original text received part of the 3 and 10 £ fines, in art. 9, 10 and 11. The hereditary office of castellan of Bruges disappeared in 1224/25, when Countess Joan of Constantinople bought it back from the last holder of the office, John II of Nesle<sup>33</sup>. After that date there was no need to maintain this office in the text and the scribe therefore reallocated his part in the fines to the count.

At Ypres, the Latin text of the 'Grote Keure' has long since disappeared. Until the destruction of the municipal archives in 1914, at the beginning of the First World War, three French translations still existed. They are known today through nineteenth-century editions and through copies made by Jean-Jacques Lambin, archivist of Ypres

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<sup>32</sup> Lille, Archives départementales du Nord, B 1345/237. The editions (see the preceding note) give the text of this copy in the right column.

<sup>33</sup> E. Warlop, *The Flemish Nobility before 1300*, I, 1, Kortrijk 1975, p. 266–267.

in the 1820s and 1830s<sup>34</sup>. The first, which seems to date from the thirteenth century, was copied on a loose leaf inserted in the book with the urban statutes (*li livres de toutes les keures*) compiled around 1310. This was a apparently a literal translation of the Latin text<sup>35</sup>. The other two translations are in fact two versions of the same translation<sup>36</sup>. The first version was written probably in 1301 on a long roll, on which it was followed by a petition addressed by the urban authorities to the French king Philip the Fair, who visited Ypres in June 1301<sup>37</sup>; the other was transcribed in the oldest cartulary of the town, the so-called ‘white book’ (*Wittenboek*) which can be dated to around 1310. This second translation was to all probability made to be presented to the French king<sup>38</sup>, for in their petition the aldermen request on behalf of the urban community explicitly the confirmation of their privileges and customs (“*Item que tout leur privilege et tout leur*

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<sup>34</sup> See the references in Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 2–4 and 13–14.

<sup>35</sup> This is the recensio I in the edition of Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 15–40. The other recent edition only gives this translation: de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 436, p. 253–259. Neither of these editions mentions the fact that this translation was copied on a loose leaf. This not unimportant detail is signaled by L.-A. Warnkoenig – A.-E. Gheldolf, *Histoire de la Flandre et de ses institutions civiles et politiques jusqu’à l’année 1305*, V, Paris 1864, p. 426 note 1 (“une feuille détachée trouvée dans le *Livre de toutes les keures*”, cf. also p. 430 note 5). Gheldolf, who is in fact the sole author of this volume, certainly saw that register, for he gives a detailed description of its contents (p. 14–17).

<sup>36</sup> Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 15–44 (recensio 2a and 2b).

<sup>37</sup> This roll (including the petition to the French king) was edited by Warnkoenig – Gheldolf, *Histoire* (*supra* n. 35), V, p. 426–434; an earlier edition by I.L.A. Diegerick, *Inventaire analytique et chronologique des chartes et documents appartenant aux archives de la Ville d’Ypres*, I, Bruges 1853, p. 299–306 only gives extracts of the petition.

<sup>38</sup> Cf. Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 7.

*usages lor soient tenus et wardés et de nouvel confremé*”<sup>39</sup>. Philip the Fair conceded to their request, for in September 1301 he granted a privilege to Ypres in which he confirmed among other things “the old laws and customs” of the town (“*leges, coustumas et usagia antiqua*”)<sup>40</sup>. The translation is a heavily modified version of the ‘Grote Keure’: several articles were adapted, a few entirely omitted and four new articles were added (three of these at the end of the text)<sup>41</sup>. Nonetheless it is still presented as a law granted by Count Philip of Alsace: “These are the laws granted to the aldermen and the community of the town of Ypres by Philip of blessed memory, once count of Flanders and Vermandois” (“*Ce sont loys donnees as eschevins et a la comunité de le vile d’Ypre de par Philippe de boine memore jadis conte de Flandres et de Vermendois*”). Some modifications are simply updates (the detailed delimitation of the urban territory in art. 1 is e.g. replaced by the term ‘banlieue’, to take into account the extension of the urban territory in 1270)<sup>42</sup>, others change the penalties that had been prescribed by Count Philip for certain crimes (in art. 6 the fine of 60 £ for theft was replaced by the death penalty). Two articles, both concerning the reconciliation of feuding families (art. 13 and 14), were updated by inserting into the text the new institution of the ‘paiseurs’ (i.e. ‘pacifiers’), a function created specially for that purpose. A most remarkable modification is to be found at the end of text. In the last article of the original ‘Grote Keure’ (art. 28), Philip of Alsace had forbidden the

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<sup>39</sup> Warnkoenig – Gheldolf, *Histoire* (*supra* n. 35), V, p. 433.

<sup>40</sup> Warnkoenig – Gheldolf, *Histoire* (*supra* n. 35), V, p. 435.

<sup>41</sup> For a detailed discussion of these changes, see Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 8–11.

<sup>42</sup> Van Werveke, *La banlieue* (*supra* n. 20), p. 397–399; cf. Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 5 and 7.

aldermen and the burghers to change – i.e. to add, modify or correct (“*addere, mutare vel corrigere*”) – anything to the ‘Grote Keure’ without his approval or that of his judicial agent (the bailiff). This article has disappeared from this translation and is replaced by a new and long article (31b in the numbering of the Ypres text), which allows the aldermen to do just the opposite: they can add if necessary new statutes that are advantageous for the urban community (“*aucuns estatut ... pourfitable a la communauté de le vile*”) and they have the power to abolish existing statutes that are deemed damaging for the urban community (“*aucun estatut ... damageus a le communauté de le vile*”); in both cases, the count or his legal representative have no choice but to do as the aldermen request them to do, i.e. give their approval, for the wording of the article is quite compelling: “*li sires i doit mettre son assent*”, “the count has to give his approval” in the first case, “*li cuens ... le doit abatre a le requeste des eschevins*”, “the count has to abolish it at the request of the aldermen” in the second one. As Van Caenegem has stated, this revised translation is an illustration of the fact that the balance of power in Ypres (and, we might add, also in the other main towns) had shifted from the count to the aldermen<sup>43</sup>. It is therefore not surprising that this version of the ‘Grote Keure’ was copied into the municipal cartularies (first in the ‘white book’ around 1310, later also in the ‘red book’ and the ‘black book’, both from the sixteenth century)<sup>44</sup>, while nobody in Ypres deemed it necessary to copy the original Latin text of Count Philip, which as a consequence went missing long ago. If we nonetheless know the original version in a literal French translation, that is only due to a loose leaf in another municipal register.

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<sup>43</sup> Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 10.

<sup>44</sup> Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 13.

Ypres thus provides us with a good example of the extent to which formless legal texts like the ‘Grote Keure’ could be adapted or updated. In Ghent, the two early copies of the Latin text of the ‘Grote Keure’ present at first sight only minor differences. The oldest copy, written into a register of the local St Peter’s Abbey around 1200, appears to be an almost verbatim transcript of the original text<sup>45</sup>. Only one article is somewhat shortened (art. 27). The scribe of this ‘private’ copy – to all probability a Benedictine monk – has, however, replaced the word “*Gandensibus*”, the “people of Ghent”, in the heading by “*Oudenardensibus*”, the “people of Oudenaarde”, a small town on the Scheldt between Ghent and Tournai, thus creating the impression that this was a law issued by the count for that town. As could be expected, this has long misled historians<sup>46</sup>, but it is certainly a wrong interpretation, for in the text itself the scribe maintained all references to Ghent (art. 7: “*Gandensibus*”, 18: “*Gandavo*”, and 19: “*Gandensibus*”). The reason for this ‘private’ copy (and for the modified heading) was clearly the charter by which Count Philip granted in 1189 the “customs and laws of the people of Ghent” (“*consuetudines Gandensium et leges*”) to Oudenaarde<sup>47</sup>. The second copy of the Latin text can be found in the oldest municipal cartulary of Ghent, compiled

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<sup>45</sup> Ghent, State Archives, fonds Sint-Pietersabdij, II, 28, f° 11r°–13r°; this copy is manuscript B in the edition of Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 232–239. In the more recent edition the text of B is printed separately in the left column: de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 435, p. 247–252.

<sup>46</sup> It was more in particular edited several times as a ‘keure’ for Oudenaarde; the last of these editions is M. Martens, *Recueil de textes d’histoire urbaine belge des origines au milieu du XIII<sup>e</sup> siècle*, in: Elenchus fontium historiae urbanae, ed. C. van de Kieft – J.F. Niermeyer, I, Leiden 1967, no. 35, p. 334–337.

<sup>47</sup> de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 9), II, 3, no. 755, p. 328–329.

in 1237 or shortly thereafter<sup>48</sup>. Here, some important words are missing in two articles<sup>49</sup>. In art. 20, which concerns the statutes on bread, wine and other commercial products issued by the aldermen (the so-called ‘voorgeboden’), the part of the castellan in the fines foreseen for those transgressing these regulations (originally one half for the count, the other half for the town and the castellan) has disappeared. In art. 24 the words “by choice of the count” (“*electione comitis*”) have been omitted, although this important article originally stated that it was up to the count to choose a new alderman if one of the aldermen came to die. Both of these omissions can hardly be scribal errors. They were probably made because the content of these two articles no longer corresponded to the situation at the time when this cartulary, or perhaps rather its model, was produced. This can be deduced from a comparison with the Dutch translation of this text, to which I will turn in a moment. As the editors of the ‘Grote Keure’ for Ghent have persuasively shown, the Latin text of the cartulary is not a copy of the original, but of a slightly revised version, which can be dated to the early thirteenth century, probably sometime after 1206<sup>50</sup>. The copy in the second cartulary of

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<sup>48</sup> Ghent, State Archives, fonds Stad Gent, 6, f<sup>o</sup> 21r<sup>o</sup>–23r<sup>o</sup>; in the edition of Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 232–239 this copy is manuscript C; de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 435, p. 247–252 (and the note on the textual transmission on p. 243–246) indicate it as D and have used it together with the copy in the second cartulary of Ghent (see below n. 51) to reconstruct in the right column of their edition the slightly revised text [C] that is found in all municipal cartularies of Ghent.

<sup>49</sup> Cf. Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 223–224.

<sup>50</sup> Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 222–225 and 229 (who date this version only enough before the regency of Philip of Namur [1206–1211], although they suppose on p. 225 that he reimposed the ‘Grote Keure’); de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 435, p. 244–246.

the town, dating from the fourteenth century<sup>51</sup>, goes independently from the first cartulary back to that same model, which seems to have been part of a small booklet that also contained some supplementary texts of the same type, as we will see further on<sup>52</sup>.

The oldest cartulary of Ghent does not only contain a copy of the Latin text of the ‘Grote Keure’, but also an early translation in Dutch<sup>53</sup>. This translated version has all the hallmarks of an updated version. Art. 24, which already had been truncated in the Latin text, is now omitted altogether. In the twelfth century aldermen were appointed for life by the count, and if an alderman died, he appointed a successor, as was prescribed originally in art. 24. In the shortlived privileges of Queen Mathilda and Count Baldwin VIII for Ghent from 1191, the aldermen managed to obtain the right to present to the count a successor after the death of one of their colleagues<sup>54</sup>. A few years later, the ‘Grote Keure’ was however reimposed upon the town and it is only in 1212, when the annual renewal of the aldermen came into force, that a new system was introduced. Henceforth, the count had to appoint each year four electors who then

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<sup>51</sup> Ghent, Municipal Archives, 93bis, 8, f° 25r°–27r°.

<sup>52</sup> The idea of this hypothetical booklet comes from de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 435, p. 245 and 252 note 2.

<sup>53</sup> Ghent, State Archives, fonds Stad Gent, 6, f° 27v°–30r°; see A.C.F. Koch, *Vroeg middelnederlands ambtelijk proza. Gentse keuren van vóór 1240*, Groningen 1960, no. I, p. 2–15, who prints the Dutch text on the uneven pages and the Latin text of the same cartulary on the even ones.

<sup>54</sup> Prevenier, *De oorkonden* (*supra* n. 7), II, no. 1, p. 12 and no. 4, p. 26 (art. 2 in both charters).

together with him chose the new aldermen for that year<sup>55</sup>. This system would remain in place until 1228, when Countess Joan and Count Ferrand granted the urban elites the right to appoint themselves the aldermen, without any intervention by the count or his bailiff, according to a complicated system which combined annual renewal and appointment for life<sup>56</sup>. After 1212 the original regulation of Count Philip had therefore lost its meaning. This explains why the words “*electione comitis*” were left out in the first cartulary and its model, and why the translator decided to drop an article, which had become in fact senseless. The omission of the castellan in art. 20 of the Latin text has apparently to do with a new partition of the proceeds of the fines for the infringement of urban statutes. The Dutch translation of this article allocates two thirds of these fines to the count and the remaining third to the town. This partition first appears in the privilege of Count Baldwin VIII from 1191<sup>57</sup>, and although this privilege was only in effect for a short time, the new partition it had proposed nonetheless remained in force. It can also be found later in the great charter granted by Count Guy of Dampierre to the town of Ghent on 8 April 1297<sup>58</sup>.

Several other articles in this Dutch translation have a wording that clarifies the original Latin clause, generally by adding a few words (art. 4, 6, 8), e.g. art. 6 specifies that the damage caused by robbery has to be repaired by the criminal “within three

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<sup>55</sup> L.-A. Warnkoenig – A.-E. Gheldolf, *Histoire de la Flandre et de ses institutions civiles et politiques jusqu'à l'année 1305*, III, Brussels 1846, p. 251–252.

<sup>56</sup> Warnkoenig – Gheldolf, *Histoire* (*supra* n. 55), III, p. 263–265.

<sup>57</sup> Prevenier, *De oorkonden* (*supra* n. 7), II, no. 4, p. 31 (art. 33).

<sup>58</sup> A.-E. Gheldolf, *Coutume de la ville de Gand*, I, Brussels 1868, no. XXIII, p. 445 (art. 48) and 494 (art. 151).

days” (“*binnen derden daghe*”) after his conviction. Another clarification is even more clear cut. In the Latin text of the ‘Grote Keure’ the penalty for rape is defined vaguely as “the same penalty to which this kind of criminals used to be condemned in Flanders by the predecessors of the count” (art. 17: “*eadem pena ... qua a predecessoribus comitis huiusmodi malefactores condempnari solent in Flandria*”); the Dutch translation replaces this vague phrase by the clause that “if the rapist is caught, he will be decapitated, and if he can escape justice, he becomes an outlaw” (“*hi wert beuaren men salne houeden ende ontuart hi, hi es wetloes*”). We know from other sources that what is meant, is not a ‘normal’ decapitation, but the so-called beheading with a plank, the traditional and archaic penalty for rape in Flemish criminal law<sup>59</sup>. Finally, one article of the translation has been changed fundamentally: in the Latin text art. 23 stipulated that the person who was convicted of giving false testimony before the aldermen had to pay a fine of 60 £; in the Dutch text this has become that “if someone gives false testimony before the aldermen, he may never give testimony again” (“*So wie so uor scepnen ualsche orconscepe draget hi nemah nemmermer orconscepe dragen*”). This article has been taken almost verbatim from another Dutch text in the same cartulary, the draft of the law on the procedure in case of debt and inheritance (“*Hec est lex ... super placito et debito pecunio*”), issued by the count’s bailiff and the aldermen of Ghent in 1218<sup>60</sup>. The Dutch version of this law prescribes in art. 3 that “he who gives false testimony may never give testimony again” (*Die ualsche orconscepe draget, hi nemah nemmer*

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<sup>59</sup> R. Pirenne, *Note sur le supplice de la décollation par la planche au Moyen-Âge, en Flandre et en Brabant*, *Revue belge de philologie et d’histoire*, IX (1930), p. 567–573; see also R.C. Van Caenegem, *Geschiedenis van het strafrecht in Vlaanderen van de XI<sup>e</sup> tot de XIV<sup>e</sup> eeuw*, Brussels 1954, p. 158–159.

<sup>60</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), no. VI, p. 44–59 (art. 3 in Latin on p. 46, in Dutch on p. 47).

*orconscepe dragen*). Anton Koch has shown persuasively that this Dutch text is not a translation of the Latin text of this law, which is also copied in the oldest municipal cartulary (art. 3 of this Latin version runs as follows: “*Qui fert falsum testimonium, amplius non potest ferre testimonium*”) <sup>61</sup>, but that the Dutch version is on the contrary the draft (undated and without a heading) of the Latin text <sup>62</sup>. This makes the Dutch version of the 1218 law the oldest official document in Dutch that is preserved. As Koch likewise argued that the translation of the ‘Grote Keure’ was not made by the scribe of the oldest cartulary, but possibly by the same person who drafted the law of 1218 <sup>63</sup>, it also means that this Dutch translation was made shortly after 1218 and hence reflects an updated version of the law of Count Philip as it was applied in Ghent in the 1220s and 1230s.

### **The Dutch translations of the ‘keuren’ for Ghent in the oldest municipal cartulary**

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<sup>61</sup> A similar clause already occurs in the charters of Queen Mathilda and Baldwin VIII from 1191, as art. 29 (“*Hereditatus vir qui compertus fuerit falsum tulisse testimonium, nunquam ulterius in testem recipietur*”): Prevenier, *De oorkonden* (*supra* n. 7), II, no. 1, p. 16 and no. 4, p. 30.

<sup>62</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), p. XVII–XIX. His arguments seem solid to me, but he apparently failed to convince M. Gysseling, *De Gentse keurenvertaling van circa 1237*, *Gentse Bijdragen*, XX (1963), p. 29–31, according to whom that is only a possibility, not a certainty.

<sup>63</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), p. XV. Here again Gysseling, *De Gentse keurenvertaling* (*supra* n. 62), p. 31 is of a different opinion; according to him the person responsible for the Dutch text of 1218 is certainly not the author of the Dutch translation of the ‘Grote Keure’ nor of the other translations in the cartulary.

The ‘Grote Keure’ for Ghent and the law of 1218 are for that matter not the only formless law texts that were copied both in a Latin and in a Dutch version in the oldest cartulary of Ghent in 1237 or shortly thereafter. This cartulary is a small codex made up of five quires and forty leaves<sup>64</sup>. The original part, written by a single scribe, consists of two separate sections that are clearly distinguished: the first section (f<sup>o</sup> 1r<sup>o</sup>–16v<sup>o</sup>) contains copies of a series of charters, ranging in date from 29 May 1173 (a diploma of Emperor Frederick Barbarossa) to 3 December 1236 (a charter of the English king Henry III), the second section (f<sup>o</sup> 19r<sup>o</sup>–33v<sup>o</sup>) is entirely devoted to formless (and generally undated) legal documents. Between the two sections two leaves were left blank, that were afterwards used by other thirteenth-century scribes for copying additional documents (f<sup>o</sup> 17–18). The scribe of the original part thus clearly distinguishes between formal charters and legal documents without diplomatic form. The second section contains six formless law texts that were transcribed in fifteen different copies. For all texts there is a Latin and at least one Dutch version; for three documents there are even two different Dutch translations<sup>65</sup>. All of these texts are drafted in indirect discourse and the count is always named in the third person. The six texts are, in the order of the Latin versions<sup>66</sup>:

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<sup>64</sup> Ghent, State Archives, fonds Stad Gent, 6; for a detailed description, see Koch, *Vroeg middelnederlands* (*supra* n. 53), p. VI–XII.

<sup>65</sup> In his edition Koch, *Vroeg middelnederlands* (*supra* n. 53), p. 2–59 gives the Latin texts on the even pages and the Dutch versions on the uneven ones.

<sup>66</sup> The Dutch versions were edited in the order of the manuscript by M. Gysseling, *Corpus van middelnederlandse teksten (tot en met het jaar 1300). I. Ambtelijke bescheiden*, I, The Hague 1977, nr. 4, p. 30–39.

- “This is the law issued in Ghent on the judicial proceeding and the financial debt” (“*Hec est lex que in Gandauo constituta est super placito et debito pecunio*”; Latin text: f° 19r°–21r°, Dutch draft: f° 31v°–33v°)<sup>67</sup>: a law, essentially on inheritances and cases of debt, but containing also some clauses of criminal law, issued by the count’s baillif and the thirteen aldermen of the town in 1218;
- the ‘Grote Keure’ of Count Philip of Alsace (Latin text: f° 21r°–23r°; Dutch translation: f° 27v°–30r°)<sup>68</sup>;
- “These are the points which the count ordered to be observed throughout his entire land” (“*Hec sunt puncta que per uniuersam terram suam comes obseruari precepit*”; Latin text: f° 23r°–24r°; Dutch translation: f° 25r°–26r°)<sup>69</sup>: the so-called ‘ordinance on the bailiffs’, probably promulgated by Count Baldwin IX between 1194 and 1202<sup>70</sup>;
- “These are the precepts which the lord count promulgated in Ghent at the time he returned from Jerusalem” (“*Hec sunt precepta que statuit dominus comes in Gandauo eo tempore quo rediit Iherosolymis*”; Latin text: f° 24r°–v°; two Dutch

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<sup>67</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), no. VI, p. 44–59.

<sup>68</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), no. I, p. 2–15.

<sup>69</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), no. III, p. 24–31.

<sup>70</sup> For the attribution of this ‘keure’ to Baldwin IX, see Prevenier, *De oorkonden* (*supra* n. 7), II, no. 214, p. 437–447 (with a new edition of the Latin text), and in particular R.C. Van Caenegem, *Considérations critiques sur l’ordonnance comtale flamande connue sous le nom d’“Ordonnance sur les baillis”*, in: *Actes du congrès international de la Société italienne de l’histoire du droit*, Florence 1971, p. 133–152.

translations: f<sup>o</sup> 26v<sup>o</sup> and 30r<sup>o</sup>–v<sup>o</sup>)<sup>71</sup>: additions to the ‘Grote Keure’ issued by Count Philip after his return from Jerusalem in October 1178<sup>72</sup>;

- “These are the edicts which Philip, count of Namur, established in his days on the advice of the aldermen to end the discord in Ghent” (“*Hec sunt edicta que Philippus marchio Namurensis tempore suo ad destruendam discordiam in Gandauo constituit consilio scabinorum*”); Latin text: f<sup>o</sup> 24v<sup>o</sup>–25r<sup>o</sup>; two Dutch translations: f<sup>o</sup> 26v<sup>o</sup>–27r<sup>o</sup> and 30v<sup>o</sup>–31r<sup>o</sup>)<sup>73</sup>: additions to the ‘Grote Keure’ issued by Philip of Namur at the time he was regent of the county of Flanders between 1206 and 1211;
- a law on the breaking of the truce and the peace (“*treugas aut concordiam*”)<sup>74</sup>, without heading (Latin text: f<sup>o</sup> 25r<sup>o</sup>; two Dutch translations: f<sup>o</sup> 27r<sup>o</sup>–v<sup>o</sup> and 31r<sup>o</sup>–v<sup>o</sup>)<sup>75</sup>: as it follows the edicts of Philip of Namur it is generally seen either as part of this text, or as a second law issued by him. For the scribe of this manuscript (and also those of other cartularies) it clearly is a separate text (it begins with an ornamented initial and has a rubric of its own). The only dating

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<sup>71</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), no. II, p. 16–23.

<sup>72</sup> More recent editions of the Latin text are R.C. Van Caenegem – L. Milis, *Kritische uitgave van de ‘Precepta’ van graaf Filips van de Elzas voor de stad Gent (1178)*, Handelingen van de Maatschappij voor geschiedenis en oudheidkunde te Gent, n.s., XXXIII (1979), p. 99–115 (edition on p. 112–115), and de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 9), II, 3, no. 530, p. 20–21 (in this edition the second Dutch translation – here manuscript K – is erroneously dated to the fourteenth century).

<sup>73</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), no. IV, p. 32–37.

<sup>74</sup> In the Dutch translations “uerde of(te) sondinc”; on this terminology (and its modern translation), see Van Caenegem, *Geschiedenis* (*supra* n. 59), p. 248 note 18.

<sup>75</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), no. V, p. 38–43.

element is the mention of the bailiffs of the count in the plural (“*balgiuorum comitis*”) at the end of the third and last article. The only period during which there was more than one bailiff in Ghent is between 1196 and 1213/18<sup>76</sup>.

With the exception of the law from 1218, all these documents concern mainly (or even only) criminal law. As we have already hinted at above, the Latin texts of the last five of these legal documents go to all probability back to a small booklet from the early thirteenth century, which was also used for the second municipal cartulary in the fourteenth century. Both cartularies contain these five texts – the ‘Grote Keure’ and four additional ‘keuren’ – in the same order<sup>77</sup> and their copies are independent from each other<sup>78</sup>. The terminus post quem for this booklet with law texts is certainly 1206, the beginning of the regency of Philip of Namur, and probably 1212, the year in which the system for the appointment of the aldermen was altered (hence the omission of the words “*electione comitis*” in art. 24 of the ‘Grote Keure’); the terminus ante quem seems to be 1218, the date of the law issued by the bailiff and the aldermen, which does not appear to have been part of this booklet. Anton Koch for his part has shown that the Dutch versions of all these texts can be divided into two groups on the basis of the legal terminology that is used. The Latin word *convictus*, which expresses when someone is

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<sup>76</sup> H. Nowé, *Les baillis comtaux de Flandre des origines à la fin du XIV<sup>e</sup> siècle*, Brussels 1929, p. 38–40 and 54–56.

<sup>77</sup> Ghent, State Archives, fonds Stad Gent, 6, f<sup>o</sup> 21r<sup>o</sup>–25r<sup>o</sup>; Ghent, Municipal Archives, 93bis, 8, f<sup>o</sup> 25r<sup>o</sup>–29r<sup>o</sup>.

<sup>78</sup> For the ‘Grote Keure’, see Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 222–224 and de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 435, p. 245–246; for the precepts of Count Philip: Van Caenegem – Milis, *Kritische uitgave ‘Precepta’* (*supra* n. 72), p. 111–112; for the so-called ‘ordinance of the bailiffs’: Prevenier, *De oorkonden* (*supra* n. 7), II, no. 214, p. 444.

found guilty, is e.g. translated in the first group as *verwonnen* (f<sup>o</sup> 25r<sup>o</sup>–27v<sup>o</sup>), in the second group though the Dutch equivalent is *bedregen* (f<sup>o</sup> 27v<sup>o</sup>–33v<sup>o</sup>)<sup>79</sup>. This implies that two different translators (or authors) were at work here. Some archaisms in the vocabulary and the spelling suggest moreover that the second group is older than the first<sup>80</sup>. The Dutch texts of the first group correspond almost verbatim to the Latin text, those of the second group are generally versions that were modified. The translation of the ‘Grote Keure’ and the draft of the 1218 law belong to the second group. Among the other texts in this group, the translation of the edicts of Count Philip of Namur has omitted the last article of the Latin text (art. 5), while the translation of the precepts issued by Philip of Alsace after his return from Jerusalem has been reworked in a more substantial way: the last four articles of this short text (only seven articles) have disappeared and were replaced with three new articles<sup>81</sup>. These additional articles were in 1297 also inserted (with some modifications) in the great charter of Count Guy of

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<sup>79</sup> Both groups are also clearly separated in the manuscript: after the Latin texts of the ‘keuren’ (f<sup>o</sup> 19r<sup>o</sup>–25r<sup>o</sup>), the scribe has first copied the translations of the first group (f<sup>o</sup> 25r<sup>o</sup>–27v<sup>o</sup>), then the Dutch texts of the second group (f<sup>o</sup> 27v<sup>o</sup>–33v<sup>o</sup>).

<sup>80</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), p. XIII–XVI. In those cases where there are two translations (nos. II, IV and V) Koch has labelled the translations of the first group as A (left column on the uneven pages), those of the second group as B (right column).

<sup>81</sup> The numbering of the articles in the Latin text is unfortunately not identical in the different editions: Koch, *Vroeg middelnederlands* (*supra* n. 53), no. II, p. 16–20 has divided this short text in five articles, whereas Van Caenegem – Milis, *Kritische uitgave ‘Precepta’* (*supra* n. 72), p. 114–115, and de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 9), II, 3, no. 530, p. 21 have seven articles. Art. 3 of Koch corresponds to art. 3–5 in the other editions. The articles omitted in the ‘second’ Dutch translation (B in the edition of Koch) are 3b, 4 and 5 in the numbering of Koch, 4, 5, 6 and 7 in the numbering of Van Caenegem – Milis and de Hemptinne – Verhulst.

Dampierre for Ghent<sup>82</sup>. Just like the translation of the ‘Grote Keure’, these translations of the edicts of Philip of Namur and the precepts of Philip of Alsace are therefore updated versions that represent the law of Ghent as it stood in force in the 1220s and 1230s<sup>83</sup>.

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<sup>82</sup> Compare Gheldolf, *Coutume* (*supra* n. 58), I, no. XXIII, p. 442–443 (art. 37–39) to Koch, *Vroeg middelnederlands* (*supra* n. 53), no. II, p. 21 and 23 (art. 6–8). As de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 9), II, 3, no. 530, p. 20–21 date this translation (their manuscript K) erroneously to the fourteenth century, they invert the relation between the two texts, and suppose that the charter of Count Guy of Dampierre was the source for these additional articles.

<sup>83</sup> Koch, *Vroeg middelnederlands* (*supra* n. 53), p. XX supposes that these Dutch versions are in fact translations of a lost Latin version of both ‘keuren’. That is, however, not really a convincing explanation, as he seems to admit himself. J. Burgers, *Het ontstaan van de twaalfde-eeuwse Vlaamse stadskeuren*, *Handelingen van de Koninklijke Zuid-Nederlandse Maatschappij voor taal- en letterkunde en geschiedenis*, 53 (1999), p. 96–97 suggests that these Dutch texts are the original drafts of the Latin versions. The hypothesis is based on the ideas of J.G. Kruisheer, *Het ontstaan van de oudste Zeeuwse stadsrechtsoorkonden*, in: *Ad fontes. Opstellen aangeboden aan prof. dr. C. van de Kieft ter gelegenheid van zijn afscheid als hoogleraar in de middeleeuwse geschiedenis aan de Universiteit van Amsterdam*, Amsterdam 1984, p. 275–304. It starts from the assumption that, in urban privileges, clauses in indirect discourse (and hence naming the count in the third person) were to all probability drafted by the townspeople themselves (and, consequently, that the Latin text of such clauses must be a translation of a draft in the vernacular). That may perhaps be true in the case of formal charters, but it is certainly wrong in the case of the formless texts under discussion here. All articles in such documents are always drafted in the third person, regardless of whether it is a piece of princely legislation (the ‘Grote Keure’ or the precepts of Count Philip), or a record of customary law (the ‘keure’ of the castellany of Bruges that will be discussed below).

## **Flemish ‘keuren’ as dynamic legal documents**

The legal documents without diplomatic form we have discussed show that it was apparently an accepted practice in Flemish towns to update these law texts whenever that was necessary. At first, it was the Latin texts that were modified (Bruges, Ghent), in a second stage they were translated into the vernacular and these French or Dutch versions then became the basis for further changes (Ypres, Ghent). In Ghent, this shift from the initial to the second phase, from Latin to Dutch, took place around 1220. These translations appear to have been made for use in daily practice and they therefore seem to have become the norm. The translation of the ‘ordinance on the bailiffs’ and the Dutch texts of the second group in the oldest cartulary henceforth formed together with a similar document from the middle of the thirteenth century<sup>84</sup> a sort of corpus of legal texts that began to look like a law code in which the individual articles tended to become more important than the documents which contained them. In the second municipal cartulary from the fourteenth century (and in all the later cartularies which depend on it) the individual articles of these different texts in Dutch are clearly distinguished by the use of great initial letters at the beginning of each article and the insertion of rubrics above each of them<sup>85</sup>, and these rubrics are also repeated in an index

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<sup>84</sup> See n. 87.

<sup>85</sup> Ghent, Municipal Archives, 93bis, 8, f<sup>o</sup> 29r<sup>o</sup>–40r<sup>o</sup>. It is not always clear in this part of the cartulary where a text ends and another text begins; see e.g. f<sup>o</sup> 35v<sup>o</sup> where the transition between the law of 1218 and the short ‘keure’ on the breaking of the truce and the peace is not visible; as a consequence, the three articles of this ‘keure’ (in this cartulary in fact considered as two articles) are presented in the index, on f<sup>o</sup> 90v<sup>o</sup>, as if they were the final part of the law of 1218.

at the end of the volume<sup>86</sup>. This highlights the practical nature of this collection of Dutch texts in which the law of Ghent is arranged in 70 articles. The oldest copy comes from the fourteenth century, but the model for this law book in Dutch seems to date from the second half of the thirteenth century (presumably between 1258 and 1270)<sup>87</sup>. In 1297 it formed the basis for the codification in Dutch of the laws and customs of Ghent by Count Guy of Dampierre in a great charter which begins and ends in French. In the opening clause the count states that he grants the town of Ghent “the laws, the *keuren* and the things which hereafter are written in the Flemish language” (“*les loys, les cores et les choses qui chi apres en langage Flamenge sont escrites*”). The text of these laws – 152 articles in all – is, at least in part, clearly an updated version of the earlier legal documents which the people of Ghent had presented to the count for confirmation. Each article is presented as a separate clause with a rubric<sup>88</sup>. A number of articles goes unmistakably back to the Dutch translations of the ‘Grote Keure’ or the

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<sup>86</sup> Ghent, Municipal Archives, 93bis, 8, f° 89v°–91r°.

<sup>87</sup> The most recent text in this section of the cartulary is a ‘keure’ on intestate succession from 1258 (Ghent, Municipal Archives, 93bis, 8, f° 37r°–v°); a Latin charter by which Countess Margaret of Constantinople confirmed in 1270 a ‘keure’ on the breaking of the truce (f° 24v°–25r°) was apparently not translated into Dutch and is therefore not included in this law collection.

<sup>88</sup> Gheldolf, *Coutume* (*supra* n. 58), I, no. XXIII, p. 426–495.

precepts of Count Philip<sup>89</sup>, and in some cases even the rubrics are identical to those in the municipal cartularies<sup>90</sup>.

A consequence of the dynamic nature of these formless legal documents is that the notion of an original engrossment on a sheet of parchment is less important and even less relevant. Such originals nonetheless seem to have existed, but little trace of them has been left. We know, as we have seen, that a sealed original of the first privilege of Philip of Alsace for the town of Arras was still preserved in the fifteenth century. For Ghent, the sealed original of the law issued by the count's bailiff and the aldermen of the town in 1218 is mentioned in an inventory from the sixteenth century<sup>91</sup>, and, if we are to believe Charles-Louis Diericx, it was apparently still available when he edited this text in 1817<sup>92</sup>. For the other documents of the same type for Ghent we have

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<sup>89</sup> Compare e.g. art. 6, 8, 9, 10, 11 and 16 of the translation of the 'Grote Keure' to Gheldolf, *Coutume* (*supra* n. 58), I, no. XXIII, p. 449 (art. 57), 443 (art. 41), 444–445 (art. 46) and 450 (art. 58). For the precepts of Count Philip, see n. 82.

<sup>90</sup> See e.g. Ghent, Municipal Archives, 93bis, 8, f° 30r° ("Van roeue", i.e. "On robbery") and 32r° ("Van kniue te treckene", i.e. "On pulling a knife"); cf. Gheldolf, *Coutume* (*supra* n. 58), I, no. XXIII, p. 449 (art. 57) and 442 (art. 38).

<sup>91</sup> Ch.-L. Diericx, *Mémoires sur les lois, les coutumes et les privilèges des Gantois, depuis l'institution de leur commune jusqu'à la révolution de l'an 1540*, I, Ghent 1817, p. 376–377 ("Item une lettres en latin ... marquées 15, scellées d'ung grand scel de chire verde, pendant en double queue de parchemin").

<sup>92</sup> Diericx, *Mémoires* (*supra* n. 91), I, p. 342. There are doubts as to whether he really saw the original; cf. Koch, *Vroeg middelnederlands* (*supra* n. 53), p. 44 ("naar het origineel?"). Diericx refers to the number ("Cette pièce se trouve aux archives de Gand sous le n° 15") which the original had in the inventory of the sixteenth century (see the previous note). An eighteenth-century inventory of the municipal archives ("Index van charters"), which once belonged to Count de Kerchove de Denterghem (and is now in my

no reference whatsoever to an original. By the early thirteenth century (between 1212 and 1218 as we have seen) the original Latin versions of most of these texts had to all probability been copied in a booklet, which in turn formed the direct or indirect source for the numerous copies in the series of municipal cartularies. In Ypres the situation is even worse. Here, all traces of the Latin text, and hence of the original, have disappeared. The Latin text was however still extant in 1228 when it formed the basis for the privilege of the town of Saint-Dizier in Champagne<sup>93</sup>. At first sight this may seem remarkable, given the care with which towns as Ghent and Ypres preserved in the middle ages their privileges that had the form of formal charters. However, if one takes a closer look, it is perhaps not that remarkable at all. The shapeless documents were not only different in form from the charters, but also in content. The latter contained liberties and commercial privileges, whereas the former codified the rules of law, in particular of criminal law. The way the scribe of the first municipal cartulary of Ghent distinguished these formless documents from the formal charters is a clear indication that they were not considered as charters. They were therefore probably not preserved under lock and key with the formal privileges in the municipal archives, but seen as pragmatic documents that were kept at hand by the aldermen. Once updated versions had been produced (the already mentioned hypothetical booklet in Ghent) and certainly once translations in the vernacular had been made in the thirteenth century, the original (and in fact outdated) versions of these laws became less and less relevant. In Ghent the Latin versions continued to be copied in the municipal cartularies alongside with the

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(possession), lists on p. 217–260 several charters with the number they had in the inventory from the sixteenth century, but this document is lacking and was therefore probably already lost by that time.

<sup>93</sup> A. Beugnot, *Les Olim ou registres des arrêts rendus par la cour du roi*, II, Paris 1842, p. 702–716; cf. J.J. Carlier, *Ypres et Saint-Dizier*, Annales du Comité flamand de France, 3 (1856-1857), p. 60–72.

updated Dutch translations, but in Ypres even that was not the case. By the very nature of the texts written on them, the originals of these formless legal documents were thus ill suited for long time preservation.

The difference between charters and formless legal documents was not limited to their formal characteristics (or the absence of these). The difference was in fact more fundamental: charters can be described as static or closed texts, the legal documents without diplomatic form appear on the basis of the evidence to have been rather dynamic or open texts. The content of charters was in principle fixed. It could not be modified, because that would amount to forgery. In the tenth and eleventh centuries, scribes of early cartularies had sometimes altered the form of so-called private charters (i.e. non-royal or non-papal charters) from the early middle ages, either by changing from direct to indirect discourse (or viceversa), or by elaborating the rhetorical style in order to bring it into line with the standards of their own time<sup>94</sup>. From the twelfth century onwards that was no longer possible. The rediscovery of Roman law and the rapid development of canon law had as a result that the text of charters – not only their content but also their form – became sacrosanct. Moreover, charters were now produced in greater numbers than before, and written records such as charters were on the verge of becoming a normal method of proof. As a consequence, authentic copies of charters

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<sup>94</sup> The cartularies of Cluny are a well-known case in point: A. Bruel, *Note sur la transcription des actes privés dans les cartulaires antérieurement au XII<sup>e</sup> siècle*, Bibliothèque de l'École des chartes, 36 (1875), p. 445–456. For a Flemish example: G. Declercq, *La mise en livre des archives du haut moyen âge. Le cas du second Liber Traditionum de l'abbaye de Saint-Pierre-au-Mont-Blandin (milieu du XI<sup>e</sup> siècle)*, Bibliothèque de l'École des chartes, 171 (2013), p. 327–364.

in the form of *vidimus* or *inspeximus* were introduced<sup>95</sup>, and copies in cartularies became much more accurate<sup>96</sup>. In other words, charters were now seen as closed texts. In marked contrast to the content of a charter, law was all but fixed. If the legislator felt the need, it could always be changed by the addition of new clauses or the abolishment of other articles. A document without diplomatic form may therefore have seemed a more suited format than a formal charter for the codification of law, at least in some instances. The formless legal documents or ‘keuren’ under discussion in this paper do indeed seem to have been dynamic and open texts that could be modified or updated if need be: we have seen that obsolete clauses were omitted, that other passages were updated and that new articles were added as time went by. This was already the case with the Latin texts, and it was even more so with the French or Dutch translations.

The traditional name for this kind of documents in Flemish is ‘keuren’. The word originally denotes a type of criminal law. In 1110 it is mentioned as ‘keurerecht’ in an original charter of Count Robert II for the abbey of Saint-Bertin concerning the respective rights of the abbot and the count in the village of Poperinge. In the text the count speaks of “whoever is found guilty of theft, counterfeiting of money or another crime, with the exception of what belongs to the *keurerecht*” (“*quicumque ... de furto aut falsis nummis vel de alio crimine, preter quod pertinet ad curerhet, convicti*

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<sup>95</sup> N. Vincent, *The Charters of King Henry II: The Introduction of the Royal Inspeximus Revisited*, in: *Dating Undated Medieval Charters*, ed. M. Gervers, Woodbridge 2000, p. 97–120; B.-M. Tock, *Actes confirmatifs et vidimus dans le Nord de la France jusqu’à la fin du XIII<sup>e</sup> siècle*, in: *Urkunden und ihre Erforschung. Zum Gedenken an Heinrich Appelt*, ed. W. Maleczek, Vienna 2014, p. 227–246.

<sup>96</sup> Cf. P. Chastang, *Lire, écrire, transcrire. Le travail des rédacteurs de cartulaires en Bas-Languedoc (XI<sup>e</sup>-XIII<sup>e</sup> siècles)*, Paris 2001, p. 145, 147, 219 and 354.

*fuertint*)<sup>97</sup>. In the fourteenth century, the scribe of the second municipal cartulary of Ghent likewise uses the term ‘keurerecht’ to describe the content of the ‘Grote Keure’ of Philip of Alsace<sup>98</sup>. In a second stage, the word ‘keure’ also came to mean the written record of such a law. Two of the three thirteenth-century copies of the ‘Grote Keure’ for Bruges call this document “the *keure* of the town of Bruges” (“*chora ville Brugensis*”): in the oldest copy – a roll – this name is mentioned as a note on the back; in a second copy, with an edited version produced after 1225, it figures as a title at the beginning of the text<sup>99</sup>. In 1329, the councillors of Count Louis of Nevers, who prepared a new ‘keure’ to punish Bruges for its role in the coastal insurrection of the years 1323–1328, clearly appreciated the ‘Grote Keure’: their memorandum begins with the remark that “the *keure* of Count Philip seems good, clear and acceptable” (“*li coere li conte Philippe sanle bonne et clere et recevable*”) and they end their text with the advice that “nothing should be granted to them [the people of Bruges] which goes against the *keure* of Count Philip” (“*on ne leur otroie riens ki soit encontre le keure le conte Philippe*”)<sup>100</sup>. In this context, it should be noted that the name ‘Grote Keure’ is not medieval and is

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<sup>97</sup> F. Vercauteren, *Actes des comtes de Flandre 1071-1128*, Brussels 1938, no. 45, p. 121.

<sup>98</sup> Ghent, Municipal Archives, 93bis, 8, f° 89v°: “Dit sijn de rubriken van eenen chartre die getranslateert was in Diets vander wet die de grave Philips van Vlaendren ende van Vermendois made te houdene dien van Ghent als van den kuerrechte ende up elc point es eene rubrike”. The scribe of this cartulary is the first to qualify the ‘Grote Keure’ as a charter, probably because at the time he worked (fourteenth century) ‘keuren’ granted by the Flemish counts always had the form of charters.

<sup>99</sup> These two copies are: Ghent, State Archives, fonds de Saint-Genois, 6 (roll); Lille, Archives départementales du Nord, B 1345/237 (edited version). See Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 246 and 248; and de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 13), II, 2, no. 433, p. 237.

<sup>100</sup> Warnkoenig – Gheldolf, *Histoire* (*supra* n. 16), IV, p. 342–345.

even fairly recent. The by now commonly accepted name of this enactment of Count Philip of Alsace was apparently only introduced by Raoul Van Caenegem in 1954<sup>101</sup>. The term ‘keuren’ is for that matter not limited to towns, but is also used for similar law texts given by the counts to rural districts. It is, however, not always possible to distinguish between the name of the document and the law it contains. The ‘keure’ of the coastal castellanies of Veurne, Bourbourg and Bergues-Saint-Winoc granted by Countess Joan of Constantinople and her husband Thomas of Savoie in July 1240 – also a formless document – is named in the heading “the law and custom which is called *keure*”, or in this case perhaps rather “the customary law which is called *keure*” (“*lex et consuetudo que cora vocatur*”)<sup>102</sup>. Here, the word appears to be used as a synonym of law and custom, hence as a term to describe in the first place the content of the document and not so much the document itself. That is also the case if we look at the so-called second ‘keure’ of Bruges, imposed by Count Guy of Dampierre on 25 May 1281, after the insurrection of 1280. The heading of the Dutch version of this ‘keure’ – once again a document without diplomatic form – is inspired by the ‘Grote Keure’, but it uses the word ‘keure’ instead of custom: “This is the law and the *keure* which Count Guy of Flanders and Namur wants to be observed and followed in the town of Bruges”

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<sup>101</sup> Van Caenegem, *Geschiedenis* (*supra* n. 59), p. XXI, 95, 96, 109, 124, 160, 215 and 222 (still without capital letters and alongside the more general term ‘keure(n)’ of Count Philip). It was taken over in 1960 by Koch, *Vroeg middelnederlands* (*supra* n. 53), p. XII (likewise without capital letters). For the terminology used before 1954, see Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 215–216 note 2.

<sup>102</sup> Martens, *Recueil* (*supra* n. 46), no. 65, p. 397–404 (Veurne); G. Espinas – Ch. Verlinden – J. Buntinx, *Privilèges et chartes de franchises de la Flandre. I. Actes généraux et Flandre française*, Brussels 1959, no. 38, p. 93–98 (Bergues and Bourbourg, cf. no. 58, p. 145).

(“*Dit es die wet ende die kuere die die grave Wyt van Vlaendren ende marchis van Namur wille datse si ghehouden ende gheachterwert binder port van Brugghen*”)<sup>103</sup>.

This example and the preceding one make it clear that the word is connected in one way or another to customs and customary law, probably because customary law is a law chosen voluntarily by a community. It is, however, also understandable that the term ‘keure’ rapidly came to mean both the (often criminal) law and the written record of this law itself<sup>104</sup>.

### **Between legislation and customary law**

Flemish legal texts of the twelfth and thirteenth centuries often associate ‘law and custom’ (*lex et consuetudo*), thus giving the impression that they are registering

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<sup>103</sup> Warnkoenig – Gheldolf, *Histoire* (*supra* n. 16), IV, p. 257–264; for the reading “gheachterwert”, see E. Gaillard, *De keure van Hazebroek van 1336*, IV, Ghent 1899, p. 66. This second ‘keure’ is in fact a new version of the ‘Grote Keure’ and most of the articles are fully or partly identical in both texts; see J. Van Rompaey, *De Brugse Keure van 1329 en de aanvullende privilegies*, Bulletin de la Commission royale des anciennes lois et ordonnances de Belgique, XXI (1965), p. 50–51 and 60–61.

<sup>104</sup> The term ‘keure’ was also used for urban statutes; see K. Stallaert, *Glossarium van verouderde rechtstermen, kunstwoorden en andere uitdrukkingen uit Vlaamsche, Brabantsche en Limburgsche oorkonden*, 2, Leiden 1890 (Handzame 1978), p. 62–63 and 65. In Ghent, though, a clear distinction was made between laws (‘keuren’) and urban statutes (‘voorgeboden’). A note in Dutch written below a short and formless ‘keure’ in Latin from the middle of the thirteenth century (on the abduction of young women) in the second municipal cartulary (fourteenth century) indicates explicitly that it is a ‘keure’, not an urban statute: “Ende dit vanden ontscakene es keure ende negheen vorbot” (Ghent, Municipal Archives, 93bis, 8, f° 23r°–v°).

customary law. In the case of the uniform urban legislation of Philip of Alsace that is certainly not a coincidence. As Henri Pirenne, François-Louis Ganshof and Raoul Van Caenegem have remarked the format chosen for the codification of this new law is that of a record of existing customs<sup>105</sup>. The titles placed above these ‘keuren’ leave indeed no doubt in this respect. That is especially clear in the case of Arras in 1163: “This is the law and custom which the citizens of Arras follow” (“*Talis est lex et consuetudo quam cives Attrebatenses tenent*”)<sup>106</sup>. According to Van Caenegem this heading and the similar titles of the ‘Grote Keure’ “paid lip-service to the traditional notion that all true law is old and customary”<sup>107</sup>. In the twelfth century, legislation was still a new phenomenon, and to introduce new law, it had therefore to be represented as the apparent registration of existing customary law. This may also explain the formless nature of these legal documents, for it cannot be excluded that this is, in fact, only an imitation of records of customary law that may have existed at the time. We have very little information in this regard, but some indications do nonetheless exist.

The so-called ‘keurbrief’ (letter of the ‘keure’) of the castellany of Bruges is a case in point. Probably dating from 1190, the original part is a formless list of 21 articles that was addressed by the aldermen of the castellany to Count Philip of Alsace

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<sup>105</sup> Pirenne, *Keures* (*supra* n. 3), p. 664; Ganshof, *Note* (*supra* n. 3), p. 99; Van Caenegem, *Coutumes* (*supra* n. 1), p. 257 and 267.

<sup>106</sup> de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 7), II, 1, no. 214, p. 333.

<sup>107</sup> Van Caenegem, *Criminal Law* (*supra* n. 14), p. 233.

for confirmation<sup>108</sup>. With the exception of one article (art. 20) which is a petition to the count to change some rules, this intriguing document appears to be largely a record of the customary law of the castellany, to which the writer added some comments (introduced by “*hoc dico*”, “this is what I say”, in articles 3, 4 and 12). The ‘keurbrief’ itself is even mentioned as the “*karta legis*” (“charter of the law”)<sup>109</sup> in the first article, which shows that the document, or perhaps rather an earlier version of it, was used during judicial proceedings. The name of Philip of Alsace is not mentioned in the ‘keurbrief’, but it became known as the ‘keure’ of Count Philip (“*cura comitis Philippi*”). Between 1190 and 1224, a whole range of new articles were added to this formless text, which in its final form counts a total of 65 articles<sup>110</sup>.

Another example of what seems to be a record of customs can be found in the privilege which Queen Mathilda, the widow of Philip of Alsace, granted to the town of Ghent in 1191<sup>111</sup>. This formal (but undated) charter confirms “the rights, customs and liberty” (“*iura sua, consuetudines et ... libertatem*”), which the people and the town had enjoyed “since ancient times” (“*ab antiquo multis retroactis temporibus*”). The

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<sup>108</sup> de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 9), II, 3, no. 828, p. 423–427; see E. Warlop, *De Keurbrief van het Brugse Vrije*, Handelingen van het Genootschap “Société d’émulation” te Brugge, XCIX (1962), p. 161–186; cf. also Van Caenegem, *Coutumes* (*supra* n. 1), p. 266.

<sup>109</sup> In the Dutch translation from the fourteenth century “*karta legis*” is translated as “den brief van der wet” or “the letter of the law”: D. Berten, *Un ancien manuscrit flamand de la bibliothèque de Vienne*, Bulletin de la Commission royale des anciennes lois et ordonnances de Belgique, IX (1913), p. 477 (44 of the offprint).

<sup>110</sup> Warnkoenig – Gheldolf, *Histoire* (*supra* n. 16), IV, p. 463–477.

<sup>111</sup> Prevenier, *De oorkonden* (*supra* n. 7), II, no. 1, p. 13–16.

privilege consists of 32 articles, but from the fifth article onwards, it appears to be, at least in part, a record of the old customs of the town, which the people of Ghent had presented to the countess<sup>112</sup>, who was in a weak position after the death of her husband and consequently had no choice but to give in to their demands. Introduced by the words “These are their decrees” (“*Sunt autem hec eorum decreta*”), the articles that follow (art. 5-31) show a return to the situation that must have existed before the introduction of the ‘Grote Keure’: the maximum fine of 60 £ and the bailiff have disappeared, the maximum fine is now 10 £, the judicial agent is the ‘amman’ (*preco*) and the purgatory oath (for freemen) and the ordeal (for unfree people) are accepted as method of proof. The major part of this formal privilege (there is however no eschatocol) is thus a list of articles drafted by the burghers themselves who were clearly intended to turn the clock back. This is not the only example of a formal privilege that has simply taken over an existing formless list of customs. The charter of Count Philip of Alsace for the town of Geraardsbergen from 1190 belongs in my opinion to the same category<sup>113</sup>. According to the narrative introduction of this charter the count confirms the liberties (“*libertatis iura*”) of the town which were originally granted by his predecessor Count Baldwin VI (1067–1070). The list of eleven articles is preceded by the words “They (i.e. the liberties) are these” (“*Sunt autem hec*”). The content of the clauses of criminal and civil law that follow makes clear that this too is a record of existing customary law, not a list of liberties that goes back to the eleventh century.

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<sup>112</sup> Cf. Burgers, *Het ontstaan* (*supra* n. 83), p. 94–95.

<sup>113</sup> de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 9), II, 3, no. 789, p. 377.

These three examples from the late twelfth century are the closest we can get to early records of customary law in the county of Flanders. The practice of presenting to the count records of customary law for confirmation would however continue in the thirteenth and even fourteenth century. The already mentioned long text of 152 articles of criminal and civil law in Dutch in the charter of Count Guy of Dampierre for Ghent from 8 April 1297 is such a formless document, to which the comital chancery only had to add a protocol and an eschatocol in French<sup>114</sup>. In 1330 the town of Aardenburg addressed to the count a petition which contained “the customs of the people of Aardenburg” (“*consuetudines Ardenburgensium*”), a record of the customary law of the small town to a large extent based on the ‘Grote Keure’ for Bruges<sup>115</sup>. Count Philip is not named either in Aardenburg in 1330 nor in Ghent in 1297, but it is clear that by that time the ‘Grote Keure’ had become the basis of customary law both in Ghent and in Aardenburg. It is a perfect example of the point of view of Van Caenegem who defined “as customary law what the people themselves at any given time felt and considered as

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<sup>114</sup> Gheldolf, *Coutume* (*supra* n. 58), I, no. XXIII, p. 426–495. The urban origin of the Dutch law text itself was already noted by Ch.-L. Diericx, *Mémoires sur les lois, les coutumes et les privilèges des Gantois, depuis l’institution de leur commune jusqu’à la révolution de l’an 1540*, II, Ghent 1818, p. 236 and 369. In several articles the count is nonetheless named in the first person plural (art. 20, 38, 46, 48, 49, 64, 65, 151 and 152). This shows once again that the rationale behind the hypothesis of Kruisheer and Burgers, who argue that legal texts drafted by the townspeople themselves should be in indirect discourse (see note 83), is rather flawed.

<sup>115</sup> L.A. Warnkönig, *Flandrische Staats- und Rechtsgeschichte bis zum Jahre 1305*, II, 2, Tübingen 1837, Urkundenbuch, no. CXLIX, p. 52–60. For a comparison to the ‘Grote Keure’, see the more recent edition by B.R. de Melker, *Het oudste stadsrecht van Aardenburg*, Archief. Mededelingen van het Koninklijk Zeeuwsch genootschap der wetenschappen, 1990, p. 38–43.

such, even if it had in reality been introduced through the legislative process (as privileges from the ruler or as urban statutes)”<sup>116</sup>.

Be that as it may, it is clear that the format of the ‘keuren’ imposed on the major towns as documents without diplomatic form was a deliberate choice by Philip of Alsace and his entourage (among which first and foremost his chancellor Robert of Aire)<sup>117</sup>. They wanted to give the impression that the ‘Grote Keure’ was a record of customary law, even if its content indicates exactly the opposite. Because of the use of this format, these legal texts were perhaps treated as if they were records of customary law, i.e. as texts open to change. Customary law was flexible and could always be adapted: “customary law quietly passes over obsolete laws, which sink into oblivion, and die peacefully, but the law remains young, always in the belief that it is old”<sup>118</sup>. The dynamic format of the formless documents had the same effect: obsolete clauses could be omitted and new ones could always be added. In this way, the written law remained up to date. In 1127, Count William Clito had granted the burghers of Bruges the right to

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<sup>116</sup> R.C. Van Caenegem, *Law, History, the Low Countries and Europe*, London – Rio Grande 1994, p. 123.

<sup>117</sup> On the role presumably played by Robert of Aire in the creation of a uniform law for dealing with crime in the main towns of Flanders, cf. Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 211–212; see also H. Van Werveke, *Filips van de Elzas als biografisch probleem*, Brussels 1969, p. 9–10. It is however not excluded that this format already existed during the reign of his father Count Thierry of Alsace, who is believed to have granted between 1128 and 1147 a lost ‘keure’ to the coastal castellanies of Veurne, Bourbourg and Bergues-Saint-Winoc; see de Hemptinne – Verhulst, *De oorkonden* (*supra* n. 7), II, 1, no. 99, p. 162.

<sup>118</sup> Clanchy, *From Memory* (*supra* n. 5), p. 297 citing F. Kern, *Kingship and Law in the Middle Ages*, trans. S.B. Chrimes, Oxford 1939, p. 179.

improve and adapt their customary law<sup>119</sup>. The last article of the ‘Grote Keure’ (art. 28) now explicitly kept the possibility open to change the text of the written law, at least if this happened with the approval of the count or his representative<sup>120</sup>.

This dynamic and open format was however only used by the Flemish counts for a relatively short period of time. The first example is the first privilege of Count Philip for Arras from 1163, the last one is the Dutch version of the ‘keure’ of Guy of Dampierre for Bruges from 1281. The latter appears, however, to be the translation of a more formal version in French<sup>121</sup>. The shift to the exclusive use of formal charters for legal texts must therefore be situated somewhat earlier, around the middle of the thirteenth century. In 1240, the ‘keure’ of Countess Joan of Constantinople and Count Thomas of Savoie for the castellanies of Veurne, Bergues-Saint-Winoc and Bourbourg is essentially still a formless document (albeit with a trinitary invocation and a date as part of the heading)<sup>122</sup>, but the ‘keuren’ issued by the same authors for two other rural

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<sup>119</sup> Galbertus Brugensis, *De multro, traditione et occisione gloriosi Karoli comitis Flandriarum*, ed. J. Rider, Turnhout 1994, p. 104.

<sup>120</sup> Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 239: “Ad hec nec scabini nec burgenses aliquid addere, mutare vel corrigere poterunt, nisi per consensum comitis vel illius quem loco suo ad iustitiam tenendam instituerit” (text for Ghent).

<sup>121</sup> Warnkoenig – Gheldolf, *Histoire* (*supra* n. 16), IV, p. 265–271 (the French version, which is preserved in what seems to be an incomplete copy, has no heading or protocol, but ends with a dating clause and a list of witnesses).

<sup>122</sup> See the references in n. 102. A fourteenth-century copy of the ‘keure’ for Veurne has at the end an additional clause (art. 66) in direct discourse (Warnkönig, *Flandrische Staats- und Rechtsgeschichte* (*supra* n. 115), II, 2, Urkundenbuch, no. CLX, 80) that is lacking in the original (Martens, *Recueil* (*supra* n. 46), no. 65, p. 404 note 1). The originals for the castellanies of Bergues-Saint-Winoc and Bourbourg

districts, the ‘Waasland’ and the ‘Vier Ambachten’, respectively in 1241 and 1242, have the form of solemn charters<sup>123</sup>. The ‘keure’ of Countess Joan and Count Thomas for the small towns of Eeklo and Kaprijke in 1240 is hybrid in nature: it begins as a document without diplomatic form (“*Haec est libertas et cura concessa a...*”, “This is the liberty and the keure granted by ...”), but ends as a formal charter (with an eschatocol, announcing the seals, in the first person plural), and the articles are drafted partly in the third, partly in the first person<sup>124</sup>. In 1258, a short and formless ‘keure’ in Dutch (but with a dating clause in Latin) was still being proclaimed in Ghent<sup>125</sup>. In 1270, though, Countess Margaret of Constantinople approved another short ‘keure’ for Ghent and issued it in the form of a charter in Latin<sup>126</sup>. Henceforth, solemn charters were the normal format to grant (or confirm) ‘keuren’ to urban and rural communities in

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are lost, but the same clause can also be found in an authentic copy (a so-called vidimus) from 1329 of the ‘keure’ for Bourbourg; see Espinas – Verlinden – Buntinx, *Privilèges* (*supra* n. 102), no. 38, p. 98 note 1). Given its wording (“*Preterea nos Thomas et Johanna comitissa predicti...*”), this additional clause appears to have been issued by the comital couple between 1240 and 1244.

<sup>123</sup> Warnkönig, *Flandrische Staats- und Rechtsgeschichte* (*supra* n. 115), II, 2, Urkundenbuch, no. CCXX, p. 178–184 and no. CCXXII, p. 186–198.

<sup>124</sup> Warnkönig, *Flandrische Staats- und Rechtsgeschichte* (*supra* n. 115), II, 2, Urkundenbuch, no. CCXXXII, p. 213–219.

<sup>125</sup> Gheldolf, *Coutume* (*supra* n. 58), I, no. X, p. 404–405; the Latin dating clause begins with the words “*Hec predicta proclamata fuerunt*”, thus suggesting that the oral promulgation was more important than the written record. In the updated version of the ‘Grote Keure’ for Ypres from 1301, a clause (art. 31b) stipulates that changes to the law have to be proclaimed (“*faire crier*”) by the bailiff or the castellan: Van Caenegem – Milis, *Édition critique* (*supra* n. 17), p. 41. On the proclamation of new laws and regulations in thirteenth-century England, see Clanchy, *From Memory* (*supra* n. 5), p. 265–266.

<sup>126</sup> Gheldolf, *Coutume* (*supra* n. 58), I, no. XIV, p. 408 (“*assensum nostrum prebemus ad hoc quod in villa nostra Gandensi talis fiat keura*”).

Flanders<sup>127</sup>. It is not entirely clear why this shift to formal charters happened, but perhaps it has to do with the development of the comital chancery, the standardization of documents issued by the count(ess) and the growing requirements made on legal records.

Raoul Van Caenegem attributed what he calls the “immature” (“*onvolwassen*”) and even the “clumsy” (“*onbeholpen*”) form of the ‘keuren’, by which Philip of Alsace imposed a uniform law for dealing with crime on the Flemish towns, to the fact that he and his entourage were ill at ease with the new phenomenon of princely legislation<sup>128</sup>. That is perhaps not a fair qualification for the remarkable legal texts that would become the basis of Flemish (customary) law for centuries. As we have seen, the decision of Count Philip to use formless documents for his new urban law was probably not a coincidence, but rather a deliberate choice. More or less formless legal documents had been known for centuries (Carolingian capitularies, promulgations of the Peace of God, canons of councils and synods). What made the Flemish documents without diplomatic

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<sup>127</sup> In 1350, the ‘keure’ of Count Louis of Male for the small town of Hulst has the eschatocol of a normal charter, but the opening clause is rather reminiscent of the heading of the ‘Grote Keure’, even though it is drafted in direct discourse: “Dit es de wet, privilege ende vryhede die wy Lodewyc, grave van Vlaendren, van Nevers ende van Rethel, gheven onsen porters van Hulst” (Th. de Limburg-Stirum, *Cartulaire de Louis de Male, comte de Flandre (1348 à 1358)*, I, Bruges 1898, p. 333–339, at p. 333; “This is the law, privilege and liberty which we Louis, count of Flanders, of Nevers and of Rethel, grant to our burghers of Hulst”). The text of this charter is to a large extent a Dutch translation of the ‘Grote Keure’ and of a few clauses of the precepts of 1178 and the so-called ordinance of the bailiffs; cf. Van Caenegem, *Considérations* (*supra* n. 70), p. 142.

<sup>128</sup> Van Caenegem – Milis, *Kritische uitgave* (*supra* n. 2), p. 219–220.

form known as 'keuren' unique, is their dynamic and open nature. In this way, they were a format suited for the flexible character of living law.