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PROVISIONAL TEXT

The precursors of the earliest law reports on the continent as sources about the spokesmen, the forgotten experts of customary law

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A. The problem: the experts of customary are largely unknown to us

Legal historians studying customary law in Northern France, the Low Countries and Germany can only be envious of their colleagues working about the *ius commune* or the early history of the common law. Both of the latter can identify the makers of the law they study, whether these are legislators, professors, notaries, judges, serjeants, attorneys or advocates. Hundreds of their names have come to us and, even if this is not always easy, one can identify their contribution to the development of law. Some of them have even become famous for it and have added a certain 'star quality' to the history of the law they created. Continental customary law is different because it lacks these names. True, a few of them, like Beaumanoir¹ or Eike von Repgow have become household names amongst legal historians,² but these few make us even more aware of the fact that we do not know much about their colleagues. Here, one can quote Susan Reynolds about Eike: "*He was what I would call an expert, and he cannot have been the only one in Germany to have gained his legal expertise in courts rather than in schools.*"³

Abbreviations used: ADN, B: Archives départementales du Nord (Lille), Series B; Cassel: DE COUSSEMAKER, E., 'Loy et jugemens des hommes de le baillie de Cassel', in: Sources du droit public et coutumier de la Flandre maritime, *Annales du comité flamand de France*, 11 (1873), 204-219; HFl: HAUTCOEUR, E., *Cartulaire de l'abbaye de Flines*, Lille, 1873, 2 vol.; HStP: HAUTCOEUR, E., *Cartulaire de l'église collégiale de Saint-Pierre de Lille*, Lille, 2 vol.; Lille: MONIER, R., *Les lois, enquêtes et jugements des pairs du castel de Lille. Recueil des coutumes, conseils et jugements du tribunal de la Salle de Lille, 1283-1406*, Lille, 1937.

¹ See e.g. CARBASSE, J.-M., 'Philippe de Beaumanoir. Coutumes de Beauvaisis', *Revue d'histoire des facultés de droit*, XXII, 2002, 135-154.

² E.g. the exposition Heiner Lück organised about Eike, first in Germany and then also in Brussels, as capital of the EU (for the catalog, see LÜCK, H. e.a., *Sachsenspiegel und Magdeburger Recht. Saxon Mirror and Magdeburg Law. Eike von Repgow. Grundlagen für Europa. The groundwork for Europe*, Magdeburg, 2005; the texts of a 2007 symposium in Brussels about Eike will be published in the series *Iuris scripta historica*).

³ REYNOLDS, S., 'The emergence of professional law in the long twelfth century', *Law and history review*, XXI, 2003, 365. Actually, Reynolds would have done better by choosing another example, as Eike seems to have had received some formal schooling, though

Indeed, Eike was not the only one, but the individual contribution of his colleagues to the development of customary law has been forgotten. In fact, customary law is sometimes even said to have been created by the ‘people’, even though most of it was made by the judges of customary law courts whose judgements were later condensed into legal rules.⁴ However, if there was not a single judge, but a group of judges, the court’s judgement was seen as a collective act.⁵ Even if the legal historian knows who the members of a court were, he is not informed about their individual contributions. He may safely assume that some judges were more important than others in bringing about a decision, that they were the real makers of customary law, but they are hidden because of the presence of their lesser colleagues.

B. An exception: the Lille spokesmen around 1300

Most of our sources may give the impression that the judgement of the customary law courts was a collective act, but the reality was somewhat different as a Flemish text from around 1300 proves. This text is the *Lois des pairs dou castel de Lille* which contains a hodge-podge of legal rules and case law from the feudal court of the count of Flanders in his castellany of Lille.⁶ This court was competent for comital fiefs in the castellany of Lille, but it had also jurisdiction in criminal cases and was the ‘head’⁷ of the castellany’s lower courts, which asked for its advice when their judges were unable to solve a case themselves.

The *Lois de Lille* show how the collective judgement of the Lille court came to be. As in other Flemish courts, the proceedings consisted of a series of questions by the court’s president, the lord or his representative, who summoned the court to judge, on the one hand, and answers by the court on the other.⁸ Other texts give us the impression that the members of the court answered their president all together. This may have been possible for simple questions, where a rote formula could be used (e.g. the question about whether the sun had risen, so that the court could start its activities), but when the legal and factual issues were more complex this would have led to chaos, because some members would have contradicted the others. One can only imagine what a nice cacophony of shouts and ensuing brawls would have been the result of any more or less complicated question by the court’s president. Moreover, not every ealdorman or vassal sitting on a court was an expert, so that some judges

in theology, rather than in law, and there is even a (small) chance that the canonist Johannes Teutonicus was one of his teachers (see LANDAU, P., ‘Der Entstehungsort des Sachsenspiegels. Eike von Repgow, Alzelle und die anglo-normannische Kanonistik’, *Deutsches Archiv für Erforschung des Mittelalters*, 61 (2005), pp. 73-101 and LÜCK, H., *Über den Sachsenspiegel. Entstehung, Inhalt und Wirkung des Rechtsbuches*, Döbel, 2005, esp. 23).

⁴ Cf. GILISSEN, J., *La coutume*, Turnhout, 1982, pp. 78-80.

⁵ See e.g. D’HOOP, F., *Recueil des chartes du prieuré de Saint-Bertin à Poperinghe, et de ses dépendances à Bas-Warneston et à Couckelaere*, Bruges, 1870, nr. 102, 113-114 (1263); Archives départementales du Nord (Lille), Series B, 4058/4150 (1299)).

⁶ About the *Lois de Lille*, see HEIRBAUT, D., ‘The oldest part of the *Lois des pers dou Castel de Lille*’, *Tijdschrift voor rechtsgeschiedenis*, LXXV, 2007, 139-152.

⁷ *Appel et recours à chef de sens à Brabant. Wie hoet heeft die heeft beroep*, *Tijdschrift voor rechtsgeschiedenis*, LXV, 1997, 281-297.

⁸ VAN CAENEGEM, *Geschiedenis van het strafprocesrecht in Vlaanderen van de XIe eeuw tot de XIVe eeuw*, Brussels, 1956, 138-139.

would have remained silent.⁹ Therefore and also to avoid confusion, in Lille someone who was an expert, acted as a spokesman for the court and, after he had spoken, the other members of the court followed suit: *Se rendy che jugement, Jehan de le Heye, chevaliers, et l'ensüuy...*¹⁰ That they all did so, was only possible because they had first secluded themselves to debate about the matter and reach an agreement.¹¹ In this discussion, the later spokesman came to the fore and he can be considered to be the intellectual author of the court's judgement and thus the Lille spokesmen are the real creators of customary law in the Lille area.¹²

Not only do the *Lois de Lille* describe this very well, they also contain the names of eight spokesmen: Pasquier Li Borgne, Robert Brunel, Peter of Sainghin, John of la Haie, Giles of Linsselles, Walter of Douai, Walter of Reninge and Peter of Le Més.¹³ In itself it is not that interesting to know only their names, but these can form the starting point of a detailed prosopographical research of the Lille spokesmen, which can lead us to the common characteristics of these persons.¹⁴ For this, Peter of Le Més's biography is not very useful as not much is known about him. The others, however, have in common that they are:

- legal advisers: all of the spokesmen studied, acted as legal advisers of others: judges, arbiters, parties in court and even the count of Flanders.
- presidents-summoners of courts, either as lords or as their representatives (bailiffs and comparable officials): Pasquier Li Borgne, Robert Brunel, Peter of Sainghin, Walter of Douai, and Walter of Reninge were all lords who had their own tenants, which in Flanders meant that they had their own courts over which they presided. Moreover, Pasquier Li Borgne, Robert Brunel, John of La Haie, Peter of Sainghin and Walter of Reninge, all acted as bailiffs, or in a like capacity, in which they had to preside over the courts of others. Thus, all spokesmen were presidents-summoners of courts at one time or another.
- members of other courts than the Lille castellany courts: at the central level, in the count's *curia* we can find: Robert Brunel, Walter of Douai, John of La Haie and Walter of Reninge; in other castellany courts: Walter of Reninge in Ypres; Walter of Douai and Peter of Sainghin in Douai; in local courts, whether feudal or not: Pasquier Li Borgne, John of La Haie, Peter of Sainghin and Giles of Linsselles.

⁹ In one 1280 Flemish case it seems all of the judges were so ignorant that the whole court remained silent. In the end its more experienced president, the bailiff of Douai had to trade places with a member of the court (HFli, I, nr. 216, pp. 237-239).

¹⁰ Lille, nr. 290, 183-184 (1292).

¹¹ See e.g. State Archives Ghent, Groenenbriel Abbey, Charters, 71 (1260-1261); GYSSELING, M., *Corpus van Middelnerlandse teksten (tot en met het jaar 1300)*, The Hague, 1977, I/4, nr. 1694, 2537-2539 (1298); D'HERBOMEZ, A., 'Histoire des châtelains de Tournai de la maison de Mortagne. Preuves', *Mémoires de la société historique et littéraire de Tournai*, XXV, 1895, nr. 67, 74-75 (1240).

¹² However, the city of Lille had its own law, written down by its cleric Roisin around 1300 (MONIER, R., *Le livre Roisin. Coutumier lillois de la fin du XIIIe siècle*, Paris, 1932).

¹³ For the detailed references, see HEIRBAUT, 'The oldest part of the *Lois de Lille*', 144.

¹⁴ For these prosopographies, see HEIRBAUT, D., 'Une méthode pour identifier les porte-paroles des juridictions de droit coutumier en Europe du Nord au Haut Moyen-Age, basée sur une prosopographie des porte-paroles de Cassel et Lille autour de 1300', *Cahiers du Centre de recherches en histoire du droit et des institutions* (forthcoming). For their analysis, see HEIRBAUT, D., 'Who were the makers of customary law in medieval Europe? Some answers based on sources about the spokesmen of Flemish feudal courts', *Tijdschrift voor rechtsgeschiedenis* (forthcoming).

What these data show is that the Lille spokesman, even though they were only semi-professionals,¹⁵ were the legal experts par excellence in the Lille area. If someone has been identified as a spokesman, he was a major player in the world of law in Lille and, in many cases, not just there, as some of the Lille spokesmen were also active elsewhere. Still, this may be interesting for specialists of local legal history, if they are working about the Lille castellany around 1300, but the Lille data only become really useful if it can be proven that spokesmen can be found in other times and places. It may well be that the Lille spokesmen were typically Flemish and a recent phenomenon. In the last decades of the thirteenth and the first of the fourteenth century Flemish feudal law underwent great upheavals. The count of Flanders then had a network of local feudal courts, but originally he had only one feudal court, the central *curia*¹⁶ Because of the count's supremacy in Flanders, he had the most vassals and his *curia* set the tone for other courts. Consequently, early Flemish feudal law was (almost) identical to the comital *curia*'s feudal law. For various reasons, local comital feudal courts, the feudal castellany courts came into existence in the second half of the twelfth and the first half of the thirteenth century. Before 1244 they were only of secondary importance and their impact on the development of Flemish law was very limited. However, in 1244, when countess Margareth came to power, the *curia* ceded its jurisdiction over most comital fiefs to the castellany courts, so that it could concentrate on more important issues. During a first generation, the vassals in these courts still stuck to the old common feudal law of the central *curia*. A next generation, starting in Lille around 1280, did not remember the old common law that well and in this generation the unity of Flemish law disappeared, as in each castellany the local court developed its own version of the formerly common law¹⁷. The Lille spokesmen could have been just a result of this typically Flemish evolution, but they were not as the following paragraphs will show.

C. Flemish Spokesmen in the first half of the twelfth century

The Lille spokesmen around 1300 were, in fact, founding fathers of a new customary law, which henceforth distinguished the Lille castellany from others and, therefore, their names have been preserved for posterity. However, this in no way means that there were no spokesmen in Flanders before the late thirteenth century. We just don't know their names, but that does not necessarily mean they did not exist. After all, without the *Lois de Lille* the

¹⁵ It is clear that they had received no training in the learned law and they were still far behind the professional lawyers to be found at the same time in England (about those, see BRAND, P., 'The professionalisation of lawyers in England', *Zeitschrift für Neuere Rechtsgeschichte*, 2006, XXVIII, 7-19; BRAND, P., *The origins of the English legal profession*, Oxford, 1992; BRAND, P., 'The origins of the English legal profession', in: BRAND, P., *The making of the common law*, London, 1992, 1-20 (first published in: *Law and history review*, V, 1987, 31-50); BRAND, P., 'Edward I and the transformation of the English judiciary', *Ibid.*, 135-168).

¹⁶ The Flemish *curia* probably already existed in the tenth century, but we have only reliable data from 1024 on (HEIRBAUT, D., *Over heren, vazallen en graven. Het persoonlijk leenrecht in Vlaanderen, ca. 1000-1305*, Brussels, 1997, 152-153 note 130 to be corrected in light of MEIJNS, B., *Aken of Jeruzalem? Het ontstaan en de hervorming van de kanonikale instellingen in Vlaanderen tot circa 1155*, Leuven, 2000, 368-381) and its early history, including its activity as a feudal court, still needs to be studied in detail.

¹⁷ D. HEIRBAUT, *Over heren.*, 152-164, 172-189 ; D. HEIRBAUT, *Over lenen en families. Het zakelijk leenrecht in Vlaanderen, ca. 1000-1305. Een studie over de vroegste geschiedenis van het leenrecht in het graafschap Vlaanderen*, Brussels 2000, 81-87, 133-136.

spokesmen commemorated there, would also have been forgotten. However, without evidence one cannot be certain about the existence of these older spokesmen. In fact, of the tens of thousands of charters about Flanders before the end of the thirteenth century¹⁸ only two, one from 1122 and another from 1148, explicitly mention spokesmen.¹⁹

The 1122 charter²⁰ was issued by Count Charles the Good and contains more data about a law suit, than was usual at the time, but it concerns a case which was of the utmost importance to the abbey of St Vaast in Arras. Therefore, one of the monks, and not the comital chancery, had written it, making sure that it gave a full report. The abbey had a vassal, Ingelbert, whose feudal office it was to collect a poll tax from the abbey's serfs. Strange as it may sound, there were also many others who pressed Ingelbert to make them pay too, thus, in fact, enserving them. That they were "*innumerabiles*" is exaggerated, but even so, many inhabitants of Arras may have wanted to become serfs and Ingelbert was an eager accomplice in this. The abbey, however, was not pleased and to anyone who still thinks that serfdom was always an unwelcome burden, this may look bizarre. Medieval townsmen are expected to be running away from and not into serfdom. As usual, when people act strangely from a legal point of view, they have very sound financial reasons for doing so. In this case, the abbey's serfs were exempted from the market toll and this far outweighed any disadvantage the poll tax had. The abbey's officials tried to stop this, but the opposition proved too much for them. As soon as someone got into trouble at the toll booth, Ingelbert came running and confirmed that his accomplice was indeed a serf of the abbey. If proof was needed, a simple oath by the self proclaimed serf was sufficient. Needless to say, the abbey's toll revenues declined sharply, the abbot and the monks of St Vaast being powerless against Ingelbert and the citizens.

In the end their only recourse was to call in Charles the Good, count of Flanders and their protector, and this led to two procedures before the count's *curia*. The first took place in Saint-Omer, where count Eustace of Boulogne²¹ and 'the wisest men of the land' were present. As soon count Charles had put to them the question whether one had to prove one's serfdom either by an oath or by an account of one's lineage, the public reaction was that the first method of proof was completely absurd.²² The judgment of the most prominent members

¹⁸ About the sources of Flemish feudal law, see D. HEIRBAUT, 'The quest for the sources of a non-bureaucratic feudalism: Flemish feudalism during the High Middle Ages (1000-1300)', in NIEUS, J.-F., *Le vassal, le droit et l'écrit*, 2007 (forthcoming)

¹⁹ Though, as will be shown below, they all do so implicitly.

²⁰ F. VERCAUTEREN, *Actes des comtes de Flandre (1071-1128)*, Brussels, 1938, nr. 108, 247-251.

²¹ About the relationship between the counts of Boulogne and Flanders, one can see H.-J. TANNER, *Families, friends and allies: Boulogne and politics in Northern France and England, c. 879-1160*, Leyden, 2004, though it is better to use J. NIEUS, 'Aux marges de la principauté: les «comtés vassaux» de la Flandre, fin X^e-fin XII^e siècle', *VIe Congrès de l'association des Cercles francophones d'histoire et d'archéologie de Belgique*, Mons, 2002, p. 309-324.

²² Cf. e.g. the genealogies in the female line for some serfs of St. Peter's abbey at Ghent (VAN LOKEREN, *Chartes et documents de l'abbaye de Saint Pierre au Mont-Blandin à Gand*, I, Ghent, 1868, nr. 388, 210 (around 1200)). However, in 1127 a woman was allowed to prove her freedom by an oath, but in that case there were several special circumstances: she was the well-known wife of one of the land's highest nobles, twelve nobles also had to take an oath in support of her assertion and the rest of her family was excluded from this arrangement, which proves that it was, indeed, highly exceptional (WALTER of THEROUANNE, *Vita Iohannis*

of the *curia* was a foregone conclusion. In this case, the judges were considered to be experts of law and amongst them count Eustace is singled out (“*comite Eustachio et prudentioribus patrie*”). Thus, it is very likely that he was their spokesman, though his high social status may also have played a role.²³

A second judgement was still needed because the first one had decided about a point of law only, Ingelbert and the monks being absent. Hence, a second session of the *curia* was held in Arras. The count called upon his barons and asked them to retire and to give him a judgement: “*Domini, obtestor vos per fidem quam michi debetis, ite in partem et iudicio irrefragabili decernite, quid Ingelberto, quid monachis conveniat responderi.*” When they returned, Robert of Bethune, was their spokesman, and this time there can be no doubt about that: “*Qui euntes communicato consilio redeuntes, per Robertum advocatum*²⁴ *responderunt*”. Needless to say, the judgment went against Ingelbert.

To the chagrin of the monks, but to the joy of the historian, Ingelbert’s son Helvin²⁵ followed in his father’s footsteps, which led to a new complaint and an extensive 1148 charter²⁶ about the ensuing trial in the comital *curia*. In the absence of her husband, Countess Sybilla called upon the barons to judge: “*adiuratis baronibus meis... precepi ut quid abbacie et ecclesie, quid Helvino facere deberem studiosissime iudicarent.*”, and the barons answered through their spokesman Anselm of Houdain:²⁷ “*Communicato itaque consilio omnes unanimiter per Anselmum de Husdenio nobilem virum et dapiferum nostrum iudicaverunt*”. Of course, like his father, Helvin lost, but once again there can be no doubt that a spokesman had acted for the court.

The 1122 and 1148 charters prove that the spokesmen were not new at the end of the thirteenth century and they are indications of a remarkable continuity, though there are some differences between these charters and the Lille data. For example, in the Lille court the judgement was made by the court. In 1122 and 1148 the court made a proposal and only the count’s or countess’s confirmation turned it into a judgement (in 1148: “*hoc iudicium confirmavi*”). This difference is not caused by any changes between the first half of the twelfth and the late thirteenth century, but by the modified procedure which was followed in the count’s *curia*. In all cases which did not involve comital vassals, the real judge was the count, not the court, an exception caused by the special position of the count in Flanders.²⁸

Another difference is that those sitting on the court and its spokesman are persons of a higher social status, the count of Boulogne in 1122 being more of a neighbouring prince than a Flemish vassal.²⁹ In general later spokesmen in Flanders were, even at the central level, of a

episcopis Tervanensis, ed. Oswald Holder-Egger, in M.G.H., SS. 15/2, Hanover, 1888, ch. 15, 545-546.)

²³ See *infra*.

²⁴ Robert, lord of Bethune, was advocate of Saint Bertin at Saint Ome and also advocate of the abbey of Saint Vaast (WARLOP, E., *Flemish nobility*, II/1, nr. 65, 664), but his title of advocate in these years was linked to Bethune (“*advocatus Betuniae*”, e.g. in VERCAUTEREN, *Actes*, nr. 67, 158-159).

²⁵ See about him, T. de HEMPTINNE and A. VERHULST, *De oorkonden der graven van Vlaanderen (juli 1128-1191)*, II/1, Brussels, 1988, 182 note 4.

²⁶ DE HEMPTINNE and VERHULST, *Oorkonden*, II/1, nr.111, 179-182.

²⁷ See about him, DE HEMPTINNE and VERHULST, *Oorkonden*, II/1, 136 note 5 and also *infra*.

²⁸ F. GANSHOF, *Die Rechtsprechung des gräflichen Hofgerichtes in Flandern vor der Mitte des 13. Jahrhunderts*, in: “*Zeitschrift der Savigny Stiftung für Rechtsgeschichte, Germanistische Abteilung*”, LVIII, 1938, 168.

²⁹ See note 21.

a lower status due to the presence of bailiffs at the end of the thirteenth century. A wealthy thirteenth century lord was very likely not to preside over his feudal court himself, but to send his bailiff instead,³⁰ whereas a twelfth century lord did not have that luxury. On the other hand this meant that a twelfth century great lord, of necessity, had to be versed in law, whereas his late thirteenth century counterpart could afford to neglect it, which made him less qualified to act as spokesman of a feudal court. Even so, this only means that one has to take into account the changes in context, but that the existence of spokesmen before the end of the thirteenth century cannot be denied.

D. Spokesmen outside Flanders

Around 1300 or before that, for that matter, spokesmen can also be found outside Flanders. For an example one can quote the count of Hainaut in 1281: “*par le jugement de mes hommes, c’est à savoir monsigneur Rasson de Gavre, signeur de Liedekierke, sour cui li jugement fî tornés, et l’en sivirent notre autre homme ki i furent*”³¹, which brings to mind the *Lois de Lille*: “*Se rendy che jugement, Jehan de le Heye, chevaliers, et l’ensiuy...*” Hainaut was a neighbour, but the activity of spokesmen is also recorded for the *curia* of the kings and emperors of the Romans, for which there charters containing references to spokesmen³² and sometimes they also clearly indicate that someone spoke first (“*Primam iudicii sententiam dedit*) and that then others followed his opinion (“*quam secutus est*”).³³ A detailed study of the German material still needs to be made,³⁴ but it seems that in this case too there are some peculiarities. For example, a certain distinction between law and fact may at times explain the choice of a spokesman who knew the local situation well (not so surprising given the size of the empire), if the judgement concerned the facts and one more specialised in law, if a point of law had to be decided. Thus, according to Gislebert of Mons in 1190 in a dispute between the count of Hainaut and the duke of Brabant two spokesmen acted:

- “*dominus rex super hoc sententiam a comite Flandrensi requisivit. Qui per sententiam dixit, et inde principes habet sequaces, quod...*”

- “*a marchione autem de Minse ibidem iudicatum fuit, et inde pares habet principes sequaces, quod...*”³⁵

Philip of Flanders, a neighbour of both Hainaut and Brabant was the court’s spokesman for the facts, whereas the margrave of faraway Meissen spoke about the law.³⁶

³⁰ About the first Flemish bailiffs, see DE GRUYSE, L., Some observations on the origin of the Flemish bailiff (bailli): the reign of Philip of Alsace, in: “Viator”, VII, 1976, 243-294; DE GRUYSE, L., *The reform of Flemish judicial and fiscal administration in the reign of Philip of Alsace (1157/1163-1191)*, Ann Arbor, 1971.

³¹ C. DE REIFFENBERG, *Monuments pour servir à l’histoire des provinces de Namur, de Hainaut et de Luxembourg*, I, Brussels 1844, I, nr. 45, 372-373 (1281).

³² See e.g. DIESTELKAMP, B. and ROTTER, E., *Urkundenregesten zur tätigkeit des deutschen Königs- und Hofgerichts bis 1451*, I, *Die Zeit von Konrad I. bis Heinrich VI. 911-1197*, Cologne, 1988, nr. 284, 218 (1150).

³³ DIESTELKAMP and ROTTER, *Urkundenregesten*, I, nr. 255, 192-193 (1147).

³⁴ German historians have only mentioned it in passing, e.g. HAUSER, S., *Staufische Lehnspolitik am Ende des 12. Jahrhunderts, 1180-1197*, Frankfurt, 1998, 385.

³⁵ GISELBERG OF MONS, *Chronicon Hanoniense*, ed. Vanderkindere, L., Brussels, 1904, 251-252. About this dispute, see SCHLINKER, S., *Fürstenamt und Rezeption. Reichsfürstenstand und gelehrte Literatur im späten Mittelalter*, Cologne, 1999, 53-70; HAUSER, S., *Staufische Lehnspolitik*, 70-74.

Although this article is mainly concerned with the continent, it should be mentioned that indications for the activity of spokesmen can also be found for England. For example, in an 1121 lawsuit in the feudal court of the bishop of Bath an anonymous person acted as spokesman: “*Those who were older and more learned in law left the crowd and weighed subtly and wisely all the arguments they had heard and settled the case. After they came back, the following pronouncement was made by one man’s mouth for them all, who said...*”³⁷ In the 1164 trial of Thomas Beckett at Northampton, it was: “*The noble man Robert, at the time earl of Leicester, most honoured among the honoured, who had been asked to act as spokesman*”.³⁸ Needless to say, once again, the context was different. For example, Robert of Beaumont, earl of Leicester, was chief justiciar of England and as such hardly a person who needs to be saved from obscurity.³⁹ In general, the history of the legal experts of the common law is already relatively well known and followed a path different from the one on the continent.⁴⁰

E. Finding spokesmen not explicitly identified as such: charters

Once it has been established that spokesmen could be found not only in Lille around 1300, but also in other times and places, it is useful to find a way to identify persons who have not been expressly named as spokesmen. For Flanders, one can with the data about the Lille spokesmen construct a model of a spokesman in a Flemish feudal court around 1300 and use that as a pointer to other spokesmen. A person who acted as a legal adviser, judge in and summoner-president of courts and interacted with spokesmen was likely a spokesman himself.⁴¹ Moreover, very valuable information is given by the lists of judges in charters. The *Lois de Lille* indicate that the first member of the court to be mentioned is the spokesman and those who follow him in the list, are those who spoke after him, following his opinion.⁴² The same order is found in the charters. For example, charters of lower courts, in which one of the known spokesman of the Lille castellany court is present, will, with one exception,⁴³ award

³⁶ The distinction in the judgments of the German royal court between abstract decisions about points of law which were generally binding and judgments about one specific case has led to some debate (see DIESTELKAMP, B., *Reichsweistümer als normative Quellen?*, in: CLASSEN, P., (ed.), *Recht und Schrift im Mittelalter*, Sigmaringen 1977, 281-310).

³⁷ “*Secedentes ergo a turba qui majores natu vel juris peritiores esse videbantur, singula juxta quod audierant subtiliter et discrete pensantes, causam dijudicaverunt. Quibus iterum introgressis, sic unius ore pro omnibus relatum est.*” (VAN CAENEGEM, R., *English lawsuits from William I to Richard I*, I, London, 1990, nr. 226, 192-193).

³⁸ “*Nobilis vir Robertus, tunc Leicestriae comes, inter honoratos honoratior, in cujus ore verbum positum fuerat,*” (VAN CAENEGEM, *Lawsuits*, II, nr. 421C, 446-457 (455)).

³⁹ About him, see CROUCH, D., *The Beaumont twins. The roots and branches of power in the twelfth century*, Cambridge, 1986.

⁴⁰ See for example, the publications by Paul Brand quoted in note 15. Paul Brand kindly sent me some more references to spokesmen in English sources, for which I would like to thank him. I hope to make a more detailed study of English spokesmen in a later publication.

⁴¹ HEIRBAUT, ‘Une méthode pour identifier les porte-paroles’.

⁴² Lille, nr. 290, 183-184 (1292): “*Se rendy che jugement, Jehan de le Heye, chevaliers, et l’ensüü...*”. Cf. in Hainault: “*par le jugement de mes hommes, c’est à savoir monsieur Rasyon de Gavre, signeur de Liedekierke, sour cui li jugement fi tornés, et l’en sivirent notre autre homme ki i furent*” (DE REIFFENBERG, *Monuments*, I, nr. 45, 372-373 (1281)).

⁴³ Pasquier Li Borgne in the feudal court of the castellan of Lille (HStP, I, nr. 802, 568 (1299)); this personal court of the comital castellan, composed of the castellan’s own vassals,

the first place to the spokesman of the higher court,⁴⁴ which can only be taken as meaning that he also acted as spokesman of the lower court. This impression is strengthened by looking at the position of the known Lille spokesmen in other courts, where they are also likely to be mentioned first,⁴⁵ unless a more expert spokesman was present.⁴⁶ Likewise, charter evidence for Robert Brunel and Walter of Douai, i.e. other sources than the *Lois de Lille*, shows that these spokesmen took the first place in Lille.⁴⁷ A final indication of the fact that the first place in the list of the court's members went to its spokesman is to be found in another Flemish text, the *Loy et jugemens des hommes de le baillie de Cassel*, a text from the end of the thirteenth century about the law of the castellany of Cassel,⁴⁸ which explicitly identifies Philip of Ypres once as the spokesman of the Cassel castellany court⁴⁹ and which thrice mentions him in the first place,⁵⁰ a place he also occupied in lower courts in that region.⁵¹ In short, in Flanders a spokesman can easily be found, as he will head the list of the judges, like he was their head in court. Nevertheless, this is not yet proven to be an unbreakable rule and it is best to always corroborate this with other evidence. For example, a 1279 charter makes it highly likely that Christian of Wicres was a Lille spokesman, by putting him ahead of the other Lille judges.⁵² That he belonged with the spokesmen is proven by the *Lois de Lille*, in which he is acting together with Pasquier and Giles as advisers of Robert Brunel⁵³ and a 1286 charter in which his advice is asked together with that of Walter of Douai.⁵⁴

The two charters from the first half of the twelfth century confirm that the first place in the list, belongs to the spokesman. In 1122, both the count of Boulogne and Robert of Bethune are singled out and the latter is explicitly identified as a spokesman. Thus, it comes as no surprise that their names are the first in the respective lists of judges. In the 1148 charter's list of subscriptions the name of the spokesman, Anselm of Houdain, is not the first, but those preceding him were the child Baldwin, the designated heir of the county of Flanders

is not to be confused with the castellany court, composed of comital vassals), but at that time Pasquier had not yet been a spokesman of the castellany court (see HEIRBAUT, 'Une méthode pour identifier les porte-paroles), so this does not count. Moreover the two persons preceding him had already been pre-eminent in the castellan's court in 1284 (HStP, I, nr. 716, 504-505).

⁴⁴ HFl, I, nr. 319, 337 (1292); VANHAECK, M., *Cartulaire de l'abbaye de Marquette*, Lille, 1937-1940, I, nr. 302, 287-288 (1290); HStP, I, nr. 800, 566 (1298); Lille, nr. 298, 188-189 (1296)..

⁴⁵ HFl, I, nr. 291, 316-319 (1290); DE REIFFENBERG, *Monuments*, I, nr. 18, 22-23; nr. 59, 202-203 (1284).

⁴⁶ In Cassel Walter of Reninge had to let his kinsman Philip of Ypres (see about him, *infra*) go before him (Cassel, nr. 32, 216-217 (1288)).

⁴⁷ Robert: DE COUSSEMAKER, 'Sommaire des chartes de la Chambre des comptes à Lille, et du Grand-Cartulaire de Saint-Bertin où se trouve mentionné Philippon de Bourbourg', *Bulletin du Comité flamand de France*, 4 (1866-1868)', 88 (1292); Walter: HStP, I, nr. 721, 507 (1285).

⁴⁸ See about this text, *infra*.

⁴⁹ Cassel, nr. 11, 208 (1276).

⁵⁰ Cassel, nr. 14, 209 (1276); nr. 23, 212; nr. 32, 216-217 (1288).

⁵¹ HAIGNERÉ, *Chartes*, II, nr. 1237, 157-158; nr. 1236, 155-156 (1282). It is interesting to note that in these charters Philip was a judge in Walter of Reninge's feudal court and thus, the latter's vassal, but that this did not bar him from preceding Walter in the castellany court.

⁵² GACHET, *Abbiette*, nr. 64, 56-57 (1279).

⁵³ Lille, nr. 304, 194-195 (1298).

⁵⁴ HStP, I, nr. 727, 510-512.

and some high ranking members of the clergy, but they had not sat on the court. However, of those who had, Anselm's name comes first. Though some caution is called for, it is safe to say that, in general, already in the first half of the twelfth century in Flemish charters the spokesman is the first in the list of the judges.

Unfortunately, it is not always that easy. It seems likely that in the charters of neighbouring Hainaut, this mechanism was also at work,⁵⁵ but it certainly was not always so in Germany.⁵⁶

F. Finding spokesmen not explicitly identified as such: the earliest law reports on the continent

1. The oldest part of the *Lois de Lille*

If one wants to find more spokesmen, it would be useful to look more closely at the *Lois de Lille* the text which was the starting point of this article. It is a strange mixture of legal rules and case law, containing reports of cases and abstracts thereof from 1283 until 1407. Five later manuscripts have been preserved, of which only one (E) was a copy of another. This still leaves four of them (A, B, C and D) of them and none can be considered to be closer to the original text than its colleagues.⁵⁷ In fact, at first there were several texts and these have thereafter been compiled, separated, amended and abridged by different authors in different ways and the upshot was such a confusion that the editor Monier initially put all four manuscripts on an equal footing.⁵⁸ The chaotic origins of the texts also mean that, at least to us, there seems not to be no logic in it. Some cases or legal rules derived from them, are found in all four manuscripts,⁵⁹ some are not and sometimes one manuscript is our only source.⁶⁰ Moreover manuscripts which agree with one another on one point, may not on another.⁶¹ Manuscripts may contain a very elaborate report of a case with the parties' arguments, the court's decision and remarks by later compilers of the *Lois de Lille*,⁶² or just a mere abstract, the legal rule, but not the original case.⁶³ Even if two manuscripts are alike in the amount of attention they pay to a certain case, they may focus on other aspects, e.g. one report

⁵⁵ DE REIFFENBERG, *Monuments*, I, nr. 45, 372-373 (1281)).

⁵⁶ E.g. in DIESTELKAMP, *Urkundenregesten*, nr. 446, 349 (1179), the spokesman is also the first in the list of witnesses, but in nr. 517, 407-408 (1189-1190) he is not. Even if the spokesman is listed first, this may not be due to his legal expertise, but to his social standing in general (e.g. nr. 477, 375-376 (1184); the archbishop of Mainz, who as *primas Germanie* and *archicancellarius imperii* was the first of the German princes anyway).

⁵⁷ HEIRBAUT, 'The oldest part of the *Lois de Lille*', 140.

⁵⁸ MONIER, *Lois de Lille*, pp. 14-16.

⁵⁹ E.g. Lille, nr. 1, p. 19 (1286).

⁶⁰ E.g. Lille, nr. 304-322, pp. 194-203 have only been preserved in manuscript C.

⁶¹ Manuscripts B and D have the same content most of the time, but there are exceptions (see *infra*). The order of texts in B and D may also vary in significant ways. For example, nr. 298, pp. 188-189 (1296) and nr. 219, pp. 139-141 (1297) relate to two trials concerning the same fact. Manuscript D wants to show this and has the two reports follow one another, whereas in manuscript B they have been put far apart.

⁶² E.g. Lille nr. 219, pp. 139-141 (1297); nr. 298, pp. 188-189 (1296); nr. 237, pp. 151-153 (1297).

⁶³ E.g. Lille nr. 7, p. 22 (end of the thirteenth century; date based on its place in manuscript A).

concentrating on a problem concerning witnesses and another on the arguments of parties.⁶⁴ A manuscript may for one case be very short, whereas another manuscript may be the opposite.⁶⁵ The impression of shoddy workmanship is greatest when a manuscript contains several reports of the same case,⁶⁶ or when the text contradicts itself and solves the same legal problem in different ways.⁶⁷

2. The notes taken in court by the Lille spokesmen and their English counterparts

Monier, the editor of the *Lois de Lille* could not really name any text like it, but in a footnote he tentatively suggested that they might be compared to the *Year Books*,⁶⁸ although he did not elaborate upon this, in all likelihood because the *Year Books* were largely unknown to him.⁶⁹ His hesitation is justified. True, the *Lois de Lille*, at times, share with the *Year Books* an interest in pleading strategies and arguments, in the way the judgement had come to be⁷⁰ (called by Baker: “the possible moves in the recondite games of legal chess played by pleaders in an open court”),⁷¹ rather than in the legal rule it expressed. Moreover, the earliest English law reports⁷² were as chaotic, varied and creative as the *Lois de Lille*.⁷³ Yet, one cannot deny the differences, in many cases the *Lois* do not contain a report of the court’s proceedings, but an abstract of its judgement and real verbatim reports are rare and short.⁷⁴

It would be better to make another comparison not so much with the *Lois de Lille* and the *Year Books*, but rather their predecessors. The contradictions of the *Lois de Lille* already indicate that it was composed of several chronological layers, each stating the law as it was at that time, hence conflicts with earlier or later legal rules. This oldest stratum concerns the years 1283 until 1308/1314 and it is the one which contains the names of the Lille spokesmen around 1300. In fact, they were at the origin of this oldest part. There was no formal training in the local law available to them, but the court room could be their school. For their own information or the training of their successors some spokesmen must have taken notes and out of these private notes, which were later continued and passed on to or copied by friends and pupils, grew the texts which we now know as the *Lois de Lille*. The link between the

⁶⁴ E.g. Lille, nr. 121, pp. 78-79 (1298) and the report of the same case edited in the note there.

⁶⁵ E.g. manuscript C contains an extensive report of a case (Lille, nr. 304, pp. 194-195 (1298)), whereas the others only have an abstract of it (Lille, nr. 52, pp. 49-50).

⁶⁶ E.g. manuscript A contains two versions of a 1305 case (Lille, nr. 42, pp. 43-44; nr. 118, p. 77). The same is, probably, also true for nr. 53, p. 50 and nr. 219, pp. 139-141 (1297) in manuscripts B and D, which also contain the report of another trial related to this one (nr. 298, pp. 188-189 (1296)).

⁶⁷ E.g. the contradictions between Lille, nr. 16, 27-28; nr. 20, 30 and nr. 85, 62.

⁶⁸ MONIER, *Lois de Lille*, 15 note 2.

⁶⁹ He did not refer to LAMBERT, J., *Les Year Books de langue française*, Paris, 1928, a book in his own language, which might have given him valuable insights (cf. PLUCKNETT, T., *A concise history of common law*, Boston, 1956, 268 note 2).

⁷⁰ See e.g. Lille, nr. 235, 148-150 (1300); nr. 236, 150-151 (1291) where several remarks have been added to the report.

⁷¹ BAKER, J., *An introduction to English legal history*, London, 2002, 179.

⁷² Edited in BRAND. *The earliest English law reports*, London, 1996-2005, 3 vol. (vol. 4 forthcoming).

⁷³ BRAND, P., *Observing and recording the medieval bar and bench at work. The origins of law reporting in England*, London, 1999 (Selden Society Lectures).

⁷⁴ See e.g. Lille, nr. 305, 195-196.

spokesmen and the *Lois de Lille* explain why these also contain lawsuits in which the spokesmen themselves or their family members were involved. Moreover, it is even possible to find out which spokesmen took the notes which resulted in the *Lois de Lille* and to link them to the manuscripts we now have. Manuscript A contains nothing useful, but manuscript C can be linked to Pasquier Li Borgne and manuscripts B and D to Robert Brunel and Peter of Sainghin. Of course, this does not mean that they wrote these manuscripts, because all three contain a lot of later material. It does not even mean that all of their notes (or at least the notes of someone close to them) were used by the compilers of these three manuscripts. It only means that in manuscript C more is preserved of Pasquier's notes, and in manuscripts B and D more of Robert's and Peter's.⁷⁵

Any comparison with English material should not be made with the later *Lois de Lille*, but with the notes of Pasquier and of Robert and Peter. In that case, their closest counterpart are the first English experiments from the 1250's and later of putting to parchment what happened in court.⁷⁶ In England too, we have notes taken by lawyers, which could contain anything from mere dicta of judges to longer reports,⁷⁷ and which can be seen as the forerunners of the law reports. In fact, one is struck by similarities between the *Lois de Lille* and the *Brevia placitata*⁷⁸ or the *Casus placitorum*⁷⁹ and the very excellent studies English scholars have made of texts like these and the earliest English law reports can help to explain some hitherto unresolved puzzles. Originally, in England reports were written down in court on small slips of parchments, which were then preserved in bags and only later were they copied in books.⁸⁰ Given this, it is easy to see why in Lille some years are better documented than others (some pieces of parchment simply got lost), though the Franco-Flemish war around 1300 also played a role.⁸¹ If the notes came out of the bag as unordered as they went in, it is no wonder that the final text was chaotic.⁸² Another interesting element from the English events is that there was a lot of mutual assistance and co-operation between the note takers and their successors.⁸³ This is also evident in Lille, where the notes of Robert Brunel and Peter of Sainghin were already brought together at an early date, maybe even in 1311-1314 by Peter of Sainghin himself.⁸⁴ (One should not overestimate the difficulty of this, as the

⁷⁵ HEIRBAUT, 'Oldest part of the *Lois de Lille*', 146-148.

⁷⁶ BAKER, J., 'Case-law in medieval England', in: BAKER, J., *The common law tradition. Lawyers, books and the law*, London, 2000 (first published in: BAKER, J. (ed.), *Judicial records, law reports, and the growth of case law*, Berlin, 1989), 136-138. It may be useful here to stress that the following is not about records ("kept by the court as an official memorial of what it has done" (BAKER, J., 'Case-law in England and continental Europe', in: BAKER, *The common law tradition* (first published in: BAKER, *Judicial records*), 110) but about reports ("an account (usually unofficial) of how a case was argued or what motivated a decision" (*Ibid.*)).

⁷⁷ BAKER, 'Case-law in medieval England', 138.

⁷⁸ TURNER, G. and PLUCKNETT, T., *Brevia placitata*, London, 1951.

⁷⁹ DUNHAM, W., *Casus placitorum and reports of cases in the king's courts, 1272-1278*, London, 1952.

⁸⁰ DUNHAM, *Casus placitorum*, xlvi-iv. Dunham edited some of these slips of parchment in Appendix III of his introduction (*Ibid.*, xc-xciv).

⁸¹ During the fighting the Lille court was not in session (cf. Lille nr. 55, p. 51; nr. 306, p. 196 (1303): "a che jour estoit were et ly plet souspendut").

⁸² DUNHAM, *Casus placitorum*, xxx-xxxii.

⁸³ DUNHAM, *Casus placitorum*, lii.

⁸⁴ HEIRBAUT, 'Oldest part of the *Lois de Lille*', 148.

whole operation may have amounted to nothing more than Peter asking Robert's heir for his father's bag of notes and shaking it one out in his own bag.)

Of course, the similarities should not make us forget the differences. For example, in Lille there clearly was no sharing of notes between the knights Peter and Robert and their colleague Pasquier who was a burghess of the city.⁸⁵ Moreover, texts like the *Brevia placitata* and the *Casus placitorum* already belonged more to the class- than to the courtroom.⁸⁶ Yet, the main differences with the *Lois de Lille* came to be only later. In England the notes evolved into a continuous, standardised series of verbatim reports,⁸⁷ whereas the *Lois de Lille* took off into a completely different direction. From reports of cases and other notes the Lille text gradually became a book of legal rules. Because the focus was on fixed rules and not on ever changing arguments and strategies, there was no need of a continuous series of reports. In fact, after a certain period of time, when most rules had been fixed, there was not much need of any report of events in court at all. Hence, the oldest group of cases in the *Lois de Lille* is the largest and the younger a group of cases was, the less material it had to contain, groups 2, 3 and 4 in the *Lois de Lille* each being smaller than their predecessor.⁸⁸ The evolution from reports to rules was not completely achieved in the *Lois de Lille*, as it still contains some more elaborate texts. In one case, we can even see the process of abridgement at work. Manuscript A sometimes has only the abstract of a case which is extensively reported in the other manuscripts,⁸⁹ but in nrs. 42 and 118 manuscript A has both an abstract and a longer report, whereas the other manuscripts only have the longer report.⁹⁰ The compiler of A must have forgotten that he already had the abstract and no longer needed the longer text.

3. Hidden continental law reports as sources about the spokesmen

The evolution from reports and other extensive notes to abstracts was not unique to Lille. For example, the *Loy et jugemens des hommes de le baillie de Cassel*, which has already been mentioned, contains reports of cases, *dicta* of judges, legislation and customs from the feudal castellany court of Cassel 1276, 1292 and four yours in between.⁹¹ That the text deals only with six years, indicates that it also started as notes written on slips of parchment, which for most years were lost, though their existence may be presumed.⁹² Their loss was of no great concern at

⁸⁵ Ibid., 148-149.

⁸⁶ BRAND, P., 'Courtroom and schoolroom: the education of lawyers in England prior to 1400', in: BRAND, *Making the common law* (first published in: *Historical research*, LX, 1987), 57-75; BRAND, P., 'Legal education in England before the Inns of court', in: BUSH, J. and WIJFFELS, A., *Learning the law. Teaching and transmission of law in England, 1150-1900*, London, 1999, 51-84; BECKERMAN, J., 'Law-writing and law teaching: treatise evidence of the formal teaching of English law in the late thirteenth century', *Ibid.*, 33-50.

⁸⁷ This all happened rather fast, with already a break-through of larger-scale law reporting in 1291 (BRAND, 'Observing and recording', 16).

⁸⁸ HEIRBAUT, 'Oldest part of the *Lois de Lille*', 142, 143, 149.

⁸⁹ Lille, nr. 52, 49-50 is the shorter version of nr. 304, 194-195 (1298).

⁹⁰ Lille, nr. 42, 43-44; nr. 118, 77 (1305).

⁹¹ Edited in DE COUSSEMAKER, E., 'Sources du droit public et coutumier de la Flandre maritime', *Annales du comité flamand de France*, 11 (1873), 204-219.

⁹² Cf. references to earlier decisions in Cassel Loy, nr. 6, 206; nr. 9, 207; nr. 21, 212 (1280); nr. 36-39, 218 (1289); nr. 41, 218 (1291). That in these case there was a text can be proven by a comparison with a 1324 text which, for example, for nr. 37, 218 (1289) has the rule referred to (Cassel, Statut, nr. 19, 223).

the time because there is a second text, the *Statut ordené en l'enquête faite à Cassel* of 1324,⁹³ which contains legal rules only. However, many of these have their origin in the case law and legislation of the period 1276-1292.⁹⁴ In one generation those had been turned into abstract legal rules and consequently the original documentation, the first slips of parchment, were no longer needed. (One can only wonder why even then some of them have been preserved nevertheless.) If we would have only the Cassel *Statut* and not the Cassel *Loy*, we would have remained unaware of its origins in case law and legislation, and, likewise, if we would have for Lille only the end result of the evolution from reports of cases to abstract legal rules. In how many other cases do we only have the end product nowadays?⁹⁵

In short, a new study of the medieval law texts on the continent is needed, because, if, as has been shown for Lille and as is likely for Cassel, there is a link between some embryonic law reports, some of which may, at first sight, look like mere collections of legal rules, and the spokesmen, any study of the latter is necessary to learn more about the former. The reverse is also true, a study of the spokesmen will lead us to a new appraisals of the infancy of law reporting on the continent, but, by comparison, also in England. In light of what happened in Lille and Cassel in the last quarter of the thirteenth century, England does not seem to be that much ahead of North-Western Europe as far as the first steps into law reporting are concerned, only a few decades and not more than a century later as has been assumed.⁹⁶ (One has to admit though that the infancy of law reporting lasted much longer on the other side of the Channel.)⁹⁷ The opinion of this author is that discoveries still may be made, because texts like the *Lois de Lille* or the Cassel *Loy* have been neglected by historians who prefer more polished, more finished texts like Beaumanoir's, whereas their raw predecessors may contain more interesting data, although it is much harder to unearth them.

G. Conclusion: a general study of the spokesmen and their texts is needed

The spokesmen were the makers of customary law. Thus, a general study of the spokesmen should be undertaken, because without them legal historians are apt to miss certain crucial elements. For example, how can one really evaluate the role and importance of the few great names of customary law we have, like Beaumanoir and Eike von Repgow, if we ignore their lesser brethren? This may lead us to overestimate their contacts with learned law, because we have looked at them from that angle and neglected their normal environment.⁹⁸

In fact, a study of the spokesmen can lead to a reappraisal of many aspects of legal history. One Flemish example may serve to illustrate this. In the thirteenth century the count of Flanders' main local deputies and summoners-presidents of his local courts were the bailiffs, who have been the subject of several studies, but these did not take into account their

⁹³ Edited in DE COUSSEMAKER, 'Sources', 220-234.

⁹⁴ E.g. Cassel Statut, nr. 18, 223 was based on an ordinance (Cassel Loy, nr. 34, 217-218 (1289)) and nr. 3, 221 on case law (more in particular, Cassel Loy, nr. 2, 204 (1276)), like nr. 52, 231 (more in particular, Cassel, nr. 40, 218 (1291)) or nr. 61, 232-233 (more in particular Cassel Loy, nr. 33, 217 (1288)).

⁹⁵ See for more examples, HEIRBAUT, 'Oldest part of the *Lois de Lille*', 150-151.

⁹⁶ BAKER, 'Case-law in England and continental Europe', 110-112.

⁹⁷ Cf. HILAIRE, J. and BLOCH, C., 'Connaissances des décisions de justice et origine de la jurisprudence', in: BAKER, *Judicial records*, 47-68.

⁹⁸ This does not mean that studies Landau's about Eike's links to canon law (see note 3) should not be made. In fact, they are necessary, but they should not be the only ones.

legal expertise,⁹⁹ so that research about their recruitment leads to no more than the commonplace statement that many bailiffs were minor lords or cadets of greater houses, without indicating why of some of these became bailiffs and others did not, because one fails to see that it was legal expertise which distinguished the bailiffs from their peers and that this expertise was linked to their role as spokesman. This is already evident in 1148, when Walter of Houdain acted as spokesman. Walter then was the seneschal of the countess. He was not the only comital seneschal in Flanders during the twelfth century. In fact, under Counts Thierry and Philip of Alsace a lot of local comital seneschals were active.¹⁰⁰ They and others are considered to pre-bailiffs, persons who fulfilled roles like those of bailiffs, but in a less organised, more ad hoc way.¹⁰¹ It is interesting to note that some of these seneschals were habitually present at the session of the *curia* and then may be first in the witness list,¹⁰² a place typically reserved for spokesmen, though a more detailed study of this needs to be made precisely to determine the link between the twelfth century local comital seneschals and spokesmen.

Around 1170 proto-bailiffs appear, who are only in a few things, most notably the absence of a standard official titulature, different from the later bailiffs¹⁰³ and some of them may have been recruited among the spokesmen of feudal courts of lesser lords. For example, Peter of Le Maisnil was active as proto-bailiff in Lille.¹⁰⁴ He had a long and distinguished career in the service of the counts of Flanders, which started in 1147 and may have ended as late 1214, when he still may have fought for the count of Flanders at Bouvines.¹⁰⁵ The first time we meet him is in 1247, when a comital charter mentions him as the second of Roger of Wavrin, a seneschal and thus a pre-bailiff, in a comital court.¹⁰⁶ Ten years later he was the first in Roger's court,¹⁰⁷ i.e. its spokesman. This only one example, but it shows that an in depth study of the pre- and proto-bailiffs and their recruitment has to take into account their previous experiences in feudal courts.

A study of the spokesmen can not only help us to better understand certain persons and offices, but also to explain differences and similarities between systems of customary law. For Northern France and the Southern Netherlands several clusters of customs have been identified, but explanations for the existence of these groups have not always been

⁹⁹ For Flanders, see NOWÉ, H., *Les baillis comtaux de Flandre des origines à la fin du XIVe siècle*, Brussels, 1929; VAN ROMPAEY, J., *Het grafelijk baljuwsambt in Vlaanderen tijdens de Boergondische periode*, Brussels, 1967; DE GRYSSE, 'Origin of the Flemish bailiff', 243-294; DE GRYSSE, *The reform of Flemish judicial and fiscal administration*.

¹⁰⁰ WARLOP, *Flemish nobility*, I, 162-167, 234-236, 238-239.

¹⁰¹ DE GRYSSE, 'Origin of the Flemish bailiff', 258-265.

¹⁰² See e.g. DE HEMPTINNE and VERHULST, *Oorkonden*, II/1, nr. 197, 308 (1161).

¹⁰³ DE GRYSSE, 'Origin of the Flemish bailiff', 288, based on the criminal legislation of Philip of Alsace for the great cities of Flanders. This allows us to date the rise of the first bailiffs around 1170, following Van Caenegem's dating of this legislation (VAN CAENEGEM, R. and MILIS, L., « Kritische uitgave van de 'Grote Keure' van Filips van de Elzas, graaf van Vlaanderen, voor Gent en Brugge (1165-1177) », *Handelingen van de koninklijke commissie voor geschiedenis*, CXLIII, 1977, p. 207-257).

¹⁰⁴ A. KOCH, *De Rechterlijke organisatie van het graafschap Vlaanderen tot in de 13de eeuw*, Antwerpen, 1951, 203; L. de GRYSSE, 'Origin of the Flemish bailiff', 280-281.

¹⁰⁵ DE HEMPTINNE and VERHULST, *Oorkonden*, II/1, 162 note 4 ; W. PREVENIER, *De oorkonden der graven van Vlaanderen (1191-aanvang 1206)*, Brussels, 1964, II, 96 note 4.

¹⁰⁶ DE HEMPTINNE and VERHULST, *Oorkonden*, II/1, nr. 98, 161-162.

¹⁰⁷ DE HEMPTINNE and VERHULST, *Oorkonden*, II/1, nr. 171, 271-273.

satisfying.¹⁰⁸ Looking at the influence of spokesmen who were active in several courts may be useful here. For example, at the end of the thirteenth century in Artois and Lille a new rule appeared in the law of inheritance: henceforth the eldest son would have to award a fifth of the fief to his younger siblings.¹⁰⁹ It is strange that these regions suddenly shared a new rule, the more so when one takes into account that the border between Flanders and Artois separated them. However, what joined these territories was the person of Robert Brunel, an Artois lord and a Lille spokesman and, in fact, one can prove that he brought the new rule from Artois to Lille.¹¹⁰ The spokesmen have clearly contributed to the spread of legal rules from one region to another. Moreover, within a certain region, like the Lille castellany, spokesmen of the higher court, the castellany court, were also active in lower courts, which ensured that the rules of the former would seep into the jurisprudence of the latter. Of course, the practice of asking the advice of a higher court, its head, also contributed to that, but one can only wonder in how many this was not necessary because the legal expert from the higher court was already present in the lower one. In short, both the ‘migration’ of legal rules from one region to another and the homogeneity within one region may, in part, be explained by the activity of spokesmen.

Given these and other new insights to which a study of the spokesmen and their embryonic law reports can lead us, the conclusion of this article can only be that a general search for these forgotten heroes of customary law is long overdue.

¹⁰⁸ For a survey, see GODDING, P., *Le droit privé dans les Pays-Bas méridionaux du 12e au 18e siècle*, Brussels, 1987, 318-321.

¹⁰⁹ HEIRBAUT, D. *Over lenen en families*, 81, 85.

¹¹⁰ HEIRBAUT, ‘Makers of customary law’.