

# **RULE OF LAW**

## **Cases, Strategies, and Interpretations**

Edited by Barbara Faedda

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## *Tandem tandem iustitia obtinet* Images, Law, and the Criminal Body during the Revolt of the Netherlands

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Pieter Bruegel the Elder's great painting of *The Triumph of Death* of around 1562–1563 (fig. 1) and to a lesser extent that of *The Road to Calvary* of 1564 show an unparalleled multiplicity and variety of scenes of death and capital punishment.<sup>1</sup> Arrayed along the horizon or off in the distance are the many scaffolds, crosses, and elevated wheels on which the bodies of the condemned have been left to be picked on by vultures. These are works of art that are usually taken to allude to the terrible punishments meted out against the predominantly Protestant heretics and rebels for infringing one or the other of the stringent Placards of Charles V (who abdicated in 1555, thereby relinquishing his sovereignty over the Netherlands) and the severe edicts of Philip II of Spain and his regents Mary of Hungary and Margaret of Parma. It was to them that the task fell of trying to keep some semblance of good order—*goede ordonnantie* would have been the appropriate term at the time—in the period immediately preceding the outbreak of the Revolt of the Netherlands in 1566.

That great uprising was precipitated by the wave of iconoclastic disorder that swept over the country from deep south-western Flanders all the way up to once-calm Friesland in the North—with its climacteric in Antwerp on the night of

This essay was first presented in a slightly different form, entitled “Embodiment and the Law: The Sixteenth Century Example,” at the conference *Imago, Actio, Iustitia: Images, Bodies and the Actions of the Law*, organized by Carolin Behrmann and Philipp Ruch at the Humboldt University and the ICI in Berlin and then again at the Italian Academy in December 2011. A further version was given as the Munich History Lecture at the Ludwig-Maximilians-Universität in 2014. Since then the important articles by David Ragazzoni, “De quaestione sive tortura’ nella *Praxis Criminalium* di Damhouder: Coscienza, giustizia e diritto nel Cinquecento Europeo,” *Archivio di storia della*

*cultura* 26 (2013): 25–46, and Jos Monballyu, “Joos de Damhouder, an Internationally Influential Jurist from Bruges,” in *The Art of Law*, ed. Stefan Huygebaert et al. (Tielt, Bel.: Lannoo, 2016), have appeared and usefully supplement the present essay. I am grateful to Matthew Peebles, NOMIS Foundation Fellow at the Italian Academy, for his ever-constructive help in bringing it to its current form.

1. *The Triumph of Death*, Madrid, Prado (inv. no. P001393), 117 × 162 cm, 1562–1563; *The Road to Calvary*, Vienna, Kunsthistorisches Museum (Gemäldegalerie, inv. no. 1025), 124.3 × 170.6 cm, 1564.



1. Pieter Bruegel the Elder, *The Triumph of Death* (detail), 1562–1563. Oil on wood, 117 × 162 cm. Museo del Prado, Madrid.

August 21–22 of that fateful year. Images were attacked with unprecedented fury, as if they were embodied and living beings, not just pieces of dead wood and stone, as Martin Luther and many other Reformers insisted.<sup>2</sup> In the following pages I want to set out one of the most critical stages in the complex interactions among embodiment, law, and the proliferation and multiplication of images at a crucial moment in early modern history. Although the examples I outline will at first seem most relevant to criminal law, their implications for the rule of law and the history of human rights will emerge. They help us grasp both the centrality and the nuances of embodiment in the execution of law and punishment. At the same time they illuminate many issues regarding images, punishment, and the rule of law in the wake of the Iraq War and the campaigns of ISIL and suggest new ways of considering the role of digital media in the complex relationship between law and assaults on the body.

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Shortly before Bruegel painted his *Triumph of Death* (fig. 1), he delivered a set of drawings of *The Seven Virtues* to the already famous print publisher Hieronymus Cock, who had them engraved by Philips Galle and published them in 1559–1560.<sup>3</sup> There has been considerable discussion about whether the subjects of this series are to be taken at face value—in other words, whether *Faith* really shows the good Catholic Faith (only three sacraments are highlighted, Word seems to be emphasized over Faith, and the bulk of the congregation turns their backs on the personification of Faith in order to hear the sermon, all of which give a distinctly Protestant flavor to the scene); whether *Hope* really represents the triumph of hope or it ironizes that virtue in the face of the scenes of utter hopelessness around her; whether *Prudence* shows excessive and exaggerated demonstrations of the conservation and saving of one's resources; and whether *Temperance* actu-

2. See David Freedberg, "Art and Iconoclasm, 1525–1580: The Case of the Northern Netherlands," in *Kunst voor de beeldenstorm: Noordnederlandse kunst 1525–1580*, ed. J. P. Filedt Kok, W. Halsema-Kubes, and W. Th. Kloek (Amsterdam: Rijksmuseum, 1986), 39–84.

3. Nadine Orenstein and Manfred Sellink, *Pieter Bruegel the Elder, The New Hollstein Dutch & Flemish Etchings, Engravings and Woodcuts 1450–1700* (Rotterdam: Sound & Vision Interactive in cooperation with the Rijksprentenkabinet, Rijksmuseum Amsterdam, 2006), nos. 13–19 (pp. 32–45).

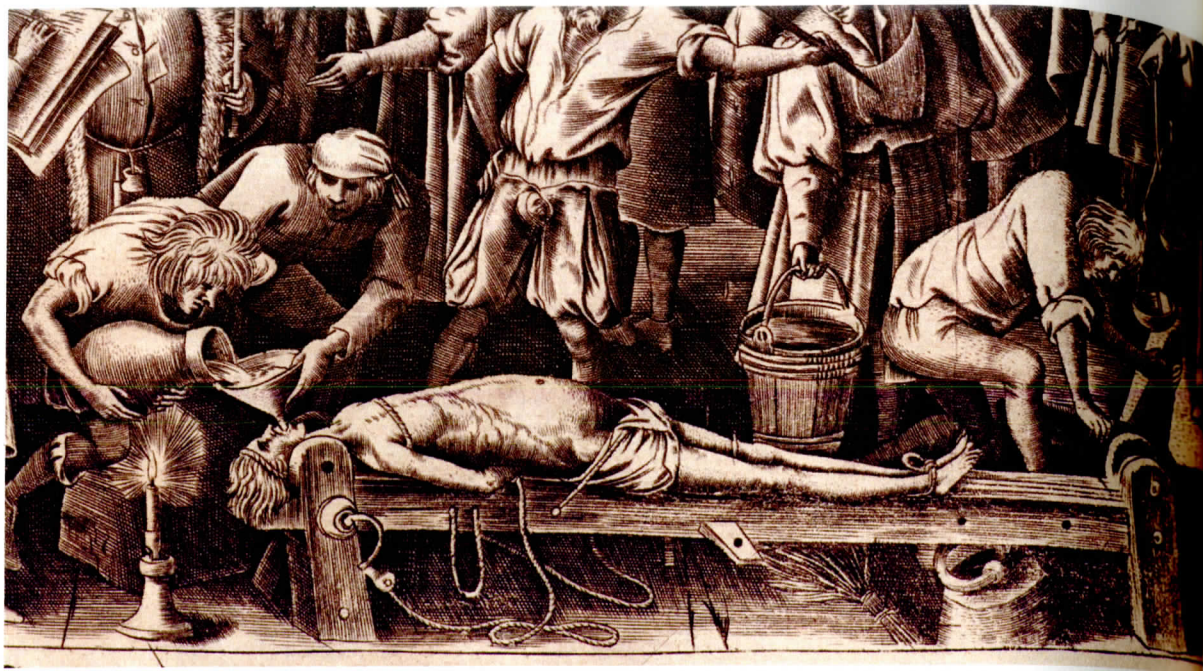


2. Pieter Bruegel the Elder, *Justice*, from *The Seven Virtues*, 1559–1560. Engraving by Philips Galle and published by Hieronymus Cock, 22.5 × 29 cm. The Metropolitan Museum of Art, New York.

ally shows scenes of *intemperance* all around it (like the vain attempts to measure the moon, the gambling, gaming, and so on) or it is all by contrast that *Temperance* is shown to be the virtue that overcomes all. The question, in other words, may well be that of whether these scenes simply exemplify the *opposite* of what they are supposed to embody.

Nowhere in this series is this issue more challenging than in the engraving of *Justice* (*Iustitia*) (fig. 2).<sup>4</sup> As is only to be expected, she is shown blindfolded, with sword and scales in hand.<sup>5</sup> Behind and above her are a line of crosses, wheels, scaffolds, and a very public burning at the stake up on the horizon, all not so dissimilar to those in the two paintings just

4. Orenstein and Sellink, *Pieter Bruegel the Elder*, no. 16 (p. 33). Illustrated print: New York, Metropolitan Museum of Art (inv. no. 28.4[29]), 22.5 × 29 cm (plate), 1559–1560.



3. Detail of fig. 2.

mentioned. Below them, Bruegel represented what looks like an all-too-plausible catalogue of actual forms and procedures of punishments, and the judges, clerks, witnesses, scribes, and even prison officials that attend the execution of justice. But is this really justice when all it shows is punishment? One has only to move one's eyes from top to bottom, from the serrated ranks of gallows, wheels, and burning, through the *estrade*, and down to the dreadful water torture below (fig. 3), or from side to side, with the execution and flogging scenes on the left and the dragging of the poor criminal out from prison, presumably to torture him, on the right. And then there's the clerk who calmly takes notes on the confession being extracted from the man on the bench of torture below.

The more one looks, as so often with Bruegel, the more one sees. Amid all the punishment here, the judge is almost lost, seated behind the allegorical figure of *Iustitia* herself. It is a truly vengeful scene, from which the actual judges—and justice itself—seem to have disappeared: Was justice really understood in 1559 in Flanders so exclusively in terms of punishment of the body? Of course one could say that this was pretty typical of the time—after all, this was the year of

the imposition of the Spanish Inquisition in Flanders, the introduction of ever more severe civil and ecclesiastical discipline, the even stricter application of the Placards of Charles V by Philip II, and the arrival of his regent in the Netherlands, Margaret of Parma. But even so, was this how Bruegel himself thought of justice—as vengeful and remorselessly body-oriented? And did he share the view expressed by the inscription on the print (presumably not chosen by him) saying that “the aim of the law is either to improve him who is punished, or that the punishment make others better, or that once the evil is removed, the rest of us live more safely?”<sup>6</sup>

Is this *really* what Bruegel thought of as the aim of law—to punish and to purge in order to make the rest of us safer—or was he here ironizing the deep blindness of justice by focusing on punishment alone? Or was he suggesting that justice, in her blindness, stands above all these scenes of the injustice of the law, just as in the case of the images of *Faith, Hope, Prudence, and Temperance*? Even if we read these works as showing the ways in which the dominating allegorical figures represent the *overcoming* of the scenes around them, the problem self-evidently persists here too: that the central figure, in this case Justice, represents (at least to us) the very antithesis of what goes on around her.

Could this hypothesis also apply to *The Road to Calvary* and *The Triumph of Death*? Certainly *The Road to Calvary* shows the instruments of punishment, whether in highlight or in doom-laden darkness, but the parallels with Golgotha and the emphasis on the horrors of execution are clear and consistent with what we know about Bruegel's close personal association with some of the great ecumenical and irenic figures of the time, like the printer and publisher Christopher Plantin and the geographer Abraham Ortelius. Keenly aware of the human and penal costs of sectarianism, both men seem to have chosen to dissimulate their true beliefs un-

5. In addition to Judith Resnik and Dennis Curtis, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (New Haven, CT: Yale University Press, 2011), for a substantial contemporary American treatment of this subject, see also the two splendid compilations edited by Stefan Huygebaert et al., *The Art of Law: Three Centuries of Justice Depicted* (Tiel, Bel.: Lannoo, 2016; published in conjunction with an exhibition of the same title, Groeninge-

museum, Bruges, October 2016–February 2017), and *The Art of Law: Artistic Representations and Iconography of Law and Justice in Context from the Middle Ages to the First World War* (Berlin: Springer, 2018).

6. *SCOPUS LEGIS EST AUT EUM, QUEM PUNIT EMENDET, AUT POENA EIUS CAETEROS MELIORES REDDIT AUT SUBLATIS MALIS CAETERI SECURIORES VIVANT.*

der the guise of being practicing Catholics. Instead, they seem to have cultivated a certain indifference to both Catholic and Protestant doctrine, and there is now a considerable amount of evidence to suggest that they were sympathetic to some of the more idiosyncratic yet pacific and ecumenical Protestant sects of the time, like the Family of Love.<sup>7</sup> Their indifference to settled doctrine masked a deep commitment to conciliation between conflicting theological positions and religious affiliations.<sup>8</sup>

The ambiguities of *The Seven Virtues* may be taken as catering to such an audience, as much as to more conventional ones, and we can probably assume that the degree of doubt about their true meaning and the space thus left for then very different interpretations were intentional. Bruegel's image of *Justice* has never yet been understood in this context of purposefully irenic ambiguity. This is a longer story for another occasion, but the question that has not been asked—and yet has considerable relevance for all these issues—is that of its principal sources. Are the vignettes of justice and its execution in Bruegel's print all inventions of his own, or do they come from somewhere else? How much did he actually know about law and its images?

One of the most frequently published of the many treatises on criminal law of the sixteenth century was Joos de Damhouder's *Practycke ende handbouck in criminele zaeken*, perhaps more widely known by its Latin title *Praxis rerum criminalium*. It had a complicated publication history. Initially written in Flemish in 1550–1551, it was first published in Latin in Antwerp in 1554, and in French in Louvain the same year.<sup>9</sup> In 1555 a rather splendid Latin edition appeared in Venice, and a more modest one in Flemish in both Louvain

7. The bibliography is now very rich. See, for example, René Boumans, "The Religious Views of Abraham Ortelius," *Journal of the Warburg and Courtauld Institutes* 17, no. 3/4 (1954): 374–77; Colin Clair, *Christopher Plantin* (London: Cassell, 1960); J. A. van Dorsten, *The Radical Arts: First Decade of an Elizabethan Renaissance* (Leiden: University Press, 1970); Alistair Hamilton, *The Family of Love* (Cambridge: James Clarke, 1981); and so on. For more recent arguments against any direct affiliation with the Familism of Hendrik Niclaes, see Paul Valkema Blouw, "Was Plantin a Member of the Family of Love? Notes on His Dealings with Hendrik Niclaes," *Quaerendo* 23 (1993): 3–23; Jason Harris, "The Religious Position of Abraham

Ortelius," in *The Low Countries at the Crossroads of Religious Beliefs*, ed. Arie-Jan Gelderblom, Jan L. de Jong, and Marc Van Vaeck (Leiden: Brill, 2004), 89–139.

8. See also Carlo Ginzburg's now classic *Il nicodemismo: Simulazione e dissimulazione religiosa nell'Europa del '500* (Turin: Einaudi, 1970).

9. Joos de Damhouder, *Praxis rerum criminalium* ... (Antwerp: Ioannes Bellerus, 1554); Damhouder, *Practique et enchiridion des causes criminelles* ... (Louvain: Steven Wauters & Ian Bathen, 1554).

and Antwerp (there sold by the very active publisher Hans de Laet).<sup>10</sup> The latter is the edition that Bruegel is likely to have had to hand when he conceived of his great *Iustitia* drawing now in Brussels for the print of 1559.<sup>11</sup> By that time the book had again appeared in Latin and was swiftly on the way to becoming one of the most popular handbooks of criminal law of the century. It was the first printed legal handbook to be extensively illustrated in the Low Countries and one of the earliest in Europe. In its emphasis on the visual representation of the body of the criminal (whether in committing crimes or in the course of punishment), it would have had an appeal well beyond its strictly juristic audience, and the imagery surely contributed to the wider sale of the vernacular editions.

Yet no one has yet commented on the close similarities between many of the episodes shown in Bruegel's *Iustitia* and the illustrations in Damhouder's treatise—especially those of torture and execution. If one considers them side by side, they are easy enough to discern. Perhaps the most obvious of these is that of what is generally called the water torture (but which in fact could also involve the use of acid and oil) (cf. figs. 3 and 4).<sup>12</sup> Once one notices this, the kinship between the flogging and execution scene on the left side of Philips Galle's engraving after Bruegel's drawing and the woodcut in Damhouder is clear (fig. 5).<sup>13</sup> The same for the scenes of the criminal being taken to prison, escaping, and being freed,<sup>14</sup> as well, it so happens, of the judge sitting in judgment, with the confessor beside him, taken from the representation of the actual appeal in Damhouder.<sup>15</sup> But it was the two torture bench scenes that had a long and influential afterlife in the many subsequent editions of this work in Latin and in several European vernaculars, as well as a notable and not irrelevant etiology, as we shall see.

These are striking similarities, and it is perhaps not surprising that Bruegel, who himself expanded both the possibilities

10. Joos de Damhouder, *Praxis rerum criminalium* ... (Venice: Valgrisi, 1555); Damhouder, *Practycke ende handbouck in criminele zaeken* ... (Louvain: Steven Wauters and Ian Bathen ["te coop Thantwerpen by Hans de Laet"], 1555).

11. Brussels, Royal Library of Belgium (inv. no. S.II 133707), 22.5 × 29.5 cm, 1559.

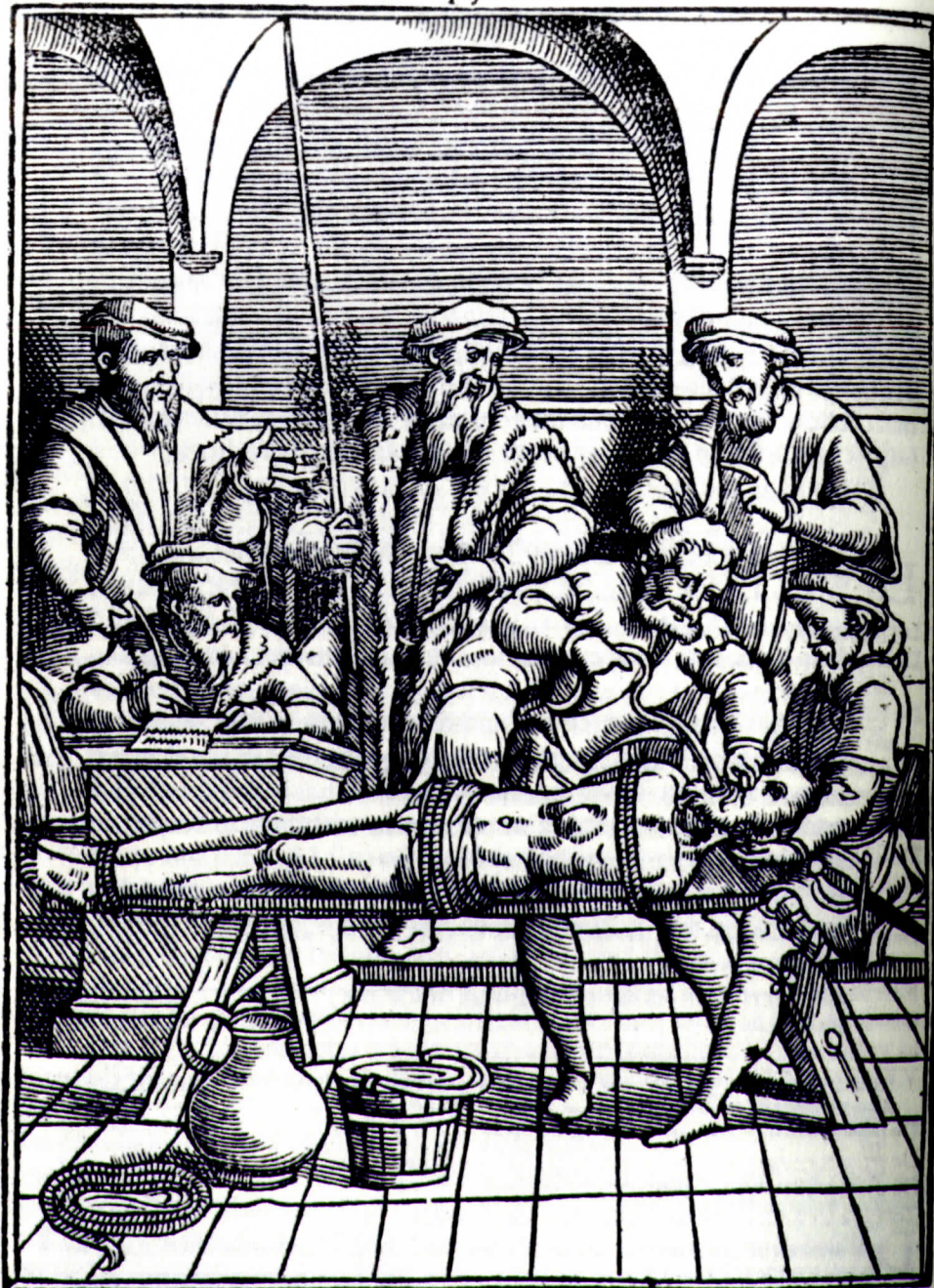
12. Damhouder, *Practycke* (1555), p. 52 ("Van pynene"). As always, it is important to remember that the print made after Bruegel's drawing

would have appeared in reverse to it, so that the fact that the drawing is actually in the same direction as the woodcut in Damhouder offers further proof of this indebtedness to Damhouder.

13. Damhouder, *Practycke* (1555), p. 288 ("Van criminele executie of van criminelen vonnissen texecuterene").

14. Damhouder, *Practycke* (1555), pp. 22–29.

15. Damhouder, *Practycke* (1555), p. 282 ("Van appele").



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naer strāghelich/daer naer noch strāghelickere/naer de grootte quantiteit  
of quali-



te bringh-re/met cenē duecwacder/ Maer inden raet van Vlaenderen  
decreutie wort ghecommittēert den eersien ende hooch balliu vanden  
Pp Craue

4. Criminal being tortured on the bench. Woodcut. In Joos de Damhouder, *Practycke ende handbouck in criminele zaeken* (1555), p. 52 (*Van pynene*).

5. The execution of criminal sentences. Woodcut. In Joos de Damhouder, *Practycke ende handbouck in criminele zaeken* (1555), p. 288 (*Van criminele executien of van criminenen vonnissen texecuterene*).

and the public for printmaking, should so directly have turned to a legal treatise that was itself another pioneering example of reproductive printmaking, even if only as the basis for the typically animated figurative elements in his composition.

The illuminating connection between images and the law during this period, in books as well as in engravings, has been almost totally overlooked by every study of the printing press as an agent of change, as Elizabeth Eisenstein's enormously influential book was appropriately titled.<sup>16</sup> And for all his concentration on the relationship between bodily constraints and justice, Michel Foucault himself ignored (probably because he did not know) the foundational text by Damhouder.<sup>17</sup> As often in Foucault, the grand epistemic changes can arguably be located much earlier than he supposed.

But the *Praxis rerum criminalium* and its illustrations offer a paradigmatic instance of the relationship between law and its images, and of the ways in which the law is predicated on the central issue not just of the embodiment of the criminal but of every element in the execution of justice, from the role of the judge to the assessment of evidence—and the actual conception of justice itself.

Born in Bruges in 1507, Joos de Damhouder studied in Louvain and Orléans, where he received his degree in both civil and criminal law in 1531.<sup>18</sup> Already in 1534 he was named an alderman (*Schepen*) of his hometown and continued to practice law there. In 1537 he became pensionary of the City Council (*Raadspensionaris*) and, on the basis of his experience at the bar, on the magistracy, and in working on the administration of the local poor care, he published his first book in 1544, *Patrocinium pupillorum, minorum, atque prodigum*, on the guardianship of minors.<sup>19</sup> This was followed two years later in Ghent by what may be the first legal treatise ever on auc-

16. Elizabeth Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe* (Cambridge: Cambridge University Press, 1979).

17. Michel Foucault, *Surveiller et punir* (Paris: Gallimard, 1975).

18. For an overview of Damhouder's career, see Egidius I. Strubbe, "Joos de Damhouder als criminalist," *Tijdschrift voor Rechtsgeschiedenis* 38, no. 1 (1970): 1–65; Jan van Rompaey, "Joos de Damhouder, rechtsgeleerde," *Nationaal Biografisch Woordenboek* 5 (1972): 273–84; Jos Monballyu, "Strafbare poging bij Damhouder en Wielant en

in de 15de- en 16de-eeuwse Vlaamse rechtspraktijk," *Tijdschrift voor Rechtsgeschiedenis* 58, no. 3 (1990): 301–17. The basic material was already to be found in L. Gilliodts van Severen, "Notes et documents pour servir à la biographie de Josse de Damhouder, 1507–1581," *Annales de la Société d'émulation de Bruges* 45 (1895): 147–209, as well as J. J. Haus, "La pratique criminelle de Damhoudere et les ordonnances de Philippe II," *Bulletin, Académie royale de Belgique* (2nd series) 31 (1871): 415–34, and 37 (1872): 81–105, 297–319.

19. Joos de Damhouder, *Patrocinium pupillorum, minorum, atque prodigum* ... (Bruges: H. Crocus, 1544).

tions, the *Subhastationum compendiosa exegesis* (to which, for some presumably expedient reason, he attached a *Declamatio panegyrica* on the Spanish nation in his hometown of Bruges).<sup>20</sup> In 1550 he became *Griffier-crimineel* (criminal scribe) of Bruges, and in 1565 *Opperforestier* (chief warden) of the East and West Dunes of the Coast. Although the first edition of his handbook *Praxis rerum criminalium* was already completed in 1551 (in the same year as his appointment as *Raadsheer* and commissioner of the Council of Finances),<sup>21</sup> publication was delayed until 1554, by which time Damhouder had moved to Brussels to be *Raadspensionaris* there.

From then on until the late seventeenth century, the *Praxis rerum criminalium* in its many forms and translations was one of the most republished books in Flanders and in much of the rest of Northern Europe as well.<sup>22</sup> It was unquestionably the most frequently reprinted criminal treatise of the sixteenth century. With the exception of Johannes Millaeus's *Praxis criminis persequendi*, published by Simon de Colines in Paris in 1541 with engravings that certainly influenced the rather less cluttered (and less sophisticated) designs in Damhouder's book,<sup>23</sup> it was the first legal treatise to be illustrated. Indeed, several of the scenes in Millaeus are also to be found in Bruegel—the hanging, the wheel, the execution, the version of the *estrapade*. But Millaeus's treatise had only thirteen illustrations, whereas Damhouder's first edition in Latin of 1554 had fifty-seven.

We do not know who did these splendidly vigorous and vivid images for Damhouder's book. They are critical for the understanding of the relationship between law and embodiment in the early modern period, and yet they have been totally neglected as such. It's a book that must have had an exceptional impact, *precisely* because of its wonderfully lively images of the body. They have usually been vaguely and misleadingly said to come from the school of Frans Floris, but that is so broad and vague a category as to be unhelpful.<sup>24</sup> But we do know from the afterword of the 1555 Flemish edition

20. Joos de Damhouder, *Subhastationum compendiosa exegesis* ... (Ghent: Erasmus Querceus, 1546).

21. An important post that was then followed by several others, some of them quite lucrative (e.g., *Opperforestier* of the dunes of Flanders).

22. As in notes 9–10, 27–29, 31, and 36–37 here.

23. Johannes Millaeus, *Praxis criminis persequendi* ... (Paris: Simon Colinaeus, 1541).

24. As suggested, for example, by the excellent and most useful *Nawoord* to the facsimile of the 1555 edition of the *Practycke* (as in note 10) by Jozef Dauwe and Jos Monballyu (Roeselaere, Bel.: Den Wijngaert, 1981).

that Damhouder had a great deal of trouble with the artists and engravers he initially chose. They were slow and did not produce, in his judgment, good enough work. In fact, it was probably this that held him up after completing the work in 1551 (and receiving the privilege for publication in 1552 already). They were so slow that in fifteen months he only got fifteen prints, when—in his obvious enthusiasm for the still-new medium of extensive illustration—he really wanted one image per chapter. “I was sure that I had all the illustrations ready and prepared for each chapter,” he wrote, “but the slowness of the artists and the woodcutters meant that I had to leave out some of the illustrations I had intended to put in, since in fifteen months I could barely get fifteen illustrations out of their hands, such was their lack of good faith and industriousness; so that we were unable to illustrate every chapter, and here and there some had to remain unillustrated; so that we are not to be blamed for this, but rather the slowness and sluggishness of the craftsmen.”<sup>25</sup>

Even so, it is easy to imagine how much the illustrations must have contributed to the popularity of the book. Its publishing history is truly astonishing: after the three editions in Latin, French, and Flemish of 1554–1555,<sup>26</sup> came another Flemish one in 1561,<sup>27</sup> a Latin one in 1562, now with seventy-two illustrations,<sup>28</sup> and a new French one in 1564.<sup>29</sup> In that year too, new editions of the *Patrocinium* and the *Subhastationum* were published and dedicated to Cardinal Granvelle, Bruegel’s patron, recently retired primate of the Netherlands, and to Erasmus’s friend Viglius of Zuilichem.<sup>30</sup> In 1565 a large German edition of the *Praxis* appeared, with new illustrations,<sup>31</sup> followed by a French version of the *Patrocinium* in 1567.<sup>32</sup> Most important, however, the pendant treatise to

25. Damhouder, *Practycke* (1555), p. 203.

26. See notes 9 and 10.

27. Joos de Damhouder, *Practijcke ende hantboeck in criminele saken* (Antwerp: Hans de Laet, 1561).

28. Joos de Damhouder, *Praxis rerum criminalium* (Antwerp: Ioannes Bellerus, 1562).

29. Joos de Damhouder, *Pratique iudiciaire es causes criminelles* (Antwerp: Jean Bellere, 1564).

30. Joos de Damhouder, *Pupillorum patrocinium, legum et praxeos studiosis, non minus utile quam necessarium ... Item. De magnificentia politiae ... civitatis Brugarum ... subhastationum compendiosa exegesis* (Antwerp: Ioannes Bellerus, 1564). On

the biography of Viglius, see Simone Bergmans, “Le triptyque de Viglius d’Ayta de François Pourbus ‘van die beroerlycke tyden,’” *Belgisch tijdschrift voor oudheidkunde en kunstgeschiedenis* 9 (1939): 209–23; E. H. Waterbolk, “Viglius van Aytta, Maecenas van St.-Baafs te Gent,” *Handelingen der Maatschappij voor Geschiedenis en Oudheidkunde te Gent* 28 (1974): 59–76.

31. Joos de Damhouder, *Praxis rerum criminalium* (Frankfurt: Johannes Wolffius, 1565).

32. Joos de Damhouder, *Le refuge et garand des pupilles, orphelins, et prodigues* (Antwerp: Jean Bellere, 1567).

the *Rerum criminalium*, the *Praxis rerum civilium*, appeared and went on to have almost as great a success as its criminal counterpart.<sup>33</sup> In 1568 an edition of the *Rerum civilium* was published in Venice,<sup>34</sup> another in Antwerp in 1569, and on through the seventeenth century.<sup>35</sup> And so the great flood of editions of these works continued, throughout all the changes of government in these tumultuous years.

During the final four years of his life, between 1577 and 1581, critical years for the Revolt of the Netherlands, Damhouder reworked and expanded the *Rerum criminalium*, resulting in the Cologne edition of 1591,<sup>36</sup> and then still larger editions in 1601 and 1616,<sup>37</sup> with more seventeenth-century editions in French, German, and Dutch, which censored several of the more provocative images of crimes involving sex and adultery. Once again it was a case of the body being all too present in the illustrations, and it had to be suppressed, or at least those parts that made its fleshly presence, even in a lawbook, too apparent, too open to carnal susceptibility.

There is one more revealing work among those that Damhouder wrote that is worth mentioning in this context, the *Paraeneses Christianae* of 1571.<sup>38</sup> This he dedicated to none other than the Duke of Alva, to whom he refers as “an imitator of St Paul, an imitator of St Peter, defender of the holy Christian church ... so all good Christians should be your imitators!”<sup>39</sup> It’s perhaps ironic that when it came to the execution of the law, Damhouder’s position on punishment was considerably less ferocious than that which his much-feared patron tried to sustain.

33. Joos de Damhouder, *Praxis rerum civilium ...* (Antwerp: Ioannes Bellerus, 1567). It’s worth noting not only the comparatively late appearance of this work, but also that its first publication—as in the case of the *Rerum criminalium*—was in Latin, obviously intended for lawyers. It too was heavily plagiarized from Philips Wielant’s much older treatise entitled *Corte instructie in materien criminele*, which was never published (see below; cf. Monballyu, “Strafbare poging bij Damhouder en Wielant,” and Strubbe, “Damhouder als criminalist”). But could there be any significance in the large number of editions (1567, 1568, 1569, 1596, 1617) of this treatise in the immediate years following the assumption of power by the Duke of Alva in 1567 (with a French one in 1572 and German ones in 1575 and 1591)? And why did the first edition in Dutch only appear in 1626 (to be followed by two more as late as 1649 and 1660)?

34. Joos de Damhouder, *Praxis rerum civilium* (Venice: Guerrei, 1568).

35. Joos de Damhouder, *Praxis rerum civilium* (Antwerp: Ioannes Bellerus, 1569), and on until the *Practycke in civile saeken* (The Hague: Hillebrant Jacobsz van Wouw, 1626; and Rotterdam: Pieter van Waesberge, 1660).

36. Joos de Damhouder, *Praxis rerum criminalium* (Cologne: Joannes Gymnicus, 1591).

37. Damhouder, *Praxis rerum criminalium* (Antwerp: Widow of Ioannes Bellerus, 1601). This and the next edition of 1616 (Antwerp: Caspar Bellerus) both included a second part entitled *Praxeos rerum criminalium selectae sententiae pertinentes*.

38. Joos de Damhouder, *Paraeneses Christianae ...* (Antwerp: Ioannes Bellerus, 1571).

39. Damhouder, *Paraeneses Christianae*, 17.



If we want to know what Damhouder looked like, we have the evidence of the frontispiece portrait—with its hopeful motto *TANDEM TANDEM IUSTITIA OBTINET*—in the earliest editions of the *Praxis*, as well as the altarpiece painted for him in Bruges by Pieter Pourbus in 1574.<sup>40</sup> It was also here that he would have seen since childhood one of the most dramatic of all early Netherlandish paintings exemplifying a topic that preoccupied civic officials like Damhouder, namely, the question of corrupt rulers, officials, and judges. For Louvain Town Hall in the previous century, Dirk Bouts had painted *The Justice of the Emperor Otto III* (1470–1475), showing the personal courage and commitment to the rule of law of the Emperor Otto in the face of the lying of his wife;<sup>41</sup> but Bruges itself had the most gruesome admonitory painting of all, Gerard David's extraordinary *The Judgment of Cambyses and the Flaying of Sisamnes* of 1498 (fig. 6),<sup>42</sup> which provides yet another important but vastly grimmer predecessor for torture on the bench, showing the son of the judge Sisamnes presiding over the torture of his corrupt father. This bloody and terrifying image points forward to the almost as grim sculptured relief of *Zaleucus Having His Eyes Put Out*, commissioned from Artus Quellinus for the west wall of the Tribunal of Jacob van Campen's great Town Hall of Amsterdam in the middle of the next century.<sup>43</sup>

But back to Damhouder's *Practycke* and its expanded versions known as the *Praxis rerum criminalium*. Pioneering in many respects though it may have been, it was nevertheless a massive work of plagiarism. Almost all of it seems to have been directly copied from the work of the earlier Flemish jurist Philips Wielant (1441–1520), whose *Corte instructie in materien criminele* was not published until 1872 but existed in three manuscripts of 1510, 1515, and 1519 (now in the Royal Library in Brussels).<sup>44</sup> There is hardly anything in the *Praxis* that is new, at least not in juristic terms.<sup>45</sup> For the most

40. Bruges, Church of Our Lady, 143 × 47 cm (left wing), 1574.

41. Brussels, Royal Museums of Fine Arts of Belgium (inv. nos. 1447–1448), two panels 181.5 × 323.5 cm and 182 × 324.5 cm, ca. 1470–1475. See also below.

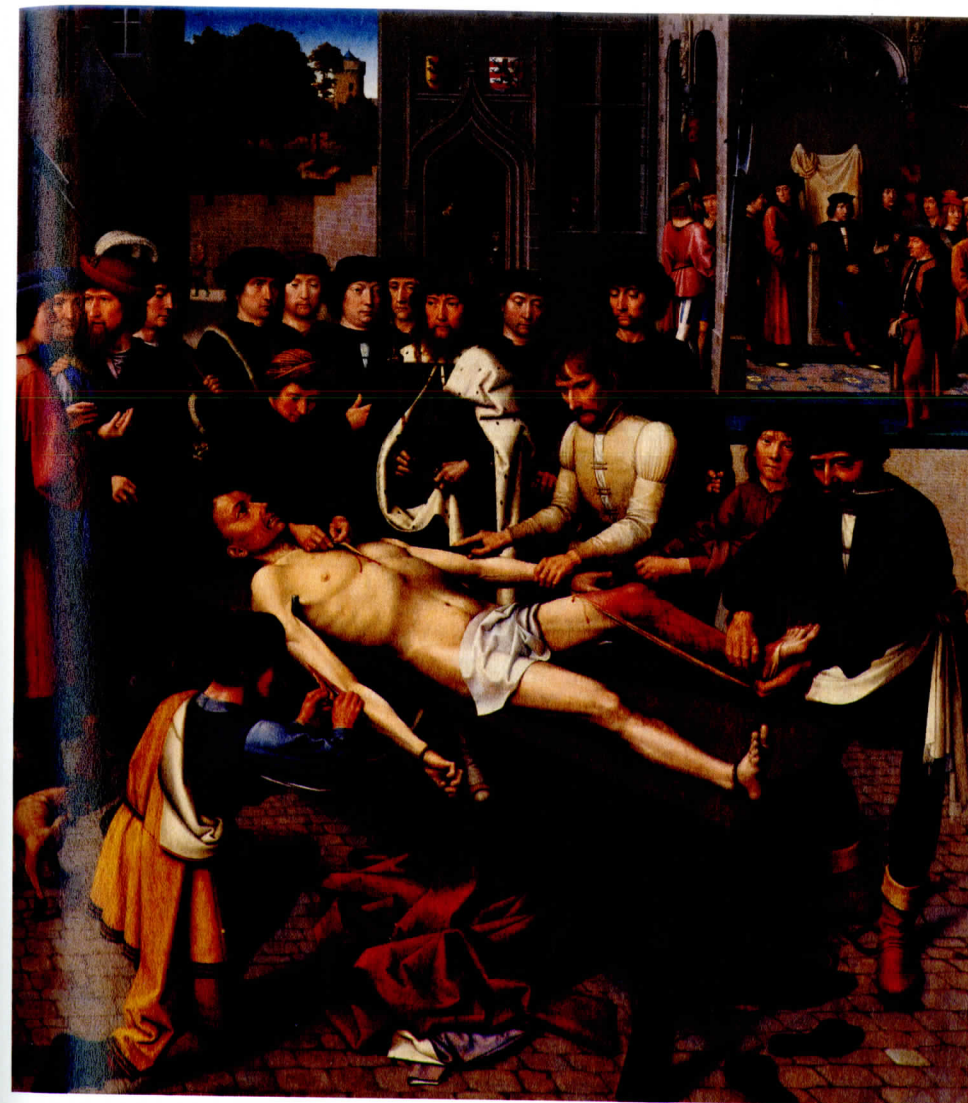
42. Bruges, Groeningemuseum, two panels 202 × 172 cm and 202 × 173 cm, 1498.

43. See Katherine Fremantle, *The Baroque Town*

*Hall of Amsterdam* (Utrecht: Haentjens, Dekker & Gumbert, 1959).

44. Monballyu, "Strafbare poging bij Damhouder en Wielant," 303–4; cf. also Auguste Orts, *Practycke criminele van Philips Wielant* (Ghent: C. Annot-Braeckman, 1872).

45. Well discussed in both Strubbe, "Damhouder als criminalist," and Monballyu, "Strafbare poging bij Damhouder en Wielant."



6. Gerard David, *The Flaying of Sisamnes*, 1498. Right-hand panel of diptych, oil on wood, 202 × 173 cm. Groeningemuseum, Bruges.

part, it fits well into the whole conservative Bartolist and Hippolytan tradition (Bartolus of Sassoferrato, 1313–1357, and Hippolytus de Marsiliis, b. 1451, obviously), as filtered through the mouth of Wielant.<sup>46</sup> On the other hand, it should

46. For a detailed analysis of Damhouder's many sources, see especially Strubbe, "Damhouder als criminalist."

be acknowledged (as has not been adequately done by the standard histories, which take an unmitigatedly stern view of the issue of plagiarism) that the title of the Flemish edition both makes clear the appeal of the work because of the illustrations and is completely up front about the fact that it is little more than a compilation, "adorned with many beautiful figures and images serving the material, all brought together by Joos de Damhouder."<sup>47</sup> Not surprisingly, the Flemish versions of the text always remained more popular than the Latin ones, which were constantly updated by Damhouder during his lifetime and contained not a few additions to the basic text he took from Wielant.

But if the work is both conservative and largely plagiarized, why should we bother with it at all? Because of the illustrations, of course, but also because of the significance of those places in the later editions of his work where he diverged from Wielant. It was these additions, in fact, as both Strubbe and Monballyu have noted, that gave the *Praxis* its added legal-historical and juristic value as well.<sup>48</sup>

Aside from the matter of its indebtedness to Wielant, Damhouder's book did not come from nowhere. A market for such works, even if unillustrated, existed already. In 1550 a translation of the prolific Bavarian jurist Andreas Perneder's much reprinted *Von Straff unnd Peen aller unnd yeder Malefitz Handlungen ain kurtzer Bericht* (1544) was published in Antwerp, by Hans de Laet, under the title of *Een tractaet van criminele saken ... van saken die dlijf aengaen*.<sup>49</sup> The Flemish *editio princeps* was immediately followed by five editions published by de Laet (and at least one other publisher) before the end of the century.<sup>50</sup> The extent to which Damhoud-

47. "Verchiert met zommighe schoone figuren ende beilden ter materie dienend." Damhouder, *Practycke* (1555), title page.

48. Strubbe, "Damhouder als criminalist"; Monballyu, "Strafbare poging bij Damhouder en Wielant." For further additions in the Latin translations especially, see Strubbe, 54–56 (including the nice one in 1562 about ship construction and provision for criminals in the galleys). On the importance of these additions, note the blunt assessment in Strubbe, 65: "Als volksboekje was het voor de rechtswetenschap zonder betekenis. Zijn *Praxis* zelf bleef daarentegen steeds geraadpleegd en druk geciteerd, meer als getuige van de vroegere praktijk dan als leidraad van de rechtsleer."

49. See Strubbe, "Damhouder als criminalist," 29–31, for a brief discussion of Perneder's *Von Straff unnd Peen*, which was reprinted as frequently as Damhouder (in Flanders alone, 1550, 1551, 1554, 1557, 1566, 1575, 1624, 1641, and 1648, all in Flemish, as well as editions of 1555 and 1570 in French). For a refutation of doubts about Perneder's own authorship of several of the works attributed to him, see Strubbe, note 119.

50. *Editio princeps*: Andreas Perneder, *Een tractaet van criminele saken* (Antwerp: Hans de Laet, 1550). Further de Laet printings: 1551, 1554, 1557, 1566, and 1575. See also two further editions of 1575 (Antwerp: Van Ghelen; and Antwerp: Peeter Mesens Mechelen ["men vintse ooc te coope by Jan vanden Poele"]).

er depended on Perneder, if at all, has not been studied and certainly merits future attention. Indeed, the whole question of their relationship is an interesting one, especially since the Flemish translation of Perneder's book first came out in 1550, just when Damhouder seems to have begun working on the first edition of his treatise, which, as we have seen, was held up at least partly by his struggle over obtaining the illustrations for his book. Could it be that the sole illustration in Perneder's *Tractaet*, that of the frontispiece showing a prisoner before judge, witnesses, and scribes, was designed by the same artist and cut by the same woodcutter as the illustrations in Damhouder's? On stylistic grounds, I believe that it was. The vogue for this kind of handbook in the early 1550s could hardly be clearer, and Damhouder surely decided to exploit and expand it by providing as many illustrations as possible.

What connects these two works is their approach to a view of criminal law that has the body of the offender at its center, from the criminal act itself to the punishment that ensues. The title of Perneder's treatise makes this plain. But Perneder's book has a much greater emphasis on necessary restraint when it comes to the exaction of punishment than Damhouder's. Chapter after chapter insists that one should err on the side of restraint rather than severity.

In any case, the body is vividly present in almost every one of Damhouder's illustrations, from the ways in which it is constrained and restrained by justice and the law to its vivid presentation in the course of a crime: murder by conspiracy, robbery, theft of the property of the freshly dead (*reeuroven*, the *crimen expilatae hereditatis*), parricide, mischievous murders (one of many instances here where the picture explains more than the words), murders whose perpetrators are to be excused (like women, children, and lunatics); and then of course the comparatively full and predictably vivid series of sexual crimes, many of which would be censored in the later seventeenth-century editions—adultery, rape, rape of virgins, fornication, and incest. The latter—along with the illustration of homosexuals—is one of the very few cases in the book where it seems as if pictures alone are insufficient. The only way to make sure that readers grasped what was being shown was to add the words *Nichte* and *Neve*.

It becomes easy to see the appeal of such rough-and-ready illustrations of crimes large and small, especially involving

the body, for an artist like Bruegel. But the book as a whole, text and illustration together, makes a more general juridical point still clearer: that one must see the body in order to understand the crime. This is a modern enough concept, but what we should remind ourselves is how differently it would have been conceived in the age before photography. No wonder that in this first substantial and systematic use of reproductive printmaking in the service of law, Damhouder should have added a whole chapter on a subject not to be found in Philips Wielant at all, the *Lijkschouwing*, the *De inspectione occisi & percunctatione vulnerum*.<sup>51</sup> One had actually to see, to inspect the body to determine the nature of the crime, the extent of the wound, and the possible evidence it might provide in cases in which homicide might be a matter of the victim's own fault, or of negligence, or where the doctors and surgeons were unsure or not to be trusted as to whether the blow itself was legal, and so on. Similarly, Damhouder added to what he found in Wielant: entirely new chapters on insults by gesture, one of the most basic nontactile forms of bodily insult, confession before death, and finally a concluding chapter on the executioner himself (compare how much more dramatic and expanded the image of the carnifex was in chapter 155 of the 1601 edition—an indication of the growing ferocity of executioners during the course of the revolt and from the lessons of contemporary martyrdom). But where did this interest in the visualization of the body originate? And how might we historically account for the impulse to show the body in these ways?

Here it is instructive to consider the illustration to the chapter on re-torture—returning the torturer to the bench when it seems that insufficient or unreliable evidence was given the first time round (fig. 7).<sup>52</sup> In a chapter that insists on proceeding with caution and restraint in such cases, it also secures an important visual connection. The now diagonally foreshortened body takes one back to one of the most critical books in the history of the understanding of the body in reproductive imagery: the astonishing, opened, foreshortened body with which Andreas Vesalius's great *De humani corporis fabrica* of 1543 begins (fig. 8).<sup>53</sup>

51. Damhouder, *Practycke* (1555), chap. 75.

52. Damhouder, *Practycke* (1555), p. 56 ("Van herpynene").

53. Andreas Vesalius, *De humani corporis fabrica* (Basel: Ioannis Oporini, 1543).



Als de patient ghekent heeft een slock dat hy alleene niet heeft moghen doen dan  
vermach den iuge hem te herpynen om zijn complicen te vvetene. xijj  
Den patient liggende vpden banck accuseert hy yemande, die accusacie maecte  
indicie

7. Criminal being re-tortured on the bench. Woodcut. In Joos de Damhouder, *Practycke ende handbouck in criminele zaeken* (1555), p. 56 (*Van herpynene*).



8. Andreas Vesalius, *De humani corporis fabrica* (1543), frontispiece. Woodcut.

This was a year that was the real *annus mirabilis* for the history of the printed image in books. In that year, one year after the publication of the final volume of Fuchs's great *De historia stirpium*,<sup>54</sup> there appeared not only the most definitive astronomical book of the century, the *De revolutionibus orbium*,<sup>55</sup> with its comprehensive diagrammatic coverage of the heliocentric argument, but also the first edition of Damhouder's Brussels cocitizen, Vesalius. One wonders whether they could possibly have known each other. In any case, Vesalius, with its incomparably superior illustrations, is the first book in which the body is fully realized in images; it is a book that explores not just the structure of the body but also, as this remarkable frontispiece also testifies, its external and internal vulnerabilities. It is in attention to these matters that the history of art and the history of medicine meet. Understanding of the anatomy of the body for centuries—and certainly in the sixteenth century—was as essential for medicine and surgery as it was for image-making, as we learn from the determined perseverance of artists in finding bodies for exploration, and of doctors and surgeons for demonstration. In both cases that determination meant a reaching across and into the fields of the other, and one of the common areas in which these two fields most clearly intersect is of course that of law. One has only to consider Andrea del Sarto's remarkable drawings of hanged men of around 1630<sup>56</sup>—a common subject of illustration in the Italian city-states of the time; several of Vesalius's stunning illustrations of the human body recall just such treatments of the body in juridical procedures.

It was indeed Vesalius in 1543 who provided the major impulse for the expansion of illustrations of the body. The resonance of the hundreds of illustrations was immediate, in many fields, not excepting law. In 1544 the first of Damhouder's illustrated treatises appeared, the *Patrocinium pupillorum*.<sup>57</sup> This is hardly a topic that one would have thought required illustration—but so it was. And within a few years, Damhouder was already working on the illustrations for his book on criminal law, five of which were actually dated 1551.

54. Leonhart Fuchs, *De historia stirpium* ... (Basel: Isingriniana, 1542).

55. Nicolaus Copernicus, *De revolutionibus orbium coelestium* (Nuremberg: Iohannes Petreius, 1543).

56. Florence, Uffizi (inv. nos. 328<sup>F</sup>–331<sup>F</sup>); Chatsworth, Duke of Devonshire (inv. no. 710).

57. See notes 19 and 30.

The compulsion to illustrate thus also found its exponent in Damhouder: one recalls how upset he was when he found he did not have enough woodcuts to illustrate every chapter in the first round of editions of his handbook. The *Praxis rerum criminalium* underscores yet again the significance of the printing revolution of the sixteenth century for knowledge of the body in society, as appears not only in the works of Vesalius and his followers but even in those such as Tagliacozzi's later volume on plastic surgery,<sup>58</sup> and many other medical treatises of the second half of the sixteenth century, all concentrating on the body as well as the instruments that open it up, close it, and repair it. Many of them show remarkable connections with the images of torture that would proliferate just a few years later not only in the Netherlands but in Rome and across the rest of Europe as well.

Overall, however, the illustrations in Damhouder's *Praxis* focus very much more on the body in the perpetration of crimes than in the execution or even the rendering of justice. This is not necessarily what one would expect in the light of the contemporary concentration on bodily punishment and torture (as in Bruegel's print, too, published in the immediate wake of the arrival of Margaret of Parma and just after the publication of Damhouder's *Praxis*). His contemporaries would see a great increase in images of the body affected and sometimes savaged by law and justice, but it is precisely in the chapters accompanying the two images of torture that Damhouder sets out the relatively strict constraints on torturing someone a second time around.

In fact, despite his strong attachment to law and order in those difficult times (Damhouder himself refers to the "maligna et ulcerata tempora" in the dedication of his *Paraenesis* to Alva), neither the content nor the illustrations of his book come anywhere near the partisan savagery of later illustrations, such as those that adorned Richard Verstegan's *Theatrum crudelitatum haereticorum* of 1587 or Antonio Gallonio's *Trattato degli strumenti del martirio* of 1591 (both reprinted in the following years).<sup>59</sup> Of course, to some extent, these were polemical projects; but even so, Damhouder's

58. Gaspar Tagliacozzi, *De curtorum chirurgia per insitionem* (Venice: Bindonus, 1597).

59. Richard Verstegan, *Theatrum crudelitatum haereticorum nostri temporis* (Antwerp: Adria-

num Huberti, 1587); Antonio Gallonio, *Trattato degli strumenti di martirio ...* (Rome: Ascanio e Girolamo Donangeli, 1591); see also the further editions of Gallonio cited in note 79 below.

book exemplified a tone of moderation, of dispassion (as perhaps one might expect from a legal work), and sometimes of compassion (as one might not) that offers an important context to the more extravagant illustrations in antihetical tracts from the 1570s on.

Interestingly, all this emerges even more in the dedication to the Flemish edition than in the Latin one. In it Damhouder explains how he knows he can count on his patron Philips d'Oignies for his support for careful justice and for the conservation of the body itself, "for the protection of our poor fellow citizens' lives," and for the wise execution of sentences, so that "these unreasonable, cruel, and bloodthirsty officers in exercising their duty do not exceed the limit and pale of their commission and charge, and behave in such a way that they don't so forget themselves, without compassion, commiseration, and orderly justice, as if they were dealing with Turks or unreasonable animals and take no consideration of the robbing of someone of their human life."<sup>60</sup> This is strong language. And while it is essential to punish the criminal, one must still conduct oneself with "such temperance, wisdom, and discretion that one feels one has avoided a crime better than the unfortunate criminal himself."<sup>61</sup> *Goede ordonanncie* in the execution of the law remains fundamental.<sup>62</sup>

Such an attitude is deeply significant, I think, in the context of the ever greater tightening of social control by the Placards and other elements of legal discipline introduced into Flanders in these very years. Damhouder's concern about excessive zeal on the part of the judges is apparent throughout the book, even in the preambles to the chapters on torture itself, where he makes it clear (as had both Wielant and Perned-

60. "hoedanighe neersticheit dynck uwe E. van nooden te zijne, int bewaeren van smenschens lichaeme? Int beschermen van onse aerme medeghesellens levne? Midtgaders ooc int wisyene ende execugerene van sentietien criminelen? Ten fine dat dese onverstandeghe, wreede, ende bloetghiereghe officieren exercerende huerliedder officie niet en overtreden de limite of palen van huerliedder commissie ende laste, noch hemlieden geheel ende al vergehetende, sondere medelyden, misericordia ende ordonancie van iusticie, ghelyck of zij turcken of onredelicken dieren onder handen hadde, tot lichtveerdighe ende ongoddelicke executie en procederen, cleen ja gheen (Godt betert) anschau nemende inte

berooovene van smenschens edelen levne." Damhouder, *Practycke* (1555), \*iii.

61. "met sulcke ghetemperthede, wysheit, endde discretie ghedaen te werdene, up datmen claerlick ghevoele dat zijlieden liever hadden ende sochten tquaet gheweert thebbene dan het ongeluckeghen quaetdoender." Damhouder, *Practycke* (1555), \*iii.

62. And so this remarkable paragraph concludes with the statement that crimes should be corrected with compassion, and all the solemnity of rights and due process be observed within the limits of justice: "huerliedder mesdaet medelydelick corrigerere, observerende totte dien allez solempniteiten van rechten, ende goeder ordonancie."

er) that one shouldn't proceed to torture if one can extract the proof of a crime by other means, by *preuve ordinaire*. He notes with evident disapproval that "bloody and insatiable judges and officers" submit the defamed prisoner to torture ("throw him on the bench," as the Flemish puts it) simply because of rumor or reputation, without having any particular proof, on the grounds, they say, that torture will bring out everything.<sup>63</sup>

In the case of the chapters with the only two illustrations in the book that focus on torture of the body (aside from the penultimate plate showing a general scene of criminal execution), the details and the procedure are described in close and grim detail. Here too, however, Damhouder takes care to express his reservations about the fierceness and unjustness of some of the judges he had seen in the course of his legal work. He adds several remarkable passages not to be found in Wielant and diverges from the Bartolist tradition from which they both emerge. For example, the chapter on torture begins: "The manner of torture, whether light or strong, lies wholly within the consideration, discretion, and conscience of the judge." But the good judge should always have sympathy and compassion—*medelijden ende compassie* in the Flemish but only *comiseratio* in the Latin editions—with the patient ("sufferer"). He should take into consideration "the age, strength, and health of the patient, and what torture he is able to tolerate ... so that he, the judge, can arrive at a good, truthful, and wise judgment. ... And although he should not pay too much attention to the cries and shouts of the patient, he should act with good moderation and take a well-tempered approach, so that the body of the patient should neither be mutilated nor too badly wounded." In following these principles, "the judge should also pay close attention to the face and behavior of the patient on the bench."<sup>64</sup>

What stands out in passages such as these is not only the inclination to allow *medelijde, comiseratio*, to drive the pragmatics of corporeal punishment, but also the need for

63. Damhouder, *Practycke* (1555), chap. 35, p. 49.

64. "De maniere van pynenen zoete of stranghe licht gheheel inde consideratie discretie ende conscientie vanden iuge. Maer de goede iuge heeft altyt medelyde ende compassie met den patient ... ende dit al me tzulcke goede moder-

atie ende ghetemperthede dat lichaem vanden patient niet gheminckt niet ghecranckt noch te zeere ghequetst en zij.... De iuge heft oock zeere tanmerken de contenance ende maniere die den patient heeft up den banck." Damhouder, *Practycke* (1555), chap. 35, pp. 51–53.

the judge's visual attentiveness to the body throughout the whole of the proceeding. The rest of this chapter is similarly tempered by the insistence on moderation and restraint from unnecessary cruelty. We may have different standards now, but the fact is that this is a chapter that is powered by a drive toward mitigation, not exaggeration.

Perhaps not surprisingly, the chapters on torture are the ones in which the body itself figures more explicitly and more blatantly than any others in the book. In the first of them, Damhouder describes it and its treatment down to the tiniest detail. He tells, for example, how the prisoner is to be tied to the bench, how the bench should be narrower than the back of the patient himself, and how he is to be stretched and twisted, along with full details of the water torture. Could it be that in writing such passages, Damhouder also recalled what was surely one of the fiercest of all the justice images in the Netherlands, that of the punishment of the unjust judge Sisamnes in his hometown of Bruges (fig. 6)?<sup>65</sup> Sometimes this material is supplemented by clear evidence of his personal involvement with torture, but it is only in the case of the terrible treatment of a witch—who was deprived of all her hair, tortured four times, and shaved not once but twice, until finally they found some parchment scrolls in her vagina—that he seems to lose the sense of relative humaneness and moderation that characterizes his other insertions. In this respect he did not diverge much from the standard attitudes of his time.

But let us return to what was distinctive and humane in Damhouder. The chapter on *herpijnen* is critical to this issue.<sup>66</sup> Once someone has been tortured and hasn't confessed, he cannot be tortured again under the same accusation. This is exactly the opposite of what we might suppose, especially in those times—and, indeed, the illustration (fig. 7) seems even fiercer than that showing its first stage (fig. 4). Furthermore, the patient, the chapter insists, cannot be re-tortured unless there is new evidence. The only exception to be made to this rule is in cases of witchcraft.

There is more of this restraint in the chapters that follow. As soon as the patient has confessed, the torture must be

65. See above and note 42.

66. Damhouder, *Practycke* (1555), chap. 38, pp. 55–59.

stopped. This too is the opposite of the retributive vengeance often associated with the trials under Alva. If someone confesses under torture to something beyond what he was interrogated about, then this is to be discounted. Judges must be rigorously cautious about false confessions produced under torture. For example, one must absolutely not put someone on the bench simply because his name has been revealed by someone else under torture. Damhouder's sense of the importance of *medelijde*—*compassio*, sympathy—for the sufferer on the bench is critical to his evaluation of the limits on bodily cruelty in extracting reliable information from the accused. Some of this may have come from Wielant, but one may wonder whether in cases such as his translation of Wielant's passage about reasons for nonappearance at a trial (*essonnia*), where he adds *siecte van wijne* (wine-sickness) to the much more serious matters of death of a spouse or child, it was not a lapsus generated by the kind of humanity revealed in these larger issues.<sup>67</sup> Though Damhouder often seems to be a legal conservative in the Bartolist tradition, Strubbe suggests that his conservatism is mitigated by his adoption of ethical positions from classical humanism.<sup>68</sup>

Despite the ferocity of some of the passages about the prosecution of witches, there is no reference to these in the figural dimension of Damhouder's book. Even during the period from the late 1570s on, when book illustrations of tortures—both of Protestants by Catholics and of Catholics by Protestants—began to proliferate, the illustrations in succeeding editions barely changed. Despite the abundance of opportunity the illustrations might have offered for the visible demonstration of the violence of the law, and in particular of the violence of punishment legalized more by religion and politics than by law itself, Damhouder not only put a careful brake on the kinds of excesses of investigation, punishment, and retribution that characterized his times but also refused to allow any further expansion of his illustrational modes in that direction.

67. Damhouder, *Practycke* (1555), chap. 25, p. 36, ¶ xv. Strubbe, "Damhouder als criminalist," 39; see also Strubbe, pp. 40–42, on other instances in which Damhouder's sensibility veers away from traditional legal severity or inclines to anger with exploitative merchants, usurers, and money-changers.

68. Strubbe, "Damhouder als criminalist," 52, where he argues for a supersession of humanist over "medieval" attitudes—perhaps too broadly posed as a polarity.

Even the 1601 illustrations, which sometimes show a certain sharpening of tone, have none of the violence that might have been added had there been any desire or need to make them conform to other punishment and torture texts of the time.

The differences between these illustrations of legal texts and the images of the martyrdom and the torture of heretics that were produced in the wake of Alva's Council of Blood—with its important anticipations in the works of Bruegel—are striking. These images were generated by the intense strife that went far beyond the ecumenic irenicism to which Bruegel and his circle were committed, and far beyond any then-prevailing concept of what we now call rule of law. The mass executions shown in Frans Hogenberg's illustration of the hanging of Protestants during the siege of Haarlem in 1573 in Michael Aitsinger's *Leo Belgicus* are unsparing in their representation of the treatment of rebels and heretics (fig. 9),<sup>69</sup> yet they are typical enough of the kinds of imagery that achieved a kind of high fetishization of torments of the body both in Flanders and Rome visited on both the proponents and antagonists of orthodox Catholicism that went way beyond anything seen in the newly developed corpus of body imagery in the legal textbooks.

Already by the very early 1570s, the Jesuit Father Valeriano was working on the program for Santo Stefano Rotondo, the early Christian church dedicated to the first of the martyrs, to be adorned (if that is the word) with fifty-three scenes of the most horrific tortures by Niccolò Pomarancio and Antonio Tempesta (1572–1585).<sup>70</sup> The ferocious tone of these scenes is to be understood in the context of the appearance of the three editions of Usuardus's ninth-century martyrology between 1568 and 1583, all edited by Johannes Molanus,<sup>71</sup> which in turn formed the basis for Cesare Baronio's martyrology of

69. Michael Aitsinger, *De leone Belgico* (Cologne: Kempen, 1583).

70. L. H. Monssen, "Antonio Tempesta in Santo Stefano Rotondo," *Bolletino d'arte* 67 (1982): 107–20; Monssen, "The Martyrdom Cycle in Santo Stefano Rotondo, Part I," *Acta ad archaeologiam et artium historiam pertinentia* 2 (1982): 175–317; Monssen, "The Martyrdom Cycle in Santo Stefano Rotondo, Part II," *Acta ad archaeologiam et artium historiam pertinentia* 3 (1983): 11–106;

Monssen, "Rex Glorioso Martyrum: A Contribution to Jesuit Iconography," *Art Bulletin* 63, no. 1 (1981): 130–37; Antonio Vannugli, "Affreschi di Antonio Tempesta a S. Stefano Rotondo e l'emblematica nella cultura del Martirio presso la Compagnia di Gesù," *Storia dell'arte* 48 (1983): 101–16.

71. *Usuardi martyrologium* . . . (Louvain: Hieronymus Wellaus, 1568, 1573); *Usuardi martyrologium* (Antwerp: Philippus Nutius, 1583).



9. Frans Hogenberg, Rebels on scaffold in Haarlem in 1573. Etching and engraving. In Michael Aitsinger, *De Leone Belgico* (1583), pp. 163-164 (*Haerlem*).

1586,<sup>72</sup> and is underwritten by the growing influence of Ignatius Loyola's *Spiritual Exercises*,<sup>73</sup> with its vivid recommendations to imagine the exquisite sufferings of Christ. In 1587 the Flemish-English polemicist Richard Verstegan published one of the most graphic series of prints ever dedicated to tortures, the much republished *Theatrum haereticorum crudelitatum*,<sup>74</sup> probably inspired by the popularity of Foxe's famous *Book of the Martyrs*, which first appeared in 1563 but had already been reprinted in 1570, 1576, and 1583.<sup>75</sup> In turn, Verstegan's

72. Caesar Baronius, *Martyrologium romanum* ... (Rome: Dominici Basae, 1586).

73. *Editio princeps*: Ignatius Loyola, *Exercitia spiritualia* (Rome: Antonius Bladus, 1548).

74. See note 59.

75. John Foxe, *Actes and Monuments* ... (London: John Day, 1563).

*Theatrum* was followed by Antonio Gallonio's even more gruesome and fetishistically detailed *Trattato degli strumenti di maritrio e delle varie maniere di martoriare usate da' gentili contro cristiani* of 1591,<sup>76</sup> translated into Latin three years later as *De sanctorum martyrum cruciatibus*.<sup>77</sup> The titles' emphases on the representation of the instruments of torture make clear how much the suffering of the martyrs was implicit even in the very instruments that exacted it.

These scenes are almost always harrowing, and they establish the formulas for future representations of such scenes of torture or even predict how actual scenes of execution might be, particularly outside the rule of law, very long into the future indeed and up until the dreadful images of lynching during its long history in the American South.

When I first wrote about Gallonio's treatise on the torture of contemporary martyrs, I had no sense of its long afterlife.<sup>78</sup> In fact, it continues to be reprinted even in our own times and has enjoyed a certain evangelical modishness—a grim return, to be true, but not an altogether unexpected one in fundamentalist America.<sup>79</sup> Its popularity offers continuing testimony to the fetishization of bodily feels, to the varieties of felt imitation and of instrumentalized empathy that arise when punishment is visited on the body of others. It exemplifies some of the ways in which theology is used to sustain extremes of torture far beyond the rule of law. At the same time, the illustrations point forward to those extravagant excursions beyond the reach of the law in the name of violent justice, from lynching and the Abu Ghraib photographs, on the one hand, to the exploitation of digital images by the militants of ISIL, on the other. And in images such as all these, the figurative parallels in the relationship between embodiment and fractured law could hardly be clearer.

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76. As in note 59.

77. Antonio Gallonio, *De sanctorum martyrum cruciatibus* ... (Rome: Typographia Congregationis Oratorii, 1594). The subtitle of the work is particularly relevant here: *Liber in quo potissimum instrumenta et modi quibus eisdem Christi martyres torquebantur accuratissime tabellis expressa discrebantur*.

78. David Freedberg, "The Representation of Martyrdoms during the Early Counter-Reformation

in Antwerp," *Burlington Magazine* 118 (1976): 128-38; now expanded in Freedberg, *Iconoclasm* (Chicago: University of Chicago Press, 2021).

79. For the first Italian and Latin editions, see note 59. Further Latin editions: *De sanctorum martyrum cruciatibus* (Cologne: Joannes Gymnicus, 1602); *De sanctorum martyrum cruciatibus* (Paris: Fridericus Leonardus, 1660); *De sanctorum martyrum cruciatibus* (Antwerp: Frisius, 1667 [and 1668]). French editions: *Tortures et tourments*



As the seventeenth century progressed, and the Protestant-Catholic conflict, at least in the Northern Netherlands, settled into a pattern of coexistence (despite the continuing Thirty Years War), the intensity of the more vivid illustrations of martyrdom diminished. It is perhaps against this background that we might recall how the greatest of all Dutch artists chose to record a particular scene of the execution of justice, in which a tried body is shown attached to a physiognomy of a recognizable individual named Aris Kindt, quite unlike the anonymous figures of the condemned in the legal treatises.<sup>80</sup> In Rembrandt's *Anatomy Lesson of Dr. Tulp* (1632) now in the Rijksmuseum, a volume of Vesalius is placed beside the body of a criminal, as if to emphasize that even in death such a body can be useful and well serve the living (fig. 10).<sup>81</sup> The meeting of medicine and law is indicated not only by the position of the body but also by the didactic gesture of the surgeon himself. And the body surely refers back, even if only broadly, to the preceding illustrations discussed in this essay, from Damhouder's contemporary and source Vesalius onward.

But our story of images of the condemned during the Revolt of the Netherlands and its aftermath must end with an infinitely more modest work—a slender drawing. In 1664 Antonie van Borssom made a drawing of the site in Amsterdam, the Volewijk, where the bodies of those condemned between 1660 and 1664 were displayed (fig. 11).<sup>82</sup> It is nothing like as grim as the scenes of mass executions that Bruegel and others conveyed in the sixteenth century, but it certainly recalls them. On the left can be seen the hanging body of Elsje Christiaens, an eighteen-year-old girl who came from Denmark to work as a domestic servant in Amsterdam. After failing to pay the rent, she got into a fight with her landlady, who then attacked her with a broomstick. Grabbing an ax that

*des martyrs chrétiens* (Paris: Carrington, 1904); *Traité des instruments de martyre ...* (Grenoble: J. Millon, 2002). English edition: *Tortures and Torments of the Christian Martyrs*, trans. A. R. Allinson (London: Printed for subscribers, 1903); reprinted several times by various presses (1930, 1939, 1989, 2004).

80. The Hague, Mauritshuis (inv. no. 146), 216.5 × 169.5 cm, 1632.

81. The literature on this work is, of course, vast. But the two best monographs remain those by William S. Hekscher, *Rembrandt's Anatomy of Dr. Tulp: An Iconological Study* (New York: New York University Press, 1958); and William Schupbach, *The Paradox of Rembrandt's Anatomy of "Dr. Tulp"* (London: Wellcome Institute for the History of Medicine, 1982).

82. Amsterdam, Rijksmuseum (inv. no. RP-T-1954-182), 20.5 × 31.8 cm, 1664.



10. Rembrandt van Rijn, *Anatomy Lesson of Dr. Tulp*, 1632. Oil on canvas, 216.5 × 169.5 cm. Mauritshuis, The Hague.

11. Antonie van Borssom, *Gallows Field on the Edge of the Volewijk, Amsterdam*, 1664. Drawing, pen and brown ink, and watercolor, 20.5 × 31.8 cm. Rijksprentenkabinet, Rijksmuseum, Amsterdam.



12. Rembrandt van Rijn, *Elsje Christiaens Hanging on a Gibbet*, 1664. Drawing, pen and brown ink, brush and brown wash, 17.1 × 9.1 cm. The Metropolitan Museum of Art, New York.

happened to be lying nearby, Elsje seems to have pushed her mistress, who fell down the stairs and died. Perhaps stealing a few things from another lodger, Elsje ran away. Of course she was caught, and a harsh sentence was delivered: she was to be attached to a stake and strangled to death before being strung up to be shown in public with the alleged instrument of her crime—the first time in twenty-one years that a woman had been thus treated. In the van Borssom she is an anonymous victim among many. Only Rembrandt, in his tiny drawing, could have conveyed so much of what was left of the personality of the girl (fig. 12).<sup>83</sup> Only Rembrandt could have turned so small and swift a document of the cruelty of justice into a powerful work of art. It is a modest little drawing (one of two that he made of that crumpled body on the gallows), but it is titanic in its humanity. And it is perhaps one of the most moving of all representations of the relationship between embodiment and the rule of law.

83. Front view (illustrated image): New York, Metropolitan Museum of Art (inv. no. 29.100.937), 17.1 × 9.1 cm, 1664. Side view: New York, Metropolitan Museum of Art (inv. no. 1975.1.803), 15.8 × 8.0 cm, 1664. See also Otto Benesch, *The Drawings of Rembrandt*, vol. 5 (London: Phaidon, 1954–1957), cat. nos. 1105–6.