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Laws in the Making: The Feudal and Penal Charters of Hainaut (28 July 1200)

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French historians often describes the twelfth and thirteenth centuries as a time of ‘documentary revolution’, following in the footsteps of Michael Clanchy.¹ It is well known that the central Middle Ages was marked by a growing use of the written word and an increase in charter production in the Latin West. At the same time, documentary typology tended to become increasingly diverse.² In this context, the lay aristocracy became more aware of the political, administrative, and legal potential of the written word—not to mention royal and comital literary patronage, princely libraries, and lay lyric poetry.³ First the high aristocracy, then the second- and third-rank nobles, gradually incorporated writing into their governance throughout northern France and the Empire.⁴ These developments were crucial to the emergence of centralised and bureaucratic forms of government in Europe.

Like so many other principalities, the county of Hainaut went through this process in the twelfth and thirteenth centuries. The rulers of this powerful principality became increasingly familiar with the written word from the end of the eleventh century.⁵ After a period of political turmoil in the 1120s following the accidental death of Baldwin III, charter production grew continuously under the reigns of Baldwin IV, Baldwin V, and Baldwin VI, who was also (and mainly) count of Flanders due to his father’s marriage to Margaret of Alsace (between 1124

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¹ M.T. Clanchy, *From Memory to Written Record: England, 1066-1307* (3rd ed.), Oxford 2013. See also the summaries of recent research by P. Bertrand, *À propos de la révolution de l’écrit (X^e-XIII^e siècle). Considérations inactuelles*, *Médiévales*, 56 (2009), p. 75-92, P. Chastang, *L’archéologie du texte médiéval. Autour de travaux récents sur l’écrit au Moyen Âge*, *Annales. Histoire, Sciences sociales*, 63 (2008), p. 245-269, and F. Menant, *Les transformations de l’écrit documentaire entre le XII^e et le XIII^e siècle*, in: F. Menant, N. Coquery, and F. Weber (ed.), *Écrire, compter, mesurer. Vers une histoire des rationalités pratiques*, Paris 2006, p. 33-50.

² P. Bertrand, *Les écritures ordinaires. Sociologie d’un temps de révolution documentaire entre royaume de France et Empire, 1250-1350*, Paris 2015.

³ M. Aurell, *Le chevalier lettré. Savoir et conduite de l’aristocratie aux XII^e et XIII^e siècles*, Paris 2011.

⁴ J.-F. Nieuw, *Des seigneurs sans chancellerie ? Pratiques de l’écrit documentaire chez les comtes et les barons du nord de la France aux XII^e-XIII^e siècles*, *Bulletin de la Commission royale d’histoire*, 176 (2010), p. 285-311.

⁵ Baldwin II was the first count of Hainaut to use an equestrian seal of which the earliest surviving originates from the mid-1080s (R. Laurent, *Les sceaux des princes territoriaux belges du X^e siècle à 1482*, Brussels 1993, vol. 1, p. 356, vol. 2, pl. 164).

and 1206: see Table 1).⁶ There is no doubt that a chancery was constituted in Hainaut towards 1180 at the latest.⁷ Gislebert, the provost of St German in Mons, was probably the key player in the emergence of the comital administration in Hainaut in the last third of the twelfth century, at a time when it's the counts of Hainaut became one of the most powerful ruling families in Europe.

In what follows, I will focus my attention on two documents commonly attributed to the hand of Gislebert. They are traditionally known as the 'feudal' and 'penal' charters of Hainaut. They were written at the comital chancery in July 1200. These relatively famous but paradoxically little-studied documents are often described as the oldest princely written laws produced in the Low Countries during the high Middle Ages.⁸ The feudal charter established rules for the inheritance of fiefs and allods, while the penal charter dealt with the consequences of violence and bloodshed. These charters are particularly interesting because of their precociousness. The aim of this article is to gain a better understanding of the making, the meaning, and the dissemination of these written laws, which were developed by the prince in collaboration with his lay aristocracy and his close entourage.

This article is divided into three parts. First, I will focus my attention on the writing process of the feudal and penal charters. By examining the documents from the perspectives of palaeography and diplomatics, I will try to determine how and by whom the laws were drafted. The analysis will show that we can no longer follow the commonly accepted hypothesis: that the charters were written by the hand of Gislebert of Mons. I will then turn to the content of the laws. What was the purpose of their promulgation? Were these rules negotiated with the aristocracy? What do they tell us about the power of the prince at the turn of the twelfth and thirteenth centuries? It will be argued that the laws were not the result of a conflict between the count of Hainaut and his aristocracy. On the contrary, I hypothesise that they were promulgated in order to solve certain problems within the county, in particular those relating to the inheritance of comital power. Finally, the last part of the article will be devoted to the complicated question of the enforcement of the laws. Did the feudal and penal charters 'make a difference', to paraphrase David Carpenter's words about the *Magna Carta*?⁹ Answering this question requires an examination of the manuscript tradition of the documents which reveals

⁶ Baldwin V and Baldwin VI of Hainaut are also known as Baldwin VIII and Baldwin IX of Flanders. However, as this article mainly deals with the county Hainaut, I will use their title of Hainaut here.

⁷ *De oorkonden der graven van Vlaanderen (1191-aanvang 1206)*, ed. W. Prevenier, Brussels 1964), vol.1, p. 300-10; id., *La chancellerie des comtes de Flandre dans le cadre européen à la fin du XII^e siècle*, Bibliothèque de l'École des chartes, 125 (1967), p. 34-93. For a nuanced definition of this concept, see Nieus, *Des seigneurs sans chancellerie ?* (*supra*, n. 4), p. 285-286, who defines the chancery as a 'small group of individuals who work, with a certain regularity, at the production, or at least at the validation, of a significant part of the charters issued by an author'.

⁸ J.-M. Cauchies, *Coutume et législation en Hainaut du XII^e au XVI^e siècle*, in: id. and J.-M. Duvosquel (ed.), *Recueil d'études d'histoire hainuyère offertes à Maurice A. Arnould*, Mons 1983, vol. 2, p. 7-33, at p. 11. The charters were published by L. Devillers, *Description analytique de cartulaires et de chartes utiles à l'histoire du Hainaut*, 8 vols, Mons 1865-78, vol. 4, p. 8-15 (see also the database *Diplomata Belgica. The Diplomatic Sources from the Medieval Southern Low Countries* [now *DiBe*], Brussels 2015 (www.diplomata-belgica.be/), 4663-4).

⁹ D. Carpenter, *Magna Carta*, London 2015, p. 430.

that they were widely copied and translated from the middle of the thirteenth century at the latest.

Table 1. The Baldwins of Hainaut (mid-11th century–early 13th century)

The making of the charters

The penal and feudal laws were written in Latin on two parchment leafs measuring approximately 53×40cm and 42×33cm (Images 1 and 2). The penal charter is 1182 words long, while the feudal charter is 988. In both documents, the text is written parallel to the small side of the charter (*carta transversa*) in a gothic minuscule, which was commonly used by the chancery of Hainaut. The handwriting is easily legible. Despite their solemnity, the charters do not contain any ornaments or graphic symbols, except for *litterae notabiliores* and some majuscules which are more elaborate than usual. Three techniques were used to authenticate the charters. First, the chirograph form, with the classical legend CYROGRAPHV[M]. Second, the witness list. No fewer than 41 names appear at the bottom of the feudal charter and 71 in the penal charter. These witnesses—all male and from the nobility—came from all over the county of Hainaut. Finally, the sealing. Six wax pendent seals were used to authenticate the charters. One is the seal of Baldwin VI, while the others are the seals of William the Uncle and Philip the Noble—Baldwin’s uncle and brother respectively—and seals of Walter of Avesnes and Alard of Chimay, two of the prince’s closest allies. The sixth seal is lost, but may have belonged to Henry of Hainaut, another of Baldwin’s brothers.¹⁰

Image 1: The feudal charter of Hainaut (28 July 1200): Mons, State Archives, *Local archives*, C 2996 (= *Precious Documents*, 9)

Image 2: The penal charter of Hainaut (28 July 1200): Mons, State Archives, *Local archives*, C 2997 (= *Precious documents*, 7)

According to Gabriel Wymans, who was responsible for much of our current understanding of the medieval archival collections of Hainaut, both charters were written by Gislebert of Mons (*ca* 1150–*ca* 1224).¹¹ Gislebert is best known as the author of the *Chronicon Hanoniense*, a panegyric of the Baldwins of Hainaut written shortly after the death of Count

¹⁰ The surviving pendent seals belonged to witnesses mentioned at the very beginning of the witness list. In both charters, Henry appears in third position in this list, between Philip the Noble and Walter of Avesnes.

¹¹ G. Wymans, *Per manum Gilleberti*, *Scriptorium*, 33 (1979), p. 17-24.

Baldwin V in December 1195.¹² He also wrote the epitaphs of Baldwin IV and Baldwin V.¹³ Gislebert was therefore more than an average member of the counts' entourage. Together with William the Uncle—Baldwin IV's illegitimate son, whose seal was also appended to both charters—, he was a close adviser to the princes, especially to Baldwin V.¹⁴ He was also provost of St German (1188–1224) and St Waudru in Mons (probably after 1209)¹⁵, and provost and keeper (*custos*) of St Alban (1190–1223) and St Peter at the Castle in Namur (before 1195–after 1198). In addition, he had several prebends in the chapters of Soignies, Maubeuge, Condé-sur-l'Escaut, and St Lambert in Liège.¹⁶ Gislebert was thus the key player in the chancery of Hainaut during the second half of the twelfth century. Charter-production increased considerably under his office, as can be seen in Table 2. In 1169, when his name first appears, he is identified as *capellanus*.¹⁷ The title of *cancellarius* was given to him from the 1170s: in 1172, a charter identifies Gislebert as *capellanus et cancellarius*.¹⁸ In 1178, he appears as *cancellarius* in a charter for the abbey Haumont.¹⁹ After the union of Flanders, Hainaut and Namur in 1191, Gislebert was described as *in Hainoa cancellarius* (1192) and *in Hainoa et in Namuco cancellarius* (1192).²⁰ In Flanders, the office remained in the hands of Gerard of Alsace, an illegitimate son of Count Thierry († 1168).²¹ As chancellor of Hainaut, Gislebert was probably in charge of the prince's seal matrices. However, it is likely that his role went beyond the limits of the production of charters. Gislebert may have been a secretary responsible for the writing of the prince's letters and may have played a role in the estate management of the principality, as he certainly did in St Waudru.²²

Dozens of charters record that they were written 'by the hand of Gislebert'.²³ It is well known that the meaning of these words was quite vague in twelfth- and thirteenth-century

¹² *La chronique de Gislebert de Mons*, ed. L. Vanderkindere, Brussels 1904. For an English translation of the narrative, see *Gilbert of Mons. Chronicle of Hainaut*, ed. L. Napran, Woodbridge 2005. For a summary of the life of Gislebert, see J. Pycke, *Gislebert de Mons, chroniqueur hennuyer*, Dictionnaire d'histoire et de géographie ecclésiastiques, vol. 21, Paris 1985, col. 27-31.

¹³ F. Vercauteren, *Gislebert de Mons, auteur des épitaphes des comtes de Hainaut Baudouin IV et Baudouin V*, Bulletin de la Commission royale d'Histoire, 125 (1959), p. 379-403; M. de Waha and J. Dugnoille, *Mort et sépulture des comtes de Hainaut jusqu'en 1195*, in: M. Margue (ed.), *Sépulture, mort et représentation du pouvoir au Moyen Âge. Actes des 11^{es} Journées lotharingiennes, 26-29 septembre 2000*, Luxembourg 2006, p. 423-470.

¹⁴ D. Dereck, *Guillaume l'Oncle (circa 1150-novembre 1219). Rôle politique, fortune et descendance d'un fils naturel du comte de Hainaut Baudouin IV*, Annales du Cercle archéologique de Mons, 78 (1999), p. 43-136.

¹⁵ These two secular chapters were closely associated with the prince. Most of the counts of Hainaut and their relatives were buried in St Waudru in Mons (de Waha and Dugnoille, *Mort et sépulture (supra*, n. 13), p. 429-435).

¹⁶ *La chronique de Gislebert de Mons (supra*, n. 12), p. XX-XXII.

¹⁷ *Cartulaire de l'abbaye de Cysoing et de ses dépendances*, ed. I. De Coussemaker, Lille 1883, p. 38 (*DiBe*, 3715).

¹⁸ *Ibid.*, p. 39 (*DiBe*, 3716).

¹⁹ C. Duvivier, *Recherches sur le Hainaut ancien (pagus Hainoensis) du VI^e au XII^e siècle*, Brussels 1865, p. 624-625 (*DiBe*, 3390).

²⁰ *Chartes du chapitre Sainte-Waudru de Mons*, ed. L. Devillers, vol. 1, Brussels, 1899, p. 30-31 and 31-32 (*DiBe*, 2181 and 2182).

²¹ Prevenier, *La chancellerie des comtes de Flandre (supra*, n. 7), p. 53-54.

²² M. Bruwier and M. Gysseling, *Les revenus, les biens et les droits de Sainte-Waudru de Mons à la fin du XII^e siècle*, Bulletin de la Commission royale d'histoire, 121 (1956), p. 239-330, at 267.

²³ For instance, Mons, State Archives, *Cartularies*, 1: cartulary of the abbey of Aulne (13th century), fos 138r-v: *Actum Montibus per manum Gilberti secundi notarii mei [...]*. For a list of the original charters referring to *per manum Gil(le)berti*, see Wymans, *Per manum Gilleberti (supra*, n. 11), p. 18.

charters and often referred to the holding of the office of chancellor or equivalent position rather than the act of writing the document itself. Historians have long noted that someone described in a charter as a *notarius*, *clericus*, or *capellanus* did not necessarily take part in the material production of the document.²⁴ These statements are undoubtedly true in this case. Gislebert clearly did not write the 116 charters in which his name appears, although he may well have dictated some of them.²⁵ A general survey devoted to the 112 charters (of which 48 have survived as originals) written during the reign of Count Baldwin V would also reveal the specific features of the charters produced under Gislebert's supervision. One of these is well known: their protocols (and sometimes their dates) frequently contain some biographical information about the counts and their relatives.²⁶

Table 2: Charter-production of the Baldwins of Hainaut and their relatives (1061–1210)

In 1979, Gabriel Wymans claimed to have identified Gislebert's handwriting.²⁷ Wymans suggested that at least five charters were written by the chancellor of Hainaut between 1198 and 1200: a charter of St Vincent's chapter in Soignies for the counts of Hainaut (1198), a charter of Philip the Noble—Baldwin VI's brother—for St Peter at the Castle in Namur with genealogical notes on the back (1198), the feudal and penal charters (1200), and a charter of William the Uncle for St Foillan's abbey in Le Roeulx (1205).²⁸ According to Wymans, the hands of these documents share many common features, such as: a very personal way of

²⁴ Prevenier, *La chancellerie des comtes de Flandre* (*supra*, n. 7), p. 58-66; B.-M. Tock, *Auteur ou impétrant ? Réflexions sur les chartes des évêques d'Arras au XII^e siècle*, Bibliothèque de l'École des chartes, 149 (1991), p. 215-248, particularly p. 222-223; O. Guyotjeannin, *Écrire en chancellerie*, in: Michel Zimmerman (ed.), *Auctor et auctoritas. Invention et conformisme dans l'écriture médiévale. Actes du colloque tenu à l'Université de Versailles-Saint-Quentin-en-Yvelines (14-16 juin 1999)*, Paris 2001, p. 20-21.

²⁵ F. Vercauteren, *Note sur Gislebert de Mons, rédacteur de chartes*, *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, 62 (1954), p. 238-253, at p. 239.

²⁶ For instance, at the end of a charter of 1192: '*Ut autem pateat cunctis quis fuerit iste Balduinus, comes et marchio, cum multi comites in Hainoia nomine Balduini fuerint appellati, notum sit universis quod iste Balduinus comes Hainoensis uxorem habuit Margaretam, Philippi comitis Flandrie et Viromandie sororem, de qua filiam habuit Elisabeth gloriosissimam Francorum reginam, Philippo illustri Francorum regi desponsatam. Defuncto autem predicto Philippo comite Flandrie et Viromandie in transmaris partibus, sepeditus Balduinus comes Hainoensis et eius uxor Margareta comitatum Flandrie iure hereditario obtinuerunt. Ipse etiam Balduinus comes ex parte Henrici avunculi sui comitis Namucensis et Lusceleburgensis iure hereditario Namucum castrum adeptus est, de quo princeps imperii factus est et marchio Namucensis appellatus*' (University of Louvain in Louvain-la-Neuve, *Collection Cornet*, 38).

²⁷ Wymans, *Per manum Gilleberti* (*supra*, n. 11), p. 17-24. The article was published without plates.

²⁸ St Vincent's chapter in Soignies for the counts of Hainaut (1198): Mons, State Archives, *Comital archives*, 9 (= *Precious documents*, 5), published by L. Devillers, *Monuments pour servir à l'histoire des provinces de Namur, de Hainaut et de Luxembourg*, 8 vols, Brussels 1844-1874, vol. 3, no. 374, p. 478-479 (*DiBe*, 2750); Philip the Noble for St Peter at the Castle in Namur (1198): Namur, State Archives, *Ecclesiastical archives*, 792, in *Actes de Philippe I^{er}, dit le Noble, comte et maquis de Namur, 1196-1212*, éd. M. Walraet, Brussels 1949, no. 2, p. 118-121 (*DiBe*, 2931); penal and feudal charters of Baldwin VI (1200): Mons, State Archives (Belgium), *Local archives*, C 2996-7 (= *Precious documents*, 7 and 9), published by Devillers, *Description analytique* (*supra*, n. 8), p. 8-15 (*DiBe*, 4663-4664); William the Uncle for St Foillan's abbey in Le Roeulx: State Archives in Mons, *St Foillan's abbey in Le Roeulx*, 49, published in *Actes et documents anciens intéressants la Belgique*, ed. C. Duvivier, vol. 2, Brussels 1903, n° 201, p. 368-369 (*DiBe*, 13798).

drawing the capital letters *A*, *F*, *H*, *L*, *R* and *U*; the use of peculiar abbreviation symbols; the frequent use of a capital *R* in the middle of words; the variations in the way of writing the upstrokes of the small letter *d*, and so on.²⁹ In Wymans's opinion, the handwriting which appears on these five charters was undoubtedly that of Gislebert, both because of the biographical notes on the dorse of the charter of Philip the Noble (a feature which considered typical of Gislebert) and because Gislebert would have been the only common denominator between these five documents written by the same hand. Indeed, he was both chancellor in Hainaut and in Namur, canon in St Vincent in Soignies, and keeper at St Peter at the Castle in Namur between 1198 and 1205. Since 1979, Wymans' identification of Gislebert as the scribe of these five documents has been generally accepted.

A new analysis of the five documents has led me to reject Wyman's hypothesis. In my opinion, the handwriting and letterforms of these charters produced in a relatively short interval of seven years should be sufficiently similar to conclude that they were written by the same scribe. Sadly, this is not the case. Indeed, some of the features that Wymans considered typical of Gislebert's handwriting are very common in Hainaut at the end of the twelfth century. For instance, the capital *R* inside the words is regularly used in comital charters from the 1180s and the 1190s. Moreover, the handwriting of the penal and feudal charters of 1200 (which were written by the same scribe) differs significantly from the handwritings of the charters written in 1198 for Philip the Noble and St Vincent's chapter, as it is shown in Table 3. The differences in their hands are numerous. The abbreviation symbol for *-ur* looks like a *2* in the 1198 documents, but resembles to an *a* in the feudal and penal charters. The downstrokes of the small letters *s* are under the writing line in 1198, while they are on the writing line in 1200. The doubling of the *s* is sometimes written with a long *s* and an uncial round *s* in 1198. This is never the case in 1200. The capital letters *A* and *P* are not drawn in the same way. The ligatures between the *s* and the *t* are very peculiar in the charters of 1198. They look more standard in the feudal and the penal charters. These differences are only the main dissimilarities between the two groups of charters. I would not draw any categorical conclusions about the charter of William the Uncle (1205), which is much shorter. The handwriting in this document resembles the one which appears in the laws of 1200, even if the downstrokes of the *f*, the *p*, the *s* and the *r* are regularly under the writing line in 1205, unlike in the penal and feudal charters.

The five charters attributed to Gislebert by Wymans should better be divided into two or three related groups. On the one hand, the charter of Philip the Noble for St Peter at the Castle and the charter of St Vincent in Soignies, both dated 1198, were probably written by the same scribe. On the other hand, the feudal and penal charters were penned by the same scribe. It is likely that this scribe also copied the charter of William the Uncle but this cannot be fully proven. In such circumstances, we can no longer attribute the *scriptio* of the feudal and penal charters to Gislebert. In fact, it would have been surprising if the chancellor himself had used his pen to write the documents. In a first-rank principality such as Hainaut, whose destiny was bound to Flanders and Namur, the task of a chancellor was probably more to compose the

²⁹ Wymans, *Per manum Gilleberti* (*supra*, n. 11), p. 23.

dictamen of the charters than to produce them materially, although we cannot exclude the possibility that a chancellor sometimes wrote individual documents.³⁰

Table 3. Charters attributed by Wymans to the hand of Gislebert of Mons: some points of comparison

Can we at least attribute their *dictamen* to Gislebert? The question is particularly complex, because his role at the chancery of Hainaut under the government of Baldwin VI remains unclear. According to Belgian historiography, the death of Baldwin V in 1195 marked a break in Gislebert's career.³¹ At the beginning of Baldwin VI's government, the chanceries of Flanders and Hainaut were united under the authority of the Flemish chancellor Gerard of Alsace, although the regional offices were still maintained. From that moment, Gerard was probably the only keeper of the seal in the two principalities. Gerard's appointment coincides with the gradual introduction of new practices at the chancery of Hainaut, such as the adoption of the style of Easter instead of the usual style of the Nativity, which had been used under Gislebert.³² In this context, the political role of the former chancellor began to decline around 1200. He was probably less present at the court of Baldwin VI than during his father's government. In fact, Gislebert was mostly present in Namur at the start of the thirteenth century. There, he worked closely with Philip the Noble, whose relationship with Baldwin VI may have been more complicated than they have been portrayed.³³ It was only in the years following Baldwin's disappearance in the East that Gislebert regained a position of power in Hainaut. These facts do not support the attribution to Gislebert. However, we cannot formally exclude the possibility that Baldwin VI had made use of Gislebert's long experience in regional politics to enact the feudal and penal laws. Although he was probably more present in Namur than in Hainaut, his name still appears in the witness lists of the comital charters written after 1195.³⁴

³⁰ E. De Paermentier, *Une chancellerie complexe. La production d'actes dans l'entourage comtal pendant l'union personnelle des comtés de Flandre et de Hainaut (1191-1244)*, *Revue historique*, 665 (2013), p. 23-56, especially p. 41-47.

³¹ Prevenier, *La chancellerie des comtes de Flandre (supra, n. 7)*, p. 53-57; E. De Paermentier, *La chancellerie comtale en Flandre et en Hainaut sous Baudouin VI/IX (1195-1206) et pendant la régence de Philippe I^{er} de Namur*, *Bulletin de la Commission royale d'histoire*, 176 (2010), p. 259-284, at p. 262-268.

³² W. Prevenier, *Du style de Noël au style de Pâques dans la chancellerie des comtes de Hainaut et dans le Chronicon Hanoniense de Gislebert de Mons (1171-1205)*, in D.P. Blok (ed.), *Miscellanea Mediaevalia in memoriam Jan Frederik Niermeyer*, Groningen 1967, p. 245. Nevertheless, according to Olivier Guyotjeannin and Benoît-Michel Tock, *Mos presentis patrie. Les styles de changement du millésime dans les actes français (X^e-XVI^e siècle)*, *Bibliothèque de l'École des chartes*, 157 (1999), p. 41-109, at p. 67, the style of the Nativity was already known in Hainaut towards 1189-1190.

³³ See the biography of Philip written by Marcel Walraet, *Philippe le Noble, comte et marquis de Namur, régent de Flandre et de Hainaut (1196-1212)*, 2 vols, Brussels 1941, vol. 1, p. 28-31 (Université Libre de Bruxelles, Unpublished doctoral dissertation).

³⁴ De Paermentier, *La chancellerie comtale (supra, n. 31)*, p. 279-282; P. Dehove and J.-F. Nieuws, *Aux origines de la science princière des archives. Le premier chartrier des comtes de Namur et son inventaire de 1263*, *Bibliothèque de l'École des chartes*, 168 (2010), p. 95-149, at p. 113-116.

Although Gislebert's involvement in the production of the feudal and penal charters remains uncertain, it is beyond doubt that these texts were produced in the county of Hainaut rather than in Flanders, probably at the comital chancery. In fact, some regional writing offices still existed in Hainaut (in Valenciennes and, perhaps, in Mons), even if the chanceries of Flanders and Hainaut were united under the authority of Gerard of Alsace. Els De Paermentier has established that some scribes worked exclusively in these regional chanceries and has also shown that some local traditions in charter production persisted in Hainaut after 1195.³⁵ The feudal and penal charters resemble the bulk of chancery production in Hainaut at the end of the twelfth century in a number of ways, in particular, the diplomatic form used for both charters: the sealed chirograph. This form was introduced into the chancery by Gislebert soon after his appointment as *cancellarius*.³⁶ Of the original charters produced between 1172 and 1195, almost one in four is a chirograph, with the bulk produced mainly after 1185.³⁷ The use of chirographs became extremely rare after the appointment of Gerard of Alsace as chancellor. Only three charters of Baldwin VI as count of Flanders are written in form of sealed chirographs.³⁸ In this context, the use of this diplomatic form could be a good indication that they were written in a regional writing office in Hainaut. This would not be surprising, as the laws were applied only to Hainaut and not to Flanders or Namur.³⁹

Why the feudal and penal laws?

³⁵ De Paermentier, *La chancellerie comtale* (*supra*, n. 31), p. 262-268.

³⁶ All the chirographs of the counts were produced after 1172, apart from two comital charters concerning religious houses located in or around the episcopal city of Cambrai: Lille, Departemental Archives, 4 H 25/191 (St Sepulchre in Cambrai, 1158; *DiBe*, 8719); Duvivier, *Recherches sur le Hainaut ancien*, p. 587-590 (Solesmes, 1162; *DiBe*, 3376).

³⁷ 11 out of 47, to which we can add at least five copies that are described as chirographs in the text of the document: *Chartes de coutumes en Picardie, XI^e-XIII^e siècle*, ed. R. Fossier, Paris 1974, p. 166-171 (*DiBe*, 3444); Mons, State Archives in Mons, *Trésorerie des comtes de Hainaut*, 1 (*DiBe*, 2747); *Les chartes de l'abbaye d'Anchin, 1079-1201*, ed. J.-P. Gerzaguët, Turnhout 2005, p. 299-300 (*DiBe*, 3017); Ghent, State Archives, KK 144/604 (*DiBe*, 2870); *Opera diplomatica et historica*, ed. Aubert Le Mire et Jean-François Foppens, 4 vols, Brussels 1723-1748, vol. 2, p. 834 (*DiBe*, 7590); *Actes et documents anciens* (*supra*, n. 28), vol. 2, p. 135-136 (*DiBe*, 3032); Municipal Library of Arras, ms. 1304/3 (*DiBe*, 10924); *De oorkonden der graven van Vlaanderen (1191-aanvang 1206)* (*supra*, n. 7), vol. 2, p. 34-40 (*DiBe*, 313); *Actes et documents anciens* (*supra*, n. 28), vol. 2, p. 174-176 (*DiBe*, 3048); Mons, State Archives, *Trésorerie des comtes de Hainaut*, 7 (*DiBe*, 2743); *Chartes du chapitre Sainte-Waudru de Mons* (*supra*, n. 20), vol. 1, p. 46-49 (*DiBe*, 2190). Original charters now lost: *De oorkonden der graven van Vlaanderen (juli 1128-september 1191)*, vol. 2/1 : *Regering van Filips van de Elzas*, ed. T. de Hemptinne and A. Verhulst, Brussels 2001, p. 231-233 (*DiBe*, 2739); *Chartes du chapitre Sainte-Waudru de Mons* (*supra*, n. 20), vol. 1, p. 31-32; *Actes et documents anciens* (*supra*, n. 28), vol. 2, 186-9 (*DiBe*, 3051); *Opera diplomatica* (*supra*, n. 37), vol. 1, p. 295 (*DiBe*, 3970); Mons, State Archives, *Cartularies*, 1: cartulary of the abbey of Aulne, fos 56r-56v (*DiBe*, 12345).

³⁸ *De oorkonden der graven van Vlaanderen (1191-aanvang 1206)* (*supra*, n. 7), vol. 2, p. 74-77, p. 144-151, 258-262 (*DiBe*, 328, 309, and 390). Two of these charters are political treaties concluded with the kings of England Richard I (1197) and John (1199).

³⁹ It is clearly stated in the penal charter : '*Hec est forma pacis in toto comitatu Hainoensi quam dominus comes Flandrensis et Hainoensis Balduinus et viri nobiles et alii milites juramentis suis assecuraverunt et confirmaverunt [...]*' (Devillers, *Description analytique* (*supra*, n. 8), p. 16).

The history of the counts of Hainaut in the twelfth century could be described as a kind of ‘success-story’. The power of Count Baldwin VI was at its peak in July 1200, when the feudal and penal laws were enacted. Thanks to their matrimonial strategies, the Baldwins inherited the county of Namur in 1190. As both of Count Philip of Alsace’s marriages remained fruitless, Baldwin V—who had married Philip’s sister—became the sole heir to Flanders on the count’s death in 1191 (see Table 1). As a result, Baldwin V and his son were at the head of three major principalities in the early 1190s. In this context, they were able to place their own candidates on the episcopal sees of Cambrai and Liège, two large and wealthy dioceses.⁴⁰ These events are well known, thanks to Gislebert’s *Chronicon*. As it ends with the death of Baldwin V, the chronicle says nothing about the promising but short and disappointing reign of Baldwin VI.⁴¹ The Fourth Crusade caused the ruin of the Baldwins’ political efforts. Baldwin VI tragically disappeared in the defeat of Adrianople in 1205, only a year after acquiring the ‘cursed’ title of Emperor of Constantinople. His unexpected death led to a major political crisis, as his wife, Mary of Champagne, had also passed away in the Latin East, and their two daughters, Joan and Margaret, were still minors. The government of Hainaut and Flanders therefore fell into the hands of Baldwin’s younger brother, the marquis of Namur, Philip the Noble. According to traditional Belgian historiography, which views Philip unfavourably as the one who precipitated the (temporary) decline of the Flemish county, Philip’s regency was marked by several poor decisions, as was the beginning of the government of Countess Joan.⁴² The infamous defeat at Bouvines (1214) against King Philip Augustus symbolised the political setbacks suffered by the rulers of Flanders and Hainaut in the first quarter of the thirteenth century. The heavy failures experienced by Baldwin VI and his successors may explain why the feudal and penal charters have never been studied in detail.

Count Baldwin VI promulgated the feudal and penal charters only two years before his departure for the Latin East. Both charters were promulgated in the castle of Mons, the epicentre of Baldwin’s power in Hainaut. As it appears in the protocols, the documents were not only written in Baldwin’s name alone, but as collective charters produced by the comital and lordly authorities. This may explain why the charters were written in the form of chirographs, a form that embodied the fact that the agreement was bipartite. The witness lists

⁴⁰ M. Bruwier, *Le Hainaut, le Cambrésis et l’Empire au XII^e siècle*, in: Fédération archéologique et historique de Belgique. XXXVI^e congrès. 12-15 avril 1955, Gand. Annales, 2 vols, Ghent 1956, vol. 2, p. 207-226; A. Wilkin, *Le legs de Baudouin V de Hainaut à la cathédrale Saint-Lambert de Liège : une générosité inexplicable ?*, *Revue du Nord*, 88 (2006), p. 275-90; Dirk Heirbaut, *On and Over the Edge of the Empire: The Counts of Flanders and Hainaut and the Election of the Kings of the Romans (1000-1314)*, in: Armin Wolf (ed.), *Königliche Tochterstämme, Königswähler und Kurfürsten*, Frankfurt-am-Main 2002, p. 419-455, at p. 428-433.

⁴¹ Nevertheless, we cannot exclude that a part of Gislebert’s work dealing with the reign of Baldwin VI is lost, as he indicated his intention to evoke the reign of the successors of Baldwin V (i.e. Baldwin VI, but also Philip the Noble) in his preface (*La chronique de Gislebert de Mons* (*supra*, n. 12), p. 2; see also de Waha and Dugnoille, *Mort et sépulture* (*supra*, n. 13), p. 470).

⁴² Philip’s bad reputation probably surfaced a few years after his decease in 1212. Indeed, around the middle of the thirteenth century, Caesarius of Heisterbach and the chronicler Alberic of Trois-Fontaines suggested that Philip was tormented by remorse before his death, partly because of his poor political decisions (Caesarius of Heisterbach, *Dialogus miraculorum*, ed. J. Strange, Köln-Brussels 1851, p. 86-87; Albericus of Trois-Fontaines, *Chronicon*, ed. P. Scheffer-Boichorst, in *Monumenta Germaniae Historica. Scriptores*, vol. 23, Hannover 1874, p. 631-950, at p. 896-897).

show that the entire aristocracy of the county was present at the prince's court.⁴³ The witnesses came from all over Hainaut but with a concentration in the north-east of the county, that is to say from the political heart of the principality (see Map 1).⁴⁴ Some of them were peers and members of the prince's close entourage.⁴⁵ Others were former counsellors and comrade-in-arms of Baldwin V.⁴⁶ A few of them were close relatives of the count. For unknown reasons, the penal charter lists more witnesses, including the names of about thirty lesser lords who are absent from the feudal charter. Most of these were third-ranking nobles settled in the north-east of the county, around Mons, the city at the centre of the counts' power. However, only Baldwin's relatives and a few highest lords sealed the charters with the prince.

It was no accident that Count Baldwin VI appeared in the two charters surrounded by his entire aristocracy. It was a deliberate choice on the part of the prince. The charters give the impression that there was a kind of political concord in Hainaut at the dawn of the thirteenth century. They portray Baldwin as a powerful ruler, supported by dozens of members of the lay elites who worked with him to maintain peace and order in the county.⁴⁷ There is no evidence that the issue of the laws was the result of any form of political uprising or reform movement such as that which produced *Magna Carta*. The aristocracy and the count were not opposing forces of political power in Hainaut around 1200. The two charters suggest that the nobility was involved in the dynamics of government. Indeed, the short preamble of the feudal charter states that the text was written 'with the common consent, agreement, deliberation, and sane recollection of the noble men and *ministeriales* of the county of Hainaut'.⁴⁸ The penal charter states that the law was agreed, confirmed and secured not only by the count but also by 'noble men and other knights'. We do not know exactly what their role was, but the geographical extent of the witness lists, together with their high-profile seals, shows that the idea of the elite of Hainaut was invoked in the promulgation of the two charters, and that aristocratic as much as comital authority was understood to be essential to their issue. By emphasising the role of the aristocracy in his charters, Baldwin VI probably wanted to show that the laws were promulgated with the common assent of the aristocracy of Hainaut. However, the statement about the participation of the aristocracy may be more than a *topos*, since Gislebert reveals in

⁴³ It seems that neither the urban elites (of Mons and Valenciennes) nor the clergymen participated in the promulgation of the feudal and penal laws. Gislebert himself is not mentioned in the witness lists.

⁴⁴ The points on the map are located according to the toponym associated with the individual name of each witness (i.e. what the French historiography calls '*cognomen toponymique*'). It is assumed that these toponyms refer to the places that were at the heart of the power of the aristocrats. However, it makes only a few doubts that most of the nobles spent much of their time away from their estates, for instance at the *curia* of the prince or in martial activities.

⁴⁵ On the peers of Hainaut, see J.-F. Nieuw, *Du donjon au tribunal. Les deux âges de la pairie châtelaine en France du Nord, Flandre et Lotharingie (fin XI^e-XIII^e siècle)*, Le Moyen Âge, 112 (2006), p. 9-42, at p. 22-27.

⁴⁶ *La chronique de Gislebert de Mons* (*supra*, n. 12), p. 327-328.

⁴⁷ Such an image was also given at the royal level in the middle of the twelfth century, as it appears in a peace charter of King Louis VII promulgated in Soissons in 1155. The *pax* was also established in the context of a collaboration between the king and his highest aristocracy (*Recueil des historiens des Gaules et de la France*, vol. 14, Paris 1806, p. 387-388; on this charter, see Y. Sassier, *Louis VII*, Paris 1991, p. 257-269). Many thanks to Jean-Marie Cauchies for sending me the reference to the Soissons' charter.

⁴⁸ Devillers, *Description analytique* (*supra*, n. 8), p. 8.

his *Chronicon* that some penal laws were also negotiated with the aristocracy in the 1170s.⁴⁹ Discussions, or even negotiations, with the aristocracy (or at least with the most prominent families of Hainaut) may have preceded the writing of the laws of 1200, since they would have been dependent on such men for their enforcement. Unfortunately, we know nothing of the nature of these discussions. However, we can assume that only the most prominent witnesses took part to them. As Léopold Genicot has shown, a small group of nobles and *ministeriales* assisted and advised the prince during Baldwin's V government.⁵⁰ Some of them may have continued to play a role in the count's entourage after Baldwin V's death in 1195.

Map 1: Origins of the witnesses in the penal and feudal charters of Hainaut (July 1200)

It is likely that the penal and feudal charters were written in anticipation of the count's departure for the Fourth Crusade. According to Geoffrey of Villehardouin, Baldwin VI and Mary of Champagne took the cross only five months before the laws were enacted.⁵¹ Baldwin would have been particularly aware that the expedition to the East might be a journey from which there was no return, since his uncle Philip of Alsace and many knights of Flanders and Hainaut perished in the Third Crusade only ten years earlier.⁵² The count may have wished to put the affairs of his principality in order before leaving. Baldwin's crusading projects may therefore have triggered the promulgation of the feudal and penal laws. However, it would be simplistic to see these charters merely as the consequence of Baldwin's adventurous undertaking. They were first and foremost the product of a prince whose authority was at its height. They are generally regarded as the oldest written laws promulgated in the Low Countries, although this assertion is not entirely true. In fact, as Jean-Marie Cauchies has shown, Baldwin legislated against usury as count of Flanders in 1199.⁵³ In addition, Gislebert's *Chronicon* recalls the enactment of some penal laws in Hainaut by Baldwin V at the dawn of the 1170s. However, we do not know whether they were written down.⁵⁴ Some measures that could be defined as laws were also promulgated in Flanders at the beginning of the twelfth century, such as a *pax* of Count Robert II of Jerusalem issued *per totam terram suam* and

⁴⁹ 'Ad hec ipse Balduinus comes novus de communi hominum suorum consensu et consilio quandam in Hanonia pacem ordinavit et eam tenendam tam suo proprio quam hominum suorum majorum juramento confirmavit. In qua quidem pace expressum fuit [...]' (*La chronique de Gislebert de Mons* (supra, n. 12), p. 106).

⁵⁰ L. Genicot, *Le premier siècle de la curia de Hainaut (1060 env.-1195)*, Le Moyen Âge, 53 (1947), p. 39-60, here at p. 59-60.

⁵¹ 'A l'entree de Quaresme après, le jour après que l'en prent les cendres, se croisa li quens Baudoins de Flandres et de Henaut, a Bruges, et la contesse Marie sa fame qui estoit suer le conte Thiebaut de Champaigne. Après se croisa Henri son frere, Thierrri son neveu [...]' (Geoffrey of Villehardouin, *La conquête de Constantinople*, ed. Jean Dufournet, Paris 2004, p. 44). Baldwin left his possessions during the spring 1202 whereas his wife, who was pregnant with Margaret in 1202, decided to join him the following year. Mary died in Acre in August 1204 before joining her husband (*Actes de Philippe I^{er}, dit le Noble* (supra, n. 28), p. 17-20).

⁵² H. Van Werveke, *La contribution de la Flandre et du Hainaut à la troisième croisade*, Le Moyen Âge, 78 (1972), p. 55-90.

⁵³ *De oorkonden der graven van Vlaanderen (1191-aanvang 1206)* (supra, n. 7), vol. 2, p. 276-278 (*DiBe*, 396); Cauchies, *Coutume et législation* (supra, n. 8), p. 11.

⁵⁴ *La chronique de Gislebert de Mons* (supra, n. 12), p. 106-107. Unfortunately, the penal laws of Baldwin V are now lost. They may have been cancelled soon after the production of the penal and feudal charters of 1200.

regulating the building of castles in the county.⁵⁵ If, the feudal and penal laws were not, strictly speaking, the oldest laws in the Low Countries, they were nevertheless far more ambitious and far more elaborate than the previous texts. More than the first written laws in the Low Countries, Baldwin's charters were probably the first attempts to codify a wide range of measures relating to justice and the questions of inheritance. In this sense, they were among the most important charters produced during Baldwin's government.⁵⁶

The appellations 'penal' and 'feudal' charters are modern but have been retained here for convenience, although these names obscure their form (technically, both are sealed chirographs) and slightly distort our immediate understanding of their content (the 'penal' charter did not deal with many punishments and the 'feudal' charter covered far more than fiefs). The count did not describe the documents in these terms. The 'penal charter' presents itself as a *'forma pacis'* and as a *'pax firma'*. The use of such designations was quite common for regulatory texts in the twelfth-century Low Countries. In 1114, for instance, the famous urban charter of privileges of the city of Valenciennes was called the 'Peace' of the town.⁵⁷ Like the German *'Landfrieden'*, the penal charter laid down rules for the maintenance of the peace and the administration of justice. Although Baldwin VI also ruled over the counties of Flanders and Namur, the laws only applied to the county of Hainaut.⁵⁸ The penal charter mainly concerned the freemen, separating the knights and their sons from the *'rustici'*. It only deals with the serfs and the *homines de advocatia* to determine who has the right to perceive the mortmain on them.⁵⁹ The law also made a distinction between the freemen. Since they are not affected by the *'lex talionis'*, and since they need no more than three witnesses to prove their innocence if a guilty person has fled, the knights and their sons enjoy a privileged position compared to the bulk of the freemen.⁶⁰ The higher-status interests of the aristocracy are therefore protected by the comital law.

The regulation of offence, retributive violence and their consequences was the main purpose of the penal charter. In order to prevent violence and vendettas, Baldwin VI introduced a wide range of measures to bring peace between two opposing families. One of the most important of these measures is probably the introduction of the practice of the *abjuratio* and *forjuratio*. By 'forjuring', the relatives of a criminal or a murderer dissociate themselves from the guilty person if he flees. The aim is to limit retributive violence.⁶¹ In return, the family of the injured or killed person cannot take its revenge on the family of the criminal.⁶² In other words, the ambition of the count's *pax* is both to protect the murderer's relatives from the revenge of the

⁵⁵ *Actes des comtes de Flandre (1071-1128)*, ed. F. Vercauteren, Bruxelles 1938, p. 125-126 (*DiBe* 226).

⁵⁶ Cauchies, *Coutume et législation (supra, n. 8)*, p. 11, note 16.

⁵⁷ P. Godding and J. Pycke, *La paix de Valenciennes de 1114. Commentaire et édition critique*, Louvain-la-Neuve 1981.

⁵⁸ For instance, the seizure of goods which referred to in the penal laws only concerns the goods located in Hainaut (Devillers, *Description analytique (supra, n. 8)*, p. 18).

⁵⁹ On the *'homines de advocatia'*, a specific kind of unfree men in Hainaut, see L. Verriest, *Le servage dans le comté de Hainaut. Les sainteurs. Le meilleur catel*, Brussels 1910, p. 266-272

⁶⁰ *'De hominibus igitur qui milites vel filii militum non fuerint, mortuum pro mortuo membrum pro membro. Filii vero militum qui usque ad vicesimum quintum etatis sue annum non fuerint facti milites, post vicesimum quintum annum tales erunt ad pacem quam rustici'* (Devillers, *Description analytique (supra, n. 8)*, p. 16).

⁶¹ Cauchies, *Coutume et législation (supra, n. 8)*, p. 13.

⁶² Devillers, *Description analytique (supra, n. 8)*, p. 16-18.

injured party and to prevent them from helping the fugitive. The penalties against the offenders of the *forjuratio* are quite severe, as the dispenser of justice could seize their properties in Hainaut.⁶³ We do not know whether these rules echoed some political tensions in the principality around 1200. It is all but impossible, as the penal regulations of the 1170s mentioned above could have been created to put an end to a feud between the noble families of Trith and Aulnois.⁶⁴

The *pax* of Baldwin VI also sheds light on other aspects of the administration of justice in Hainaut. It proposed the fines to be applied, specified the sanctions or corporal punishments to be inflicted on offenders, and defined the way in which evidence was to be obtained through oral testimony.⁶⁵ However, although the penal charter is undoubtedly very prescriptive, it only provides a few means of enforcing its provisions and does not describe detailed procedures relating to the exercise of justice and its administration. The application of the laws depended largely on the *domini*. Indeed, comital justice was not subordinate to lordly courts. The penal charter does not question the fact that the lay elite remained the main dispensers of justice in Hainaut around 1200. The lay lords were entitled to receive fines, or at least a part of them, to seize the movable goods of fugitives and were also responsible for the arrest of criminals. In fact, the count could only intervene if the territorial lords failed in their duties.⁶⁶ The significant presence of the aristocracy in the witness list of the charter is therefore easy to understand, since the *pax* could not be effective without their collaboration and explicit consent. The co-optation of the lay aristocracy could also explain why a lay lord such as the John I of Oudenaarde ordered the production of a French translation of the penal charter in the middle of the thirteenth century, a point to which we shall return.⁶⁷

The feudal charter was given the internal designation of a *declaratio legum* by Baldwin VI and was issued *ad perpetuam observationem*.⁶⁸ It predominantly discusses questions of inheritance of fiefs and allods in the county of Hainaut, although it also deals with some peripheral issues, such as the legal age of majority.⁶⁹ The text deals mainly with freemen. The status of serfs is only mentioned in one article considering their right to alienate or to enfeoff their allods with the consent of their *dominus*.⁷⁰ The feudal charter envisaged many scenarios for the inheritance of freemen. It considers the rights of under-age children, the case of the absence of a legal heir, the future of the dowry after the death of the husband, the problem of

⁶³ '[...] *post annum vero non plus redire potest quam ille qui malefactum perpetraverit, et infra annum illum dominus in cuius justitia manserit mobilia illius habebit ubicumque fuerint illa in comitatu Hainoensi*' (ibid., p. 18).

⁶⁴ *La chronique de Gislebert de Mons* (supra, n. 12), p. 106-107.

⁶⁵ Devillers, *Description analytique* (supra, n. 8), p. 16-24.

⁶⁶ '[...] *quod si ille non fecerit justiciam et vindictam dominus comes Hainoensis eam facere debet*' (ibid., p. 20).

⁶⁷ See below, 00-00.

⁶⁸ Devillers, *Description analytique* (supra, n. 8), p. 8.

⁶⁹ '*Ad legem etas hominis est quindecim annorum, femine vero duodecim*' (ibid., p. 10).

⁷⁰ The legal status of the *servi* was being discussed at the same time in at least one other comital charter (see N. Ruffini-Ronzani, *Administrer sa familia au bas Moyen Âge. Pratiques de l'écrit et dépendance en Hainaut (XIII^e-XIV^e siècles)*, in: Xavier Hermand, Jean-François Nieus, and Étienne Renard (ed.), *Décrire, inventorier, enregistrer en Seine et Rhin au Moyen Âge : formes, fonctions et usages des écrits de gestion. Actes du colloque international organisé à l'Université de Namur – FUNDP, les 8 et 9 mai 2008*, Paris 2012, p. 227-259, at p. 249-250).

the inheritance of properties acquired jointly by a couple, and many other complex issues related to the patrimony of the freemen. Much attention is paid to the rights of widows and minor children. For example, the first provision affirms the right of the daughters to inherit fiefs from their parents, provided that a father's second marriage has not produced a son.⁷¹ The charter also protects the rights of the widows against the risks of spoliation, emphasising that widows must cede the fiefs and allods of their deceased husbands to their children when they come of age.⁷² In addition, the feudal charter states that the guardianship of minors (and their property) must fall to the widow, and not to her late husband's family.⁷³ By putting these measures into writing, Baldwin VI may have been responding to a more general demand from the lay elite who were probably keen to define their inheritance rights on the eve of a crusade potentially costly in human lives.

Furthermore, the last articles of the feudal law set out the legal competences of the bailiff of Hainaut. The enforcement of these regulations seems to depend on him not on the lordly courts, as in the penal charter. This is particularly interesting as the bailiff of Hainaut is not mentioned in the penal charter. These two chirographs thus seem to operate within different enforcement structures, and it is interesting to consider why this might be. The bailiff first appears in the sources around 1172, at the very beginning of Baldwin V's government. Robert of Jemappes, a member of Baldwin's *curia* in Valenciennes, was then in charge of the office.⁷⁴ From the 1190's at the latest, the bailiff of Hainaut coexisted with some regionally based *baillivi* under his authority.⁷⁵ The feudal charter only vaguely describes the extensive responsibilities of this officer. The law affirms that he was to administer justice to all and hear all cases (except those relating to the comital possessions), as if he were the count himself.⁷⁶ Since the charter deals with the questions of inheritance, it is likely that the bailiff of Hainaut was particularly well-versed in this subject. The bailiff therefore played a key role in the administration of the principality at the turn of the twelfth and thirteenth centuries. This was

⁷¹ 'Firmatum est igitur ad legem, ut si homo tenens feodum duxerit uxorem et ex ea filiam habuerit et non filium, ipsa filia succedet patri et matri in feodis' (Devillers, *Description analytique* (supra, n. 8), p. 8).

⁷² For instance: 'Si homo et femina allodium pariter adquisierint, et decesserit homo sine proprii corporis herede, femina, quo advixerit, totum allodium tenebit; post decessum vero femine, totum allodium ad propinquos viri heredes deveniet' (ibid., p. 12). For the second point: 'Si homo moriatur antequam eius uxor, heres eius, si etatem habuerit, succedat patri statim in feodis, ita quod uxor nichil inde retinebit, nisi dotalicium et mobilia illius anni in terra cultibili, que vulgariter waignale dicitur' (ibid., p. 10).

⁷³ The guardianship falls to the late husband's family only if both parents are dead: 'Si homo et femina decesserint antequam pueri eorum etatem suam habeant, propinquior heres puerorum, qui de illa fuerit proximitate, in pueris et eorum feodis et allodiis baiulationem habebit, quousque pueri etatem suam habuerint' (ibid., p. 12).

⁷⁴ P. Gorissen, *Robert de Jemappes, premier bailli de Hainaut*, *Revue belge de philologie et d'histoire*, 30 (1952), p. 161-68.

⁷⁵ The feudal charter refers to these regional officers: 'Baiulus domini comitis Hainoensis, supra omnes alios baiulos sub testimonio hominum domini comitis constitutus [...]' (Devillers, *Description analytique* (supra, n. 8), p. 12). In 1193, a charter of Count Baldwin V for St Waudru in Mons mentions the existence of the *baiulatio* of the city of Binche (*Chartes du chapitre Sainte-Waudru de Mons* (supra, n. 20), vol. 1, p. 35-36; *DiBe*, 2184).

⁷⁶ 'Baiulus [...] iusticiam potest facere de uno homine contra alium et exercere de omnibus rebus tamquam dominus comes [...] Ipse autem baiulus de possessionibus et tenuris et hereditate domini comitis placitare non potest, quod comes per illius iusticiam vel manu tenementum perdere possit' (Devillers, *Description analytique* (supra, n. 8), p. 12).

particularly true after the departure of Baldwin VI to the East, when William the Uncle was appointed to the position and assisted the countess in the administration of the principality.⁷⁷

The feudal charter is particularly interesting from a political point of view. Apart from the protection of the elite's inheritance rights, the immediate reasons for its production may lie in the political context. Is it indeed a coincidence that some of its articles anticipated what happened in the Orient after the death of the count? Probably not. Baldwin VI, his close advisers, and the experts in feudal law who were present in his entourage⁷⁸ plausibly anticipated the risks of the count's crusading expedition by safeguarding the interests of the prince's wife and daughters. Inheritance by women existed in Lotharingia and, for that matter, in Flanders since the eleventh century, but, in Hainaut at least, it was not looked in a favourable light.⁷⁹ By putting the 'feudal' laws in writing, the count protected his young heirs from the possible claims of his relatives, especially his younger brothers. In fact, although Philip the Noble, the marquis of Namur, frequently appears in the witness lists of Baldwin's charters, the relationship between the two brothers does not seem to have been as good as it has sometimes been described.⁸⁰ There may have been some tension between them. As Michel de Waha has demonstrated, Baldwin VI never hesitated to sacrifice Philip's political interests to his own benefit in the context of his rivalry with Philip Augustus.⁸¹ In July 1199, when Philip the Noble was the prisoner of the French king, Baldwin concluded the Treaty of Dinant with Count Thibaut I of Bar, by which he gave him a large part of the county of Namur located on the right bank of the Meuse, a deal done initially without any provision of compensation for Philip's loss.⁸² Baldwin was looking for new allies after the death of King Richard I the Lionheart. The county of Namur, which Philip held in liege homage to his brother, was probably regarded as an unimportant and peripheral county in Baldwin's eyes. It is also worth noting that Philip did not become involved in the internal political affairs of Hainaut and Flanders until 1206. Moreover, as Baldwin VI had decided before his departure, the most important decisions and offices were exercised not only by the relatives of the counts, but also—and above all—by a number of administrators appointed by the prince and designated

⁷⁷ Dereck, *Guillaume l'Oncle* (*supra*, n. 14), p. 50-54. On the political role of the countesses of Hainaut, see E. Santinelli, *Être comtesse de Hainaut aux XI^e-XII^e siècles*, in: Marie-Geneviève Grossel, Jean-Pierre Martin, Ludovic Nys, Muriel Ott, and François Suard (ed.), *Un clers ait dit que chanson en ferait*. Mélanges de langue, d'histoire et de littérature offerts à Jean-Charles Herbin, Valenciennes 2019, p. 719-739.

⁷⁸ Some 'semi-professional specialists of feudal law' were present at the court of Flanders since the middle of the twelfth century, according to D. Heirbaut, *Feudalism in the Twelfth-Century Charters of the Low Countries*, in J. Dendorfer (ed.), *Das Lehnswesen im Hochmittelalter: Forschungskonstrukte – Quellenbefunde – Deutungsrelevanz*, Ostfildern 2010, p. 217-54, at p. 225-6, who gives a full bibliography on the topic.

⁷⁹ F.-L. Ganshof, *Qu'est-ce que la féodalité?*, 5th ed., Paris 2015, p. 232-234; Heirbaut, *Feudalism in the Twelfth-Century Charters* (*supra*, n. 78), p. 230.

⁸⁰ *Actes de Philippe I^{er}, dit le Noble* (*supra*, n. 28), p. 28-31.

⁸¹ M. de Waha, *La marche impériale de Namur-Luxembourg. Vicissitudes d'un concept géo-politique de 1150 à 1300*, in M. Margue (ed.), *Ermesinde et l'affranchissement de la ville de Luxembourg: Études sur la femme, le pouvoir et la ville au XIII^e siècle*, Luxembourg 1994, p. 91-159, at p. 134-138. I am grateful to Michel de Waha for having shared his thoughts with me. His comments have led me to reconsider my positions on the relationship between Baldwin VI, Philip the Noble, and Gislebert of Mons. About Philip the Noble, see also Heirbaut, *On and Over the Edge of the Empire* (*supra*, n. 40), p. 433.

⁸² *Actes de Philippe I^{er}, dit le Noble* (*supra*, n. 28), p. 13-17. Nevertheless, it is likely that Baldwin eventually compensated Philip for his loss, for some *conventiones* were made between them. Unfortunately, their contents are unknown (*ibid.*, p. 172).

by him as his authorised representatives. During the count's absence, these principalities were administered by Mary of Champagne, Baldwin's spouse, in collaboration with the bailiffs, i.e. William the Uncle in Hainaut and, for the most part, Gerard of Alsace in Flanders.⁸³ Only diplomatic relations seem to have remained entirely in the hands of the comital family. As the *custos* of his brother's possessions, Philip was only responsible for the foreign policy of the principalities, a field in which his interventions were judged to be anything but successful.⁸⁴

The tensions within the comital family may also explain why Gislebert—who was probably a close friend of Philip—transferred some of his activities to Namur after being replaced by Gerard of Alsace at the head of the chancery of Hainaut. Gislebert considered Philip to be the true heir of his father, Baldwin V.⁸⁵ From his arrival in Namur, he tried to legitimise Philip's authority over the county of Namur, by means of some historical arguments recorded in the genealogical notes written on the back of the aforementioned charter of 1198.⁸⁶ Moreover, it is likely that, until 1212, Gislebert managed Philip's chancery, which was located in St Peter at the Castle, where he had been *custos* since 1195 at the latest.⁸⁷ The continued good relationship between Philip and Gislebert is therefore an additional argument in favour of Gislebert not being the author of the penal and feudal charters.

The reception of the feudal and penal laws: some preliminary thoughts

The penal and feudal charters were written in the form of chirographs. One part of the documents was kept in the comital archive in Mons. We do not know who received the second part of the parchment. It is likely that St John's chapter in Valenciennes, which was closely associated with the comital power, held one part of the chirograph or, at least, a copy of the texts. Indeed, copies of important documents were kept in St John, such as the *Ministeria curie Hanonie*, a roll that defined the functions of the domestic officers of the courts in Mons and in Valenciennes.⁸⁸

⁸³ B. Hendrickx, *Het regentschap over Vlaanderen en Henegouwen na het vertrek van Boudewijn IX (VI) op kruisvaart (1202-1211)*, *Revue belge de philologie et d'histoire*, 48 (1970), p. 377-393; Dereck, *Guillaume l'Oncle. Rôle politique, fortune et descendance* (*supra*, n. 14), p. 50-54. It must be said that both were related to Baldwin VI, as William and Gerard were the illegitimate sons of Counts Baldwin IV and Thierry of Alsace respectively.

⁸⁴ *Actes de Philippe I^{er}, dit le Noble* (*supra*, n. 28), p. 18-19.

⁸⁵ De Waha, *La marche impériale* (*supra*, n. 81), p. 154.

⁸⁶ Namur, State Archives, *Ecclesiastical archives*, p. 792; *Relatio de infeodatione comitatus Namucensis*, ed. Wilhelm Arndt, in *Monumenta Germaniae Historica: Scriptores*, vol. 21, Hannover 1869, p. 610-611.

⁸⁷ Dehove and Nieuw, *Aux origins* (*supra*, n. 34), p. 113-116 and p. 122, no. 6. A charter of Count Louis II of Looz indicates that Gislebert was on Philip's side when the latter concluded a peace treaty with William of Frisia in 1204. Until 1263 at least, this important document was kept in Namur—and not in Hainaut neither in Flanders—, where Gislebert was chancellor. The document was later transferred in the Flemish archives (Departmental Archives in Lille, *Chamber of Accounts*, B 222/261 [*DiBe*, 13620]). Many thanks to Jean-François Nieuw for his expertise on the subsequent history of this document.

⁸⁸ After Philip's death in 1212, Gislebert was in service of Countess Joan of Hainaut, Baldwin's eldest daughter, and her husband. At the beginning of their government, the new political rulers asked him to produce the *Ministeria curie Hanonie*. This roll is now lost, due to the burning of the State Archives in Mons in 1940.

The feudal and penal laws were widely copied in Hainaut during the Middle Ages and the early modern period. The *Diplomata Belgica* database—which provides information about the approximately 35,000 surviving charters written in the Low Countries before 1250—indicates that no less than seven copies of the feudal charter and ten copies of the penal charter still existed. This inventory is incomplete. Other copies have been discovered but not studied and we cannot discount the possibility that more will be discovered in libraries and archives in Belgium, France and the Netherlands.⁸⁹ The copies that have been identified allow us to study the transmission and the reception of the laws, although space does not permit more than a rough outline.

The Latin copies are undoubtedly the most numerous. Most of them are medieval or early modern cartulary copies made in Hainaut, sometimes at the comital court or by clerks working in the comital administration. For instance, a late thirteenth-century copy was included into a cartulary of the counts of Hainaut which is now in Valenciennes.⁹⁰ These copies have never been studied. Even if it can be assumed that the copies made in the chancery of Hainaut were directly based on the original charter, this is not the case for all of them. We do not know which document was the exemplar of the thirteenth-century copies made at the Cistercian abbey of Cambron and at the cathedral chapter of Tournai, for example.⁹¹ It is not clear how these institutions knew of the content of the laws but it can be assumed that some copies of the laws circulated in Hainaut and in the neighbouring principalities on multiple occasions after their promulgation.⁹² Indeed, the diffusion of the penal and feudal charters was indeed a necessary condition for their enforcement.

However, the most interesting copies of the penal and feudal laws are the translated ones. Indeed, it seems that the laws were quickly translated into French, that is, in the language which was used by the count and his aristocracy during the discussions that preceded their enactment. It is possible that some of the witnesses mentioned in the charters had made a translation of the laws.⁹³ The oldest surviving French translation appears in the illuminated cartulary of Oudenaarde. As it is often the case with copies of the laws of Baldwin VI, the charters were

Fortunately, it has been published by *La chronique de Gislebert de Mons* (*supra*, n. 12), p. 333-343. A local *cancellaria* existed in Valenciennes from the turn of the twelfth and thirteenth centuries, as it has been demonstrated by De Paermentier, *La chancellerie comtale* (*supra*, n. 31), p. 283-284.

⁸⁹ Els De Paermentier and Thomas Brunner —whom I thank— have informed me of the existence of two previously unknown medieval copies of the laws. The first one is now in The Hague, Royal Archives, 73 E 14, fo. 1r-v (*ca* 1250, abbey of Cambron, Latin copy), and the second in the Municipal Archives of Douai, AA 90, fos 76r-78r (*ca* 1275, city of Douai, French copy).

⁹⁰ Municipal Library of Valenciennes, ms. 784, fos 7r-11v and 219r-221r. On fos 256v-257v, this manuscript also contains an (incomplete) French translation of the penal charter, which I have not yet had the opportunity to analyse in detail. On these French translations, see below.

⁹¹ The Hague, Royal Archives, 73 E 14, fo. 1r-v; Tournai, Cathedral Archive, Cartulary D, fos 314r-316r.

⁹² We do not know whether the practice was widespread at the turn of the twelfth and the thirteenth centuries, but the princely administration of Hainaut often distributed the legislative texts in the form of paper copies or *vidimus* during the fifteenth century (J.-M. Cauchies, *La législation princière pour le comté de Hainaut. Ducs de Bourgogne et premiers Habsbourg (1427-1506). Contribution à l'étude des rapports entre gouvernants et gouvernés dans les Pays-Bas à l'aube des Temps Modernes*, Brussels 1982, p. 186-188).

⁹³ I do not believe that an “official” French translation of the penal and feudal charters was made by the chancery of Hainaut, because the French translations which circulated in Hainaut and in Flanders during the Middle Ages were different from each other. Further research should confirm these first impressions.

written at the beginning of the manuscript. This cartulary was composed towards 1261 for John I of Oudenaarde († 1293/1294) by a first-rank clerk and administrator known as *maistre Quentin*.⁹⁴ Arnulf IV († 1242), John's father, was a close ally of Count Baldwin VI and was present in Mons in July 1200, appearing in the witness-lists of both charters.⁹⁵ Arnulf and, perhaps, some of the more prominent lay lords appearing in the documents may have ordered the writing of a translation of the laws only a short while after their enactment.⁹⁶ After all, the rules laid down by Baldwin VI were also useful to them in the exercise of their authority and, indeed, the enforcement of those rules in the penal charter depended to a large extent on the cooperation of those present. There is evidence that the penal and feudal laws were important to John. They are transcribed at the very beginning of the manuscript with three charters of privileges, including a French translation of the municipal charter of Tournai issued by Philip Augustus in 1188.⁹⁷ The translated copy of the penal charter is preceded by miniature depicting the promulgation of the penal law by a man who could be Baldwin VI (see Image 3).⁹⁸ In addition, thirteen notes (always the abbreviation for *nota*) written in the margins by Quentin indicate that some passages were particularly of interest to John I and his entourage. Five of them relate to the penal charter and mainly to the jurisdiction of territorial lords. They refer to a lord's ability to administer justice to fugitives arrested in his lands and, also, to his ability to confiscate the movables of the fugitive criminals. Eight *notae* appear in the text of the feudal law: two relate to the higher competences of the bailiff of Hainaut, one to the age of majority, and the other five to the definition of the rights of the collaterals on the property of relatives who died without a legitimate heir. Were these late notes related to a conflict over inheritance that John experienced in the early 1260s? The question cannot be answered but we know that Giles, John's brother, died without an heir around 1250.⁹⁹ The notes may refer to his inheritance, about which we have no information. Nevertheless, the French translations of the cartulary of Oudenaarde prove that, in Hainaut at least, the lay aristocracy had some interest in the precise content of the feudal and penal laws.

⁹⁴ Lille, Departmental Archives, *Chamber of Accounts*, B 1570, fos 2r-3r (*Cest li pais de le loi que Bauduin cuens de Flandres et de Haynau dona*) and fos 3r-4r (*Cest le pais des iretages partir en Haynau que li cuens devant dis dona*). On the cartulary of Oudenaarde, see J.F. Nieuw, *Les quatre travaux de maître Quentin (...1250-1276...): cartulaires de Picquigny et d'Audenarde, Veil rentier d'Audenarde et Terrier l'évêque de Cambrai. Des écrits d'exception pour un clerc seigneurial hors normes ?*, *Journal des savants*, no volume numbering (2012), p. 69-119, at p. 82-90.

⁹⁵ For a genealogy of the lords of Oudenaarde, see E. Warlop, *The Flemish nobility before 1300*, vol. 2, Kortrijk, 1976, p. 1031-1042, whose position is not totally shared by R. Moens, *De legato domini Arnulphi de Audenarde. De testamenten van Arnulf IV van Oudenaarde (1242), Handelingen van de geschied- en oudheidkundige kring van Oudenaarde*, 50 (2013), p. 149-200.

⁹⁶ Another evidence suggests that this was the case. A translation of the penal and feudal charters very similar to that of Oudenaarde can be found in another lay cartulary of Hainaut, that of the seigneurie of Quiévrain (thirteenth century), which is still poorly studied. See Mons, State Archives, *Cartulaires*, 113, fos 66r-70v. It would be particularly interesting to compare the French translations of these charters, in order to determine whether they are based on a common model or whether they were written independently of each other.

⁹⁷ Departmental Archives in Lille, *Chamber of Accounts*, B 1570, fos 4r-6r. The Latin charter of privileges has been published in *Recueil des actes de Philippe Auguste, roi de France*, ed. Henri-François Delaborde, vol. 1, Paris 1916, p. 268-274. I am not able to determine if the translations of Baldwin's laws and Philip Augustus' charter of privileges were both made by Master Quentin.

⁹⁸ The identification is uncertain, as the character giving the charter is not identified by his coat of arms.

⁹⁹ Moens, *De legato domini Arnulphi* (*supra*, n. 95), p. 152-153.

Image 3: The enactment of the penal law of Hainaut in the cartulary of Oudenaarde
(Departmental Archives in Lille, *Chamber of Accounts*, B 1570, f.2r).

The urban elites probably shared this interest in Baldwin VI's regulations with the aristocracy. In Douai, a French translation of the penal law was copied in a cartulary around 1275.¹⁰⁰ Three witnesses originating from the city were quoted in the chirograph of 1200.¹⁰¹ It cannot be excluded that a copy of the penal charter came to Douai through them. A quick comparison reveals that this translation is not the same as the one in the cartulary of Oudenaarde. Of course, they have something in common but the written forms and the turns of phrase are to some extent different. While the Oudenaarde translation is literal and very close to the Latin text, the Douai translation is less slavish and does not contain the long witness list of the original charter. In fact, the Douai translation is more practical because the scribe divided the text into articles, which does not occur in the original chirographs which are written in continuous prose. Further investigations may reveal whether the penal laws of Hainaut were enforced in Douai during the thirteenth-century. At that time, Douai was a rich and commercial city specializing in the clothing industry. The town was under the authority of the counts of Flanders but was located on the border with the county of Hainaut. In this context, the tradesmen of Douai were probably interested in the laws of the neighbouring county. It is certain, indeed, that some normative texts were publicly read in front of the merchants of the town.¹⁰² Furthermore, some articles of Baldwin VI's penal laws might have inspired the urban authorities to draw up their own legislation.

In the late Middle Ages, it became common to divide the text of the charters into articles. This is the case, for instance, in a 400-folio manuscript known as the *Carta Maria*, which was probably made in the second half of the fifteenth century by a clerk or a lawyer working at the Sovereign Council of Hainaut, the main judicial institution in the county during the Burgundian era.¹⁰³ This translation differs slightly from the texts written in the cartularies of Oudenaarde and Douai, which confirms that an official French version of the laws did not exist in the Middle Ages or, if it did, it circulated alongside other versions. The manuscript is a compilation of the comital legislation since the promulgation of the laws of Baldwin VI. According to Jean-Marie Cauchies, the manuscript was widely used by lawyers in the early modern period.¹⁰⁴ The *Carta Maria* thus shows therefore that there was still a strong interest in the feudal and penal laws several centuries after their promulgation, which is not surprising since they formed the basis of the legislation in Hainaut. This impression is confirmed by the fact that some later

¹⁰⁰ Municipal Archives of Douai, AA 90, fos 76r-78r. On this cartulary, see Thomas Brunner, *Douai, une ville dans la révolution de l'écrit du XIII^e siècle*, Strasbourg, 2014, p. 158 and 177 particularly (University of Strasbourg, Unpublished doctoral dissertation).

¹⁰¹ [...] *Gerardus prepositus Duacensis; Walterus castellanus Duacensis; Petrus de Duaco* [...] (Devillers, *Description analytique* (*supra*, n. 8), p. 22).

¹⁰² Brunner, *Douai*, p. 852-853.

¹⁰³ State Archives in Mons, *Cartularies*, 22, fo. 1r-9v.

¹⁰⁴ Cauchies, *La législation princière*, p. 34.

copies of the texts report various amendments of the laws, as it appears in an eighteenth-century law book which discusses the question of birthright, an issue which was not clearly evoked in the feudal charter.¹⁰⁵

In this context, it is likely that the feudal and penal laws were widely disseminated in medieval Hainaut. Moreover, these texts remained an essential reference for the princes for several decades after they were issued. On 3 July 1346, for instance, Countess Margaret II of Avesnes († 1356), who had recently succeeded her elder brother William II as head of the principality, issued a charter at the request of the Estates in order to guarantee the respect for the ‘good and ancient customs of Hainaut’. This document focused on issues of justice. The first article stipulates that the ‘charter of Hainaut’, which is undoubtedly the penal charter, must be respected throughout the county.¹⁰⁶ The last article, which refers to the case of the crimes committed by knights or young knights under the age of twenty-five, makes a more explicit reference to the penal charter, describing it as the ‘old charter of Hainaut mentioning the form of the peace on that point’, a direct translation of the Latin *forma pacis*, the internal description of the text found in the original charter.¹⁰⁷ There are even more references to these laws in a document putted in writing in 1323 and today known as the *Customs of Hainaut*. Some of the articles dealing with the administration of justice are clearly modelled on the penal law, which is explicitly mentioned as a source of the normative text.¹⁰⁸ Furthermore, one article states that the customs that contradict to the penal charter are not to be followed.¹⁰⁹ It was therefore clear to the scribes of the fourteenth and fifteenth centuries princely administration that the laws promulgated by Baldwin VI in 1200 formed one of the main basis of the legislation in the county. However, it was recognised that some provisions of the laws were not always enforced on the ground.¹¹⁰

Conclusion

Sometimes inaccurately described as the oldest written laws in the Low Countries, the penal and feudal charters of Hainaut were enacted by Count Baldwin VI at the castle of Mons in July 1200, only a few months after he had taken the cross. It has been argued here that they were

¹⁰⁵ Mons, State Archives, *Cartularies*, 21, fos 1r-9r, 13r-15r.

¹⁰⁶ C. Faider, *Coutumes du pays et comté de Hainaut*, vol. 1, Brussels 1871, p. 30.

¹⁰⁷ ‘Cest assavoir que par le point de l’anchienne chartre de Haynnau faisant mencion de le fourme de la pais en iceli point [...]’ (ibid., p. 37).

¹⁰⁸ See, for instance, article 18: ‘Item, est-il par point de chartre [...]’ (ibid., p. 22).

¹⁰⁹ ‘Item, est-il de coustume en ledite comté que tout usage et tout maniemment qui ont esté fait contre les poins de le chartre sont et doivent estre de nulle valeur a tousjours. Se li cas si offroit, convient-il que on repaire as poins de le chartre et que li chartre soit tousjours tenue de point empoint’ (ibid., p. 23).

¹¹⁰ Contradictions existed during the fifteenth-century between the penal law and some local customs, such as those found in the recording of customs of the village of Maroilles, written in 1335 and updated in 1441. There, a man circulating with a knife without necessity must be condemned to a fine of 40 pennies, whereas the penal law prescribed a fine of 60 pennies (compare Devillers, *Description analytique* (*supra*, n. 8), p. 20, to *Corpus des records de coutumes et des lois de chefs-lieux de l’ancien comté de Hainaut*, ed. L. Verriest, Mons-Frameries 1946, p. 30).

neither written nor prepared by Gislebert of Mons, contrary to what has been claimed since Gabriel Wymans' work of 1979. In fact, around 1200, the former chancellor of Hainaut was in the service of the marquis of Namur Philip the Noble, whom he regarded as the most valuable political heir of the former count of Hainaut. With the promulgation of these legal texts, Baldwin VI provided his principality with an embryonic legal framework in the crucial areas of property law and justice. In addition to the creation of the chancery and the institution of the bailiff under Baldwin V's government, the feudal and penal charters also reveal something about the nature of the state in Hainaut at the turn of the twelfth and thirteenth centuries.

The two charters did not deal with the same subject, but, to some extent, both deal with the relationship between the prince and his lay elites. We can assume that the count and the aristocracy collaborated closely in the making of the laws, which is confirmed not only by the textual and visual emphasis on consent but also by the content of the charters themselves. The aim of Baldwin's *pax* was to regulate bloody feuds by establishing rules by which two parties in conflict could come to peace. The law did not give the prince the monopoly on the administration of justice in Hainaut: the cooperation of the aristocracy was probably a necessary condition for the maintenance of order in the country, and the charter thus appealed to their authority. The enforcement of the rules, which is not explicitly mentioned in the text, still rested with the lordly courts. At first sight, the feudal charter did not imply such a strong collaboration with the lordly power, since Baldwin VI established the bailiff of Hainaut as the supreme authority for the adjudication of inheritance disputes. Nevertheless, the feudal law may have been promulgated to clarify the customary rules of inheritance of fiefs and allods and, thus, to protect the interests of the lay elites on the eve of the Fourth Crusade. In this context, it is not surprising that the whole aristocracy witnessed the charters. The power and the authority of the lords was seen as the symbolic key to the promulgation of both charters. In other words, the aristocracy was strongly integrated into the mechanisms of government in Hainaut around 1200. This does not mean, however, that the charters were not political documents serving the needs of the aristocracy rather than the count. Indeed, it has been suggested here that the rules laid down in the feudal charter may have also been a response to specific issues in the early years of Baldwin VI's government. It has been hypothesised here that Baldwin VI used these laws as a political tool to protect the interests of his minor daughters against the risk of depredation.

There is no doubt that the feudal and penal charters formed the basis of the legislation in Hainaut. The numerous Latin and French copies of the documents indicate that there was a strong interest in Baldwin VI's legislation, even among the lay nobility and in the urban centres. However, it remains to be seen what the concrete impact of the feudal and penal laws had. How were they enforced on the ground? Was there a gap between the written laws — which did not constitute the bulk of the legal environment in Hainaut — and the practice? Did they inspire some regulations in the neighbouring counties and cities? Conversely, what were the models that inspired them? These important questions remain to be answered.