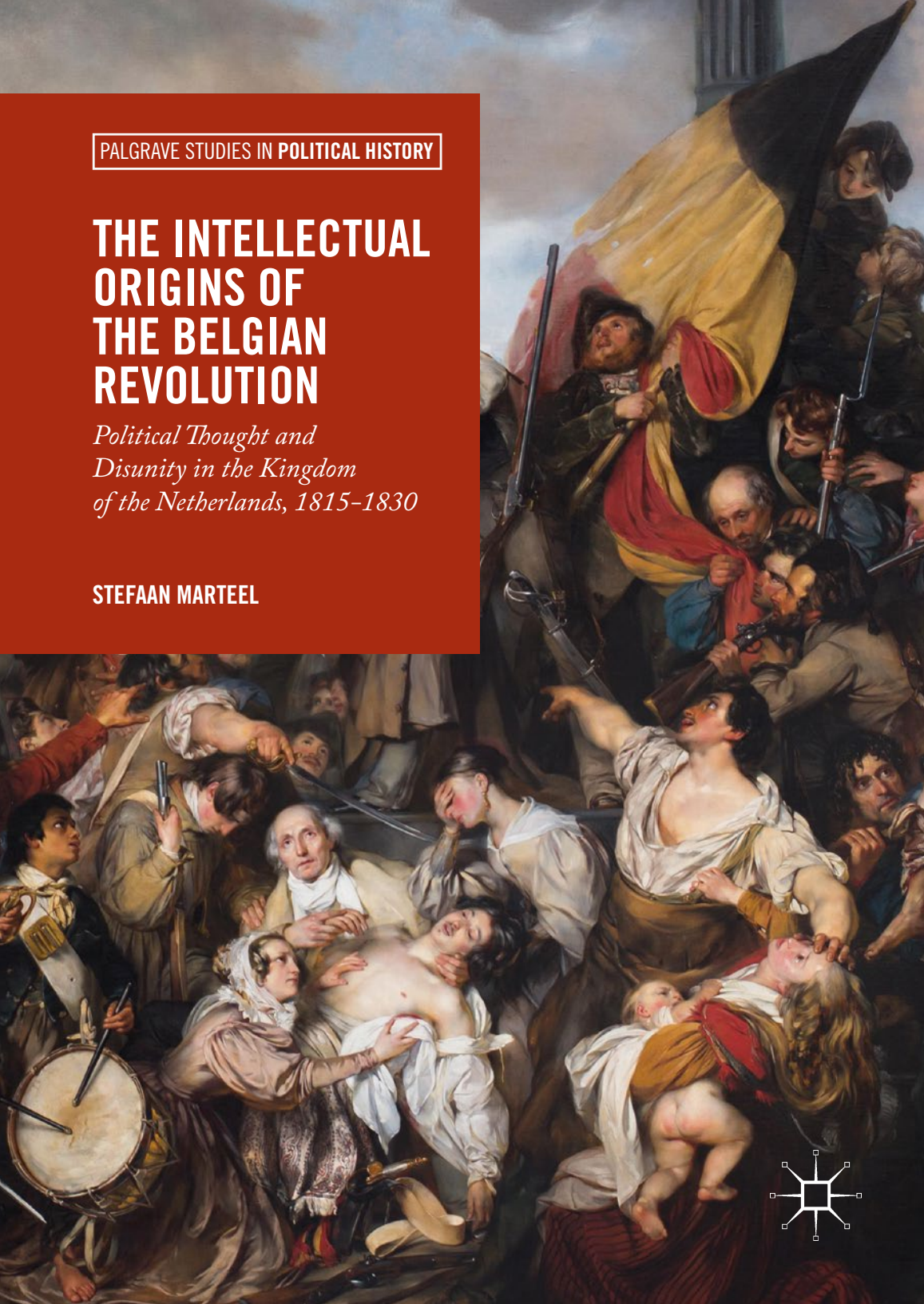

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STEFAAN MARTEEL

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In dedication to the memory of my father, Bernard Marteel (1939–2011).

Contents

CHAPTER 1

Introduction

1.1 1830 in Historiography

In recent years, the 'united kingdom' of the Netherlands (1815–1830) has obtained new interest in the context of the 200-year commemoration of the foundation of the state in 1815.[1,2] In 2015, two recommendable volumes were published, with contributions by a considerable number of Belgian and Dutch historians with specialisation in different fields. In the first volume, titled *Belg en Bataaf*, the editors confront the 'one-dimensional' perspective that still prevails in the historical narrative of the establishment of the state that united what today are Belgium, the Netherlands and Luxembourg. According to this narrative, 'the construction of the United Kingdom of the Netherlands followed the Congress of Vienna, which followed 1815, that is the Battle of Waterloo' (Judo and van de Perre 2015b, 8). Rather than understanding

[1]For an overview of the different commemorative events that took place, both in Belgium and the Netherlands, and how they fitted in the contemporary political context, as of the recent developments in the historiography of the period, see: Witte (2016).

[2]The name 'united kingdom' (often capitalised) is commonly used for the Kingdom of the Netherlands as it existed between 1815 and 1830, uniting what are today Belgium, the Netherlands and Luxembourg. It was however never the official name of the state, nor was it used at the time of its existence. We will therefore use the term 'united kingdom' only in a generic sense (it was 'a' united kingdom) and use the proper name 'Kingdom of the Netherlands' when the political entity is meant.

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the origin of the kingdom as the result of abrupt changes, provoked by great leaders and great battles, the authors believed, it makes more sense to look at its birth from the perspective of gradual change and 'synthesis.' It is the aim of the contributions to the bundle therefore, to focus on how the old and new came together in this period of transition: how old structures were adapted to a new context, how differences between North and South were looked upon and so on (Judo and van de Perre 2015b, 8). In another volume published in the same year, *(On)verenigd Koninkrijk*, the editors ascertain that in the previous decades, regretfully, the overwhelming majorities of studies on the period took either the Northern or Southern part of the kingdom as their object of study (Aerts and Deneckere 2015, 14–15).[3] This national orientation in political and social history constituted a departure from major integrative and comparative histories of the Netherlands in the 1970s and 1980s. This return to national history, Deneckere and Aerts pointed out, is at odds with the current international trends in historical scholarship towards transnational approaches. Moreover, the united kingdom, because of its multifaceted character, seems perfectly suited for studying how ideas, modes and patterns were transferred from one society to another.[4]

If historians of late wish to look at the Restoration kingdom of the Netherlands as more than the sum of two entities, this is closely related to the viewpoint that the eventual failure of the state was attributable to contingent factors, and was in no sense 'inevitable.' The value of the contributions to the volumes, is, in the words of the editors of one of them, that they focus on 'the beginning of the experiment' without 'the final failure necessarily determining the plot' (Aers and Deneckere 2015, 18). For some time already, historians have moved away from a narrow nationalistic historiography that viewed the united kingdom as an unnatural union of two clearly distinct peoples/nations. However, the respective (original) inspirations for this evolution have been very different in the Netherlands and Belgium.

Of primary importance in the Netherlands has been the influence of the so-called constructivist and modernist theories regarding nationalism,

[3] An exception has been the increasing number of studies among students of Dutch culture and literature on the impact of the cultural and language policy of the government of William I, primarily in the South. Important publications in that regard are: Janssens and Steyaert (2007), Vosters and Weijermars (2011), and Weijermars (2012).

[4] Apart from these two volumes, another volume has been published on the constitution of 1815 and its legacy (Alen and Hering 2016) and in November 2016 a symposium and exposition were held by the *Koninklijke Vlaamse Academie van België voor Wetenschappen en Kunsten* on 'the world of scientists' in the period of the united kingdom.

and more specifically the studies by Ernest Gellner and Reinhart Koselleck (Van Ginderachter 2009, 527). Dutch historians have argued that a broad Dutch national awareness developed in interaction with the revolutionary events at the end of the eighteenth century. After the transformation of the Netherlands in a centralised state during the Batavian Revolution (1795–1798), a process of normalisation and consolidation followed that is often described as the 'nationalisation of the revolution.' In that context, from 1800 onwards, politically inspired patriotism was gradually replaced with a national sentiment that was, above all, 'culturally defined' and 'carried by a new sense of (national) history' (van Sas 2004, 86–87). From a similar perspective of seeing the advent of nationalism primarily in relation to a sequence of political events (revolution and reaction), Dutch historians generally don't attribute the failure of the nation-state-project of the united kingdom of the Netherlands to a pre-existing division in nationality, but look for contingent, political causes. A strong, mutually exclusive Dutch and Belgian national awareness was therefore, in their eyes, more likely the result of the break-up in two states rather than at its origin (te Velde 1991; Aerts 2006; van Sas 2006). In Belgium, on the other hand, the revision of the predominant nationalist narrative of 1830 has primarily been the work of historians that take a social-historical approach rooted in academic Marxism. They looked at the politics of the period 1815–1848 primarily from the perspective of social-economic transition, the destruction and the dismantling of the clerical and feudal structures of the *Ancien Régime* and the construction of a liberal bourgeois state (Dhondt 1963, 1976; Witte 1973, 2006a, 2014). The Revolution itself emerges here as the work of disgruntled middle classes that took to liberal ideas, and eventually revolutionary action, in their wish to see the state reformed in a way that would give them more political leverage.

In spite of the different historiographical contexts and theoretical influences, these Dutch and Belgian historians share a common interpretation of the events of 1830. An important, recent textbook on the history of the Netherlands sums up the political crisis in the united kingdom accordingly. It was 'at origin a liberal crisis, aimed at the modernisation of the political system and potentially anticipating the liberal state' (Roegiers and van Sas 1993, 254); a state, as historian Remieg Aerts paraphrased, which 'as a result of coincidental circumstances, between 1830 and 1839, was first established in independent Belgium, than in the Netherlands' (Aerts and Deneckere 2015, 16). Moreover, historians have, in recent years, emphasised that in many fields there were tendencies towards convergence of the North and the South that have been disregarded.

In the fields of culture and literature initiatives were taken that effectively brought the North and the (Flemish) South closer to each other, even when they had sometimes also an alienating effect (Weijermars 2012). Els Witte supported in her recent book the thesis that large parts of the Southern elite, in all social areas, were before the Revolution overall loyal to the government, and, above all, the king (Witte 2014), even when they continued to distinguish themselves from the Northern elites.

However, the constructivist paradigm that has prevailed in the last decades, has not remained uncontested. A number of historians, especially in Belgium, emphasise the importance of Belgian-national sentiments in the political opposition in the South and insist the Belgian Revolution was a national revolution born out of feelings of injustice and discrimination by a Dutch-dominated government towards the Belgian provinces and the Belgian people. Supporting on the theory of nationalism of Anthony D. Smith, they argue that, in early modern times, the Southern, Habsburg-ruled Netherlands, on the one hand, and the Dutch Republic of the United Provinces, on the other hand, had developed into 'proto-nations,' which were dominated respectively by a Germanic, Protestant and a Romanic, contra-reformatory, Catholic culture.[5] The cultural, proto-national differences, in this view, obtained furthermore a new dimension by the complete integration of the Southern Netherlands in the French Republic and later Empire from 1796 onwards, resulting in a more profound endorsement in political culture of the revolutionary concepts of popular sovereignty and individual liberties. Moreover, these historians recognise a continuity between the Brabant Revolution of 1789, in which the Habsburg rule over the Southern Netherlands was overthrown and a short-lived confederal republic was established, and the Belgian Revolution of 1830. As the transformation of the Belgian proto-nation of the *Ancien Régime* in the modern nation-state is seen as the result of these two revolutions, 1830 and the failure of the united kingdom established in 1815 emerges as much less 'accidental,' i.e. more 'predictable,' than thought by other historians (Wils 1997, 1999; Stengers 2000; Dubois 2005).[6]

[5]The theories of Smith found in Belgium a more popular reception than Gellner and Koselleck. Maarten Van Ginderachter attributed the minor influence of Gellner in Belgium, compared to the Netherlands, to the fact that in Belgium research on nationalism developed primarily within the historiography on the Flemish Movement, inevitably focusing less on the state as primary actor (Van Ginderachter 2009, 527, 529).

[6]Stengers' book was a re-elaboration of a fifty years old doctoral thesis, which was nevertheless praised by its critics for its valuable semantic analysis of concepts as Flemish,

Cultural historians, on the other hand, have focused on the emergence of a national historical narrative in the second half of the eighteenth century, highlighting the common traits of the different regions and provinces rather than on their differences (Verschaffel 1998, 89–98; Deseure 2014, 62–63). This new historical narrative also gave legitimation to constitutional political views that were mobilised in opposition to the Austrian government (see later). Furthermore, historians who focus on the promotion of a Belgian national identity after the Belgian Revolution, through the creation of national art and monument creation, folklore, national histories and so on, question the identification of an enthusiastic Belgian patriotism during and after 1830 as a *creatio ex nihilo* (Verschaffel 1987; Tollebeek 1998). The emphasis on the authentic national character of 1830 was probably to some extent inspired by an aversion towards an assertive Flemish-nationalist historiography, that, predictably, insists on the 'artificial' character of the Belgian nation-state, created by francophone Belgian with the support of France and against the wish of the Flemish population (Van Ginderachter 2009, 529; Witte 2001, 184–187).[7] The search for the longer-term origins of the Belgian nation has often been criticised by (primarily Dutch) historians of the constructivist school as 'crypto-nationalistic' and in continuity with old school Belgian-patriotic historiography (Kossmann 1994, 63; van Sas 2006, 71–73; Van Ginderachter 2009, 528).

In spite of these rather intense historiographical debates, it is remarkable that no recent studies have been made into the political thought of the opposition movements in the Southern Netherlands, and the revolutionary movement that emerged from them. In the Netherlands, a number of new, innovative studies on the politics of the period have been published

Belgian, Walloon, Dutch etc. and so on (van Sas 2006, 72; Witte 2001). A recent PhD by American historian Jane Judge at the University of Edinburgh supports the view that the Brabant Revolution needs to be considered as a first manifestation of Belgian national consciousness: Judge (2016).

[7]This applies primarily to Flemish historian Lode Wils and francophone historian Jean Stengers. Lode Wils was in previous decades the major authority on the Flemish Movement and Flemish nationalism. His view that Belgian independence found support in a broadly carried Belgian national sentiment is a corollary of his thesis that the Flemish Movement in the nineteenth century remained until after the First World War loyal to Belgium, and that Flemish and Belgian national feelings were until then not in conflict with each other. This thesis has recently come under criticism by a younger generation of historians of nationalism (Van Ginderachter 2005, 2009, 529).

in recent years, but their focus was almost exclusively on the Northern Netherlands (van Zanten 2004; Lok 2009). In Belgium, only some preliminary, explorative articles have been written on the language and politics of the opposition and revolution (Witte 2006b; Beyen 2015). Marnix Beyen has, on the basis of an analysis of the parliamentary discourse, pointed at the failure among the political class to express the positive convergences between North and South discursively (Beyen 2015, 149). But this still leaves the question how a discourse expressing the wish of the 'Belgian people' to be independent and justifying this independence emerged from the political debates and arguments that preceded the Revolution. Moreover, the evidence that also in the North there was an increasing political presence of liberal and constitutional ideas and opposition groups begs the question, why the first real crisis of the kingdom developed in a Belgian-national revolution, and not in a reform of the political system along broadly shared liberal and constitutional principles (van Sas 2004; van Zanten 2004). Now that we possess thorough studies on the political languages in the Northern Netherlands, we can make a comparative study between liberals and their ideas in the North and the South: what kind of liberalism and political Catholicism are we talking about? What were their intellectual sources? How did liberals in the North and the South look differently at the legitimacy of the new kingdom, on the constitutional model adopted in 1815, and on the role of the political opposition? What, finally, were the dynamics behind the radicalisation of the liberals and Catholics in the South into a (national-) revolutionary direction, and what held back the Northern liberals?

1.2 Liberalism and Catholicism: A Turn to 'Transfers' and Comparison

In the last thirty years, no thorough research has been conducted taking liberal political thought in the first half of the nineteenth century as its primary subject.[8] The classical thesis that has long survived is one of a dichotomy between the regime-abiding liberals of the early years of the Restoration and the liberals who towards late 1820 formed a union with Catholics that would result in the national-revolutionary

[8] Among the few publications that take as their subject the beginnings of liberalism in Belgium are: Van Kalken (1926), Harsin (1930), Bartier (1975), and Demoulin (1989).

movement of 1830. In the early years of the kingdom the liberals, although they adhered to French Jacobin-style republicanism, overall supported the government of William I, in spite of its authoritarian tendencies, because of its modernising policies, often taking aim at the social power of the church, and out of a lingering fear for the reactionary political forces. In later years, liberals belonging to a younger generation that did not have memories of the *Ancien Régime*, were less willing to accept the authoritarian style of politics. They furthermore endorsed a kind of neoliberalism that sprung from Romantic, organic, less rationalistic conceptions of society, making them less averse of Catholicism and more prone to cultural nationalism (Dhondt 1976; Kossmann 1978; Witte 2016). Some studies have undermined this classical thesis, for example an exhaustive Dutch doctoral study on the subject of ministerial responsibility, which covered thoroughly the debates in both the Southern and the Northern Netherlands (van Velzen 2005). The work gives a clear indication to what extent views on this concrete issue differed from the very start in the North and the South. It also shows how mistrust and misunderstanding between political actors, the Dutch opinion press and the liberal press in the South created a dynamic that led, on the one hand, to radicalisation in the South and, on the other hand, a rallying around the government in the North. However, as the focus of the work remains focused on the long-term developments of the Northern Netherlands (beyond the separation of 1830), and takes a legal-historical approach, it does not explore how the different views related to broader differences in political culture and intellectual contexts.[9]

When it comes to the question of intellectual transfers and the influence of foreign political thinkers on early liberal developments in the Southern Netherlands, a number of studies (van Velzen 2005; Lemmens 2011; Marteel 2007, 2011) pointed to the crucial importance of French liberal thought, and especially of the works of the Swiss-French author and politician Benjamin Constant. Simultaneously, in recent years an increasing number of studies have pointed at the continued influence of

[9]Another doctoral research project is at the moment being conducted, by Wim Lemmens of the Free University of Brussels, on 'journalistic networks, the spreading of liberal political theories and the construction of a liberal opinion in Belgium' from 1815 to 1860, which will go a long way to fill the lacuna with regard to early liberalism in Belgium. Preliminary publications are: Lemmens (2011, 2013).

French liberalism on the constitutional debates following Belgian independence, as well as the later developments in liberal thought (de Dijn 2002; de Smaele 2005; Delbecke 2012; Geenens and Sottiaux 2015; Deseure 2016). For these new developments in the understanding of the intellectual origins of Belgian liberalism, Belgian scholars are indebted to a proliferation in recent decades of intellectual-historical studies on French liberalism. In its early phase, French post-revolutionary liberalism is now understood in terms of the challenge it presented both to the French absolutist tradition as to the revolutionary *légicentrisme*. In the latter, the state was generally regarded as the institutor of the society, and the individual (as well as his rights) as subordinate to *la loi*. Stéphane Rials has in this regard spoken of the '*basculement légicentriste*' of the *Declaration of the Rights of Man and the Citizen* of 1789 (Rials 1988, 352). The French political debate moved on after the French Revolution, and rather than being concerned with ensuring that the people's will could genuinely express itself, post-revolutionary theorists, as Marcel Gauchet pointed out (Gauchet 1995, 42–51), generally distrusted sovereignty and were primarily concerned with limiting the expression of the 'will.' As Lucien Jaume pointed out, among the earliest liberals there was an aspiration 'to reconcile sovereignty with liberty, authority with responsibility,' even when, generally speaking, the French political mind of the nineteenth century remained convinced that 'every question concerning the general interest obligated an invocation of the State' (Jaume 1997, 173, 185).[10]

Apart from the influence of contemporary (mainly) French political thinkers, journalists and pamphleteers in the Southern Netherlands also wrote within the context of a domestic political culture that was shaped by the political events of the previous decades. On this point, especially the legacy of the 'Brabant Revolution' of 1789 against the Austrian-Habsburg emperor Joseph II, which led to the establishment of a short-lived Belgian, confederal republic, needs to addressed.[11] In older Belgian

[10]These French early liberals need to be distinguished from the slightly later, more conservative, movement of the French *doctrinaires*, revolving around François Guizot and Pierre-Paul Royer-Collard. A new interest in them was sparked by Pierre Rosanvallon's *Le moment Guizot* (1985) and they also attracted a lot of attention among Anglo-American academia (Siedentop 2012; Craiutu 2003a, b).

[11]The new republic, heavily undermined by political instability and lacking international recognition, was already abolished in the following year in the wake of a return Austrian

historiography, the Brabant Revolution was negatively evaluated. The Revolution originated out of a reaction against the enlightened reform agenda of Emperor Joseph II, and the resulting confederal republic, founded on old constitutions and medieval charters, lacked any democratic inspiration. In comparison with the American, Dutch and French revolutions, the Brabant Revolution was therefore considered as a 'reactionary' moment in the history of the nation, 'a step back in time' without much lasting historical importance. New intellectual-historical research on the origins of the eighteenth-century revolutions, however, has made clear to what extent the language of ancient constitutionalism structured political debates in most countries were revolutions occurred.[12] Since then, historians have revisited the Brabant Revolution as a moment of political innovation that is more comparable with the revolutionary events in other countries than initially thought. Johannes Koll has distinguished four types of patriotism in the Southern Netherlands of the late eighteenth century (dynastic-state patriotism, statist-corporatist patriotism, reform-patriotism and liberal-constitutional patriotism), which all had strong links with similar patriotic movements in other European countries (Koll 2003).

In a study on the political thought of the Brabant Revolution, Geert Van den Bossche carved out how the triumphing conservative or Statist party introduced a conception of the 'Rechtsstaat' in the political discourse. They 'cancelled' the authority of the ruling monarch and reduced his status to a private person, and invested supreme authority in the institution of a Constitutional Court (Van den Bossche 2001). Similar to the Orangists in the Dutch Republic around the same time, the Belgian Statists supported the notion of the nation as the sum of privileged and corporate groups. But the absence of a royalist narrative on the national past allowed the Statists to combine this understanding of the nation with the concept of popular sovereignty that was at the time driving political debates in revolutionary France. It remains to be explored how the political discourse after 1815 related to the political culture of the past. What was, in other words, the longer-term effect of

army and a restoration of the Habsburg government. It was to become a historical point of reference for nineteenth-century Belgian nationalism (especially from 1830 onwards).

[12]This field of research was opened up by Pocock's *The Ancient Law and the Feudal Law* (1971). See for France: Baker (1990), and for the Netherlands: Klein (1995) and Velema (2007).

the political language of the most important political event in contemporary 'national' history?

With regard to this question, it is particularly (but not exclusively) to the Catholic and clerical journalists and polemists that we have to turn. Many historians have exploited the question, why Catholics between 1814 and 1830 moved towards embracing individual rights, including freedom of religion, and changed their attitude towards the liberal opposition, which resulted ultimately in a 'union of oppositions' (Haag 1950; Jürgensen 1963; Simon 1963; Aubert 1968, 1974; Lamberts 1972; de Valk 1998). Depending on what clerical and Catholic circles one takes into account, it has either been answered in terms of an authentic intellectual development, inspired by the French, liberal-Catholic thinker Félicité de Lamennais, or in terms of strategical choices. In the latter view, Catholics came to 'understand' how liberal principles, and a liberal understanding of the constitution, could be made useful to secure and advance the social power of the church. Although both explanations undoubtedly apply to specific groups within the Catholic world (respectively to circles of Catholic nobility and to the higher clerical establishment), the presumption generally seems to be that Catholics entered politics under the Restoration monarchy for the first time. In this view, their intellectual point of departure did not go beyond the ultramontane religio-political doctrine that in the eighteenth century had prevailed against more regalist ('political Jansenist') views on the relation between the church and the state (see Chapter 5). What is generally being ignored, is the extent to which clericals had contributed to the political events of the Brabant Revolution and to the intellectual justification of the Revolution, and by doing so endorsed certain principles that distinguished them, for example in comparison with the outspoken monarchist and counter-revolutionary clergy in France.[13] The question is, in other words, if or not, and to what extent, the discourse of the Brabant Revolution created a 'path dependency' when it came to the later intellectual history of political Catholicism.

[13]In a recent study on religion and politics in nineteenth century Belgium, Henk de Smaele has argued that the Catholic proliferation that took place at the end of the nineteenth century was no indication of the 'conservative or reactionary character' of the Flemish-rural territories where it primarily took place. De Smaele even implies a causal relation between the 'ruralisation' of the clergy at the end of the eighteenth century and the 'republican' convictions which a part of the Flemish clergy endorsed at the time of the Belgian Revolution (de Smaele 2009, 184–186).

1.3 Intellectual History and the Age of Revolution

The major inspiration for the research project leading to this book was provided by the way how the 'linguistic turn' or 'new cultural history' has since the 1970s influenced the historical research of the French Revolution. Essential to the conceptual turn in the historical scholarship of the French Revolution, so it is commonly acknowledged, was the work by François Furet, primarily his 1978 publication *Penser la Révolution française* (Furet 1978). Before Furet, a number of revisionist Anglo-American historians had already undermined the dominating analysis of the French Revolution in terms of class conflict and social-economic change.[14] Endorsing the rejection of an understanding of the Revolution in Marxist and structuralist terms, Furet argued eloquently, starting in the early 1970s (Furet 1971), for an understanding of the French Revolution in political and cultural terms. Crucial to that argument was bringing the Reign of Terror back to the centre of the analysis. Furet strongly rejected the view in which the Terror was dismissed as an unfortunate aberration of the Revolution that was primarily attributable to the circumstances of war and internal revolt that the revolutionary leaders were confronted with. He set out to explain how revolutionary politics, from the very beginning, was in the grip of a 'democratic imaginary,' which insisted on a perfect transparency between the government and the 'will of the people,' and in which every obstacle or resistance to the revolutionary process towards a perfect democracy was explained in terms of 'conspiracy.' The Revolution, according to Furet, was trapped from the start in a 'semiotic circuit' that led straight to the Terror (Furet 1978, 71–79).

From a critical point of view, by over-determining the course of the Revolution in terms of political language, Furet replicated in his historical analysis of the French Revolution what he considered to have been the crucial element of revolutionary discourse, an 'overinvestment in the political.' In doing so, Steven Laurence Kaplan has argued, he substituted a purely abstract, philosophical approach to history to objective historical analysis. Historical reality is entirely reduced to its representation within a certain political discourse (Kaplan 1995, 80–98). Also Lynn Hunt pointed out that 'in the absence of some linkage between

[14]The so-called Wiles Lectures by Alfred Cobban are considered to have provided a first step in that direction: Cobban (1964).

the social and the semiological, or even an analysis of how the semiological determines the social, there are no causal explanations' (Hunt 1981, 320). It appears as if, in the analysis of Furet, 'the Revolution spontaneously causes itself' (Mah 2000, 175). However, most criticisms were appreciative, and fully supported a shift towards politics and culture in revolutionary studies. Crucial in this sense was Lynn Hunt's argument that, in spite of Furet's outspoken ambition 'to rediscover the analysis of the political as such,' he to some extent boycotted his own agenda: 'Furet is so keen to demonstrate the power of discourse that he passes right by the discourse of power … so dazzled by the theoretical imaginary of the democratic consensus that he overlooks the new practices of representation which were being developed …' The fundamental error that Furet made, in Hunt's view, was to describe 'the linguisticality of the Revolution as its special, temporary condition (in fact, as its motor), rather than as a status it shares with any and all events' (Hunt 1981, 320).

Hunt herself became the inspirer for a whole new field of cultural studies on the French Revolution. Others, however, such as Keith Michael Baker, took their cue from Furet (and Hunt) to refocus on the origins of the revolutionary discourse in the political culture of the Old Regime. Baker argued, in clear resonance with Hunt's argument of the linguistic status of all events, that once we start looking at political culture, we can no longer accept that the Revolution simply erupted from behind the scenes of the *Ancien Régime* (Baker 1990, 4). His program statement therefore is that 'the conceptual space in which the French Revolution was invented … was the creation of the Old Regime' (Baker 1990, 4). Baker warns, however, for the traps which historians of ideas so often fell into in the past. One is to write a linear history of doctrines, with an emphasis on a particular thinker, often called the *C'est la faute à Rousseau* style of interpretation.[15] Secondly, he distinguishes between treating ideas as if they were causal, individual agents of motivation and determination, a view that inevitably results in an exclusive focus on their circulation, and understanding the meaning of ideas to social actors: 'Texts, if read, are understood, and hence reinterpreted, by

[15]This type of interpretation is often attributed to the work *The Origins of Totalitarian Democracy* by J. L. Talmon (London 1952).

their readers in contexts that may transform their significance; ideas, if received, take on meaning only in relation to others in the set of ideas into which they are incorporated' (Baker 1990, 18–20). In his conception of what a study of the 'ideological origins' of the French Revolution should be about, Baker clearly was inspired by the Anglo-Saxon school of intellectual history (or 'Cambridge School'), and primarily by Quentin Skinner.[16] He defends in that regard a 'linguistic approach to political culture' against the accusation that it denies the relevance of social interests as well as the possibility of human agency (Baker 1990, 4–7).[17] Concretely, Baker set out, in his book, to uncover how the revolutionary discourse emerged from a political culture defined by three distinctive discourses revolving around the concepts of 'justice,' 'reason' and 'will,' and from the way elements from each of these discourses were re-elaborated and re-combined in the context of the political crisis of 1789.

If we want to apply a similar linguistic approach to the question of the origins of the Belgian Revolution, we need to first take stock of how political culture changed as a result of the French Revolution, which, as a pan-European phenomenon, had a lasting effect. We have already pointed at the centrality in pre-revolutionary political culture of the language of ancient constitutionalism. As Brecht Deseure pointed out, the three discourses that Keith Baker uncovered, corresponding respectively with a parliamentary-constitutionalist, a royalist and a democratic-reformist political affiliation, were not typical to the French context, but returned in the neighbouring countries in similar political discussions. Moreover, what all these pre-revolutionary discourses shared, was that they originated in taking a certain position towards the question of the ancient constitution. This happened, more often than not, in combination with

[16] Baker wrote in that regard of a 'new creative synergy' that has opened up between the French historiography of the Revolution and the English-language history of politics and ideas (Baker 1990, 3). He refers to the publication of the multivolume series *The French Revolution and the Creation of Modern Political Culture* (4 vols., Oxford 1987–1994), a collection of papers from a series of symposia held at the occation of the bicentennial of the French Revolution, which address the central dimensions of the Revolution as a political event, and of which Baker was co-editor.

[17] On both these points there are distinct differences of approach between the Cambridge School and the German School of Conceptual History. See for this: Bödeker (1998), van Gelderen (1998), and Bevir (2000).

the adoption of certain new political ideas or concepts, such as the one of the social contract. More radical political scenarios became imaginable when the tension between different idioms reached breaking point and the historical arguments were sacrificed. One of the essential effects of the dynamic of the French Revolution was, in the words of Deseure, a 'total undermining of the historical models' (Deseure 2014, 68–69, 73). In effect, after the French Revolution, the political debate was clearly no longer structured by the language of ancient constitutionalism.

As Markus Prutsch pointed out, the French and American, as well as the Batavian, upheavals can be classed as 'constitutional revolutions,' in which the ideas and benchmarks of 'constitution' were fundamentally changed. In spite of the rhetoric of restoration, political culture after the period of the French Empire revolved around the notion that a constitution, in the form of a written document, was the fundament of the political system and above all normal legislation. Both the state powers and the rights of the citizens were to be systematically and uniformly established in this document. Prutsch points to two more ways in which the new understanding of the constitution traced back to the political thought of the French Revolution: it was a 'secularized creed' to which everyone could refer, and it recognised, to a more or lesser degree, 'the will of the people' or 'the nation' as the source of political power (Prutsch 2013, 1–2; Aerts 2009, 589–590). At the same time, the constitutions that became adopted in 1814–1815 also differed in important ways from the revolutionary constitutional model of the revolutionary times. First of all, societies' expectations of maintaining a constitutional state, as well as the political innovations generated by the Revolution and the Napoleonic regime, had to be reconciled with the monarch's claim to preserve their sovereignty (Prutsch 2013, 3). Secondly, after 1814, great importance was attached to investing the new constitutions with a national character, even when they all were variations on a number of general principles of politics and rights, and all more or less referred to the same constitutional models. Constitutions, after 1814, became in fact monuments of 'invented tradition,' in which the new political forms and institutions were presented as a return to old 'national' forms and tradition (Aerts 2009, 589–591).

As a result of trying to reconcile such different aspirations and inspirations, the constitutions that were adopted in 1814–1815 often excelled in ambiguities and paradoxes. Conflicting interpretations of what the

constitutions were meant to say, as well as on the fundamental question where the original constituting power was to be situated, is what drove, to a large extent, the political battles of the Restoration. We will discuss the constitution of the Kingdom of the Netherlands in the next chapter in more detail, but here its specific problems in this regard can be shortly highlighted through a comparison with the French *Charte constitutionelle* of 1814. With regard to its form, there could be no doubt that the *Charte* was a *constitution octroyée*, rooted in monarchical sovereignty. A long Preamble was aimed at forging links between pre-revolutionary France and the legitimate ruler 'Louis, by the grace of God, King of France and Navarre.' Nevertheless, while suggesting a return to monarchical sovereignty in the style of the *Ancien Régime*, the actual text of the constitution clearly corresponded with a modern understanding of constitution. This was most obvious from the provision concerning the responsibility of the ministers, including a procedure for a parliamentary initiative to indict ministers; as well as from the provision that any bill passed required the approval of both parliamentary chambers. In comparison, the Fundamental Law that became adopted in 1814–1815 in the Netherlands was generally understood at the time as a 'contract.' However, also in view of the novel nature of the new monarchy, the text of the constitution left much more room for speculation regarding the question to what extent the legislative and juridical institutions were being given the powers to keep the king's government in check. These ambiguities opened the door for mutually exclusive interpretations of the constitution to enter the political debate, leading to an escalation of political tensions.

Another preliminary point can be made with regard to the Dutch Fundamental Law, when it comes to its qualities as a harbinger of a revived national tradition. Whilst the new constitution was indeed a monument of 'invented tradition' in the Dutch context, where the national past was successfully invoked to legitimise the new constitutional monarchy and political system (Aerts 2009, 590–591), this was clearly not the case with regard to the Southern Netherlands, where the constitution, after the unification, got introduced with only moderate adjustments. In general, the government, in its attempts at legitimating the new state on a historical basis, offered little points of reference to the annexed South (Leerssen 2014, 338). This would lead to profound differences in the way the constitution was invoked in the North as compared to the South.

Aside from the differences in political culture, we are also looking at the origins of a very different kind of revolutionary event in comparison with the upheavals of preceding century. The French Revolution was marked by the idea of recreating society and by constantly placing itself in opposition to what came before, the vilified *Ancien Régime*. The Belgian Revolution in one sense innovated the political system in the Southern Netherlands, and did so on the basis of principles that the French Revolution had stood for. On the other hand, the Revolution was not conceived ('thought') in terms of a radical rupture with an *Ancien Régime* originating in the dark ages. If anything, it originated from an opposition against radical reform policies, in the fields of, public education, language, legal tradition and so on, and the eventual establishment of a Belgian State secured an increased level of continuity with the past in many of these areas. Still, the Belgian Revolution was a *national* revolution, in the sense that it declared a certain ('imagined') people or nation, with its corresponding national territory, to be henceforth sovereign over its own destiny. The challenge, therefore, is to understand how the turn to Belgian nationalism emerged from different political movements that, until very late, made no point of questioning the constitutional order itself. Trying to make sense of the sudden turn to nationalism, in particular circumstances, can be compared to the way intellectual historians of the revolutions of the late eighteenth century tried to understand how history became abandoned as the fundament to make claims of legitimacy, which eventually made it possible to make tabula rasa with the existing order.

1.4 Political Developments in the Low Countries and Europe Leading to the Creation of the United Kingdom of the Netherlands

In 1810, the former Dutch Republic, which in 1806 had under pressure of Napoleon been turned into a monarchy with the Emperor's brother Louis-Napoleon as king, was fully integrated in the French nation and lost all semblance of independence. Only two years later, however, after the disastrous retreat of *La Grande Armée* from Russia, the Empire was fighting for its survival and facing popular riots in annexed and controlled territories, in Italy, Germany, Spain, and also in the Dutch cities.

After Napoleon's defeat in the battle of Leipzig in October 1813, the authority of the imperial administration in the Netherlands crumbled and French administrators as well as troops started to evacuate. In the power vacuum that emerged, an old representative of the Dutch regency class, Gijsbert Karel van Hogendorp, took matters in hand, a coming into action that was preceded by years of silent reflection and preparation in the belief that this moment could once present itself. After a failed attempt to convoke the pre-revolutionary States General in the form as they existed until 1794, and with the same (surviving) members, Van Hogendorp in November formed in the city of The Hague a provisional 'General Government,' together with Frans Adam van der Duyn van Maasdam and (count) Van Limburg Stirum, with intention of clearing the path for a return of William Frederick, the Prince of Orange. Two delegates were sent to the prince, residing in London, with the invitation to cross the channel and be proclaimed 'Sovereign' of the Netherlands, and head of the provisional government, in attendance of the adoption of a new constitution. The messages sounded: '*La nation s'est levee, elle porte vos couleurs, elle proclame votre nom, elle proclame votre nom*' (de Haan 2014, 16).

William Frederick was the son of the last stadtholder of the Republic of the United Provinces (the title of the head of government, which since 1747 had become hereditary) who had ruled until 1795.[18] In that year the French Revolutionary Army, after having re-occupied the Habsburg Netherlands in the summer of 1794, crossed the frozen 'Great Rivers' in the winter 1794–1795, marched into the Northern Netherlands and overthrew the stadtholderate regime (which after the execution of Louis XVI had joined the first coalition in war against France). Whilst the former stadtholder settled down in a comfortable life as an exile in England, Prince William Frederick turned to Napoleon in search for employment. The French consul made him prince of the German Principality of Fulda, where he remained until the dismantling of the Holy Roman Empire in 1806. Afterwards, William retired on the family estate in Posen and Silesia, but in 1813 moved to England to plead with the English, in collaboration with other Dutch *émigrés*, for the restoration of the House of Orange in

[18]William Alexander, King William I, became recently the subject of a new academic biography: Koch (2013).

the Netherlands in the event of the collapse of the Napoleonic Empire. William was given insurance from the British foreign minister Lord Castlereigh that the 'liberation' of the Netherlands and the 'restoration' of the House of Orange were for Great Britain of primary importance. Upon receiving the invitation by Van Hogendorp, William Frederick embarked on his journey, on a fleet financed by the British government and accompanied by the British delegate Lord Clancarty (who would remain British ambassador until 1824). He famously landed on December 2nd on the coast of Scheveningen and moved from there to The Hague. In the coming months, a constitutional commission, whose members were appointed by the prince himself, drafted a new constitution, which was adopted by an Assembly of Notables, equally selected by William Frederick and his advisors, on 29 March 1814. Whilst the European powers were still consumed by the war effort to bring Napoleon to his knees, and negotiations over the future European had still to take a start, the Netherlands had remarkably smoothly been transformed into a new constitutional monarchy.[19]

In Dutch historiography, the nature of the Restoration monarchy has been intensely debated, both in comparison with other Restoration states that emerged at the time, and in perspective of the previous political and constitutional developments in the Netherlands itself. Clearly, in spite of the rhetoric of restoration and the use of vocabulary that evoked the political order of the old republic, the new state was not a restoration. Some of the most fundamental changes since the Batavian Revolution, such as the unitary state, a written constitution, a 'national' representative assembly and a uniform legal system, were maintained or consolidated, in a similar way as would be the case under the Restoration monarchy in France. Ironically, also the monarchical form of government, even when superficially a restoration of the House of Orange, was in the Netherlands undeniably a novelty for which the Dutch had as there only historical reference the 'imported' monarchy under Louis-Napoleon that existed from 1806 until 1810. Although the short history of this kingdom became, for obvious reasons, not part of the reference framework after 1814—it was generally ignored and Louis-Napoleon

[19]For a more in-depth description of the events leading to the establishment of the Kingdom of the Netherlands in 1814 see following recent publications: de Haan (2014), Lok (2009, 43–71) (in comparison to the French Restoration); Deneckere (2015) (in a European context); Koch (2013, 215–283).

became something of a 'shadow king'—the brother of Napoleon had succeeded to familiarise the Dutch to some extent with the idea of a monarchy (van der Burg 2010, 238). In contrast to an older historiography that has presented the period 1806–1810 as a moment of rupture in Dutch history, a time, in the words of Jonathan Israel, when 'practically every typical feature of the old republic was finally erased, and consciously so,' Martijn van der Burg has recently analysed the period as a time of transition, in which the principle of hereditary rule and constitutional monarchy 'were gradually—but not without resistance—introduced' (van der Burg 2010, 73–74). Louis-Napoleon managed to do so, by referring actively to the republican past of the United Provinces, as well as to Batavian precedents, whilst at the same time radically breaking with tradition in other regards. The duplicity was in fact very comparable, Van der Burg points out, with the way Napoleon accomplished the transition from republic to empire in France, referring to different historical era's in the history of France (including the revolutionary one) whilst also introducing radical changes.

Overall, the political developments in the Netherlands had since 1795 been very much tuned to how regimes succeeded one another in post-revolutionary France. The Batavian Revolution (1795–1798/1801) has in recent years been subject of a revived interest among Dutch scholars, and has been increasingly seen as the central political event in the development of the Netherlands into a modern nation-state.[20] The most important innovations introduced by the Batavian revolutionaries where the unitary state and representative democracy, the work of a National Assembly established in 1795, which, after three years of intensive debate, in 1798 adopted the first written constitution in the history of the country. These innovations were however not underpinned by contemporary liberal-democratic political theory, but were rooted in convictions resulting from a (classic-)republican vocabulary, adapted to novel Enlightenment principles as equality and popular sovereignty (Rutjes 2012, 219; Velema 2013, 29), and had been prepared by a reform movement to renovate the republic in the 1780s (the so-called Patriot Revolt that was eventually crushed by the stadtholder, with

[20]Most important example of this revival was the NWO-research project at the University of Amsterdam 'The First Dutch Democracy: The Political World of the Batavian Republic, 1795–1801' under supervision by N.C.F. van Sas and Wyger Velema (2007–2012). It resulted in a number of innovative publications, including monographs (Oddens 2012; Rutjes 2012; Grijzenhout et al. 2013).

Prussian military support).[21] If a unitary state had generally been conceived as in opposition with a free citizenry, the Batavians believed it was essential to promote the national unity and 'love of country' that were essential to the republican form of government. Furthermore, it was also justified on the basis that a fragmented republic had in the past created the desire for a strong stadtholder and now also in the new American republic necessitated a strong president (Rutjes 2012, 209–211; Velema 2013, 35–45). Excluding an Athens-like participatory democracy, representative government was considered an inevitable choice in view of the endorsement of popular sovereignty and equality, but the republican understanding of politics was still given its due through the institution of popular assemblies (*grondvergaderingen*), the adoption of clear procedures for constitutional revision and ensuring the publicity of political decision-making (Rutjes 2012, 211–214; Velema 2013, 45–51). But if 1798 was the 'pinnacle' of the republican history of the Netherlands, it was also the year in which political culture irrevocably turned away from republican concepts and ideals towards a more contemporary, 'liberal,' understanding of politics.

After the new constitution was adopted (on 23 April 1798), which even included ideas about how the state should guarantee the welfare of its citizens, the Assembly was confronted with the immense challenge of implementing the new order in a country where, at the basis, the old-republican forms and habits persisted. After the hectic political battles that accompanied the constitution-making, including a Jacobin-style 'purification' of the Assembly from its moderate and 'federalist' factions (which initiated the phase of the so-called 'Batavian Terror,'[22] from January to June 1798, a period marked by political repression at all levels of government, but without guillotines), the political mood changed radically from the summer of 1798 onwards. Emphasis shifted, on the one hand, from valuating politics and political conflict for its own sake, to a desire for reconciliation and political calm, and, on the other hand, from giving expression to the will of the people to effectively implementing the Batavian blueprints (van Sas 2013, 79–89; Rutjes 2012, 217). This *moment thermidorien* (Lok 2009, 36) of the Batavian Revolution

[21] On the political thought of the Patriot Revolt: Klein (1995), van Sas (2004, 173–274), and Velema (2007, 115–177).

[22] For a short overview of the events of the so-called Batavian Terror: van Sas (2011).

crystallised in the new constitutional regime of 1801, with a shift of power to the executive branch of government (a college of twelve), the restriction of the suffrage, the abolishment of the different possibilities for citizens to participate in and contest political decision-making and the reintroduction of old-republican political vocabulary (The republic was re-baptised as the 'Batavian Commonwealth'). Another change that took place was that, if the French, after having chased the unpopular stadtholderate regime, had initially left the Dutch relatively free to work out their own political business, with the advent to power of Napoleon Bonaparte in 1799 this radically changed. In 1805, under pressure of the now emperor, the Batavian constitution was changed again, now to establish a single-headed government, with moderate Republican ('Batavian') and former ambassador Rutger-Jan Schimmelpenninck at its head (with the old-republican title of *raadspensionaris*). The nomination by Napoleon of his brother to king of Holland, one year later, can in this sequence of events be interpreted as the logical next step in a development towards a unitary state with a strong central government. Furthermore, it presented to many Batavian rulers and administrators the best guarantee to maintain the revolutionary legacy and avoid a restoration of the old order. By that time, in view of the recent military successes of Napoleon and the expansion of *La Grande Nation*, the Dutch considered themselves lucky that the emperor was still willing to grant the former republic at least nominal independence (Lok 2009, 40).[23]

The advent of a Dutch kingdom under the House of Orange completed, what Niek van Sas has called, the 'nationalisation' of the revolution (van Sas 2013, 95–100). The divisions that had accompanied the transition from old to new in the last years of the previous century had since then been transcended by the construction of a historical narrative of the nation, which smoothed over contemporary conflicts and radical ruptures. Van Hogendorp excelled in applying a historicist approach to the constitutional consolidation of the recent major developments in Dutch politics and government, even evoking the times of the Habsburg Netherlands under Charles V, before the Dutch Revolt resulted at the end of the sixteenth century in the early-modern republic. This turn to national history also fitted a conscious politics

[23]See for a detailed discussion on the political debates surrounding the abolition of the republic: Velema (2006) and van der Burg (2010).

of 'prescriptive forgetting,' as Matthijs Lok has argued (Lok 2011, 68–72). It became an implicit political practice of not evoking the recent past, so as not to endanger the new order that was still considered very fragile. It meant that, at all levels of government, people could take up positions, or be confirmed in them, without having to answer for past political alliances or 'collaboration' with past regimes. Even when Dutch historians have in recent years strongly refuted Huizinga's image of a Dutch nation that, in 1814–1815, put itself to sleep under the 'Orange tree,' the essential value attached to 'history of the fatherland,' as a consolidating and unifying factor in politics, would, in years to come, have the effect of limiting the scope of politics to the framework of the imagined national tradition (van Zanten 2004, 40–45).

Although it is clear that the nature of the Kingdom of the Netherlands in 1814 needs to be primarily understood in the context of Dutch history, the 'founding fathers' of the new kingdom, including Prince William Frederick, had from the beginning in mind to expand the new kingdom with the former Habsburg Netherlands.[24] In historical terms, they imagined this to be a return of the political unity of the Netherlands that in the fifteenth century had been the result of the dynastic politics of the House of Burgundy. The idea of a 'reunion' of the 'two Netherlands' was not entirely new in 1814 either. At the time of the Brabant Revolution, the Belgian leaders had considered choosing the brother of William Frederick, second son of the Dutch stadtholder William V, to become stadtholder over the Southern Netherlands. In 1805, British prime minister William Pitt presented a memorandum to the Russian Tsar for a post-Napoleonic European order, in which he suggested that a Dutch state restored in its independence should be expanded with the region Antwerp-Maastricht. The rest of the Southern Netherlands would best be transferred to Prussia, whilst Austria would be compensated in Italy. In 1812, after news reached the European capitals of Napoleon's Russian disaster, the new British minister of foreign affairs, Lord Castlereagh, adopted Pitt's blueprint from 1805 and turned it into a political program. After the Dutch exploited the power vacuum left by

[24]The following description of the events that led to the creation of the united kingdom supports on: Judo and van de Perre (2015b), Lamberts (2014), Deneckere (2015), Koch (2013, 259–283), and Lok (2009, 60–62).

the French retreat to create their own state, the new Dutch government unfolded an active diplomacy for an expansion of the new state with the Southern Netherlands. William Frederick even hoped that not only the Southern Netherlands, including also the former Prince-Bishopric of Liège and Luxembourg, would become part of the united Netherlands, but also the territory between the rivers Meuse, Moselle and Rhine, containing German cities as Aachen, Cologne and Düsseldorf. As a German prince, he dreamed of a 'third Germany' next to Austria and Prussia, which could possibly even have outshined the latter (ruled by his nephew Friedrich Wilhelm III). As other rulers of the time, the Prince still primarily thought in terms of 'dynastic interests.' Nevertheless, his ambition to create a state with such diverse territories was remarkable in view of his later preoccupation with the uniformisation and nationalisation of the new state.

In January 1814 Castlereagh travelled to the continent to start negotiations on post-war territorial redistributions, now clearly with a union of the Northern and Southern Netherlands in mind. In the same month, the government in Vienna made it clear it was no longer interested in a return of the Southern Netherlands to the Habsburg Empire. In February, most of the Southern Netherlands were occupied by the Russian, Prussian and Saxon armies. Hereupon the Dutch government sent agents to the South to prepare the public opinion for a union with the North, an independent manoeuvre which stirred the anger of the British and resulted in Ambassador Clancarty confronting directly Prince William and Minister Van Hogendorp. In March, however, Castlereagh succeeded at forming the Quadruple Alliance with Russia, Prussia and Austria, with the goal of jointly fighting Napoleon to his complete surrender, and all powers agreed on the prospect of 'a reunion of Belgium and the United Provinces of the Netherlands.' This was confirmed after Napoleon's defeat in the Peace Treaty of Paris on 30 May 1814, which restored the French monarchy under Louis XVIII and reduced France to its boarders of 1792. As part of the package deal, Austria would obtain the Italian duchies of Venice and Milan, and Genoa was to be attributed to Piedmont-Sardinia. It was also agreed that most of the Dutch colonies would be returned to the Netherlands, with the exception of the territories that the British considered essential for their 'Passage to India'; for which the Dutch received a compensation of two million pounds. The treaty provided the blueprint for the Congress of Vienna that started in October 1814 and dragged on to June 1815.

Prince William and the Dutch government were, during all this time, never true participants in the negotiations leading to the creation of a united kingdom, but they did obtain a diplomatic success with the so-called London Protocol, agreed upon by the coalition powers in London on 21 June 1814. It established in eight articles the conditions for the future union according to the wishes of the Dutch government: the union would be '*intime et complète*'; the constitution of the new state would be negotiated by representatives from both parts, but on the basis of the in March 1814 adopted Dutch constitution; there would be free economic traffic and a common military; and the state debt of the different former parts, which was much higher in the North than in the South, would be combined. Even when the author of these articles was the Dutch minister Anton Falck, the Dutch were successful at creating the perception that they were purely an assignment from the European powers, which Niek van Sas has described as the 'assignment myth' ('*opdrachtmythe*') (van Sas 1985, 56). The unified Netherlands were created, so the official argument would be, in service of the balance of powers, and the future monarch was given the important task to work towards peace and prosperity. With regard to the final territorial demarcation of the new state, the outcome of the Congress of Vienna would be somewhat disappointing to William Frederick, which was primarily a consequence of the territorial claims of the Kingdom of Prussia. Prussia wanted initially to be 'rewarded' by Polish and Saxon territory, but as Russia and Austria objected to this, it was eventually compensated with more territory in the Rhineland, at the expense of the ambitions of Prince William. The prince even had to give up the hereditary land Duchy of Nassau. In return, he obtained the (Grand) Duchy of Luxembourg, which would at the same time be part of the German Confederation and fall under the military control of Prussia.

Although after the Treaty of Paris, there was no official communication to the people in the Southern Netherlands concerning their political future, it soon became clear enough what the plan was. The first months after occupation by the coalition forces, the territory was ruled by a number of successive 'general governors.'[25] The second governor, Austrian lieutenant-general Karl von Vincent, received from Klemens von Metternich the clear instruction to prepare 'with all possible means'

[25]For a detailed overview of the governance in the Southern Netherlands during the transition period 1814–1815, see de Broux (2015).

the population of the Southern Netherlands for a 'reunion with Holland.' Vincent reported in his turn on many occasions to Metternich that the situation of uncertainty threatened to turn the people against the prospect of a union. There were also numerous complaints, during this period, about high fiscal burdens, requisitions and the burden of sustaining the coalition troops. In this context, the decision was made to appoint William Frederick himself as governor, which happened on 1 August 1814. The prince declared to the people of Belgium that he would do everything in his power 'to promote and stimulate the unity that will be your fate' and to 'dedicate an equal love' towards the Belgian people as towards 'that people which is predestined to form with the people of Belgium a strong and prospering state' (Judo and van de Perre 2015b, 20). Eventually, on 25 February 1815, the Congress of Vienna officially made it known that the Netherlands were to be united and that Sovereign Prince William would be elevated to King William the First of the expanded kingdom.

The shocking news in the following month of the return of the French emperor from Elba created the circumstances for Prince William to act immediately upon the Congress' decision. On March 16, in the assembly room of the States General, William Frederick proclaimed himself King of the Netherlands and gave a speech in which he referred to the Treaty of Paris, the Burgundian Netherlands of Charles V and the dream of 'father William'—William the Silent—leader of the Dutch Revolt and founder of the Dutch Republic. The Battle of Waterloo, on 18 June 1815, provided the new kingdom with an unexpected 'founding myth.' The son of the new king, twenty-two-year-old Prince William, who had been appointed at the head of the united English-Dutch troops in the Southern Netherlands, was quick to take defensive measures against an anticipated French military campaign to the North. The subsequent victory at Waterloo and the apparently heroic behaviour of the prince (who became wounded) were considered confirmation of the functionality of the new kingdom as barrier state, and, according to contemporary testimonies, provoked outbursts of enthusiasm and support, in both the Northern and the Southern Netherlands, for the new regime. The celebration of Waterloo Day became the most important commemorative event in the new kingdom, meant to promote a Great-Netherlandish national identity. The decision was taken to build a commemorative monument at the spot were Prince William had been wounded, which became the famous Lion's Mound.

Although the political debates in the Southern Netherlands from their liberation onwards is the subject of the following chapters, we need to shortly address here the general nature of public opinion in view of the anticipated union with the newly created Kingdom of the Netherlands. The common view that there existed merely apathy regarding the political future of the country, has long been refuted. Immediately when the French left the country, a lively public debate unfolded (François 1993).[26] But neither did this translate into the manifestation of an identifiable 'national will' (or the representation thereof), nor into the expression of a wish for national sovereignty in the form of an independent Belgian state (François 1993; Judo 2015). The developments in recent years meant that the country had remained politically divided.[27] The Brabant Revolution (on which we come back in more detail in the next chapter) ended in failure, but the divisions of that period, involving conservatives, moderates and radical democrats, lingered on after the Habsburg Restoration of 1790. When the French Revolutionary Army, under General Charles-François Dumouriez, occupied the Southern Netherlands, the initial sentiment among the people was one of liberation. In a manifest, Dumouriez proclaimed that it would be up to the Belgians to draft a new constitution for a free Belgian republic. However, conservative Statists soon opposed the convocation of a Constitutive Assembly, on the ground that no new constitution needed to be adopted, and one only needed to preserve the old constitution 'for which our ancestors have spilled so much blood' (Deseure 2014, 102).[28] Political polarisation between the conservatives and radical Jacobins (often Belgians who had fled to Paris after the Habsburg Restoration and come back in the slipstream of the French army) followed, and on 15 December 1792 the National Convention in Paris, on the ground that the country was 'not ready for liberty,' decreed what policies the generals had to adopt. By the end of January it took political control

[26] François (1993) and Judo (2015).

[27] The following summary of these developments is largely based on: Deseure (2014, 98–106, 118–124, 130–136). Other works to be consulted on the Brabant Revolution, its aftermath, and on the French period are: Tassier (1934), Polasky (1984), and Hasquin (1993).

[28] Deseure quotes: [Antonius De Braeckenier], *Réponse d'un Belge au Manifeste du Général Dumouriez* (s.l. 1792).

in its own hands and sent commissars to reorganise the country, and in March 1793 it decided for annexation of the country altogether.

As a result of how the divisions of the Brabant Revolution were allowed to linger on, the Revolution was never 'nationalised' in the sense Niek van Sas has described with regard to the Batavian Revolution in the Northern Netherlands. It was never 'ossified' into a historical event of the past, as part of an emerging narrative of the history of the nation. The same applied to the institutional and political changes that the country underwent after its integration into France. After a second Habsburg restoration, which lasted approximately one year (March 1793–June 1794), Belgium became re-occupied by the French Republic and was re-annexed on 1 October 1796. The ultimate annexation was met with both indifference and relief, in view of the exploitative nature of the occupying regime and the hope that annexation would bring some normalisation (which it did). What took place in the following months and years was, in the words of Brecht Deseure, a 'revolution from above'—which was of a much more radical nature than the so-called 'enlightened innovations' by Joseph II. The vast body of revolutionary and republican laws were gradually introduced in Belgium, and from 6 December 1796 onwards all new French laws automatically also applied to the Belgian *départements* (Deseure 2014, 135). After Napoleon came to power, the general sentiment toward the French regime substantially improved, due primarily to the Consul's pacification of the religious question, as well as to his stimulation of industrial development in the Belgian departments. The imperial regime, however, never became truly popular, something for which the high fiscal burdens and the conscription, as well as the never ending military campaigns which both were meant to support, were to blame.

Recent trends in the historiography teach us not to look at the history of different European countries which became temporarily part of the French *Grande Nation* purely in terms of the confrontation between nations, or at cultural and institutional developments in terms a one-way traffic between occupier and occupied. Reforms resulted rather from a process of 'creative acquisition' in which multiple influences were adjusted to local contexts (Deseure 2014, 25). Brecht Deseure has, from this perspective, uncovered how French administrators made efforts to make the French political message of radical change acceptable to the Belgian population, by pointing at, or suggesting, the many synergies between their political convictions and the culture of the locals.

Apart from predominantly local, often city-specific themes, one theme that was often invoked in this sense was the traditional Belgian 'love of freedom.' By leaving out references to the ancient constitutions, the French tried to establish a connection between the tumultuous political history of the Southern Netherlands and the French revolutionary desire for liberation, a manoeuvre that to some extent continued how Belgian radical democrats had previously transformed the discourse of ancient liberties. Under Napoleon, evidently, the regime turned to other, i.e. monarchical, repertoires from the Belgian past (Deseure 2014, 363–370). To what extent these adaptions and appropriations were successful, and the reforms were carried by the local population(s), is something that is harder to establish, in view of the censorship and repressive nature of the French regime.[29] But due to the absence of a free political debate through which public opinion could digest the many changes in society, the legacy of the French years became inevitably part of the debate on political legitimacy in the country after the fall of the French imperial regime.

The lack of national consensus or an apparent desire for such a consensus, as existed in 1814–1815 in the Northern Netherlands, meant that there would be, in the coming years under the Kingdom of the Netherlands, a more receptive climate for political ideas, and, correspondingly, a greater willingness to enter into political controversy and confrontation. However, when it became clear that the Northern and Southern Netherlands were to be united under the House of Orange, there was neither much outspoken negative reaction, nor much real enthusiasm. A broadly spread moderate positive attitude was attributable to the fact that different groups projected upon a united kingdom their own political desires for the country (Judo 2015, 54). This was primarily the case with regard to moderate conservatives, who retrieved the plan of the Statist revolutionaries in 1789 for a union between the newly established Belgian confederal republic and the Dutch Republic (see Chapter 2). But it also applied to those groups who were primarily concerned with maintaining the status quo after the disappearance of the French regime, and argued in favour of the legitimacy of the many changes that had taken place since 1794. Also, the Catholics and the clergy were, initially, positive about the prospect of an

[29]Tom Verschaffel has shown that historical reproductions during the French period were to a large extent in continuity with their eighteenth-century predecessors, in spite of some lip service to the new authorities (Verschaffel 1996).

aggrandised Kingdom of the Netherlands, believing the Catholic Church would return into a privileged position in the South, and many of the controlling and suppressing measures of the French administrations with regard to the church would be abolished. However, when deliberations started for a new constitution, basically a revision of the constitution of 1814, journals and pamphlets started to express criticism, both regarding the content of the constitutional laws as regarding the process in which the constitution was adopted and proclaimed. This is what the next chapter will address.

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PART I

Liberals

CHAPTER 2

Political Debates in the Wake of the Declaration of the Constitution: The Legitimacy Problem and the Preliminaries of a Liberal Opposition

2.1 The Fundamental Law of 1814 and the Revised Law of 1815[1]

After the Northern Netherlands had been liberated, and William Frederick had been declared Sovereign Prince and head of a provisional government, a constitutional commission was set up to draft a new constitution for the country. The prince had declared on 2 November 1813 that he accept becoming the new sovereign only 'under guarantee of a wise Constitution' (van Sas 2004, 461).[2] Therefore, it was clear from the start that the new state, consisting of the territory of the former Dutch Republic, was to be established as a constitutional monarchy. The main source of inspiration was a constitutional sketch presented by Karel van Hogendorp, meticulously elaborated in previous years in anticipation of the possibility that the Netherlands might in the near future regain independence, and accompanied by an elucidative introduction. Van Hogendorp primarily aimed at a constitution that would break with the innovative spirit of the previous years of political instability, running from the Batavian Revolution (1795–1798) to the establishment of a first Dutch kingdom under Louis-Napoleon Bonaparte (1806).

[1] For the Constitution of 1814, see Colenbrander (1908–1909, Vol. 1, 446–470), for the Constitution of 1815, see Colenbrander (1908–1909, Vol. 2, 620–651).

[2] Quoted in: van Sas (1998).

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The rapid succession of 'one constitution after another' during these years (in 1798, 1801, 1805 and 1806), according to Van Hogendorp, had made it clear that 'only stability of the laws and the sanctity of the constitutional state can establish the freedom of the Nation and the Royal seat.' It was necessary, therefore, to root the new 'Fundamental Law,' as the new constitution would be named, as much as possible in the pre-revolutionary history of the country; or, in Van Hogendorp's words, to 'improve the flaws of the old Constitution, without unnecessary changes, and with the greatest possible preservation of old habits, rights, offices, and even names to which our nation is so much attached' (van Sas 2004, 462).

In spite of the rhetoric of restoration, the new constitution would maintain many of the changes that had been made in government since the Batavian Revolution. Most importantly, the Netherlands did not return to the confederal state of the United Provinces but remained the unitary state into which it had been transformed since the Batavian constitution of 1798. The choice for a monarchy under the House of Orange-Nassau was, superficially, a return to the past, as the position of stadtholder had generally been held by somebody from that family, but was also a conscious choice for a strong, single-headed, executive government in continuation of the monarchical regime under King Louis-Napoleon (1806–1810).

To some extent, it was a conscious choice by Van Hogendorp himself to wrap up the new political realities in a language of the 'old constitution' (van Sas 2004, 462–463). An example of this was the choice for the name 'States General' for the parliament. It suggested continuity, but whilst under the old republic the States General had consisted of delegates of the sovereign provinces, in 1814 they were meant to represent the whole country and therefore presupposed the existence of a unitary Dutch nation in the spirit of the French and Batavian revolutions. However, the modern elements in the constitution were also to a large extent the result of the impact of members in the commission who had made careers in the republican, monarchical and imperial institutions since 1795, and who straightforwardly aimed at erecting a government in continuation with the transformations of the last decades. They pushed to strengthen the central state, limit provincial and local autonomy and shift the balance of power to the executive branch of the government. Under their influence, Van Hogendorp also had to give up recreating the old-republican function of 'grand

pensionary' (*raadspensionaris*), which he had planned to occupy himself (van Poelgeest 2014, 67–70). As a result of these conflicting views, the constitution of 1815 would not clearly define the nature of the relation between the created powers (monarchical, representative and juridical). It did not create, in the words of Jeroen van Zanten, a 'formal frame wherein politics had to take place' (van Zanten 2012, 440). The central question was, how exactly under the constitution the power of the 'sovereign' king could be restrained or tempered (de Haan 2014, 28).

In Van Hogendorp's eyes, the new monarchy was to resemble Montesquieu's description in the *Esprit des Lois* of a moderate government in opposition to a despotic government. Thereof, the characteristic was a delicate balance of powers between the realm and the provinces, as well as between monarch, representative institutions and judiciary (Aerts 2016, 49; van Poelgeest 2014, 68). Van Hogendorp envisioned the constitutional monarchy as an improved version of the body politic of the republic of the Seven Provinces. The problem with the old republic, in his eyes, was that, in spite of the ideal of *gouvernement mixte*, the provincial assemblies or States had usurped sovereignty and considered the stadtholder as a mere servant. A hereditary monarchy offered the perfect remedy for this (van Velzen 2005, 24–26). Van Hogendorp's views in this sense resonated with those of the Orangist party in the eighteenth century, which, against the confederalist-minded Statists, considered a strong stadtholder to be an essential part of a moderate government in a Montesquieuian sense (Velema 1997, 52). However, these ideas did not offer any clear guidance when it came to clarifying how powers were to be divided and balanced against each other in a newly created constitutional monarchy. And this, in turn, offered the supporters within commission of strong monarchical government manoeuvring room to strengthen, often through subtle changes in the articles of the constitution, the prerogatives of the monarch.

The fundamental uncertainty that remained, after the constitution had been drafted and proclaimed, concerned the status of the constitution itself. According to Niek van Sas, it had been clear, to 'those who were present,' that William Frederick became king under an 'implicit contract,' that sovereignty and the constitution were therefore wrapped up with each other (van Sas 2004, 461). However, certain parts of the constitution itself gave credibility to the interpretation that the sovereignty of the monarch *preceded* the constitution. Article 1 declared unequivocally: 'The Sovereign Power of the United Netherlands is and remains

transferred to His Royal Highness William Frederick Prince of Orange-Nassau, to be possessed, by way of inheritance, by Him and His heirs […].' As Emo Boss pointed out, the framing 'is and remains' sounded more like a declaration of fact than as act of transference of power (Bos 2009, 144). Furthermore, it was not inserted in the constitution that ministers were responsible for acts of government, nor, which logically accompanied a declaration of ministerial responsibility, that the king was inviolable. Nor was the parliament explicitly granted the right to indict ministers. This could (and would) later become interpreted as if ministerial acts could not be legally challenged at all, and therefore as further proof that ministers were serving a power that transcended the constitution. Partly, this was the result of conscious manoeuvring by the members of the commission, primarily Cornelis van Maanen, who wanted to strengthen the power of the executive. But another reason was the fear that a clear procedure for the indictment of the ministers by the parliament could put the door open for an evolution towards *political* control over the government by the parliament, and therefore a form of parliamentary government *à l'anglaise*. This was especially regarded upon as a threat in view of the anticipated union with the Southern Netherlands, as it could potentially place the government in the hand Catholic-Belgian majority bloc (van Velzen 2005, 36–41; van Zanten 2012, 445).

The new constitution was submitted to and endorsed by an Assembly of Notables on 29 March 1814, and enacted the day after (van Poelgeest 2014, 70). However, the international agreement in June 1814 to unite the former Habsburg Netherlands with the new Dutch state, a territory that was already often referred to as '*la Belgique*,' meant that the young constitution was immediately up for replacement. It was foreseen that a new constitution would result from a revision of the existing Dutch constitution by a commission consisting of 22 members, 11 from the South and 11 from the North. This meant that, in spite of the changes and additions, the fundamental character of the new constitution would not be different from the constitution of 1814. Moreover, this procedure meant that that the new monarchy could not be expected to obtain the same level of historical legitimacy as it did in the North (van Poelgeest 2014, 70; van Zanten 2012, 441). An issue that would further aggravate the problem of legitimacy in the South was that of the territorial configuration of seats within the States General. In view of the larger population of the South, it seemed normal to the Belgians that the Southern members of parliament would outnumber the Northern

members, but the Dutch, who feared a Belgian- and Catholic-controlled parliament, insisted on an equal number for the Northern and the Southern parts. Equal representation eventually prevailed, on the basis of the argument that, in the indirect election system that privileged wealth and status, population numbers were irrelevant anyhow (van Zanten 2012, 441; Witte 2016, 36). However, it would, when other problems emerged, increase the sense of discrimination in the South, and ultimately even become considered as the *vitium originis* of the newly constituted state (van Zanten 2012, 441).

The fundamental problems with the constitution that we discussed previously were not resolved in the second round of negotiations. The Belgian members, apart from asking proportional representation, pushed also to expand the possibilities for control of the government by the parliament. They urged to insert the parliamentary right to indict the ministers, but were made to believe by Van Hogendorp that the existing articles offered enough guarantees in that regard (for example by the required oath of the ministers on the constitution) (van Velzen 2005, 53; van Zanten 2012, 444). The Belgians also expressed concern about the possibility for the government to legislate by executive decree, and thus to completely bypass parliament. Even though this would turn out to have been a very justified concern, it remained unaddressed (Witte 2016, 35). Somewhat inexplicably, after renegotiation, it was decided to split the budget in a part concerning normal, regular expenses, and a part concerning the exceptional expenses, with the first being adopted for a period of ten years and the latter being adopted on a yearly basis. This, on the one hand, meant that the government became in its budgetary policy less dependent of the parliament than before. On the other hand, it could have the effect, with the parliament being denied other means of holding the government accountable, of making the decennial vote into a moment of reckoning, with the additional risk of throwing the political system in a crisis (van Zanten 2012, 477).

What the Belgians did succeed in, however, is adopting a more generous approach to individual rights (which had the unintentional effect of making the constitution even more incoherent). In the Dutch constitution of 1814 there was no mention of rights whatsoever. The reason was that the commission members believed basic rights existed de facto (or not), and that it had been their assignment to establish a sovereign, independent and secure national state, not to guarantee individual rights. Moreover, they believed that the recent past had shown the danger of

translating universal norms into laws, and took a more organic and historical approach with regard to the question of rights. The insistence of the Belgians to make certain rights explicit led to the compromise of 'spreading' the provisions for individual rights over different sections of the constitution, so as not to give them any prominent place in the structure of the constitution (van Zanten 2012, 452–453; Aerts 2016, 49–50). Relevant articles that were in this way adopted involved, on the one hand, very general (passive) rights as the right to the protection of property or the security of personal freedom. On the other hand, they also involved the right to petition and the freedom of the press, rights that would allow, to some extent, for the creation of a free public opinion and the engagement in political opposition. Freedom of the press, although it guaranteed the absence of any kind of censorship, would nevertheless become, by the end of the year, restricted by a royal decree that penalised the act of insulting foreign heads of state, but also, more vaguely, the infringement of national security (van Zanten 2004, 455–456). Also, a so-called Riot Law that was adopted in April 1815 in reaction to the unexpected return of Napoleon would remain in force until the late 1820s. It was aimed at anyone committing acts 'tending to trouble public tranquillity' and would provide additional legal gunpowder for prosecutions of journalists and publishers (Bos 2009, 135–136).

A final important rights issue that the Belgians took at heart concerned that of religion. Whilst the constitution of 1814 had merely guaranteed equal protection for 'all existing affiliations' ('*gezindheden*'), the new constitution declared unequivocally the individual freedom of (all) religious convictions (Bos 2009, 120). Whilst the Dutch, again, had considered this a given, also in view of their long tradition of religious tolerance, the Belgians nevertheless feared a Protestant dominance in the kingdom (Bos 2009, 134). The (political) Catholics among the Belgian members furthermore pushed, with the support of the clergy, for Catholicism to be declared the one official religion in the Southern part of the country, and for the prospect of a new Concordat with Rome to be inscribed in the constitution. The rejection of these radical (or 'reactionary') demands ignited a lot of protest among the clergy and the Catholic press. Nevertheless, even when this marked the beginning and the first phase of the Catholic political opposition against the government (see Chapter 5), more important for the durability of this opposition would be the limited sense in which religious freedom was truly

guaranteed, and the extent to which the government would interfere with the exercise of this freedom.

As Emo Bos pointed out, article 190 merely guaranteed the freedom of one's internal convictions (Bos 2009, 134). When it came to *professing* religion, things were much less clear. Not only the restrictions on the freedom of the press put religious freedom at risk, but the French penal code (*Code pénal*), which remained temporarily in force (ultimately for the whole period), explicitly limited the clergy's freedom of expression, publication and correspondence. Freedom of religious practice was also limited by article 226 which declared education to be the 'object of concern' of the government, which would become interpreted as the legal basis for a monopolisation of education, including the education of religion and the instruction of priests (Bos 2009, 134–137). When it came to the free exercise of religion in the public space, article 193 declared that 'no public exercise of Religion can be interfered with, except when the public order and safety could be disturbed.' The latter part of this article could be interpreted as the right to prohibit religious gatherings in advance, on the basis of the mere assumption of a threat to the public order. The Napoleonic law of 1802 on the organisation of religions (*Loi relative à l'organisation des cultes du 18 Germinal an X*) further restricted the public exercise of religion. Relevant, in this regard, was also that the constitution did not contain a law that guaranteed the freedom of association and assembly in general (Bos 2009, 137–140).

Ultimately, however, the greatest threat for freedom of religion, as well as for the exercise of other liberties, was situated in the possible interpretation that the king did not rule on the basis of the constitution, and the constitution only restricted his otherwise unbounded sovereignty. In the course of the years, the government would indeed take the point of view that in matters of foreign affairs, defence, colonies, coinage, education and religion, it held exclusive authority and could not be held accountable, and would find little resistance from the parliament on its way (Wils 2007). With regard to religion specifically, it meant that the government could expand the control of and interference with the churches, to the point where it entered in flagrant contradiction with the literal text of the constitution. It was therefore of little consequence that the articles on religion were probably the most liberal of the constitution. In retrospect, as Emo Bos argued, the constitution of 1815 did not truly break with the Napoleonic state of affairs in which

churches had been reduced to instruments of the state and the clergy turned into public servants (Bos 2009, 156). This model would serve the nation-building program of the government very well, but ultimately without success.

2.2 Ancient Rights and the Legitimacy Gap

After the allied troops occupied the Southern Netherlands, a letter was published, directed at the allied headquarters in Brussels, which asked that the Southern Netherlands would be reallocated to the Habsburg Empire (Oppalfens et al. 1814). The letter was written in name of the 'nine nations of Brussels,' i.e. the former representatives of the corporate professions of the capital. The letter furthermore asked for 'the restoration of the constitutional regime of Belgium,' which, in their view, had only been 'suspended by the force of the tyrannical regime.' More to the point, it insisted that the recognition of the old provincial States (representing the different estates) would provide the only true, constitutional representation of the people: 'The People cannot recognise any other representation than in the form of the States of Brabant … any other will be deemed illegal and unconstitutional.' This was one of many reclamations for a constitutional restoration that were made in the months after the end of the French imperial state. Foreign officials who stayed in the Southern Netherlands in 1814–1815 often commented that, in the situation of uncertainty over the future of the former Habsburg Netherlands, the cry of a restoration of the old constitutions became increasingly loud. The Austrian provisional governor over the Southern Netherlands, Karl von Vincent, wrote to Metternich in May 1814: '[I]n this country, as in Switzerland, the people have too much appetite for public affairs, for the authorities not the run the risk of finding themselves placed between the volatility of democratic aspiration [on the one hand], and the equally dangerous constitutional reminiscences [on the other hand]' (Judo and van de Perre 2015b, 19). One month later Gordert van der Capellen, Dutch representative in Belgium, wrote to Minister Nagel about the inclination of the Belgians 'to awaken and to unearth quantities of ancient constitutional ideas, which whip up the sentiments, and which will later only be oppressed with great difficulty.'[3]

[3] See for both quotes: Judo and van de Perre (2015b, 19–20).

The predominance of this language of ancient constitutionalism needs to be understood in reference to the Brabant Revolution of 1789, when the Southern Netherlands had revolted against the Habsburg emperor Joseph II and established a short-lived, independent Belgian republic. The Belgian patriots of 1789 justified the revolt against Joseph II on the ground that he had violated the ancient laws of the country, and therefore had placed himself outside of the political order. But immediately after the triumph of the Revolution a split occurred in the patriot movement, as the more progressive forces saw in the Revolution the occasion to change fundamentally the political institutions, which represented only the nobility, the clergy and the traditional professions, in order to give a political voice to the new professions and the rising middle classes. The reformist faction argued that with the fall of the monarchy the 'ancient constitutions,' although they had initially provided justification for the revolution, had become destitute, and that the social pact had to be renegotiated.[4] They additionally argued that this was necessary, since the appropriation of the sovereignty by the States of Brabant in the course of the revolution involved a violation of the principle of the separation of powers, a principle that was an essential part of the political tradition of the Netherlands. In most cases, however, the reformists did not advocate an entire replacement of the representation of the provincial States by a new legislative body, but demanded that the traditional representation was *reformed*. Often their proposals still conceived of a separate representation for the clergy and the nobility, as well as the official status of the Catholic religion. At the same time, influenced by the notion of equal political participation, they made suggestions for a broadened, or even general right to vote, something that, paradoxically, went far beyond what liberals would demand in the next century.[5] Against the arguments of the reformists the conservative Statists insisted that sovereignty was embedded in the ancient constitutions: the nation did not have an independent existence outside of its ancient constitutions, and these could not be legitimately overruled.[6] The reformists remained, in the short-lived independent Belgian state, wholly unsuccessful and even became subjected to public wrath and prosecution.

[4] The reformists were often called 'Vonckists,' after the main spokesman Jean-Baptiste Vonck.

[5] On the arguments of the reformists: Polasky (1984).

[6] For the political thought of the Statists: Van den Bossche (2001).

The debate on the ancient constitution revived in 1814–1815, but it now became connected to the question, what state the Southern Netherlands were to become a part of. Continuity with the political debate of the Brabant Revolution was embodied in the person of Hendrik van der Noot, who had been the popular leader of the Statists (he was now was in his eighties), and who published in 1814 a long pamphlet arguing for a restoration of the old constitutions and a return to Austria (van der Noot 1814). In Belgium, Van der Noot argued, the nobility, the clergy and the corporations historically represent 'the nation,' which traced back to the times when the nation made a pact with a sovereign prince. The nation and her representation in the States were therefore inseparable: the nation only existed *through* the States (van der Noot 1814, 7). If his past as an anti-Habsburg revolutionary leader made Van der Noot's support for a restoration of the Austrian monarchy surprising, his argument for the return of the Habsburg rulers was similar to his argument for a return to the ancient constitutions; the French era had only 'suspended' the old regime, which from a legal point of view had not even ceased to exist (van der Noot 1814, 84). Van der Noot invoked the Pragmatic Sanction of 1725 ('a convention, a conventional, public and perpetual trust, which operates a synallagmatic obligation') to argue that Belgium was 'inseparable' from the other possessions of the Habsburg dynasty (van der Noot 1814, 22), implying that also the independence of Belgium as a republic in 1789–1790 could only have been a temporary, exceptional political situation. Anticipating possible criticism, Van der Noot reiterated that, 'only after the emperor decided to declare openly that he would destroy the constitution, the nation, by its representatives (after the example of the States who, on 26 July 1581, declared Philips II deposed of his sovereignty), declared Joseph II deposed of his sovereignty.' He further explained that the successor of Joseph II, the new emperor Leopold II, after having cancelled the edicts of the predecessor, 'has reconciled himself with Belgium' (van der Noot 1814, 39).[7]

That Van der Noot favoured in 1814 a return to Austria most likely resulted from a lingering disappointment originating in his failed

[7]This retrospective representation of the facts was at best only half true. Only after the re-occupation of the Belgian territory, Leopold II pledged to abandon the reform policy of Joseph II, mostly under pressure of the European powers. The restoration furthermore took place with little involvement of the provincial States.

attempts, at the time of the Brabant Revolution, to establish an alliance between his political movement and the Dutch stadtholderate regime. Van der Noot, as many Statists, looked at the Dutch Revolt of the seventeenth century as a model, and considered Stadtholder William V as a guarder of old constitutions (Judo 2015, 73–76).[8] In 1814, a minority among the conservatives still supported a union of the Southern and Northern Netherlands, remaining indebted to the hopes of the Brabant Statists in 1789 for a union with of the new Belgian republic with the republic of the United Provinces (Judo 2015, 55). In an anonymous pamphlet (J.B.M. 1814),[9] it was pointed out that a union of the Netherlands would not be an innovation, but a 'restored circle' ('*herstelde kring*'), a return to the natural growth of the different regions of the Netherlands. The conservative member of the constitutional commission Jean-Joseph Raepsaet is also believed to have thought along these lines (Judo 2015, 59).

The Dutch Fundamental Law of 1814, the basis for the discussions of the commission which in 1815 was to work out a constitution for the united Netherlands, contained a strong 'aristocratic' element. This was to some extent surprising, in view of the republican past of the Northern Netherlands and the absence of old nobility with venerable titles. The aristocratic element was largely indebted to Van Hogendorp and his adherents, and the influence on this group of the work of Montesquieu. The conservative Belgian members of the commission to revise the constitution, such as Charles de Thiennes and Charles de Mérode, who wanted to restore the privileged position of the nobility, agreed with many aspects of the constitution. In the States-Provincial, the nobility was to be separately represented in the form of a newly instituted order of the 'knighthood,' next to the representation of cities and provinces, which, through tax-based suffrage, would inevitably contain a high number of aristocratic members. Moreover, the national parliament of the States General was to be elected indirectly by the States-Provincial, guaranteeing the nobility also a strong presence there. In the revised constitution, the Belgian members moreover obtained the introduction of a first chamber, a nobility chamber analogue to the

[8]Van der Noot in fact remained in the 1790s one of the few former Statist leaders who continued to oppose the Habsburg Restoration. See also Van den Bossche (2006).

[9]See: Judo (2015, 57).

British House of Lords and the French *Chambre des Pairs*. Its members were to be appointed by the king for life, but, under pressure of Mérode and Thiennes, the informal promise was made that in the South the king would only appoint members of the nobility (Witte 2016, 24–27; Janssens 1981).

In spite of the fact that the nobility was well served, the revised constitution was for those who had believed in a restoration of the ancient constitutions considered unsatisfactory, and was seen as in line with the liberal views by those who had opposed the idea of constitutional restoration. The States General, first of all, was, in spite of the way it was composed, a modern parliament whose members represented the nation as an intimate union of the North and South and consisting of citizens equal before the law (van Sas 2004, 463). The members of the First Chamber, even if it was to be stuffed with nobles, would be chosen by the king primarily on the basis of their political compliance, and therefore did not truly represent the nobility. Secondly, the strong prerogatives of the monarch within government conflicted with the republican interpretation of the ancient constitutions that, indebted to the legacy of the Brabant Revolution, predominated in the Southern discourse of ancient constitutionalism. Thirdly, the ancient social privileges of the nobility and the clergy, or what had still been left of them at the end of the previous century, were not restored—even if also on this point the constitution was conspicuously framed in such a way that the conservatives could still cherish some illusions about their restoration.[10] Finally, also the selection of the members of the Assembly of Notables, which was to approve the constitution, alienated the conservatives. In view of the rising opposition regarding the religious question (see Chapter 6), the government, at the

[10]A good example here was the controversy in the constitutional commission over the term 'seigniorial territory.' If the Dutch Fundamental Law of 1814 had adopted the term in reference to certain regional constituencies, it was because it had still been the terminology in use in the Northern Netherlands. In other words, there had been no misunderstanding over the fact that 'seigniorial' had no meaning in the sense of restoring certain feudal rights of the provincial nobility over the land. But in the constitutional debates of 1815 the Belgian liberal members of the commission (most notably Theodore Dotrenge) warned that the mere mentioning of the term in the constitution could give the Belgian nobility the wrong idea. The prediction proved correct, as in 1817 Jean-Joseph Raepsaet published a pamphlet demanding 'the execution of the legally acquired seigniorial rights in accordance with the constitution' (Raepsaet 1818).

eleventh hour, tried to appoint a sufficient number of anticlerical liberals and 'francophiles' (Judo 2015, 71).

Ultimately, therefore, there was no public support for the new constitution from within the conservative public opinion that had called for a constitutional restoration, be it or not under the House of Orange. Two members of the Assembly of Notables sent a letter to the king, justifying their decision not to participate on the ground that they considered the basic conditions for a successful union not fulfilled (Judo 2015, 59). An anonymous pamphlet, *Réclamation respectueuse et légitime des droits de la nation belge sur son ancienne Constitution*, rejected the constitution for not taking into account the 'ancient rights of the Belgian people' (Judo 2015, 59). The Dutch government failed to build on the conservative support in the South for a 'reunion,' as the king, in the words of Frank Judo, did 'not understand that in the South there was more support for a William VI than for a William I' (Judo 2015, 77).

2.3 Liberals Against the Ancient Constitution

If the group pleading for a restoration of the 'ancient constitutions' was rather expressive in 1814–1815, with the majority simultaneously arguing for a return to the Austrian Empire, it was inevitably on the defence. The twenty-five years that the former Southern Netherlands had been part of France had drastically changed the Belgian society. The gradual adjustment of the former elites and integration in the modern republican and (from 1805 onwards) imperial institutions meant that a return of the social privileges, the old provincial demarcation and the separate representations for clergy and nobility seemed entirely unrealistic. It was furthermore to be expected that the new centralised institutions that were in place would not easily be abandoned by the new rulers. Within this context it is easy to understand that those who rejected the old constitutions, as well as the restoration of the Habsburg monarchy, were far less compromising than the 'Vonckists' (as the reformists during the Brabant Revolution were also called, after their leader Jan-Frans Vonck) had been. Generally, apart from a small, silent minority who preferred that the Southern Netherlands would remain attached to France, they also supported a union with the Northern Netherlands. This support for a union was probably primarily a strategical choice, as a 'intimate and complete' union provided the best

protection against a restorative political agenda. On the other hand, there might also have been a historical dimension, since at the time of the Brabant Revolution also the Vonckists held expectations for a reunion of the Netherlands (Van den Bossche 2006, 283–299).

Whilst the Vonckists had, in 1790, only insisted on 'reforming' the old constitution—which they had acknowledged as the main guarantee of the rights of the subjects of the monarchy, at least until then—to the 'liberals' of 1814 the old national constitutions were nothing but relics from ancient ('feudal') times, which had outlived themselves already in the eighteenth century. Jean-Joseph van Bouchout, a Brussels publicist who had supported the French policies and would become an important civil servant under the new government, wrote a pamphlet in response to Van der Noot (van Bouchout 1814), in which he argued that the new ruler over the Netherlands was to 'acquire' the Belgian territories 'without constitution, without prerogatives, without privileges.'[11] It was 'in the nature which makes men free and equal, in the growth and variation of their needs and the progress of their civilization, that the fundaments of the new social pact have to be searched' (van Bouchout 1814, 18–19). The lawyer from Leuven Pierre-Francois van Meenen wrote in the newly founded journal *L'Observateur belge* (the popular name of *L'Observateur politique, administratif, historique et littéraire de la Belgique*) that the future constitution of the new state should not establish any social privileges, as a modern constitution 'only concerns the essential and invariable needs of the nation.'[12] The mistake that the defenders of the old constitutions made, Van Meenen believed, was to assume the nation coincided with certain timeless and exclusive institutions. An institution such as 'a privileged class' was of 'secondary, very-subordinate interest.' If it was to exist, it needed to be adjusted to 'time, the progress of enlightenment and experience' (van Meenen 1815c, 115). The argument against the restoration of privileges was therefore rooted in a new idea of what a constitution was, as an act that needed to be '*national* in its object, as it needs to be in its origin' (van Meenen 1815c, 113).

[11] The authorship remains disputed (Judo 2015, 342).

[12] *L'Observateur* was founded in Brussels in 1815 as a journal which initially appeared twice each week (it would soon appear on an irregular basis). It would be widely read, on a national scale, and became the most important mouthpiece of the liberal opposition in the South against the government of William I. On the history of *L'Observateur belge*: Vermeersch (1981, 60–82).

Another lawyer, Antoine Barthelemy (1766–1832), published a pamphlet in which he welcomed the reunion of the two Netherlands as the culmination of a long history of social progress and civilisation in both countries (Barthelemy 1814).[13] Barthelemy presented a grand survey of the political history of the Low Countries from the fifteenth century to the Treaty of Paris (1814). Addressing towards the end the remaining doubts about the possibility of uniting two peoples 'divided by interests and opinions,' Barthelemy explained that such concerns would only have been well-founded, 'if human reason had not made considerable progress over the last century.' The Belgian territories had experienced extensive development, both from a commercial as from an industrial point of view. In the course of these changes, the feudal nobility was expropriated of its lands by a new class of property owners. In the process, the cities liberated themselves from feudal jurisdiction and the study and practice of Roman law led to the abolition of the feudal system. Distinctions between individual people became exclusively determined by merit. Barthelemy further argued that these changes occurred in the whole of Western Europe. Historical differences between nations had become negligible, and therefore nothing prevented the integration of the two Netherlands. The peoples of England, of France and of the Low Countries had reached the final stage in the civilisation process, a level of civilisation which implied that public law ought to be derived from freedom of persons and goods and that equality before the law had become self-evident (Barthelemy 1814, 77–85).

2.4 Liberal Political Thought and the Fundamental Law

One journal in particular became in the first years of the kingdom the medium for the expression and discussion of modern political ideas, the already mentioned *L'Observateur belge*. Especially the contributions by Pierre-François van Meenen (1772–1858) have been essential for the

[13] This language of social progress was indebted to the Scottish Enlightenment, more particularly to the translation into French of the work of some Scottish historians in the eighteenth century. A crucial example in this sense was the translation of William Robertson's *History of the Reign of Emperor Charles V* in 1774, by Jean-Baptiste Suard. In a letter to Robertson, Suard praised the Scot for looking 'for the sources of the revolutions of societies in the natural progress of the human mind … instead of attributing them to anecdotal events, to the passions or caprices of a few men, or other fortuitous and partial circumstances.' Here laid the origins of a discourse that played an important role in the advent of liberal thought in the wake of the French Revolution (Gordon 1994, 151).

pivotal role the journal played in the early expression of liberal thought in the Southern Netherlands.[14]

In a series of articles, which appeared in the first half of 1815, Van Meenen outlined what were in his views 'the principles of public right.' In one of his first articles, Van Meenen explained that he rejected 'the fatalism of Hobbes as well as the metaphysics of J. J. Rousseau and vulgar empiricism' and embraced the philosophical school of 'Grotius, Puffendorf, Barbeyrac, Locke, Cocceius, Bentham and Cicero' (van Meenen 1815a, 227). The classic-liberal tradition started from the idea that political order rested on the 'interior obligation' felt by the individual in respect to the law, which, in turn, was rooted in the notion that there were rights ('natural' or not) that all governments were obliged to protect. To emphasise the importance of individual rights, Van Meenen referred primarily to the English liberal tradition in constitutional thought: 'As [William] Blackstone clarified, the social contract implies that each community defends the right of each individual member composing it, and that in return for this protection each individual subjects himself to the laws of that community' (van Meenen 1815b, 29).[15] Van Meenen further argued that 'the establishment of government … changes for nobody, neither the social safeguard (of the pact), nor the pre-existing rights to this safeguard, which it has as its goal to assure.' A government was therefore primarily the 'public guarantor' of the rights pre-existing to the laws' (van Meenen 1815a, 228–230). Interestingly, he pointed in this regard to the 'improper' choice of the term 'constitution'

[14]Van Meenen studied law of and philosophy during the early years of the French period and afterwards occupied a number of political and administrative functions in Leuven. In 1808 he became a lawyer at the Court of Appeal in Brussels. He became gradually disappointed with the despotic character of the French Empire, which made him retire as public servant to embark upon a career as a barrister. Being an ardent student of political philosophy, he became from 1814 onwards a dominant figure in the political debate, which increasingly made him neglect his professional and social activities. According to Arthur Vermeersch, Van Meenen from the start felt estranged from the new Kingdom of the Netherlands and chose for 'inner emigration.' Vermeersch also pointed out that he was never able to accept 'the undemocratic way in which the constitution of 1815 was adopted,' which would indeed transpire in his political discourse (see further). Van Meenen would later become a mentor to younger liberal journalists who took the lead in the opposition at the end of the 1820s. On Van Meenen: Vermeersch (1981, 73–77) and Derez (2006).

[15]William Blackstone's *Commentaries on the Laws of England* (1765–1769) played a pivotal role in the English intellectual debate in the eighteenth century; see Lieberman (2006, 321–322).

for the founding document of the government, '… as if nations do not pre-exist to the powers established to govern them … as if the powers are not necessarily circumscribed and limited by the purpose of their institution; as if, in sum, natural right was not anterior and superior to all political right, and political right, or, if one wants, universal public right, equally superior to any constitution' (van Meenen 1815a, 231).

Van Meenen pointed out that the mistake that had been too often made was to 'confuse freedom with the individual and independent exercise by a man of his rights' and not to understand that '*freedom* consists in the faculty of following a rule, of which *independence* requires the absence' (van Meenen 1815a, 228). This distinction, for which Van Meenen refers to Montesquieu (*De l'Esprit des lois*, bk. 11, Chapter 3), had also been made by Rousseau (*Du contrat social*, bk. 1, Chapter 8).[16] The difference was that Van Meenen understood freedom in recognisable classical-liberal terms: the aim of any political order was only to give man the security that allowed him to keep his original freedom up to the point where it interfered with the freedom of others. In this sense, liberals as Van Meenen were also indebted to the republican political thought of the early phase of the French Revolution. In his famous pamphlet *Qu'est-ce que c'est le Tiers Etat?* (1789) the abbé Emmanuel-Joseph Sieyès wrote:

> When a political association is formed, one does not place in common all the rights that each individual brings to society, all the power of the entire mass of individuals. One only places in common, under the name of public or political power, the least possible, and only what is necessary to maintain each in his rights and duties. (Sieyès 1989, 6–7)

The rejection of the liberals of equal participation of all citizens in the government corresponded with their belief in the necessity of political representation. In the language of ancient constitutionalism different corporate bodies of the nation 'delegated' people to the assemblies, which were therefore supposed to provide a reflection of the diversity and the hierarchy in society (such as the estates of the clergy, the nobility and the corporations). But with the abolishment of the *estates* and social privileges this form of representation had become outdated. The French Revolution introduced the modern concept of national representation. When at the time of the convocation of the States General the Third Estate proclaimed to be the representation of the French nation, what de facto

[16] See for this aspect of Rousseau: Viroli (1988, 150–151, 156).

occurred was, as Keith Baker has explained, 'a revolution of the deputies against the conditions of their election' (Baker 1990, 244). The deputies no longer pretended to speak for a particular social group but to represent 'the one and indivisible nation.' An intellectual clarification of this modern idea of representation was provided by abbé Sieyès, who applied the idea of the 'division of labour,' indebted to the economic thinkers of the Scottish Enlightenment, to the body politic. Representation came to mean 'the division of political labour between the more and less enlightened,' in a state characterised by 'the progressive advance of civil society from simple to more complex forms of interdependence [and] from ignorance to enlightenment' (Baker 2006, 639–640).

Liberals also responded positively to, as Martin Thom described it, 'the annihiliation of Kleinstaaten' during the revolutionary and Napoleonic wars. Republican authors in the eighteenth century had not only looked at Athens and Sparta, but had equally seen the idea of republican liberty come to life in Venice or Genoa, Geneva or Florence. Liberal publicists, on the contrary, accepted the advent of larger states (Thom 1995, 91–93). Van Meenen argued that the institutions of small republics, which Rousseau favoured, were not suited to the government of the vast states. In states with large territories, the people could not assemble in its entirety on the market square at any chosen moment, and therefore 'democratic legislation, popular constitutions and popular justice [were] no longer convenient.' For that reason, the people would have to trust the authority to make the laws to elected representatives, and the task of rendering justice to permanent judges (van Meenen 1815a, 229–230).

Van Meenen mentioned in his constitutional course a number of other subordinate principles as essential to constitutional government, in order to organise the public powers 'in a way to fulfil the purpose of their institution' (van Meenen 1815a, 31). First he mentioned the by then well-known principle of the division of powers, which the author called 'the application of the true principles of political right to our national association.' Liberals after the defeat of Napoleon not only came to accept hereditary monarchy as an inevitable part of the government, but also came to see it in a positive light. Van Meenen presented the monarchy as a 'moderating power,' an idea borrowed from Benjamin Constant's *Réflexions sur les Constitutions*, the influence of which was noticeable throughout the text (van Meenen 1815a, 230–231; 1815b, 32; Constant 1814). The royal authority, as *neutral* or *preserving* power (as it was also called), was to transcend the other powers, in order to enable them to function independently and

to prevent them from integrating. However, the division of powers, by itself, was still not a sufficient guarantee that the government would 'not turn against the nation and one needed to 'elevate barriers that they can neither overthrow nor cross' (van Meenen 1815b, 32).' Van Meenen insisted that the nation should find guarantees 'in the most complete and intimate possible community of interests, ideas and sentiments, between those who exercise power and those submitted to it.' Those involved with one of the three powers were therefore to be submitted to the same laws as the other citizens: 'Essentially and invariably citizens, they can only be accidentally and temporarily legislators, judges or agents of government' (van Meenen 1815b, 33). Still, Van Meenen continued to argue that even more guarantees are necessary to safeguard 'individual and civil liberty.' He insisted, in that regard, that it was 'one of the great faults of the so-called fundamental laws of the United Provinces of the Netherlands … that it remains, so to speak, completely mute about the individual guarantees' (van Meenen 1815b, 39–40).

Interestingly, when it comes to the question of how one makes 'the guarantees of freedom and individual security,' in the words of Van Meenen, 'come out of the level of abstractions,' he refers again to the milestones of the English constitutional tradition apart from 'the great charter and their excellent parliamentary constitution'; namely: 'It's the petition and the bill of rights, the freedom of the press, the claims of the jury against the usurpations of the star chamber and the high commission, and finally habeas corpus, which, by assuring the individual freedom and freeing perpetually the citizen of any dependency other than that of the law, arrive at … establishing this government...' (van Meenen 1815b, 35). Van Meenen hereby not only emphasised the importance of a declaration of individual rights (independent of the constitution), but also included therein rights that allow the citizens to interfere with politics and criticise the government (e.g. petition and freedom of the press).

Within the constitutional commission, the liberal Belgian members generally considered the Fundamental Law of 1814 in accordance with their political convictions, but nevertheless believed that too many prerogatives were reserved for the monarch. One of the members of the commission, Jean-François Gendebien, a former member of the legislative chamber under the French imperial regime, wrote a pamphlet with Jean Baptise Leroux in which they set out to 'examine the Dutch constitution [of 1814] in relation to Belgium' (Gendebien and Leroux 1815).

They started with a clear declaration of the principle of popular sovereignty, in the language of the social contract:

> The enlightened nations know their rights…; they only consider the engagements resulting from the social pact as their obligations. With this pact, they did not want to abandon, nor could have abandoned, the sovereignty which belongs to them by the nature of things. (Gendebien and Leroux 1815, 23)

If sovereignty resided permanently with the nation, then the authors nevertheless acknowledged 'the necessity of a modern representative system,' which they considered a form of government which had developed in the course of 'civilization and enlightenment.' This also included the possibility of a monarchical government, although even within such a government 'all power derived from the people,' and the monarch himself was 'the people's first representative' (Gendebien and Leroux 1815, 23). Concerning the organisation of national representation, the authors considered it proper to re-establish the Dutch States General, as it was an institution with 'a glorious past as an assembly of free men' (Gendebien and Leroux 1815, 24). Nevertheless, they criticised the indirect election of the States General through the States-Provincial for creating a distance between the people and its deputies (Gendebien and Leroux 1815, 25–27). The pamphlet further rejected the introduction of nobility chamber. In an effort to compromise with the demand to maintain a certain guaranteed influence of the nobility, it was suggested to allocate a certain number of seats in the States General to aristocrats, even when its number had to remain inferior to the number of the representatives of 'the popular masses' (Gendebien and Leroux 1815, 28–29).

The liberal baron Karel Lodewijk van Keverberg van Kessel, a former prefect under imperial rule and future governor of Antwerp and East-Flanders, wrote a pamphlet expressing similar ideas as Gendebien (de Keverberg 1815). Keverberg invoked 'social progresses' and 'modernity' to support the idea of a modern constitution. William acted wisely by listening to those who had obtained experience under French administration. He had surrounded himself with a 'mass of enlightenment,' which was preferable over 'the false genius of theorems.' One only had to modify the Fundamental Law of 1814 in certain ways, in order to 'elevate a stable and sublime temple for the liberty and the security of the entire nation' (de Keverberg 1815, 38). As other liberal authors, Keverberg invoked the social pact, this time in support of the indivisibility of the territory of the Southern Netherlands:

> The social pact … unites each one with everyone and everyone with each. It is broken in case of the smallest cession of territory, just as the body of a man is mutilated by the amputation of one of its parts. And if there are deplorable cases where this extremity cannot be avoided, at least the whole of the nation, represented by the great bodies of the state, has to consult the complete scope of its forces, all the strength of its courage, before it agrees. (de Keverberg 1815, 51)

When it came to discussing the form of government, Keverberg did not question the appropriateness of a monarchy. 'A trustful people,' so he wrote, 'does not fear to assign to a prince the responsibility for its well-being' (de Keverberg 1815, 52). Even so, the citizens would always be 'reciprocally engaged with each other through the social pact' (de Keverberg 1815, 99). When discussing the institutions of the national representation, Keverberg, like Gendebien and Leroux, rejected the idea of a first chamber. The author insisted that the institution of a *pairie*, similar as in France, would imply the existence of 'particular interests' as opposed to 'the interests of the people'; it would constitute 'a pre-eminent society within society,' establish 'a state within the state' and so on. 'Freedom is today the prerogative of the whole of humanity. The spirit and the needs of the times no longer require any longer an intermediary power between the Prince and the Nation' (de Keverberg 1815, 55–56).

As these pamphlets demonstrate, popular sovereignty as the basic principle of liberal-constitutional government was among Belgian liberals uncontested, whilst in the North popular sovereignty had become identified with the instability and 'chaos' of the years of the Batavian Republic (van Nifterick 2011; Witte 2016, 36). In practice, this translated itself in (unsuccessful) attempts to rein in monarchical power and give the parliament a more prominent role in government. In the constitutional commission, as we have seen, the liberal members failed to make the juridical responsibility of the ministers for acts of government (the possibility to persecute them for violating the constitution) more explicit.

2.5 The Constitution Rejected: A Liberal Translation of the Legitimacy Problem

In spite of the recognised shortcomings of the constitution, the liberals called upon the members of the Assembly of Notables to accept the constitution. In doing so, they were primarily reacting to the conviction of the constitution by the Belgian episcopacy on the ground of the

articles on tolerance and equal protection of all religions, and the failure of the constitution to make Catholicism the official religion in the Belgian provinces. In *L'Observateur belge*, Van Meenen encouraged the notables not be impressed by the calls made by the clergy to reject the draft, and insisted that all enlightened citizens would speak out in favour of the constitution once they would properly familiarise themselves with its terms (van Meenen 1815d). This, according to Van Meenen, even applied to those who had the interest of religion in mind. They would come to understand that the articles of the constitution which are so carelessly attacked in the name of the Catholic faith actually provide the basis for its protection. Van Meenen repeated on this point the official argumentation, and referred to the London Articles of July 1814, which had declared the equality of all religions in the state as one of the conditions for the union. A mistake which the provisional government had made, so Van Meenen added nonetheless, was not having made public the London Protocol earlier (van Meenen 1815d, 297–298).

However, the argument that this constitutional draft was 'superior to any constitution we have ever known' (van Meenen 1815d, 290), and that it was therefore worth voting in favour for, was amended by an argument against the *process* that had led to the constitution. Van Meenen pointed out that, in spite of the decision that the Dutch constitution of 1814 was to be modified by common agreement, 'the convocation of the two nations with the goal of modifying the constitution has only been equal in the sense that *neither* has concurred [to its confection]' (van Meenen 1815d, 289). He meant by this, as he continued to explain, that neither in the South nor in the North a true public debate had taken place. Moreover, the final draft had been submitted for approval to both nations differently: '… Holland has a national representation, which is constitutional and authorised to deliberate these modifications [Van Meenen refers here the convocation of the States General in early 1814, which eventually accepted the constitution] … Belgium, … *received one* [a representative institution in the form of the Assembly of Notables], which has none of these qualities, out of the hands of a Dutch minister' (van Meenen 1815d, 289–290). Making no judgement on the composition of the assembly as such, it is the process of its convocation that he took issue with: 'The creation, the organisation, the composition and the procedure of such an assembly [should have been] issues of the highest importance,' but everything had been prepared in total obscurity: '… the decree of 5 August informed us that

the way the constitution would be presented was already settled on the 5th of July, and that, from the 15th onwards, the secretary of state was authorised to provisionally appoint the notables.' Van Meenen was also tapping into a sense of Belgian patriotism. 'What does this way of acting, of which one says that it is familiar to Dutch regency, but which is in contradiction with *Belgian liberties*, promises for the future… [?]' (van Meenen 1815d, 291–293). Van Meenen nevertheless asked the notables to react 'in a franc and liberal way' to the injustices to which the nation had been subjected, and to act 'wisely and rightfully, even if our constitutional and legal rights have not been respected.'

Only, a majority of the deputies in the Assembly did not approve the constitution: 527 voted for and 796 against. The government added, however, 126 no votes to the yes votes, namely those that had been motivated by the controversy on the position of the Catholic Church. These deputies had been misinformed, so the argument went, as the laws regarding religion resulted directly from the London Protocol adopted by the allied powers that established the very basis for the union of the two countries. Objections to these laws could therefore offer no justifiable ground for rejecting the constitution.[17] The position of the government was defended in a pamphlet, titled *Réflexions sur l'intérêt général de tous les Belges* (Anon 1815). The pamphlet anticipated the monarchical principle that would prevail, arguing that, after being blessed with the 'allocation' to the 'wise' government of King William, public opinion in the Southern Netherlands was showing a lack of patriotic and moderate spirit, and had a tendency to abuse the principle of freedom of speech. This was of course a reference to the clerical actions undertaken against the adoption of the Fundamental Law. In a review article of the pamphlet in *L'Observateur*, Van Meenen turned this accusation around, to insist that 'less precipitation and more frankness on the part of the ministry would have prevented the wrong, if there is a wrong anyhow' (van Meenen 1815e, 162). Van Meenen argued that the crisis precisely

[17] Even then the no-vote still outnumbered the yes-vote (670–653). The government eventually justified the proclamation of the constitution on the ground that the entire States General in the North had approved of the constitution, and that since the kingdom was conceived as a perfect union, what counted was that there was an overall majority in favour of the constitution. In the South, this became famously known as '*arithmétique hollandaise*.' Jeroen Koch has pointed out that the involved arithmetic was in fact more Dutch than the Belgians could even imagine, as it had been a familiar democratic custom under the government of the United Provinces (Koch 2013, 311–314).

demonstrated the importance of liberty of the press and of a free public debate to any government, as the latter would otherwise always remain uninformed about the preoccupations of the people. Freedom of thought was not only a constitutional right, Van Meenen pointed out, it was 'the essence itself of our government' (van Meenen 1815e, 164).

Whilst defending the freedom of the press, and the free public debate that had resulted in the rejection of the constitution, Van Meenen also pointed at the inevitable opposition between the ministers on the one hand, the nation and the king on the other hand. The former were only the 'usufructuaries' of power, they inevitably cherished despotic aspiration and they would triumph if they would be able to suppress the press, sole guardian of the 'permanent rights and interests of the nation and the monarch.' Their aim was nothing less than to make their own interests prevail over 'the true interests of the nation' (van Meenen 1815e, 163). Here a discourse took shape which ignored the actual shortcomings (from a liberal point of view) of the constitution, primarily with regard to ministerial responsibility, and made a 'factitious' ministry (and its followers) into the source of all evils.

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CHAPTER 3

Opposition Against National Uniformity and for Limited Government

3.1 The Agenda of Uniformisation and Nationalisation: An Experiment of 'Nation-Building from Above'

In his recent biography on William I, Jeroen Koch wondered, in his conclusion, if the life of the first Dutch king could be captured by one image. He suggests that a suitable image would be the inauguration of William Frederick as king in the city hall of Brussels on 21 September 1815. This marked the start of 'his great project, the construction of the so desired united kingdom into a prosperous and efficiently organized unitary state under his leadership' (Koch 2013, 571). This ambition, which resonated with the desire by the allied powers for a strong buffer state at France's northern border, implied also the realisation of an 'intimate and complete union' of the different parts of the new kingdom. It required therefore an 'amalgamation' of the Northern and Southern Netherlands, which for centuries had developed, politically, culturally and economically, along very different paths.

Since the endorsement of new, constructivist paradigms in the historiography of nationalism, few historians still argue that the two historical parts that were united in 1815 could be considered as distinct 'nations.' If there existed no, or only very weak, national awareness at the level of the Netherlands as a unity, the same applied to the

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North or the South separately. Probably most historians today agree with Remieg Aerts that the new state of 1815 was 'a structure that was superimposed over diverse processes, sentiments and established patterns' (Aerts 2015, 77). At the end of the eighteenth century, the Patriot Revolt (*Patriottentijd*) and Batavian Revolution in the North, and the Brabant Revolution in the South, had certainly resulted into the spreading of, respectively, 'Dutch' and 'Belgian' national sentiments among the politically aware, literate, social 'elites.' These feelings were subsequently reinforced by the political process of centralisation and uniformisation that succeeded during the French period, as well as, primarily in the North, by the national resistance against the Napoleonic regime toward the end of the French-imperial period. But among the common people, the primary identification with the local village, the region or the province remained most probably more important than any 'national' identification; in spite of the recent nationwide political events and the way terms as 'nation' and 'fatherland' had entered the political discourse. The outright plan and determination of William I to create, within the borders of the new state, a strong and united nation has therefore justly been called as a typical, and early, example of 'state nationalism,' nation-building from above by a modern, administrative state (Koch 2013, 417). It can be regarded, as Marnix Beyen argued, as an early test-case for the hypothesis that nations are created by states, rather than the other way around (with, evidently, only limited probative force) (Beyen 2015, 141).

As Dutch historian E. H. Kossmann had pointed out years ago, the united kingdom of the Netherlands was 'meant to be a national state, a political and economic unity kept together by the feeling of solidarity which the common language, historical background, and civilization were supposed to provide for' (Kossmann 1978, 118). Joep Leerssen pointed out the importance of the German background of King William, as of Queen Wilhelmina. The Prussian kings had learnt, during the Napoleonic wars, that in order to secure their throne, they needed to define their position not only in dynastic terms but also in national terms, as the commander, but also advocate and caretaker of 'the people.' Success against Napoleon required the mobilisation of a broad 'national' front.' This might have inspired William I in his ambition to create a 'stable and, under his leadership, integrated country' (Leerssen 2014, 324–326). One important instrument in pursuing national unity laid in the modernisation of the economy and the infrastructure, fields

in which William would prove himself a very entrepreneurial and even successful ruler. Another important instrument was that of the stimulation of a culture of commemoration, or the creation of *lieux de mémoire*. The most important, and successful, example in this regard was the celebration of the Battle of Waterloo as the founding moment of the kingdom (Leerssen 2014, 326–327). But there was also the attempt to root the new kingdom in early-modern, dynastic history. The government invoked the unity of the Netherlands under the Dukes of Burgundy, which in the sixteenth century had reached its zenith under the Habsburg monarch Charles V, grandson of Maria of Burgundy, as a historical justification of the new state.

In line with this idea of a return to Burgundian unity, the government promoted the application of the name '*Nederlanden*' to the whole country and '*Nederlander*' to all inhabitants. This was a vocabulary which had until deep into the eighteenth century been in use in both the Southern and Northern Netherlands (in French '*Nederlanden*' was generally translated as '*Pays-Bas*') (Leerssen 2014, 320). The government also considered to adopt '*Belge*' (and '*la monarchie des Belges*') in French as a synonym of '*Nederlander*,' which corresponded to the use of the Latin name '*Belga*' in the humanist tradition of the sixteenth century. The problem with the latter, however, was that by the early nineteenth century the name '*Belge*' had for decades, and especially since the short existence of the republic of the United Belgian States (1790), been used exclusively in reference to the Southern Netherlands. Moreover, Dutch translations as '*Belg*' and '*Belgenland*' had also become in use, as synonyms of '*Zuidelijke Nederlanden*' or '*Nederlanders*' (Dubois 2005, 124). Among journalists who responded positively to the official agenda of *Néerlandisation*, the terms '*Néerlande*' and '*Néerlandais*' as French translations of '*Nederlanden*' and '*Nederlander*' became in use, in order to counter the revival of a 'Belgian' national identity and patriotism (Dubois 2005, 154–155). However, this new vocabulary would never find broad acceptance among the Belgians. Opponents of this policy of *Néerlandisation* would persistently use the names '*Belge*' and '*Belgique*' to refer, either to all inhabitants of the country, as an alternative to the use of '*Néerlande*' or '*Néerlandais*,' or only to the Southern inhabitants, who were in that case distinguished from the Dutch (who were often called interchangeably '*les Hollandais*' or '*les Bataves*') (Dubois 2005, 157).

3.2 *Néerlandisation* and the Discourse Against Uniformisation

One matter where the agenda of nationalisation became visible from early onwards was that of the language to be used in the public space. King William wanted, over time, to introduce Dutch as the only official langue in the whole kingdom. Some historians believe this language policy was inspired by the German Romantic nationalism of Herder, Fichte, Arndt and so on, which considered language and popular culture as essential to the identity of a people (Janssens and Steyaert 2007, 43; Vosters and Janssens 2015, 153). However, it seems unlikely that this kind of romantic idealism truly inspired King William, or his Minister Van Maanen. It is more likely that the 'Netherlandish nation' in the vision of the government was primarily a 'sociological concept,' as Joep Leerssen pointed out, a 'society of civilians and subordinates sharing a state' (Leerssen 2014, 330). A national language, in this view, needs to be understood as a 'means of communication, meant to interconnect the country, in a comparable way as canals, roads and public institutions were meant to do.'

The initial goal was to make Dutch the exclusive public language in the Flemish provinces, and to increase interest for Dutch culture and for learning Dutch in the Walloon provinces. A royal decree of October 1814 made a modest beginning by introducing Dutch as an official language in the Flemish provinces for civil registration and notarial affairs. French, however, remained allowed in all public sectors and remained de facto the dominant language (Janssens and Steyaert 2007, 44–45). Another main target for 'Dutchification' was the school system. From 1816 onwards, the government started with reorganising and improving education in the Southern Netherlands. With the formation of so-called *model schools* and an institution for the instruction of future teachers, the past dereliction of the education of primary education became substantially remedied. In primary education in Flanders, Dutch therefore became, without many obstacles, the first language of instruction. With regard to secondary education, the government reorganised the institutions inherited from the French time, the *lycées* and *écoles secondares*, in colleges and athenaeums, but French remained initially dominant. In September 1819, the government decreed the exclusive use of Dutch in the courts and local administrations from 1823 onwards. Equally from 1823 onwards, a gradual transition to the exclusive use of Dutch was

initiated in the secondary schools in the Flemish provinces. Also, three state universities were established for higher education, in Liège, Gent and Leuven. Latin was preserved as the language in which academic courses were given, but at each university a chair in Dutch literature and rhetoric was established. In the French-speaking ('Walloon') provinces of the South, the plan was to start with creating some goodwill towards the national language. Initiatives in that regard were primarily taken by independent societies promoting literacy in Dutch, which obtained public funding. The organisation of Dutch language classes in schools was stimulated, and from 1817 made obligatory for secondary schools, but, up to 1830, this experienced only very modest successes (Janssens and Steyaert 2007, 77–105; Vosters and Janssens 2015, 152–160).

The gradual introduction of Dutch in (provisionally only) the Flemish provinces of the Southern Netherlands is, by itself, not considered to have been a major issue for the rising political opposition in the South (Vosters and Janssens 2015, 159; Wils 2007, 211; De Jonghe 1943, 324). The transition to Dutch in the Flemish provinces happened, overall, without major problems, and even when the king would in the 1820s again allow, to some extent, for the use of French (under pressure of the opposition), the effect would be minimal. And whilst in the Walloon part there would be more resistance against and obstruction of the legislation from within society itself, here it concerned only relatively modest initiatives that had very little impact (Vosters and Janssens 2015, 155–159). Nevertheless, in their resistance against the unilaterally imposed reforms by the government (bypassing the parliament and without any form of consultation of the public opinion), as well as against the agenda of nationalisation, the language issue would become of major symbolic importance. The grievances over language not only became integrated in a broader discourse of opposition, they were in fact the first issue in which this discourse became recognisable.

A number of brochures were published in the wake of the first language-decrees, which argued that French was 'the national language of the Belgians,' and that it was totally inappropriate to wish to replace it by such *a detestable jargon* as Dutch (Barafin 1815; Plasschaert 1817; Janssens and Steyaert 2007, 51). More frequently, however, it was the notion of 'nationalisation' that was attacked, the idea of creating a Netherlandish national identity, among other things through the legal imposition a standard language in all parts of public life. Jean-Baptise Plasschaert, previous mayor of Leuven, wrote a 'patriotic hymn

of the Belgians who reject the sobriquet Netherlanders.'[1] In a work on *Nederduytsche spraekkunst* Pieter Behaegel argued that 'it is hardly surprising that, simultaneous with the unification of the Northern and Southern Netherlands, so different in language, laws and religion, strong sentiments are emerging in our provinces against the promotion of the Dutch language.[2] Similar reflections were made in *L'Observateur belge*. 'The Belgians have been constitutionally assimilated,' the journal pointed out, 'but this does not have to mean that they have to be united with regard to their laws, language, mores and religion' (van Meenen 1816a, 141). The journal took issue with the linguistic strategy of the government, aimed at promoting the use of the terms '*Néerlande-Néerlandais*.' It confessed its 'weakness for the historical names *Belge* and *Belgique*, which have been in use for at least 2000 years … and which seem to stand the test of time and *revolutions*, much better than *Brabant, Flandre, Gueldre, Frise* and the like, which now experience a glorious revival' (van Meenen 1815c, 353–354). 'One has to distrust,' the journal further wrote, 'the prestige of words which the politics of the cabinet employs to work on the vulgar [minds]…' (van Meenen 1815b, 282). The journal would also insist that '… ordnances do not make a national language out of a language that is not one.'[3]

> The *nationaliseurs* … nationalise nothing, or rather, they de-nationalise everything…
>
> Mores, character, a national language are excellent and beautiful things, when the nation itself makes them her own, or if they are acquired over

[1] *Chant patriotiques des Belges qui ne veulent pas de sobriquet de Néerlandais.* Cited in: Janssens and Steyaert (2007, 41, 327). ('*Je suis Belge, moi, et je m'en glorifie. Je ne suis pas Néerlandais et ne veux pas l'être.*')

[2] *Nederduytse spraekkunst* (1817). Cited in: Janssens and Steyaert (2007, 45).

[3] Evidently, the language policy also found support in the Southern Netherlands. An illustrious name among its supporters was that of Jan Frans Willems, who wrote a poem, *Aen de Belgen/Aux Belges* (1818), in which he replied to the opposition by insisting that 'me too, I am Belgian and can address myself to the Belgians' (Willems 1818, 6). The Dutch language and the Belgian or Netherlandish national identity were to Willems inseparable and national unity depended according to him on the rejection of the French language and customs. He introduced his poem with a citation from the work of Germaine de Staël, *De l'Allemagne* (1813), to bring his argument home: '*Cette sainte antipathie pour les mœurs, les coutumes et les langues étrangères fortifie dans tous les Pays le lien national*' (Willems 1818, 1). On Jan Frans Willems: Weijermars (2012).

> time, slowly and imperceptibly, and in response to [the nation's] needs and circumstances. (van Meenen 1815c, 355)

These critical reflections on the intention of the government to shape a strong national consciousness, primarily through language, were influenced by a number of well-known political authors. Belgian writers who referred to the different 'mores' and 'laws' that separated the Dutch and the Belgian people had read Montesquieu's famous work *On the Spirit of the Laws*. In Chapter 3 of book 10 ('On the Right of Conquest'), Montesquieu outlined four ways in which the inhabitant of a conquered country could be treated by the conqueror: 'Either he continues to rule them according to their own laws, and assumes to himself only the exercise of the political and civil government; or he gives them new political and civil government; or he destroys and disperses the society; or, in fine, he exterminates the people.' Montesquieu subsequently adds that '[t]he first way is conformable to the law of nations now followed' (Montesquieu 1748, 176). *L'Observateur belge* elaborated that if a conqueror should not change the constitutional order of a country, but only execute pre-existing laws, this should certainly not be the approach of the government with regard to the Southern Netherlands. Now that the Netherlands were one country, so Pierre-François van Meenen argued, 'the challenge was not to level out [all differences], but to unite and to coordinate; not to imitate the *Directoire* and Bonaparte, but the large and generous politics of the Romans, who conferred gratuitously rights of citizenship to allied peoples; who did not even dispossess the conquered nations of its political and civil laws' (van Meenen 1816a, 138–139).

A more recent political work, from the famous French liberal Benjamin Constant, equally influenced the Belgians in their antipathy for the plans of William I: *De l'esprit de conquête et de l'usurpation dans leurs rapports avec la civilisation européenne* (1814). Of Swiss origins (descendant of Huguenots who fled France during the religious wars in the sixteenth century), Henri-Benjamin Constant de Rebecque (1767–1830) settled in Paris shortly before the Revolution and frequented the literary and philosophical salons. After the fall of Robespierre, he became a political pamphleteer who defended the Republic whilst developing critical reflections on why the Revolution had led to the Reign of Terror. He then became one of the most prolific critics of the Napoleonic reign, which meant he spent most of this time in exile, a time when he

wrote his most profound political manuscript, the blueprint for his later publications. During the Hundred Days, he was nonetheless employed by the returned emperor to draft a new liberal constitution for France (which became known as '*Acte additionnel*'). Thanks to the intervention of the infamous Joseph Fouché, Constant was not forced into exile after Napoleon's second defeat, and he shortly afterwards published his most famous and voluminous work on politics, which had been years in preparation, the *Principles on Politics Applicable to All Governments*. During the Restoration, he became one of the most influential liberal journalists, writing for *Le Mercure de France* and *La Minerve*, and, after his election to the Chamber of Representatives in 1818, a leader of the liberal opposition in parliament.[4] His ideas were introduced in the Southern Netherlands, through smuggling as well as the thriving business of reprinting cheap editions of popular foreign publications; but also through the French exile community in Brussels and other cities, who also established a number of political journals (which primarily dealt with issues of French politics). Furthermore, in the winter of 1816–1817, Constant resided some time in Brussels, frequenting the *salons* of Louis-Augustin Cauchois-Lemaire and Fortunée Hameling. Although it remains unclear how intensive were the contacts between French exiles and Belgian liberal journals, it seems probable that Constant at this time also met Belgian liberal journalists, such as the editors of *L'Observateur belge* (Lemmens 2011, 1174, 1178–1179).

De l'esprit de conquête was published in January 1814, whilst Constant was in exile in Hanover, and republished in London in February and in Paris in April. It was primarily a critical analysis of the Napoleonic wars and conquests, and the occupation of foreign nations. But in one chapter the author linked the new imperialism with the principle of 'uniformity' (Chapter 13: On Uniformity). Constant took issue with the appetite of government in modern times for centralisation and uniformity: 'The same code, the same measures, the same regulations, and, if they could contrive it gradually, the same language, this is what is proclaimed to be the perfect form of social organization.' He defended 'a vivid attachment to the interests, the ways of life, the customs of some locality' as the elements which 'patriotism exists … by.' Modern government, by erasing local and regional differences, 'dried up

[4]The most important monographs on the political thought of Constant are: Holmes (1984), Fontana (1991), Steven (2011), and Rosenblatt (2008).

this natural source of patriotism and … sought to replace it by a factitious passion for an abstract being, a general idea stripped of all that can engage the imagination and speak to the memory.' Constant, however, unlike some conservative commentators of his time, did not reject uniformity out of an attachment to the past because he valued the past as the primary source of wisdom; he did it on the basis of unequivocal liberal and republican beliefs.[5,6] He pointed at the contradiction between imposing uniformity and the modern liberties, and found in the 'spirit of system' a new danger for absolute power. 'The interests and memories that arise from local customs,' Constant pointed out, 'contain a germ of resistance that authority is reluctant to tolerate and that it is anxious to eradicate.' Even when old laws are replaced by new and better laws, the imposition of uniformity could only result in a nation's subjugation, as, 'while you impose your own improvements upon it by force, the result of your operation is simply to make it commit an act of cowardice that demeans and demoralizes it.' Constant embraced the principle of national sovereignty that prevailed in the Revolution, but combined this principle with a belief that '[t]he whole nation is nothing separated from the parts that compose it …' (Constant 1814, 73–77).

L'Observateur belge published in 1815 an article on the 'Belgian character,' in which it distinguished the patriotism of the Belgians from that of its neighbours: 'The Belgian loves his country, not as a Frenchman, to leave it behind the moment the opportunity occurs to chase adventure and exhaust humanity with his permanent drive for action; not as the Englishman, with arrogance and with hatred and contempt for other nations; but with this simplicity, this naturalness and this honesty which mark a profound sentiment, purely and truly' (van Meenen 1815a). In another article, Van Meenen explicitly attacked 'those plans for uniformity,' which were, 'conform the genie of despotism and anarchy, *as Constant de Rebecque has pointed out*' (van Meenen 1816a, 138). The word uniformity was 'a kind of talisman, in front of which duration, distance, variety in climate, soil, languages, cults, mores, the diversity and even opposition of interests, even justice, disappear.' The politics of

[5] One famous example is that of the French Catholic author Chateaubriand, who was a nostalgic for the monarchy of the *Ancien Régime*; see: François René de Chateaubriand, *De Bonaparte et des Bourbons* (1814).

[6] Constant, after explaining that he attached great importance to tradition, also pointed out that '[t]ime never sanctions injustice' (Constant 1814, 75).

uniformity, Van Meenen added, implied 'the survival of the revolutionary spirit to the revolutionary experience.' With regard to the political situation in the Netherlands he elaborated: 'How can one seriously support the idea of implanting Belgium into Holland; of reviving and even extending the timid, cautious and shady institutions of seven small oligarchies in a monarchy of which they only are a third of the population and half of the territory; … of converting the government, which needs to establish itself and has until now, whatever one says, only a completely artificial existence and completely mechanical forces, in an atelier of projects and a foyer of innovations and upheavals' (van Meenen 1816a, 133–134). Only through 'gradual improvements, based on experience and ulterior study,' the author insisted, the different parts of the kingdom could be 'assimilated' (van Meenen 1816a, 141).

3.3 Civil Order and Political Order: The Limited Scope of Action of the New Government

Montesquieu and Benjamin Constant, who were the most quoted authors in political texts in the Southern Netherlands, were the two pivotal thinkers within the intellectual strand of French post-revolutionary liberalism, which has in recent years obtained a lot of attention. Historians and philosophers have emphasised that, what was typical to French liberal authors in the nineteenth century, was, on the one hand, that they not conceived individual rights in an abstract sense, and, secondly, that their approach to political problems was comparative and inductive rather than deductive (Geenens and Rosenblatt 2012a, 9). The liberals were, in the political context of post-revolutionary France, the heirs of the revolutionaries of 1789. However, they were also influenced by the works of philosophers of the Scottish Enlightenment on how human society had developed in stages over many centuries, as well as by new ideas about the social nature of man. They no longer believed that political theory, in the words of Larry Siedentop, 'could be founded merely on assumptions about the unchanging or essential human nature or on assumptions about the contents of the human mind' (Siedentop 2012, 18). What distinguished French liberalism, therefore, was primarily a certain methodological approach to the study of politics; liberal thinkers drew a distinction between political institutions and social structure, and 'developed criteria for applying the latter concept – criteria such as the

distribution of property, education and social mobility.' This, however, also translated in the political-intellectual belief that there were limits to what political voluntarism could accomplish, and they thought that this was the major lesson to be learnt from the excesses of the French Revolution. Law was less powerful that the mores and customs, or *l'état social*, and law-makers must accept 'a foundation of economic and social facts as given' (Siedentop 2012, 19).

Even when these ideas only slowly started to emerge in the 1810s, and were far from crystallising in a distinct school of political thought, between the 'proto-sociologic' work of Montesquieu and the writings by Benjamin Constant a different type of argumentation in political thought became nevertheless manifest. The parts of their works on conquest, usurpation and uniformisation that were appropriated by Belgian liberals were already examples of this. Also in Belgium, primarily through the journal *L'Observateur* and the writings by Pierre-François van Meenen, ideas of government were developed that clearly responded to these new views on politics primarily associated with French liberal thought, and it took place in the context of the opposition against the politics of forced unification after 1815. The clearest example of this was a new series of articles on 'Public Law' by van Meenen in the first numbers of *L'Observateur* of 1816. The articles were given the remarkable subtitle 'On the Projects of Subversion of the Belgian Civil Order' (van Meenen 1816a, b).

Van Meenen argued, in his second article, that political problems should always to be considered in light of the distinction between the 'civil order' and the 'political order.' Regardless of what principles a political society rested on, legitimacy of every political order depended on the recognition and conservation of the civil order. Van Meenen thereby did not explain the 'civil order' in terms of social change (or social 'revolutions'), but still started from the abstract individual: civil order consisted of 'communes' or 'cities,' whilst the domestic order below the civil order consisted of a number of families, themselves composed of individuals. Each order was established, Van Meenen taught, in order to maintain the rights of the units of which it was composed (individuals in case of the family, families in case of the cities and communes), but in the process each order also acquired rights of its own. The political order, which came into existence whenever two or more cities (or communes) integrated, gave birth to 'political rights,' which involved the relations between the cities themselves, and 'international rights'

concerning the relation of the new nation (i.e. the political order) with other nations (van Meenen 1816b, 193–201).

Van Meenen emphasised the importance of individual rights as the basis of all social and political association. He imagined for the future a 'federative order' of all nations and a 'general confederation of all mankind,' which would 'complete the circle.' However, there existed always the threat that the political order would turn against the civil order, and this threat, in Van Meenen's opinion, was ultimately a threat to the rights of the individual as well. The 'legislative history of Europe,' in Van Meenen's view, offered sufficient illustration of this. A typical scenario was one in which the prince first declared himself 'creator and master of the political order,' subsequently, 'through the political order absorbed the civil order,' and 'from there [went] on to invade the domestic order, and eventually violate[d] the individual rights.' The political order, according to Van Meenen, was to be subordinated at all times to the civil order, which 'it has as its foundation and as its mission to maintain.' Van Meenen acknowledged that 'these ideas are conservative,' but that 'in them could be found the path to truth and to justice.' 'The principle of *the least action possible*,' Van Meenen concluded, 'is a law of the social world, as it is of the physical world; it belongs to the moral order as it does to the material order; the revolutionary spirit violates it in politics, as fanaticism does in religion' (van Meenen 1816b, 202–207).

In a follow-up article 'on the projects of subversion of the Belgian civil order,' Van Meenen set out to prove 'the legitimacy of the Belgian civil order as it existed on 31 January 1814,' i.e. the moment the territory was delivered from the French regime (van Meenen 1816d). This meant, concretely that he set out to defend the French legacy against those who those who wanted to abolish or replace it. He acknowledged that he considered the *Code civil*, the *Code de procédure* and the *Code de commerce*, in sum the legacy of the Napoleonic codes of law, superior to 'our numerous, exotic and diverse customs' from the time before the invasion of the French army (van Meenen 1816d, 375–376). More to the point, he rejected the claim of the conservatives that the order from before the French Revolution was somehow the 'natural order' in the Southern Netherlands. Legitimacy did not lay in one particular immutable social order from the past, but in the social order *as it exists today*: 'Every civil order or political order, or every way in which the two are combined, *which does not conflict with reason or morality*, is respectable,

legitimate, obligating, from the very moment it exists' (van Meenen 1816d, 359).

In response one could ask, how the French laws, and the changes in Belgian society under French government, could result in a legitimate civil order if they were imposed illegitimately—or, by extention, what argument there could be to deny the legitimacy of future changes in civil society imposed by a new regime. Van Meenen's answer was that the French institutions had been gradually accepted by the people, and that the people had thereby simultaneously acquired a set of civil rights, which continued to deserve protection.[7] The citizen had by submitting to the laws 'fulfilled a duty that the nation imposed upon him.' The nation, in return, owed him 'the guarantee of the rights …, the respect of all [his] transactions conform to the laws under which [he has] lived, and the maintenance, the execution and the inviolability of these laws' (van Meenen 1816d, 370–371). Van Meenen also pointed to the fact that, under the French laws, there had existed no formal inequality between the Belgians and the French. The new legislation had replaced 'our numerous, exotic, diverse customs' in an equal sense as it had replaced 'all the customs, habits and styles of the ancient France,' and the Belgians had in an equal way 'rallied around their confection' (van Meenen 1816d, 375).[8]

What directly provoked Van Meenen to write in defence of the Belgian 'civil order' were the plans of the government to replace the codes of law that were inherited from the Napoleonic period with new 'national' codes of law, and therefore for a *Neerlandisation* of the civil and criminal law (which will be discussed in more detail in the

[7]With regard to the French institutions having truly taken root in Belgian society, Herman Van Goethem has asserted that a negative evolution in the public opinion toward the regime did not concern its law system and its institution. 'The Napoleonic codes survived, as the modern public law with its principles of the sovereignty of the people, the abolition of feudalism etc.' 'In that regard,' Van Goethem points out, 'the French Revolution was indeed acquired in 1814–1815' (Van Goethem 1996, 363).

[8]This point of view obtained some track in legal history. Hervé Leuwers, for example, insisted that '… the obliged fidelity to the big principles of national sovereignty and equality between citizens, the true fundaments of the institutions of the Republic, … transformed the attachment of the conquered countries in a true integration, … the progressive fusion of two peoples, which henceforth lived under the same institutions and the same laws' (Leuwers 1996, 218).

next chapter). In light of the ambitious, reformist agenda of the new government, Van Meenen wanted to make a point that there existed a legitimate civil order, and even a political order, in Belgium, which the government needed to respect, as the very rights of the Belgians were inseparably wrapped up with this pre-existing order. Van Meenen pointed out that the new government should only modify 'the political order' of the two different historical parts, 'in those aspects that are irreconcilable with the goals of the reunion.' This corresponded to the idea of a 'spontaneous reunion' which the Kingdom of the Netherlands was supposed to accomplish. 'Beyond that,' Van Meenen insisted, 'the political orders must remain unchanged' (van Meenen 1816b, 215–216).

If this sounded in itself very conservative and 'anti-political,' the way it could be understood was that the new government or regime, established in 1815, had not secured the mandate to execute radical reforms; which undoubtedly related to way Van Meenen felt the government had failed to align public opinion around the new constitutional order. In that sense, Van Meenen pointed out that, if the government had truly the wish to make deep operations in Belgian society, it needed to follow 'the clear, consistent and formal wish of the majority of the people.' He made it thereby equally clear that the current members of the parliaments and the government had no exclusive claim to the representing the wish of the people: 'They can call themselves representatives of a nation as much, and on whatever ground they want; but, since when representatives no longer have the obligation to conform themselves to the wish of the represented?' (van Meenen 1816d, 361).

By identifying legitimacy and social order with the laws and institutions of a political regime that had disappeared, the implication of Van Meenen's articles was in fact that the new government and constitution were alien institutions. They could, at best, be tolerated as long as they did nothing to change what was already in place. In a follow-up article on 'the attributions of legislative power created by the constitution,' the author further clarified that '[a]ll which has to be positively decided, will only concern temporary and particular circumstances … and will in no sense effect the private relations of citizens among each other [civil law], nor their permanent relations with the state [political law]' (van Meenen 1816f). Therefore, according to Van Meenen, 'beyond the government in its proper sense, beyond the acts of general administration, beyond

the interests which the reunion has made general, the legislative power of the king and of the States General ceases' (van Meenen 1816f, 150–151). The question was evidently, were exactly was to be found the legislative authority with regard to the laws over which the government had nothing to say, in Van Meenen's words, 'the legislative power of these different more intimate parts of or social order?' Van Meenen admitted, in a footnote, not to have the answer to this. His suggestion was 'that we give ourselves some years of calm, observation and experience, before touching upon it' (van Meenen 1816f, 152).

What Van Meenen provided, was a conceptual framework for turning any issue related to the uniformisation and nation-building agenda of the government in a debate on the nature of the union itself. What was equally important, however, was how these views on nationalisation would influence the political-institutional debate, primarily with regard to ministerial responsibility.

3.4 The Discourse Against Legislative Voluntarism and the Unresolved Matter of Ministerial Responsibility

Benjamin Constant was during the Restoration the pivotal architect of a theory of ministerial responsibility, and his texts provided the basis for all Belgians writing on the matter.[9] Constant's theory of ministerial responsibility was rooted in a strong belief, reminiscent of the Enlightenment, in individual reason. Constant took issue with seventeenth-century Christian philosopher Blaise Pascal for taking *custom* as the basis of all authority and insisted on the necessity to question the principles behind any law, and on the importance of individual reason as the only means by which this could be done. This was the task, moreover, of any

[9] Constant developed his idea of ministerial responsibility in different writings, but especially in *Fragments d'un ouvrage abandonné* (ca. 1802, unpublished), *Reflexions sur les constitutions* (1814) and *Principes de politiques* or *Principles of Politics* (1815). Constant further in 1815 devoted an entire brochure on the subject: *De la responsabilité des ministres* (1815). See also on Constant's concept of ministerial responsibility: Jaume (2000). We supported primarily on Constant's discussion of ministerial responsibility in the *Principles of Politics* (ed. B. Fontana) published in 1815 (Constant 1815, 183–193 and 227–250).

citizen, and thus his 'responsibility.'[10] Blind obedience to the law or to the authorities was therefore never recommendable. In his voluminous *Principles of Politics Applicable to All Governments*, Constant insisted that even the lowest civil servant had the responsibility to question any order received by his superiors. If this could 'sometimes plunge subordinates into painful uncertainty,' Constant insisted that 'there is uncertainty in all human affairs: when freeing himself from all uncertainty, man would cease to be a moral being. Reasoning is simply a comparison of arguments, of possibilities and chances' (Constant 1815, 247).

Applying these ideas to politics and the question of government accountability, Constant made the distinction between 'the abuse or misuse of legal power,' on the one hand, and 'illegal acts' on the other hand. He then specified that the latter could either apply to acts 'prejudicial to the public interest' or 'assaults upon the liberty, security and property of individuals' (Constant 1815, 227). The second category seemed to provide the basis for a juridical procedure against ministers. The first category, however, was not to be mistaken for the English form of ministerial responsibility, where the fate of the minister (or the government collectively) was simply made dependent on the affirmation of trust by the parliamentary majority.[11] Instead, Constant strongly believed that central to the notion of political responsibility should be the question of the 'justness' of executive acts, which stood apart from the question of their 'legality.' What was needed to ascertain the *mauvais usage* that the ministers could make in their legal execution power was an enlightened public debate, in which 'the representative bodies informed the entire nation on the conduct of the accused ministers' (Constant 1815, 231–234). Constant furthermore elaborated a sophisticated mechanism to hold ministers accountable in a constitutional monarchy. He furthermore elaborated a sophisticated mechanism to hold ministers accountable in a constitutional monarchy. Constant started from the reflection that 'the first and indispensable condition for the exercise of responsibility is to separate executive power from supreme power.' In order to prevent responsibility from being void (the inevitable consequence if it

[10]Article from November 1817 by Constant in *Mercure de France*, cited in: Jaume (1997, 97).

[11]For the development of ministerial responsibility in the English government: Baranger (1999).

were to be set 'too high'), what was needed was a 'power superior to the ministry … to prevent others from appropriating it, and to establish a fixed, unassailable point which passions cannot reach' (Constant 1815, 190–191). For this reason, Constant devised the maintenance of royal power in a constitutional government as a 'neutral' or 'preserving' power, needed to secure the balance between the three other powers:

> The executive, legislative and judicial powers are three competences which must cooperate, each in their own sphere, in a general movement. When these competences, disturbed in their functions, cross, clash with and hinder one another, you need a power which can restore them to their proper place. This force cannot reside within one of these three competences, lest it should assist in destroying the others. It must be external to it, and it must be in some sense neutral, so that its action might be necessarily applied whenever it is genuinely needed, and so that it may preserve and restore without being hostile. (Constant 1815, 184)

As Lucien Jaume pointed out, Constant, in fact, hereby 'reinvested the ancient vision of a wise and omniscient sovereign in a procedure where the nation has the last word' (Jaume 2000, 231). Within this theory it would not be the 'confrontation between two parties' (i.e. the switching of positions between a majority and minority), or 'the choice between two competing opinions' which determined the political debate, but the employment of royal power 'to end any dangerous conflict,' either by dismissing his ministers or by dissolving the elective chamber (Constant 1815, 185).

Constant separated ministerial responsibility from the actual destitution of the ministers, by conceiving of a preserving power whose task was, in the words of Lucien Jaume, 'to anticipate the crisis, in order to resolve her in time' ('*de aller au-devant de la crise, pour la dénouer à temps*') (Jaume 1997, 189). Part of Constant's preoccupation, as Jaume pointed out, concerned a restoration of the 'power of the state.' In France, the constant battle between different political strands (Jacobins, royalists, Bonapartists etc.) over the control of the state had severely undermined the authority of the state, and the idea of 'neutral power' was meant to restore it (Jaume 2000, 229). However, Constant's dissociation of the monarchy and the actual government (the ministers) was primarily meant to create the space for public debate. He framed this

connection between ministerial responsibility and a free public space in neo-republican terms: 'It seems to me that responsibility must, above all, secure two aims: that of depriving guilty ministers of their power, and that of keeping alive in the nation – through the watchfulness of her representatives, the openness of their debates and the exercise of freedom of the press applied to the analysis of all ministerial actions – a spirit of inquiry, a habitual interest in the maintenance of the constitution of the state, a constant participation in public affairs, in a word a vivid sense of political life' (Constant 1815, 239).

Once the constitution was declared, the responsibility of the ministers became one of the first preoccupations of the liberal opposition in the Southern Netherlands. Authors discussed in the previous chapter such as Jean-Francois Gendebien, Jean-Baptiste Leroux and Charles Keverberg addressed the issue in the context of the constitutional debate in 1815 (Gendebien and Leroux 1815, 16; de Keverberg 1815, 43). However, the first to properly specialise himself in the issue, in the Southern Netherlands, was Antoine Barthelemy, who earlier presented a defence of the union of the Netherlands based on a language of social progress (see Chapter 2).

Barthelemy, who was also a journalist with *L'Observateur*, wrote, still in 1815, a pamphlet titled *On the governments of the past and on the government to be established* (Barthelemy 1815a), in which he addressed the issue of ministerial responsibility at length, and in a broad historical context. He started by arguing that, in the course of history, the source of political legitimacy had shifted from the prince to the nation. Legitimacy, so Barthelemy explained, had in ancient times rested upon a reciprocal bond, on the one hand, between the monarch and the provincial nobles, on the other hand, between the monarch and the cities. But with the loosening of feudal ties, 'political society' had come into being and it eventually came to claim legislative power for itself. Kings could from then on either govern by the grace of God or by virtue of the people. During the French Revolution the latter principle prevailed, so Barthelemy insisted. At the same time the Revolution had highlighted the most difficult question concerning the principles of political society: If one accepted that sovereignty was embedded in the nation, did that imply that the power of the king could only be of an executive, accountable nature, and if so, what then distinguished a monarchical from a republican government (Barthelemy 1815a, 27)? Three observations had to be made regarding the division of powers. Firstly, within

the executive power, there was a distinction between the 'quality' of the monarch as representative of the nation, and the quality of the ministers as general administers of public affairs, as agents of the monarch. A second observation was that the legislative branch of government was necessarily superior to the executive and juridical branches of government. From this observation followed, that if one assigned to the king only executive power, he would not be more than an 'accountable agent.' The solution to this was attributing a role to the king in the three powers. Most importantly, between the legislative and the executive power (the 'council' of ministers), the king was to be 'an observer and a judge' (Barthelemy 1815a, 45–47).

Barthelemy clearly proposed an idea of ministers who could individually be held accountable by the parliament, but whose removal still depended on the monarch, who was the moderating power in times of conflict between the different branches of government. This idea of a government went not only too far for those who wanted the executive government to predominate, but also for those who thought in terms of a delicate balance powers along the ancient notion of a 'mixed government.' This became clear from the publication of an anonymous pamphlet (attributed to Guillaume de Feltz) under the title *De la Reunion des Provinces Hollandaises et Belgiques et des Principes d'une Constitution Monarchique*. The author fiercely criticised Barthelemy for having argued that a king could either receive his legitimacy from God or from the nation, and that since the French Revolution the latter principle had prevailed. He argued that the king ruled 'by the grace of God … *and* of the constitution' (Feltz 1815, 8–9). The writer subsequently objected to the superiority of the legislative power over the executive power, and insisted that 'the three powers being or having to be necessarily independent, one should not prevail over the other' (Feltz 1815, 10). With regard to the idea of establishing an executive council independent of the king, the author argued: 'To create a council that is an integrative part of the executive power, is to confound everything, it means creating a mixed, republican-monarchical government' (Feltz 1815, 11). A council of ministers subordinated to the national assembly would annihilate the authority of the monarch and, de facto, establish a republic.

In a reaction to this pamphlet, Barthelemy, in *L'Observateur belge*, pointed out that he and the anonymous author shared the objective of uncovering the 'true and useful principles' of modern politics (Barthelemy 1815b). Both he and the anonymous author believed in the

necessary 'inviolability of the person of the king,' as well as his prerogative to dissolve the States General. Neither did Barthelemy refute that executive power would be exclusively a royal prerogative. But he then explained that a lot of government measures fell outside the 'execution of the law' as such. 'One could conceive of laws involving matters of general administration of which the execution was to be a royal prerogative,' Barthelemy explained, but it was equally true that the government would be confronted with 'a multitude of cases which were impossible to anticipate and organise [by law].' A certain part of the government power did therefore not concern the execution of the law properly understood. 'Arbitrariness always found its way into politics through the unanticipated (or its contingent element),' Barthelemy insisted, and therefore he preferred 'that administrative powers would reside in the hands of a council [of accountable ministers] rather than in that of an individual [an inviolable prince].'[12] This distinction between the general law and (discretionary) 'acts of administration' resonated with earlier writings of Pierre-François van Meenen, and was to be further elaborated upon by Van Meenen in the continued discussion on ministerial responsibility.

Two journals were established in the autumn of 1815 which would engage further with the *L'Observateur belge* in a debate over the issue of ministerial responsibility: *Le Vigilant* and *Les Ephémérides de l'Opinion*. From the autumn of 1815 onwards, the discussion of the problem of political responsibility was taken over by Pierre-François van Meenen on behalf of the *L'Observateur* and the Belgian liberals (van Velzen 2005, 106). *L'Observateur* pointed out, during the first sessions of the States General, that the ministers were acting in flagrant transgression of the spirit of the constitution by presuming they could not be hold accountable and by shamelessly hiding behind the person of the monarch to avoid any personal responsibility (van Meenen 1815d, 292). In February 1816, the Minister of Finances Six van Oterleek officially affirmed the government viewpoint that it was unclear if ministerial responsibility existed under the constitution, as it was not mentioned

[12] In a later article, Barthelemy returned to the issue from a somewhat different angle. He argued that one could not have fundamental objections to the distinction between a council and the person of the monarch, as it was the [executive] power which administered the finances of the state. On that account alone, one had to be able to hold the government responsible. For that reason, it was also necessary to detach the king from his council, in order to make his inviolability possible (Barthelemy 1815c).

in the articles. Six argued, in an address before the States General, that 'under a royal government, in which ministers cannot be hold accountable, any opposition within the representative assembly would be more harmful than useful' because it could undermine the authority of the king. Paradoxically, the government exploited the fact that the constitution had not declared the inviolability of the king to argue that ministerial responsibility could threaten the position of the king himself. The simultaneous denial of the possibility to hold ministers accountable in the journal *Les Ephémérides* demonstrated that this address was part of a consorted government offencive on the matter (van Velzen 2005, 110–111).[13]

In the first number of the *L'Observateur* of 1816 Van Meenen reacted to the address of Six to the Second Chamber with an article full of irony (van Meenen 1816c). Van Meenen insisted that the statement of 'his majesty,' in whose name Six pretended to speak, with regard to the potential dangers of the opposition could not have been more to the point. In fact, he could also just have pointed out that 'in every state, administered by inviolable agents, blind obedience is the only political virtue.' Indeed, 'in such a state, not only every opposition, but every remonstrance, even a mere complaint, is harmful' and supports, 'neither the establishment of an independent representative body of some influence, nor whatever magisterial body that is a bit considerable.' The danger in such a regime was that the opposition could 'give a centre to the public opinion,' but everyone could see that, 'in this hypothesis, nothing good can come from opposition, only a complete revolution and a violent compression.' Subsequently, Van Meenen pointed out that a government based on the principle of the inviolability of the ministers was not a monarchy; and it was neither an aristocracy, nor a democracy. In truth, it was an 'oligarchy,' because a small number of people (i.e. the ministers) disposed of everything (van Meenen 1816c, 319–320). In a later article, in March 1816, Van Meenen presented a historical narrative about the monarchy to counter the arguments of *Ephémérides* regarding monarchical inviolability (the absence of which in the constitution the journal had used as an argument against ministerial responsibility) (van Meenen 1816e).

[13]Van Velzen refers to an article in *Les Ephémérides de l'Opinion* of February 1816, titled '*De l'abus des mots*.'

Van Meenen went on to write an article in which he coupled his ideas on ministerial responsibility to his broader views on the limitation of the legitimate scope of action of the new government (van Meenen 1817). In accordance with Constant's ideas, from whose work he quoted extensively, Van Meenen explained that the exercise of ministerial functions required 'the constant habitude of a study of the law in order to follow its letter; and of the practice of morality, in order to capture its spirit' (van Meenen 1817, 23–24).[14] When it came to defining 'the law,' Van Meenen repeated the difference, also made by Barthelemy, between the law in the broader sense on the one hand, and discretionary political decisions on the other: 'If we say *the law*, we don't conceive of it in the limited sense of random acts emanating from the legislative power, but in the general and universal sense of the word *law*, to indicate the totality of rules, *written or unwritten*, which determine the natural, domestic, civil and political relations of all the citizens of the state' (van Meenen 1817, 11).[15] In Van Meenen's view, the monarch was the guarantor of all these laws, whilst new acts of government were the exclusive responsibility of the ministers, as 'subordinate and responsible agents.' Therefore, 'executive power,' which, with regard to 'the law' in this abstract sense, was exercised by the king alone (who, apart from this, had a role as a 'moderating power') needed to be clearly distinguished from the 'executive functions' of government (van Meenen 1817, 4). Whilst the king therefore embodied a supreme authority, the people who held effective power were to be attributed the least authority, and to be vulnerable to the most extreme scrutiny: 'Those momentary wishes, those movements of passion, which are proper to executive agents, are they suited for the dignity of the supreme authority? Are they reconcilable with the impartiality of a moderating power… and with the impassivity of an inviolable magistrate?' (van Meenen 1817, 12).

[14] He quoted 'Mr. Constant,' who had written that 'if you prescribe to the agents of authority the absolute obligation of an implicit and passive obedience, you send into human society instruments of arbitrariness and oppression….'

[15] He added the following, intriguing quote, which illustrates well the legal conservatism which he represented: 'The social order is a chain of exceptions. It is itself a first exception to the state of natural independence. The law of today is but an exception to the system of laws that reigned yesterday' (van Meenen 1817, 11).

Van Meenen therefore appropriated the issue of ministerial responsibility, and made it part of an argument on the scope for political action by the government; and in this way, he of course wanted to strike out at its legislative agenda. The way in which the government was making policy through an abundance of executive decrees corresponded with a despotic government, Van Meenen insisted (van Meenen 1817, 20–21). Van Meenen referred further with disdain to the Dutch political tradition, when pointing out that, 'in a small regency it is natural to *regulate* everything, and one incessantly renews the regulations' ('it is what gives importance to oligarchs'), but that in larger states 'one needs to always follow the executive procedures as established' (van Meenen 1817, 12–13). Ministerial responsibility needed to be understood entirely in this sense: in order to hold ministers responsible, 'one has to ensure that the execution of a law would not be a signal for the subversion and the violation of all the anterior laws and the rights of citizens' (van Meenen 1817, 22). If some people within the government would advance a monarchical interpretation of the constitution in order to justify its way of imposing top-down transformative policies (see Chapter 4), in the South the leading opposition figure turned the crucial constitutional issue of ministerial responsibility into an extension of a discourse that disclaimed the very legitimacy of any such policies.

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CHAPTER 4

Monarchical Government, Opposition and a Divided Political Nation

In 1817 the government, still controlled by its more moderate members, recognised that there existed a problem concerning ministerial responsibility, and initiated a debate on how the situation could be improved through a constitutional revision. However, different views on the fundaments of the constitutional order resulted in miscomprehensions on all sides about the intentions of the other sides, and, as a consequence, the debate was aborted before it had truly started. The failure to address the constitutional void brought with it the triumph within the government of the political forces who advanced the view that the monarch held priority over the constitution. The attempt to legally buttress this view led from the revival of the ancient procedure of *recursus ad principem* in affairs were judicial and administrative powers came into conflict with each other, to the reintroduction of the French 'system' that gave clear prevalence to political decisions on every level of government over court rulings.

4.1 The Clash of Two Constitutional Philosophies and the Failure to Resolve the Matter of Ministerial Responsibility

Before we look at the continued discussion on the issue of ministerial responsibility, we have to take a step back and look at why the articles in the constitution were so ambivalent. Karel van Hogendorp,

S. Marteel, *The Intellectual Origins of the Belgian Revolution*, Palgrave Studies in Political History,
https://doi.org/10.1007/978-3-319-89426-3_4

in his constitutional drafts, had anticipated a juridical procedure to be adopted in the constitution, which would allow indicting ministers for 'unconstitutional' acts: the representative chamber would be authorised to formulate an accusation against them, which would initiate a case before a constitutional court. This was more or less the type of ministerial responsibility provided for by the French *Charte* (art. 55 and 56) (Charte constitutionnelle 1814). What complicated matters, however, was that Van Hogendorp did not couple his notion of ministerial responsibility with the notion of 'royal inviolability.' A *Lecture on the History of the Fatherland*, given by him before the constitutional debates, showed that this can partly be explained in reference to Dutch history (van Velzen 2005, 19).[1] He called the idea that 'the king could do no wrong' a theoretical fiction, an abstraction of the mind. Van Hogendorp insisted that a king *could* do wrong, a fact that had clearly been proven by the last monarch to rule the Netherlands, Philip II of Spain. At the same time, Van Hogendorp feared (and he continued to do so afterwards) that the notion of royal inviolability could provide the basis for a silent transition towards a political system in which the ministry would be held collectively responsible before the parliament. In the political history of England, the notion of royal inviolability ('the king can do no wrong') had indeed been adopted simultaneously with this kind of collective responsibility.

Van Hogendorp clarified his notion of ministerial responsibility in the draft for a speech that was written in response to a cautious initiative by the government in 1817 for a debate on a constitutional revision (a speech which he never delivered). He gave an explanation of the constitution according to which responsibility resided with the monarch, but would shift from the monarch to the ministers in case of violations of the constitution. According to Van Hogendorp, not the ministers were answerable before the States General for their acts of government, but the king, and the States General had the right to demand explanation directly from him. The States General could impose this responsibility, he further explained, as the monarch depended on it as a co-legislator and through the control of the States General over the budget. In the second part of his text, Van Hogendorp continued to explain that this did not imply that ministers were inviolable in case the government would execute unlawful acts. On the basis of article 177, the States

[1]Van Velzen refers to *Discours sur l'histoire de la Patrie*, in H. van Hogendorp, ed., *Brieven en Gedenkschriften*, part 3 (The Hague, 1876), 320–321.

General had still the right, in his opinion, to incriminate a minister before the High Council, in a sense as had been anticipated by his drafts (van Velzen 2005, 130–136).[2]

However, even during the constitutional deliberations there had been little consensus on such an understanding of ministerial responsibility. 'Modernists' as Cornelis Van Maanen and Cornelis Elout, who had made careers in the Napoleonic administration and thought little of Van Hogendorp's archaic political views, were concerned with reserving as much power possible for the monarch. In the negotiations on the juridical procedure for bringing the ministers before the High Council, they shrewdly obtained that the initiative for indicting the ministers was shifted to the Council itself, and that the role of the States General was reduced to 'confirming' the indictment. Furthermore, the nature of the offences for which ministers would be indicted became explained in criminal rather than in political terms.[3] In combination with the fact that the Fundamental Law did not declare that the monarch was 'inviolable,' it became questionable if there truly was a form of ministerial responsibility under the constitution (van Velzen 2005, 39–53). The constitution, in fact, seemed to allow for the interpretation that article 177 did not provide a basis for ministerial responsibility as such, but had only outlined the procedure for the initiation of a criminal case (under the normal penal law) against minister. Paradoxically, Belgian liberals who supported a broader, 'political' notion of ministerial responsibility, and therefore had no use for article 177, would support this view.

In the beginning of 1817, the confusion with regard to the question of ministerial responsibility became painfully apparent, when a group of Belgian merchants in wine and salt sent a petition to the Second Chamber. The government had levied a new tax on their trade, but this seemed in clear contradiction with the constitution, which declared that no taxes could be raised unless on the basis of a new law. When the

[2]The draft can be found in H. van Hogendorp, ed., *Brieven en Gedenkschriften*, part 6 (The Hague, 1902), 257–261.

[3]Whilst the original sketch of Van Hogendorp provided that the 'executive actions' ('*amptverrichtingen*') of ministers could become object of prosecution before a High Council 'upon accusation by the States General,' the constitution of 1815 provided that ministers would be judged before the High Council for 'offenses committed whilst in function,' whilst only for 'offenses committed *in the exercise of their function*' permission for prosecution by the States General was required (van Velzen 2005, 39; Colenbrander 1909, 651).

representatives did not act upon this petition, apparently because they did not think they had the authority to call upon a minister to justify himself, the debate shifted to the matter of ministerial responsibility, primarily in reaction to an article by Jean Tarte in the *Journal de Belgique* (van Velzen 2005, 139–140).[4] At this moment the government, which when it came to constitutional issues still followed the Van Hogendorp-line, made an opening through the government-sponsored journal *Les Éphémérides de l'Opinion*. The journal had already in earlier numbers explained ministerial responsibility in the sense given to it by Van Hogendorp.[5] On the one hand, it insisted that the king was 'politically and administratively' responsible toward the nation. On the other hand, it argued that the ministers were required to execute the will of the monarch, but that nevertheless they could be prosecuted 'for reasons of treason, malversations [*concussion*] or abuse of confidence,' a phrasing that was borrowed from the French Charter, but which was nowhere to be found in the Fundamental Law. Then the journal acknowledged that there was an 'evident void' in the constitution, and that in a future revision of the Fundamental Law this problem would have to be addressed. As Peter van Velzen has pointed out (van Velzen 2005, 120–122), this opening was primarily meant to counter 'the Belgians,' who the government believed used the void in the constitution to advance 'the English combination' (royal inviolability, collective responsibility). What was needed, the journal argued, was a law that specified exactly the cases when ministers could be held responsible, so that beyond these cases the freedom of action of the government (i.e. the king) could be secured.[6]

[4] The discussion that followed resulted in a petition sent to the Chamber in demand of ministerial responsibility, presumably by Pierre-François van Meenen (van Velzen 2005, 140–141): *Mémoire à la seconde Chambre des Etats-Généraux par les marchands de vin et de sel des provinces méridionales* (Antwerp 1817). The petition demanded the need to 'rehabilitate ministerial responsibility in accordance with our constitutional rights.'

[5] 'De l'abus des mots,' *Les Éphémérides de l'Opinion, ou observations politiques, philosophiques ou littéraires sur les écris du temps*, February 1816, 155–167.

[6] *Les Éphémérides de l'Opinion*, May 1817, 197 (van Velzen 2005, 121): 'Our legislation needs a law which declares the ministers responsible, specifies all the cases of responsibility according to their functions, and determines how and by whom they should be accused and persecuted.' The article made it also explicitly clear that the issue could not be settled with a simple law, as this would leave room for speculations on the proper understanding of the constitution on the matter.

In *L'Observateur belge*, Pierre-François van Meenen wrote an extensive reply to *Les Éphémérides* to reject the opening by the government for a public debate, a rejection which had important consequences (van Meenen 1817a). Van Meenen could not go along with the scenario of a revision of the constitution, as he understood that, what the government had in mind was (merely) the introduction of a juridical form of ministerial responsibility: the adoption of an article that would specify the 'misdemeanours' for which ministers could be prosecuted. The reason for his rejection was not that he favoured the English practice of a 'collective responsibility' of the ministerial cabinet (as the Dutch presumed), but because he endorsed a form of ministerial responsibility, in his words, as an 'exceptional' form of justice (van Meenen 1817a, 69). Responsibility, Van Meenen explained, meant that, apart from being subjected as normal citizens to the penal and civil law, the acts of the ministers were also subjected to additional scrutiny. If the ministers, as any other citizens, were subjected to law for 'illegal' acts, which violated the rights and interests of the state or the citizens, they were to be prosecuted as well for 'faults, prejudicial to the state or to individuals, which were committed even in the use of their *legal* power.' The author in this sense spoke of '*délits constructifs*,' which did not fall under the normal law, and which resulted from 'the accumulation of different faults.'

Van Meenen admitted that for this proper form of ministerial responsibility some kind of constitutional provision might be advisable, and a discussion on this would be a debate on 'ministerial responsibility, properly spoken' (van Meenen 1817a, 69–70).[7] This would require, however, a completely different kind of law than what the government was proposing. 'If, however, a law or a constitutional disposition on *ministerial responsibility* remained to be made,' Van Meenen added, 'God forbade us that it would be a *specification of the cases of responsibility*, in the sense that the ministers have suggested it!' He quoted Benjamin Constant to insist that, 'if any possible way to harm the state

[7]Van Meenen, in a similar way as those who denied ministerial responsibility (or would come to deny it), argued that article 177 did not provide in ministerial responsibility in any sense, but only involved the application of the normal penal law to the ministers (van Meenen 1817a, 66). The reason was, obviously, that, if read in that sense (of providing in ministerial responsibility), the article only granted a very limited role to the parliament. He might also have realised that those who had conceived it, had a limited form of ministerial responsibility in mind.

was to be specified by a law, the code of responsibility would turn into a treatise on history and politics.' Moreover, in such a case, 'the ministers would easily find new ways to evade [the code] in the future' (van Meenen 1817a, 71–72). 'To specify the case of responsibility,' therefore, was 'to destroy [responsibility], to consecrate irresponsibility by right and by fact' (van Meenen 1817a, 72). This was also why ministerial responsibility was to be judged, according to Van Meenen, before one of the two legislative chamers (and not before a constitutional court), because the actions falling under 'proper ministerial responsibility' were 'rather of a *political* than of a *juridical* nature' (van Meenen 1817a, 72–73).[8]

Van Meenen furthermore pointed out, that it was regrettable that the Fundamental Law had not explicated the principle of royal inviolability in the constitution. This was, 'not [because] we have thought it necessary to establish the principle, but [because] it would have been wise to adopt it in the constitution of a *republic transformed into a monarchy*, where all ideas of public law were annihilated, and those of the monarchy entirely unknown.' In the end, so Van Meenen seemed to imply, the Dutch simply did not comprehend very well yet the principles on which rested a modern constitutional monarchy (van Meenen 1817a, 62–63). However, he expressed simultaneously suspicion towards the intentions of the Dutch political class for opening this debate. Let's accept for a moment, he suggested, that indeed under the law as it stands our ministers cannot be held responsible (just as a hypothesis, he insisted). 'In that case,' Van Meenen continued, 'the concession which the ministers now make does not come at great sacrifice [and] they have certainly not much to fear from a revision of the constitution… which their inviolability would [ultimately] make easy to prevent from being realised.' The suggested idea of a revision of the constitution, according to Van Meenen, was 'an ambush' ('*une embûche*') (van Meenen 1817a, 64–65). It was, in other words, only meant to make public opinion believe that, regardless of any small changes that would be made in the margins of the constitution, the ministers were fundamentally indeed not responsible.

[8]Van Meenen quoted a passage from Constant, in which the latter had explained the articles of the French Charter (which explicitly authorised the *Chambre des Pairs* to judge the ministers), in the sense that 'the peers have to make a judgment as supreme judges, following their *reason*, their *honour* and their *conscience*.'

4.2 From *Recursus ad Principem* to the Decree on Conflicts

4.2.1 Cornelis Felix van Maanen and the Prevalence of Monarchical Power

According to Peter van Velzen, 'the rejection (by Van Meenen and *L'Observateur belge*) ended the debate, and provided the government with the alibi to henceforth remain silent on the matter' (van Velzen 2005, 123). It furthermore created the space for certain forces within the government to advance their monarchical views on the constitutional order. The promoter of the idea that sovereignty in the Netherlands resided entirely with the monarch was Cornelis Felix van Maanen.[9]

Van Maanen considered Napoleon to have been a legitimate ruler over the Netherlands. Therefore, in 1814, he believed that a formally legal transference of sovereignty could only take place if the Emperor first abdicated. Since this did not happen, despite the fact that the French rule over the Netherlands de facto ended, the Netherlands in 1814 inevitably faced a 'power vacuum.' The only way for the Dutch people to become recognised as an independent nation had been to submit to the sovereign rule of William I. Van Maanen therefore believed, in a Hobbesian sense, that what had occurred equalled a contract of submission: the people, in order to become a nation, had irrevocably and unconditionally abandoned all its rights to the sovereign ruler. But then what about the constitution? Van Velzen insists that Van Maanen never went so far as to think of the Fundamental Law as a *charte octroyée*, a charter generously granted to the nation, but nevertheless entirely revocable. Although William's sovereignty did not depend on the constitution, he would still be held to it because of the oath he had pledged. Nevertheless, as William had 'restricted' his own authority on an entirely voluntary basis, this still meant that the person of the king was to be seen as the only *source of interpretation* of the constitution, and that ultimately only he decided to what extent he respected the letter and the spirit of this voluntary 'self-restriction.'

In the commissions of 1814–1815, Van Maanen attempted to assure that his monarchical views were reflected in the constitutional

[9] This summary of Van Maanen's political supports on: van Velzen (2005, 151–173).

documents, even if this clearly opposed the views of most of the other members. He succeeded in preventing that it would be inserted in the preamble of constitution that the old provincial States had transferred the sovereignty to the monarch (an idea of Van Hogendorp), as this would have elevated the idea of continuity with the old Republic (Colenbrander 1909, 80, 82, 394). The views held by Prince William himself at that time seem to have been ambiguous. Although, according to Van Velzen, the prince was initially unreceptive to the constitutional conceptions of Van Maanen, and relied mostly on Van Hogendorp to outline the general features of the new monarchy, in private correspondence with his son he already clearly defended the view that the monarch came before the constitution (Koch 2013, 247).[10] In any case, over the years the relationship between William I and Van Hogendorp deteriorated, partly because of the criticism of the latter on the financial-economic policy of the monarch.[11] In contrast, the influence of Van Maanen over the king rapidly increased.

The first manoeuvre towards the realisation of a monarchical government revolved around the introduction of the procedure *recursus ad principem* ('recourse to the principle authority'), which allowed the highest political authority, in this case the monarch, to intervene in sentences passed against the state by the judicial power.[12,13] The Dutch constitutions of 1805 and 1806, at the time of the Kingdom of Holland under Louis-Napoleon, had provided that the highest legislator could, in the general interest, veto legal actions directed against the state before the highest judicial institutions. The question that needed to be addressed in 1814–1815 was, if a similar competence on the part of the 'highest

[10]The prince made it clear that he considered the negotiations for a constitution as a charade. He insisted that the constitution has only to be regarded as 'a play thing,' which, placed in the hands of the crowd, offered 'only an illusion of freedom.' He furthermore pointed out that it was up to him to 'accommodate [the constitution] according to the circumstances.'

[11]Like many other representatives of the former class of 'regents' from the province of Holland, Van Hogendorp found William I too supportive of the new industry in the Southern provinces, and negligent of the commercial interests of the North.

[12]Although this was the term that was used, it was not related to the more common understanding in terms of the possibilities of recourse to secular authorities in ecclesiastical affairs (see Chapter 5).

[13]For the following paragraph: Drion (1950, 92–99).

political authority' to intervene in legal actions was to be maintained, and to whom it belonged. A royal decree of 18 June 1815 attributed this competence to the king, but it was unclear whether or not this was in violation with the constitution of 1815, proclaimed shortly afterwards.[14] The question was extensively discussed in the Council of State, which, in a report to the king of 21 May 1816, insisted that the competent institution, in the case of conflicts between different branches of power, would be the High Council. The king followed this advice and issued in that regard a royal decree on 1 July 1816. However, the Council of State advised in a subsequent document to attribute to the monarch the competence to intervene in legal procedures as a provisional measure, as long as the High Council had not yet been established, and on the condition that all means to obtain a verdict before the normal courts had been exhausted. This became adopted by the royal decree of 16 February 1817.

If William I accepted, at first, that the competences associated with *recursus ad principem* would in the new state belong to the High Council, Van Maanen was quick to realise that this procedure provided him with a point of departure to advance his view of a strong monarchical government. In a work-document he sent to Anton Falck in 1815 (*Pro Memoria voor mijnen vriend Falck*), Van Maanen endorsed *recursus ad principem*,[15] attributing a meaning to it which corresponded well with his idea of monarchical sovereignty. Van Maanen explained that the procedure involved appealing to the sovereign in case one wanted to make a protest against any kind of decision by which one felt affected, by executive councils, civil servants or the king himself. It would then be up to the sovereign to demand advice from the proper state department and from the Council of State, make a decision immediately himself, *or* send the case further to the competent court.[16] For Van Maanen, delaying the establishment of a High Council therefore became essential. In a memorandum to the king, he presented three conditions which needed to be fulfilled before the institution could be established: (1) the elaboration of a new civil and criminal code of laws; (2) the elaboration of concrete

[14] For the text of this royal decree: Drion (1950, 71–72).

[15] Quoted in van Velzen (2005, 188–190).

[16] He excluded, however, civil rights, property rights and debt mediation, for which he did acknowledge the competence of the courts.

instructions for the High Council; and (3) the revision of the organisation of whole judicial system.[17]

4.2.2 The Debate on the High Council in the Shadow of the Issue of Ministerial Responsibility

Under impulse of Van Maanen, the government invoked article 180 of the constitution, which declared that the High Council would supervise that 'all the courts and tribunals apply the laws correctly …' to justify the delay in establishing the Council. In view of the prevailing chaos in the judiciary, it would have been impossible for the Council to fulfil its most important task. However, from the midst of 1816 political pressure for the establishment of the Council increased, both from within the Northern and the Southern Netherlands. Most independent journals and political thinkers viewed the establishment of the Council as the guarantee for the realisation of a state of law and against the abuse of power. However, the discussion about the establishment of the Council was also linked to the discussion on ministerial responsibility and the nature of constitutional government. The different views that prevailed in that regard among liberals in the North and in the South also expressed themselves in the debate on the Council, as became clear from a pamphlet by Jonas Daniël Meyer and a response by the inevitable Pierre-François van Meenen.

Jonas Daniël Meyer was a judge and a lawyer who had been secretary of the constitutional commission of 1815, and had acquired a strong reputation as a publicist and a legal historian. Meyer's brochure insisted upon the need for an immediate establishment of the High Council (Meyer 1817). Under the new constitution, Meyer explained, the judge performed the task of verifying if the correct constitutional procedures in the application of the laws were being followed. Secondly, it was up to the judicial power to keep an eye on transgressions of competences by the different branches of government. These two observations made the establishment of a High Council a necessary condition for the realisation of the constitutional government on the basis of the Fundamental Law of 1815. On these grounds, Meyer opposed the argument that the establishment of a High Council had

[17] Quoted in van Velzen (2005, 177–178).

to be preceded by a reform of the judicial system. He admitted that at the moment the judicial power lacked organisation; the highest courts of justice in The Hague, in Brussels and in Liège were functioning in regions with a different history, a different judicial organisation and different laws. However, as the organisation of the judiciary would take many years, the establishment of the High Council could simply not be postponed; on the contrary, it had to play a pivotal role in the task of uniformisation at hand.

Meyer was also familiar with the theory of ministerial responsibility that was defended by *Ephémérides* at the time, which involved the possibility to indict the ministers before the High Council on the ground of 'illegal' actions (i.e. actions in violation of the constitution) (van Velzen 2005, 177–178). His insistence on the necessity of a High Council in view of the explanation of the constitution and the verification of law corresponded with this understanding of ministerial responsibility. Meyer presented in his brochure an analysis of the three branches of government, in which he came to the conclusion that the executive branch represented the greatest threat to the civil liberties of the inhabitants of the state. The legislative branch and the judicial branch did not represent the threat of 'an excess' of power, since the first only concerned itself with 'general' laws and the latter could only exercise its authority in 'particular' cases. Those, however, who are 'invested with the power to execute the laws,' in Meyer's view, 'can take decisions of both a general and particular nature,' and, therefore 'from them depended all administration …, they are in a position to invade the other powers.' The only remedy against the expansion of executive power lay in balancing the powers, but most of all in establishing a strong judicial authority that guarded over the constitution. Meyer pointed out that, 'every time that a people has obtained a constitution, one has always imagined that the judicial power provides a double guarantee: on the one hand, for the subjects against the abuses of the sovereign authority, on the other hand, for the sovereign against the suspicions and calumnies of the subjects.' The judicial power was therefore the true warrant of the constitutional order.

In a review of Meyer's brochure (van Meenen 1817b), Pierre-François van Meenen endorsed his argument that the constitutional requirement of a uniformed judicial system for the kingdom provided no justification

for delaying the establishment of the High Council. However, in spite of this agreement, Van Meenen spent the rest of his review attacking Meyer's view on the three branches of government, and disagreed with the importance of the judiciary to keep the executive power in check. In Van Meenen's view, the executive branch of power was *not* the most threatening to liberty and the state of law (or *ought not to be*). In the opinion of Van Meenen, the executive power stood apart, not because it accumulated the powers of the others, but precisely because it had none of these powers, and its tasks remained 'administrative' in the most limited sense of the word. Van Meenen described the executive power as merely 'an intermediary agent,' an 'administration between the legislator, which encapsulates the general will, and the judge which applies this will to individual cases.' Van Meenen subsequently made the distinction between 'balancing' and 'separating' the different branches of government. The act of balancing the powers, Van Meenen explained, only involved 'providing the different powers with the means to resist the encroachments of the other powers' (van Meenen 1817b, 131). However, when the 'separation' of the powers was concerned, this was simply a matter of 'seizing the true sense of [the constitutional principles] and applying them correctly' (van Meenen 1817b, 141); or, as he had put in 1815, of 'the application of the true principles of political right to our national association' (van Meenen 1815, 230). These 'general principles' of course referred to all the ideas of government that Van Meenen had outlined over the last two years. Primarily, they concerned the inviolability of existing political-social order, which a government should only try to change in case it obtains 'the clear, consistent and formal wish of the majority of the people' (van Meenen 1816, 361). And, connected with this, there was the need for a strong public opinion, informed by the true principles of politics, which was willing to confront the government and impose on it the necessary boundaries. As Van Meenen had seen no need to revise the constitution to settle the issue of ministerial responsibility, he now rejected the idea that the realisation of a constitutional government, with balanced and separated powers, depended primarily on the establishment of a 'supreme court.'

By the time the brochure of Meyer was published, the government had turned its back on the problem of ministerial responsibility, and therefore the brochure became generally ignored in the Dutch 'official' journals. The reaction by *L'Observateur belge* undoubtedly further isolated the voices in the North that spoke out for a constitutional government.

The Belgian liberals, on the one hand, absented from any engagement with constitutional revision, and, on the other hand, did not consider the matter of the High Council as relevant to the question of ministerial responsibility. Unfortunately, the schism between Northern and Southern liberals would help the government in imposing its model of monarchical government.

4.2.3 The Prevalence of Administrative Power: The Decree on Conflicts

Under the French republican and imperial regimes, the political law had provided in the predominance of political power over the courts.[18] This predominance was a legacy of the French Revolution, in which a language of 'political will' had ultimately prevailed over competing languages of 'justice' (ancient constitutionalism) and 'reason' (social progress) (Baker 1990). The first laws to establish this predominance were already adopted, paradoxically, at the time of the constitutional monarchy. The French law on the organisation of the judiciary of 24 August 1790 declared that the judicial power was not allowed to bring the 'administrators' to justice for 'reasons with regard to their duties' (*Loi sur l'organisation judiciaire des 16–24 août 1790*). The decree of 7 October 1790 furthermore established that the king and the *Législative* were to be the arbiter when there was a dispute over competence. The laws subsequently adopted under the governments which succeeded the French constitutional monarchy only confirmed and extended these earlier laws. The most renowned was that of 4 November 1801, which established that the 'prefects' (heading the *départements*) were to be

[18]This provided in a clear break with the political culture of in the Netherlands from before the French rule, in which the interference of the judicial power with political power had been most common. In the Habsburg Netherlands there existed a *Sovereign Council* of Brabant, which was attributed the role of arbiter between the States General and 'the prince' during the Brabant Revolution. The provincial courts in the Northern Netherlands had equally played a prominent role in controlling the decisions of the political authorities, and issues of possible transgressions into ('political') legislative work were rarely raised (meaning that they were resolved in favour of the courts). In France itself, the so-called 'parlements,' in origin a purely judicial institution, were renowned for their prominent role in the politics of the *Ancien Régime*, as they invoked their *droit d'enrégistrement* and the *remontrances* to obstruct many economical and social reform policies. See Van den Bossche (2001, 36–40, 188–196) and Drion (1950, 37–38, 40–42).

given the right to evoke 'a conflict,' whenever they thought that a judicial procedure threatened to obstruct a political decision. It was then up to the First Consul to decide whether a court could proceed with, or should abandon, a case (Drion 1950, 33–36).

The constitutional framework of 1814–1815 abolished in the Netherlands this French system (in Dutch called *conflictenstelsel*). Under article 106 of the Fundamental Law of 1814 it would be the competence of the High Council to decide over all legal actions introduced against the State; meaning that the competence of the judiciary to pass legal judgment over political decisions was reinstated. The Council of State, which under the French government had been entitled to act as an arbiter in disputes over competence, was now only to have an advisory role. The constitution seemed to exclude the possibility for the political powers to appeal against judicial decisions.[19] After the revision of the constitution in 1815, article 165 provided that 'all litigations revolving around property-issues, any corresponding rights, claims for indemnity or violation of civil rights, belong exclusively to the judiciary.'[20]

In November 1817, however, the Council of State 'warned' in an advice to the king for a too strong judicial power, which would frustrate the liberty of action of the political authorities. In response, King William instructed ministers Van Maanen and Patrice de Coninck (of Internal Affairs) to elaborate possible solutions to deal with the challenge. In September 1818, Minister De Coninck presented a law-proposal, which partly implied a return to the French political law. In response to De Coninck's text, the Council of State declared that 'the courts cannot judge if the legislative or executive powers have transgressed the limits of their competence, since this

[19]Article 167 declared that no one could be denied the attribution of his case to the proper judicial authority. Furthermore, the constitution did not foresee in an institution that would be competent to pass judgement in the case public authorities would invoke a conflict (Colenbrander 1909, 642).

[20]As Jan Drion has pointed out, most confusion over the new legislation occurred in the Southern Netherlands, where judges had become more accustomed to the French system than in the Northern Netherlands (for the obvious reason that the Southern Netherlands had been an integral part of France for two decades, and not just for a couple of years). This explains why precisely Belgian members of the constitutional commission (Jean-François Gendebien and Olivier Leclerq) insisted on making it explicit in the Fundamental Law of 1815 that the French system would be abolished (Drion 1950, 67–69, 81–82).

would mean that the judicial power would be prevailing over the other powers.' The Council of State, whilst admitting that the procedure for administrative authorities to invoke conflicts had been abolished, referred to the king as the proper authority to resolve any such conflicts—and therefore abandoned its earlier point of view that this was ultimately the competence of the High Council. Its proposal, as Jan Drion has explained, was an elaboration of the *recursus ad principem* procedure, which had earlier been endorsed by the government (Drion 1950, 120–125).[21] The procedure of invoking conflicts was eventually introduced upon the insistence by the king, the Minister of Internal Affairs and the Council of State. Under the Decree on Conflicts of 5 October 1822 it became forbidden to the judicial power to interfere with the decisions of the political authorities, and the right was granted to the latter to invoke 'a conflict' anytime they felt this happened, which subsequently ought to be resolved by the king (Drion 1950, 160–161, 169–170).[22]

Van Maanen, who had initially been opposed to a re-introduction of the *conflictenstelsel* (on the grounds, as he had himself indicated, that it allowed for too much arbitrariness at the level of the lower public authorities), eventually changed his mind. In a report on the matter of 1822 he defended the Decree on Conflicts by invoking 'daily experiences with the undeniable ambition of the judicial authorities to interfer with all matters of the administration, and therefore to undermine the authority of the entire government' (Drion 1950, 149). As Jan Drion argued, there existed no reason why the actions of the courts should have troubled Van Maanen to such an extent. His new concern with the 'ambition' of the judicial power was probably informed by the fear that the ultimate organisation of the judiciary and the establishment of the High Council might ultimately upset the monarchical

[21] It declared that any administrative authority that held the belief that the judicial authority interfered with its proper tasks would have the right to turn to the king. At the same time the Council reserved the same right to the judicial power, when it believed the administration interfered with its tasks. This was still different from the French law, since it did not exclude the possibility that political decisions would be judged by the judicial power, as long as the king did not interfere (Drion 1950, 125).

[22] Article 1 of the new law did refer, however, to article 165 of the constitution, outlining that the new decree could provide no justification for the violation of property-rights, or for that matter, any other civil rights.

system of government. The establishment of a High Council would potentially shift the role of constitutional guardian from the monarch to the court, and, what was more, possibly lead to the introduction of a procedure for ministerial responsibility under article 177. In light of all this, Van Maanen probably came to see in the reintroduction of the French political law the erection of a legal defence wall against future potential threats to his political-constitutional views.

4.3 Towards the First Decennial Budget (1820): A Liberal-Republican Opposition Takes Shape

4.3.1 The High Council Debate in the Second Chamber and the Role of the Parliament Under Scrutiny

In 1817 elections were held for a third of the seats in the Second Chamber. As the members of this chamber had until then been appointed by the king, this first election meant that more seats became occupied by more critical or 'independent' representatives (van Zanten 2004, 133ff.). A growing number of Dutch representatives in fact took issue with the government's fiscal and economic policies. A newly-elected member from Utrecht, Jacob Gerard van Nes, started to scrutinise the financial chaos at the Department of War. Other representatives also, among them Van Hogendorp, became increasingly worried about the state of the national finances. Eventually, about ten representatives of the North voted against the budget-proposal presented by the government for the year 1819, and they were joined by a majority among the Southern members (a majority of the total number of representatives still supported the budget). Van Nes, in the debates on the budget, also brought up the issue of the responsibility of the ministers (van Velzen 2005, 193–197).[23]

[23] Less than half a year later the States-Provincial, clearly on insistence by the government, redrew Nes' mandate. Preventing re-election of critical representatives became in fact a common practice, designed to keep the Second Chamber compliant to the wishes of the government (van Zanten 2004, 137).

However, the few representatives in the Northern Netherlands who challenged the government failed to obtain much support within the Dutch political opinion. As Jeroen van Zanten pointed out, many thought they were violating the appropriate 'parliamentary style' and 'political conventions': '… none or hardly any discussion occurred in response to the content of the discourse [by van Nes]. Attention was instead directed at *the manner* in which he [Van Nes] had expressed criticism before the Chamber' (van Zanten 2004, 141–142). Even the Dutch representatives who supported Van Nes in his criticism simultaneously pointed out where the boundaries of the political opposition lay. The Dutch representative Daniël van Alphen, who in 1817 had still defended the need for a solution to the problem of ministerial responsibility, now acknowledged explicitly the 'impossibility' of opposition, because, under the law as it was, there simply existed no form of ministerial responsibility (van Velzen 2005, 190–193). Another representative, Antoni Warrin, emphasised that the criticism on the part of the representatives was not meant to undermine the king and the government, and that 'Netherlanders,' if all things were said and done, would 'never fail to support their government.'[24]

Whilst the Dutch representatives had become reluctant to further pressurise the government on the understanding of the body politic, the Belgian representatives and publicists started a new polemic. In an intervention in the Second Chamber, in December 1818, Jean-François Gendebien placed the issue of the High Council again on the agenda. He repeated the arguments by Jonas Daniël Meyer that the establishment of a High Council was not dependent of the revision of the civil and criminal codes of law. Gendebien constructed his argument around the notion of 'justice.' 'The first task of the sovereign is to provide justice,' he claimed: 'The improvement of the law books can be postponed; but the judicial institution, the guardian of our interests, does not allow any delay. It must coexist with the constitutional government itself, because to govern is to impose the reign of justice and order' (Noordziek 1868, 79–81).

Gendebien further made a remarkable effort to attribute the problems with budgetary issues to the growing despotism of the government, and the failure to make it respect the Fundamental Law. This could be

[24] On Van Alphen and Warrin: van Zanten (2004, 147).

interpreted as an attempt to convince the Dutch politicians that it made no sense to limit the opposition to fiscal and economic issues:

> Where in fact does the state of ever-growing languishment [*languer*] of the public revenue of our country, [which is] so rich in industry and agriculture, so blessed with elements of prosperity, come from? Is it not so that one has proclaimed a Fundamental Law, which promised to establish confidence, love and public welfare among us … by sufficiently guaranteeing the liberty of the individuals, the security of the properties, in short, all the civil rights which characterise a truly liberal people, and that [instead] one governs by laws, which, compromising these values so dear to men, spread distrust, unrest, [a] fatal *malaise* among the nation, and even a kind of stubbornness among a class rich with producers?

The delay in the establishment of the constitutional institutions (i.e. the High Council) was an 'extreme vice,' Gendebien further insisted, and 'much more dangerous than an error in the tax-system … or an excess in the expenditures.' It was a vice which could 'intimidate the public confidence, frustrate the development of our resources, paralyse our means, undermine the zeal of patriotism and of devotion, provide an excuse to misdemeanour, and through a thousand small ulcers, infect the foundations of our prosperity and represent a true plague within our social body.'

The Dutch representative Joan Melchior Kemper, a renowned law professor of the Leiden University, responded to Gendebien's intervention in the Second Chamber (Noordziek 1868, 101). Kemper, who was on good terms with the government and played an important role in the elaboration of a new code of civil laws (see further), was nevertheless known to be an independent representative with a willingness to speak his mind and be critical; he was one of the Northern members who rejected the budget and who attacked the fiscal policies of the government (van Zanten 2004, 135; van Velzen 2005, 207–208, 520). In his response to Gendebien, he nevertheless defended the official viewpoint that 'the organisation of the judiciary and the establishment of a High Council are to be part of the new body of law announced by the king.' Furthermore, Kemper also touched upon the differences in the underlying constitutional beliefs, when he criticised the use made by Gendebien of formulations as 'ministerial proposals' or 'ministerial budget.' The use of such notions showed that the Belgian started from the assumption that the ministers were de facto responsible for the actions of the government.

Kemper's son has later explained that, in the eyes of his father, 'the constitution, because it did not contain ministerial responsibility, did not provide a basis for such formulations [using the term 'ministerial'].' What disturbed Kemper, in other words, was that the Belgians, 'searched to introduce a political ministerial responsibility without the necessary constitutional revision.'[25]

In a new number of *L'Observateur belge*, Pierre-François van Meenen took issue with the reluctance among the Dutch representatives, when it came to tackling constitutional and institutional issues (van Meenen 1819a). He primarily criticised the prevailing political culture among the representatives. It was very well to attribute value to 'platitudes as harmony,' but there could be 'no harmony without dissonance'; or to 'peace, as if this should mean inertia and indifference'; or to 'reciprocal confidence, as if it could subsist without the equally reciprocal exchanges of research and enlightenment, etc' (van Meenen 1819a, 245). Van Meenen also outlined what part a representative chamber could be expected to play in a constitutional government. The Chamber, which he called a 'constituted opposition,' had in the first place to judge the requests by the government. But the representation was, apart from its role as 'objective judge,' also to represent 'the nation,' which was at that point 'the legitimate and necessary contradictor' of the government: 'Collectively, the Chamber is the judge between the king-demander and the nation-defender; individually, the members of the Chamber represent the nation-defender.' Van Meenen subsequently insisted, that 'we find the defence of the projects of the government on the part of the members of the Chamber extremely worrisome.' 'What will remain of the nation,' he continued, 'if the men charged with her defence associate themselves with the ministers …?' (van Meenen 1819a, 248–251).

4.3.2 Tensions Over New Legal Codes: The Continued Battle Against Nationalisation

The discussions on issues of government, the High Council, ministerial responsibility and the need for a political opposition, remained in the South firmly connected with the resistance against the government-

[25] Quoted in: van Velzen (2005, 209–210). Van Velzen has pointed out that Kemper was probably used by the government in a strategy aimed at delaying the establishment of a High Council.

agenda of 'uniformisation' and 'nationalisation.' Apart from language, another relevant issue in this regard was that of replacement of the French codes of law. In 1814, the government established a Commission of National Legislation meant to design new law books, under direction of the already mentioned Joan Melchior Kemper.[26] In March 1816 he submitted the king his proposal for a Dutch civil code. In light of the integration of the Southern Netherlands, the government decided thereupon to establish a mixed commission in which the Dutch would present and advocate to the Belgians the new law. However, the Belgian members Pierre-Thomas Nicolaï, Pierre-Philippe-Constant Lammens and Jean Bernard de Guchteneere strongly opposed Kemper's proposal, and insisted that his commission would 'start its work from the *Code civil* which now rules us [i.e. the code of 1804].' As John Gilissen pointed out, the opposition was one between Kemper, 'a man of theory,' influenced by the German legal tradition based on a dogmatic and systematic study of Roman material and characterised by a high level of abstraction, and the Belgians who were more practically oriented and strongly attached to the French legal tradition (since Napoleon).[27] The king thereupon assigned the Council of State to work out a solution, with the insistence that the proposal by Kemper should continue to serve as a basis, and not the French codes.[28]

In the Second Chamber Gendebien became the spokesperson of the Belgian preoccupation with the reform of the legal codes, an issue which had already incited opposition by Van Meenen in *L'Observateur* in 1816, on which Gendebien could now further elaborate. Gendebien, who had played an important role in the elaboration on the French codes in Napoleonic times, expressed his scepticism about the plan for a new 'national' codification.[29] This was not, he insisted, 'because of any personal affection towards the legal work of which I have been part.' However, Gendebien pointed

[26] The basis for the discussion was article 163 of the constitution, which foresaw for the entire kingdom 'one general lawbook for civil right, for commercial right, for criminal right [etc.]' (Colenbrander 1909, 642).

[27] See for these different traditions also: De Cruz (1999).

[28] On the codifications under the government of the Kingdom of the Netherlands: Gilissen (1983; 1984, 430–432).

[29] Extracts from the debates on the codification appeared in the articles by Van Meenen on the issue: van Meenen (1819a, b).

out, 'historical experience has shown us that a new body of law, if it is a good one, can become a burden on society for an indefinite time, and that, if it is diffuse and obscure, can be a public calamity of which our grandchildren will not be the last to suffer its consequences' (van Meenen 1819a, 249–250). Another representative, Mr. Trenteseaux, argued that 'the unity or unified identity of the law in the kingdom' was something that 'could better be obtained by correction and improvement of what exists than by creating something new' (van Meenen 1819b, 321). Pierre-François van Meenen, in a discussion in *L'Observateur* of the speeches of the Belgian representatives, recognised in them a confirmation of the 'confidence in my ideas' among (Belgian) members of the Second Chamber (van Meenen 1819b, 321–322). Indeed, both applied the 'social conservatism' of Van Meenen to the question of the innovation of the body of law, to argue that the legal diversity in the Netherlands could best be maintained for a while. What was necessary was 'a slow and gradual reform' (van Meenen 1819b, 325).

The new proposal which the Council of State eventually submitted to the Second Chamber, in 1820, differed little from Kemper's proposal of 1816, and hardly took into account the objections and criticisms of the Belgians. Kemper's proposal was subsequently taken apart in many sub-proposals, which were in 1820–1821 one by one discussed by the members of the Second Chamber, and became systematically rejected. In response to this defeat, the Belgian Pierre-Thomas Nicolaï would successfully impose a new method upon the government: a new commission was established which, apart from Kemper, would also include the Belgians Nicolaï, Gendebien and Joseph Van Crombrugghe (the new commission would consist of five Belgians and only two Dutchmen). This commission would in the coming years proceed in the way that Gendebien had advocated: gradually, and with respect for the legal inheritance of the French period. The commission would permanently engage in interaction with the Second Chamber. In this way, in the years 1821–1826, a new civil code would be elaborated and passed through parliament. It would, however, never be introduced: the other codes took more time and only in July 1830 the final decision was made to introduce, in February of the next year, the complete new body of law (which, as a result of the Belgian Revolution, never took place) (Gilissen 1983, 216–220; 1984, 430–432).

4.3.3 A Controversial Book and a First Moment of Consorted Liberal Opposition

In November 1819 the first two parts of a three-volume political study by Ferdinand van der Straeten, a Flemish merchant, were published, which would quickly find itself at the centre of the political debate: *De l'état actuel du Royaume des Pays-Bas, et des moyens de l'améliorer* (1819–1820).[30] The work was in the first place meant to be a critical evaluation of the economic situation of the kingdom and, as such, it mainly took the defence of the industrial interests in the Southern provinces.

In April 1819, an increase of the tariffs on import and export incited Dutch public resentment and led to the accusation that the government was privileging Southern industrial interests. Influential merchants, united in the Chamber of Merchandise (*Kamer van Koophandel*), lobbied with Northern representatives to make the government give up these fiscal measures. The increased taxes on commercial products, such as sugar and coffee, further infuriated public opinion in the North. Petitions were sent to the Second Chamber, and in Amsterdam even a couple of anti-tax riots took place. Independent journals such as *De Weegschaal* spoke out against these measures. By the end of 1819, at the time when the first decennial budget was to be accepted, there existed a general public dissatisfaction in the Northern provinces with William I's fiscal policies (van Zanten 2004, 149–158).

In response to this Dutch preoccupation with the Northern commercial interests, Van der Straeten called upon the 'the ministers … to inform their compatriots that the times of the commercial success of the Golden Age belonged for always to the past,' and advised them to further extend the support for the industrial expansion in the Southern Netherlands, as 'Belgium offers … a vast market for commercial operations' (van der Straeten 1819–1820, 1: 25–33). However, in the course of his book Van der Straeten shifted his attention from the economic problems to the question of politics and government. 'Our country,' he wrote, 'enjoys all the resources which can give a state strength and power, which can provide all the prosperity and the riches to a people'; but 'for what reason has the state of richness and welfare entirely degenerated into a state of embarrassment and misery?' 'It is,' Van der Straeten continued, 'because we are governed by ministers, who, without criminal purpose, have nevertheless in their administration disregarded

[30] On Van der Straeten, see Bergmans (1926–1929).

the principles of government, which made our ancestors happy, rich and powerful' (van der Straeten 1819–1820, 1: 24). Government, Van der Straeten explained, has to mean 'improvement, protection and prevention of the decline, of all objects which are trusted to somebody's supervision.' If the 'body of ministers' was to be given a name, Van der Straeten insisted, it should be that of 'a work chamber for destruction.' 'It is composed of individuals who … excel in the art of destroying the last vestiges of our national prosperity under their abrasive axe' (van der Straeten 1819–1820, 1: 34–35).

Van der Straeten took of course his cue from the liberal journalists as Van Meenen. In line with the liberal concept of ministerial responsibility, he consistently made the distinction between the monarch, who was inviolable, and the ministers, who were responsible. The author insisted that the ministers had kept the king from knowing 'the truth,' and had used all possible means to that extent, such as 'inciting division in States General, suppressing every discussion in the Council of State, and denying particular individuals the possibility to send reclamations directly to His Majesty' (van der Straeten 1819–1820, 2: 2–6).[31] Furthermore, by projecting the liberal-constitutional principles back into the Belgian past, Van der Straeten also struck a Belgian-patriotic tone. The Belgians, so he insisted, had been 'the first people in Europe to combine the monarchical form of government with a wise form of freedom, a combination which other nations afterwards have attempted to introduce in their own country…' Also with regard to political economy, 'the Belgians have had the honour of instructing other peoples in the art of commerce and in the secrets of industry, and from this perspective England, Holland and even France owe an eternal recognition to our country' (van der Straeten 1819–1820, 1: 22). Van der Straeten completed his publication with a 'list of grievances,' which involved the nationalisation of the codes of law, the imposition of a national language, as well as ministerial responsibility and the adoption of a jury-system in criminal courts (van der Straeten 1819–1820, 2: 66–71).

Upon publication of the work of Van der Straeten, the police were ordered to confiscate all existing copies. Van der Straeten was arrested and brought before a criminal court under the Riot Law of 20 April 1815. A number of members of the editorial board of the *L'Observateur*

[31]This was a reference to the royal decree of 8 June 1820, which provided that the Second Chamber needed the approval of the First Chamber to transmit any petition or request to the monarch (van Zanten 2004, 258).

belge volunteered to represent him at the court, and they even published a *Mémoire* in his defence (Tarte et al. 1820). They argued that the views Van der Straeten had defended were entirely in accordance with the constitution. Van der Straeten had indeed attributed to the ministers, 'all the adversities which have fallen upon the country,' the authors admitted. But instead of inciting the people against the government, the author had (objectively) 'examined the problem …, investigated its cause and … found them in the false doctrines which his Excellences have endorsed' (Tarte et al. 1820, 7). The *Mémoire* further referred to the opposition which had occurred among Northern representatives in the previous spring over the levies on sugar and coffee. Many members of the Second Chamber, so the lawyers insisted, had then 'spoken out, with the same energy as our author, against the proposed measures.' Therefore, 'one cannot accept a principle which gives to the representatives of the nation more rights than to the nation itself, in the exercise of the natural and inalienable rights granted to each individual' (Tarte et al. 1820, 9–10). The authors argued that 'the blessings of freedom of thinking and writing are the property of the nation as a whole: this faculty has a similar, essentially individual, nature as the right of petition.' The authors assessed these freedoms from a neo-republican perspective: the right to think and write freely, as well as the right of petition, were the rights which 'establish an open and necessary circulation between the thoughts of the representative and those of the people.' 'Representative government, which is the government of the public opinion,' the authors insisted, 'would cease to exist, if the represented [people] could not express themselves freely, or make the national opinion be known…' (Tarte et al. 1820, 10).

In March 1820, the seven lawyers of Van der Straeten were themselves arrested, upon request of Minister of Justice Van Maanen. The accusation of the prosecutor was that the pamphleteers, by attacking the ministers, were de facto attacking the monarch, as the ministers were 'an emanation of the sovereign.' In a private letter Van Maanen called it the 'preferred manoeuvre' of the Belgian liberals to 'assault in a criminal way the deeds of our king himself, with the excuse of criticising the ministerial departments' (van Velzen 2005, 218–219). But Van Maanen did not obtain a condemnation, as both Van der Straeten and his defenders were eventually acquitted by the criminal court (Bergmans 1926–1929). Van Maanen would however suspend the lawyers who had defended Van der Straeten for six months from executing their profession as lawyer.

Van der Straeten himself faced further prosecution and was condemned to a substantial fine, as a consequence of a petition he addressed in February 1820 to the Second Chamber: *A la seconde chambre des Etats-Généraux* (Brussels 1820). In it Van der Straeten denounced Van Maanen as being 'guilty of arbitrary arrests and prevarication in the exercise of his function.' Van der Straeten defiantly went on to publish a third volume of the discussed book. In 1821, he even established a new journal: *L'Ami du roi et de la patrie*. At the end of 1822, Van der Straeten was again prosecuted and shortly imprisoned, in spite of bad health. He died the very day of his release from prison, in February 1823.

4.4 The First Decennial Budget: Tensions Between North and South Exposed

At the time of the case of Van der Straeten, the constitutional views of Van Maanen had prevailed within the government; i.e. they had been endorsed by King William. To this testifies a conversation which the king held in April 1820 with his son, Prince William Frederick. The king wanted to reprimand his son for writing him a letter in which he defended the idea of ministerial responsibility before the Second Chamber (Colenbrander 1915, 232–237). William made it clear that he believed the non-existence of ministerial responsibility was in accordance with the constitution of the government, and also insisted that in his view the monarch 'existed before the constitution' (Colenbrander 1915, 235). In the subsequent part of the conversation, the king expressed his fear that a government under leadership of a 'prime minister' would carry, as in England, collective responsibility, and the role of the monarch would be reduced to a merely symbolic one. He further seems to have assumed that a coalition existed between Van Hogendorp and the other members of the Dutch fiscal-economic opposition, on the one hand, and the Belgian opposition in the Chamber on the other. 'There exists a faction,' so the king believed, which 'wants to put itself in my place.' In another conversation from 1820, with his secretary of cabinet Charles-Frederic Sirtema van Grovestins, the king insisted that the claim for ministerial responsibility was a violation of 'the spirit of the constitution,' and as such an attempt at destroying the only true sovereign power (van Velzen 2005, 214–215).

The Belgian liberals, even when they pretended to believe that his ministers were misleading the king, made themselves little illusions about

the king's views. Their 'defence' of the king was evidently only an emanation of their constitutional beliefs. They admitted as much by consistently addressing themselves to the States General. 'The only solution,' Van der Straeten had insisted, 'lays with the States General, whose members will unite to save the king and the country, as soon as they will have been convinced that the politics of the ministers lead to the ruin of the state and of the nation' (van der Straeten 1819–1820, 2: 2–6). A similar address to the representatives was made in the *Mémoire* in defence of Van der Straeten. One reason why the work of Van der Straeten could not be accused of disturbing the public trust, the authors insisted, was that 'the nation knows … that she has trustworthy and courageous representatives, which are authorised by the Fundamental Law … to reform all the laws of which experience has proven their deficiency.' In other words, public disturbance could easily be avoided, as long as the members of parliament did their job.

When, at the end of 1819, the government presented its first decennial budget (for the decade 1820–1830), it was at first rejected by a clear majority. It was clear, however, that whilst the Belgians opposed it on principle, the Dutch limited their comments to the budgetary problems within the different departments (van Zanten 2004, 159–160). Furthermore, a number of Dutch representatives who had expressed severe criticism on the budget went on to approve it all the same; which provoked the comment in the *Advertentieblad* (a journal aimed at a Dutch public but owned by Belgians) that their stance reduced 'the representation to nothing and the entire constitution to nonsense' (van Zanten 2004, 160–162). Remarkably, the most outspoken critical journals in the North excused this inconsistency of a number of Dutch representatives. *De Weegschaal* insisted that the ministers were, under the constitution as it was, only responsible to the king, and that the rejection of the budget therefore could only provoke a major crisis. 'In these circumstances,' it argued, 'it required courage to vote in favour of the budget …' The journal further explained that, 'when the constitution is not being followed obsequiously, we will be confronted with one abyss after another' (van Zanten 2004, 162–163).

In March 1820, the government submitted a new proposal for the budget. This time it was approved by *all* the Northern representatives, whilst a majority of the Belgians continued to oppose it (the budget was approved by 76 against 26 votes in total). What finally convinced the Northern representatives to approve it was the promise of the

government to reconsider its fiscal policy, and therefore to encounter the grievances which in 1819 had provoked serious upheaval in the North (van Zanten 2004, 163–165).[32]

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If the different constitutional views that prevailed in the North and the South created the space for the prevalence of the monarchical doctrine within the government, these different views were subsequently at the root of the different reactions to the course that the government afterwards took. Whilst in the North, passivity and resignation prevailed, in the South it provoked a first moment of consorted liberal opposition. Furthermore, the liberal theoretical views in the South obtained increasingly a neo-republican dimension, as liberals attributed importance to the need for political opposition and conflict. The adoption of the decennial budget in 1820 exposed the division for the first time, and showed, as could have been anticipated, that this was a political moment with the potential of throwing the whole system into a crisis.

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[32] In the spring of 1821 a commission was established to elaborate a new fiscal system, more advantageous to the commercial interests in the North. It encountered a lot of opposition from Southern representatives, who feared the consequences would be nefarious for agriculture and industry. The ultimate proposal resulted from a compromise, as it compensated the predicted negative effects for the South with subsidies for the Southern industry. The law was accepted with 55 against 51 votes.

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PART II

Catholics

CHAPTER 5

Political Catholicism in the Southern Netherlands Between the *Ancien Régime* and the Restoration

Political Catholicism emerged at the end of the eighteenth century in response to the revolutionary events of that time. It developed out of 'religio-political' battles that took place in the Catholic Netherlands as well as France during the eighteenth century. But the fundamentally different nature of the revolutions in France and the Habsburg Netherlands at the end of the eighteenth century also meant that political Catholicism developed in both countries along very different paths. These developments can be emblematically associated in the Southern Netherlands with François-Xavier de Feller, and later Leo de Foere, and in France with Augustin Barruel, Louis de Bonald and Joseph de Maistre.

5.1 Catholic Religio-Political Battles in the Second Half of the Eighteenth Century: The Rise and Fall of 'Jansenism'

The Catholic political movements which emerged in the revolutionary era were rooted in the religio-political battles of the eighteenth century, which in their turn originated in the earlier theological controversy over Jansenism. Jansenism emerged at the end of the seventeenth century as a theological and moral reform movement within the Catholic Church, which began in the Netherlands but rapidly also spread into many parts

S. Marteel, *The Intellectual Origins of the Belgian Revolution*, Palgrave Studies in Political History,
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of France.[1] In the wake of the papal condemnations of the movement, culminating with the encyclical *Unigenitus* (1713), the Jansenist controversy increasingly developed into a relgio-political debate, a debate on the boundaries between the jurisdiction of the Roman Church and the secular state. In France the early condemnation of Jansenism led the movement to seek refuge behind the 'liberties of the Gallican Church.' It thereby ended up uniting with the parlements (provincial courts), who were the champions of the anti-papal, conciliarist aspects of Gallicanism against the absolute monarchy, which transformed the movement into what Dale Van Kley described as 'judicial Jansenism.'[2] In reverse, the champions of absolute monarchism solicited an explicit rejection of Jansenism in Rome, as they saw in reform-Catholicism a direct threat to the authority of the monarchy. In the Southern Netherlands, however, Jansenists found refuge in the higher political echelons of the domestic councils, such as the Privy Council and the Sovereign Court of Brabant.

Early in the eighteenth century, Zeger-Bernard Van Espen, canonist and intellectual spearhead of the Jansenist movement in the Southern Netherlands, published two works on the legal means of recourse to secular authorities in ecclesiastical affairs (known as *recursus ad principem*; a formula which, as we saw in the previous chapter, would also resurface in the context of the debate on the relation between the different branches of government). Next to the royal placet (*ius placiti*), this was a major instrument to curb the power of the church, and it would retrospectively become identified with Van Espen's name.[3] The works of Van Espen provided, in the words of Jan Roegers, 'the best known synthesis

[1] For the Jansenist controversy in the Southern Netherlands, see Lamberigts (2004) and Willaert (1946). Jansenism, in its original form, was a religious doctrine of salvation based on the texts of Augustine of Hippo (or St. Augustine), one of the church fathers who lived in the fifth century. At the beginning of the seventeenth century Cornelius Jansenius (Jansen), the Bishop of Ypres who gave his name to the movement, wrote a number of manuscripts in which he tried to settle certain dogmatic issues that had remained unresolved after the Council of Trent. Already in the immediate aftermath of the publication and popular reception of Jansen's book, the Jesuits in both France and the Netherlands ran it down, and solicited in Rome to obtain its condemnation.

[2] Dale Van Kley used the term 'judicial Jansenism' to describe a doctrine that was 'a combination of elements of Gallicanism, parliamentary constitutionalism, and Jansenism more narrowly defined' (Van Kley 1996, 254).

[3] The two works concerned *Motivum iuris pro Van de Nesse* published in 1707 and the *Tractatus de recursu ad principem,* published at the end of Van Espen's life in 1725. On Zeger-Bernard van Espen, see Cooman et al. (2003). On the legal formula of *recursus ad principem*: van Rhee (2003, 147–158).

of Jansenism and regalism' (Roegers 1976, 430–431).[4] Later on, worldly authorities recuperated Jansenism with the aim of advancing the agenda of introducing a Belgian version of the Gallican Church, a 'Belgian Church,' to counter the influence of Rome and the grip on Belgian society of what they considered a 'Baroque' version of Catholicism. In 1763 the president of the Privy Council, Patrice François Neny, who had strong roots in the Jansenist movement, wrote a historical treatise that became famous, in which he affirmed that in the Netherlands the authority of the pope was 'determined by the holy canons and … restricted by the laws, the privileges, the customs of the nation' (Roegers 1976, 44).[5]

In spite of the obvious differences between countries, Jansenism had developed by mid-century into a European-wide 'party,' with its own internationally read journal the *Nouvelles Ecclésiastiques.* Through an increasing involvement of the *philosophes* it also provided a platform for a politicisation of Enlightenment thought (Barnett 2003, 140; Rosenblatt 2006, 289; Van Kley 1996, 252–253). Through their political influence, Jansenists succeeded in 1773 in pressuring the pope into dissolving the order of the Jesuits, who they saw as their major opponents. However, there was a backlash to this apparent success, as former Jansenist sympathisers now rallied around the pope, and something like a 'ultramontane Internationale' emerged in reaction to the public humiliation of the pope by the Jansenists and worldly leaders.[6] Many ex-Jesuits joined the ranks of this movement and became editors of ultramontane (i.e. propapal and anti-Jansenist) newspapers. François-Xavier de Feller's *Journal Politique et Littéraire*, published in Luxembourg and Liège from 1774 to 1794, would become of pivotal importance (Van Kley 2006).[7]

[4] Regalism' was construed around the idea that Christ had never meant worldly rulers to be excluded from the government of the church, and that, historically, kings and emperors had collaborated with Rome in the administration of the church. Dynastic governments throughout the eighteenth century were driven towards such arguments in an attempt to gain control over the Catholic Church. Religious reform movements, however, in the face of the preoccupation of Rome with safeguarding orthodoxy, equally endorsed regalist doctrine.

[5] Cited in Roegers (1976, 444) and see also Roegiers (1981). The work of Neny was titled *Mémoire sur le droit public ecclésiastique des Pays-Bas* (S.l., 1763).

[6] The term 'ultramontanism' is of medieval and French origin. French legists who, in the footsteps of Marsilius of Padua, defended the independence of the authority of the state against the authority of Rome, and who called the Italian canonists from the other side of the Alps *ultramontani*, introduced the term (Roegiers 1984a, 11).

[7] The Jesuit priest François-Xavier de Feller was born in Brussels in 1735. After the suppression of the Jesuit order, he established the *Journal historique et littéraire*, and later became one of the pivotal intellectual spearheads of the Brabant Revolution. He published

One important result of the revolutions at the end of the eighteenth century was that the battle against Jansenism (and reformist Catholic movements in general) was definitely resolved in favour of its opponents, the ultramontane movement and the 'devout' strand within the Gallican Church.[8] In the Southern Netherlands, this was the indirect result of the policy of Joseph II towards religion and the church from the beginning of the 1780s. Under the impulse of Joseph II, the Austrian authorities became so reform-minded that they overshot the Jansenist agenda, and frustrated, what Jan Roegiers has described as 'the gradual but successful execution of a domestic Belgian church-reform' (Roegiers 1984b, 78–79; 1981, 40). References to the tradition of natural law and to modern philosophy replaced the Jansenist-regalist arguments, and the government became unwilling to consider any longer the particularities of the Belgian situation (Roegiers 1984b, 80). As a result, the Brabant Revolution led, in the words of Jan Roegiers, to the 'unconditional triumph of the ultramontane party' (Roegiers 1984a, 27–28). In the wake of the Revolution, the church engaged with a total suppression of reformist Catholicism and other Enlightenment beliefs. In numerous pastoral letters, brochures, books and pamphlets containing ideas not accepted by the Roman Church were being proscribed. A similarly victorious mood and reactionary message characterised Feller's *Journal historique et littéraire*. Clericals also became involved in the constitutional debates in order to provide a religious justification of the revolt as well as a religious foundation of the new state. The clergy considered the conservation of the provincial States and the 'ancient constitution' as the institutional guarantee for their own social position.

In revolutionary France, where the church was obviously on the losing side, the new Civil Constitution of the Clergy (1790) 'refracted preexisting divisions over Jansenism,' as Dale Van Kley has explained. It mixed elements that had their roots in judicial Jansenism with new elements, more precisely a 'radically individualist and anticorporatist bias inherited from Rousseauian and physiocratic notions of the general interest.' The result included stern measures, such as the nationalisation of all ecclesiastical property, the abolition of all religious orders and the integration of

many other works, most famous among them a *Catéchisme philosophique* (1773) and a *Dictionnaire historique et littéraire* (1781). After the invasion of the French in 1794 he left the country and he died in Ratisbon in 1802. See on Feller: Maire and Aubert (1967).

[8] '*Parti dévot*' was the name given to the Jesuitical and episcopal 'party' which opposed the Jansenists and the parlements (see further).

clergymen with laypeople as 'electors' or 'moral officers.' The fact that the National Assembly required an oath to the French constitution of 1791 of all clericals, which had just been condemned by Rome as heretic, did not help to win clerical support for the Civil Constitution. The Civil Constitution, as much as it divided what remained of the Jansenist community, therefore separated in the long run the Gallican clergy as a whole from the Revolution, and eventually resulted in 'a cycle of clerical reaction and revolutionary anticlericalism' (Van Kley 1996, 353–362; 2006, 325–326).

What Catholic nineteenth-century thinkers, both in France and in the Netherlands, inherited from the anti-Jansenist battles of the eighteenth century was a general endorsement of the central presumptions of the 'devout' theologians, primarily the notion of the mutual independence of temporal and spiritual power. However, the events at the end of the eighteenth century would also alienate modern Catholic thinkers from the elder ecclesiastical battles. First of all, it informed them with a radically increased historical awareness. Christian natural law had already become less important for the political thought of Catholics from the midst of the eighteenth century onwards. In the context of the political battles of that period, Van Kley saw 'a tendency for the natural law legacy and rationalism to side with judicial Jansenism, and for empiricism to come to the aid of the clergy and the *parti dévot*' (Van Kley 1996, 237). Nevertheless, only at the end of the century, 'history' replaced natural law as the basis of political legitimacy (either of divine origin or not). The establishment of governments, regardless of their ultimate divine nature, became seen as primarily a result of 'human action.' The crucial point was that this historical action of constituting a government, as Jean-Yves Pranchère (2004, 151–152) in a study on the political thought of Joseph de Maistre has explained, came by itself to be seen 'the natural form of a supernatural intervention by Providence.' Although it was men who made governments, and historical circumstances which determined the precise way in which sovereignty became established, they still remained instruments used by God.

5.2 The Intellectual Context: Gallicanism and Catholic Thought in the Southern Netherlands

In order to explain the different intellectual developments of political Catholicism in the Southern Netherlands and France in the wake of their revolutions, it is first necessary to grasp the strong influence of Gallican thought within the Southern Netherlands (even when the rejection

of this tradition constituted a part of the theological program of the University of Leuven). As we already pointed out, in the battle against Jansenism and the Josephist reforms, the Catholic press of the Southern Netherlands of the late-eighteenth century stood in close contact with the 'devout party' in France. At first sight, the idea that Gallican authors could be an important source of inspiration for an ultramontane discourse seems contradictory. In order to clarify this, we need shortly to explore historical contingencies of Gallicanism.[9]

The Declaration by the Assembly of the French clergy of 1682 (or Gallican Declaration) defined Gallicanism in such a way that it came to uphold the temporal independence of the monarchy, on the one hand, and the independence of the councils of the church in France from Rome on the other. If the latter proposition opposed the juridical primacy of the pope within the church, the former excluded acceptance of temporal authority of Rome over the secular ruler of France. The Declaration of 1682 was in the first place part of a program for Bourbon absolutism. The aim of this program was to overrule justifications of resistance of both the Jesuits and the *Ligueurs*, as well as those of the Huguenots—the two groups generally held responsible for the religious excesses of the sixteenth and seventeenth century. Defenders of royal authority, such as Sir Robert Filmer in England, spoke in that sense of 'two thieves, the pope and the people' between which kings were being 'crucified' (Cuttica 2012, 67). The answer to these threats was to create a 'semidivine' kingship, to initiate a 'resacralisation' or even 'divinisation' of the French monarchy. The proposition that the French king was 'accountable to God alone,' which the supporters of the Bourbon dynasty wanted to establish, presented an elaboration of Jean Bodin's famous definition of sovereignty as absolute power. This emerging religious dimension to absolute power meant that the Declaration of 1682, as Dale Van Kley has explained, primarily resulted in 'redefining the Gallican bishops as partners in absolutism' (Van Kley 1996, 37).

From then onwards, 'Gallicanism's conciliar tenets tended to rise or fall in tandem with the monarchy's need for them as a weapon in its relations with the papacy,' as Dale Van Kley has further explained. And as the threat of papal ultramontanism receded, as a result of the reliability of the support of the episcopacy for the monarchy, the threat posed by the 'republican

[9]The following largely indebted to Van Kley, *The Religious Origins*, pp. 32–37, 49–58 and 218–234.

implications of conciliar Gallicanism' increased. In this context, it even became possible for a profound affinity to develop between the Jesuits and the court of Louis XIV. Jesuits, no longer the firebrands they had been during the sixteenth and early seventeenth century, were willing to accept 'some sort of compromise between the ecclesiastical and temporal aspects of ultramontanism and Gallicanism.' This implied that 'while eschewing canonical and conciliar Gallicanism, they gradually accepted the newer "political" Gallicanism' as they 'sacrificed papal indirect power on the altar of royal divine right' (Van Kley 1996, 54–55). The nature of the Jesuit's humanism, moreover, was not incompatible with the support of divine right monarchy (Van Kley 1996, 51–53). The order of the Jesuits would thus become a motor behind the *parti dévot*, which emerged in support of absolutist rule, and in reaction to the Jansenist-republican threat.

In the controversy over the papal encyclical *Unigenitus*, ultramontane and devout elements within the Gallican Church came out for the first time as apologists of royal absolute power. The encyclical, which was solicited by the French king in Rome, became a symbol of royal authority as well as a model for an anti-conciliarist conception of papal authority. As a result, it became natural for the Jansenists to make common cause with the judicial parlements of France—especially the Parlement of Paris—as it was the latter who defended the right of the Gallican clergy to concur with the doctrinal judgments of Rome. In sum, the Jansenist movement appropriated (conciliar) Gallicanism, and Jansenism developed into a religio-political 'party' (Barnett 2003, 136–139; Van Kley 2006, 308–311). This appropriation of the Gallican label, in turn, caused the Gallican episcopacy to suffer an identity crisis. 'Confronted … by a Gallicanism construed to mean the democratisation and laicisation of a church wholly under the thumb of the state, the Gallican episcopacy was bound … to become, in short, less Gallican,' as Dale Van Kley explained (Van Kley 1996, 232–233). The alliance between throne and episcopal altar, concluded by the Declaration of 1682, was thereby to some extent transformed (in agreement of the episcopacy) into an alliance between throne and papal altar. The religio-political alignments were thereby fixed for the next fifty years.

In the Southern Netherlands, ultramontane theologians generally defended the medieval papal view that the worldly powers were directly submitted to the religious power of the church, and were therefore self-consciously 'anti-Gallican.' The Catholic clergy, however, still made a clear distinction between Gallicanism and Jansenism. This is remarkable, in view of the fact that by the second half of the nineteenth century

Gallicanism and ultramontanism would become largely defined in opposition to each other. The respect of the Belgian clergy for the Gallican tradition becomes clear, for example, from articles in the renowned *Dictionnaire historique ou histoire abrégée des hommes*, edited by François-Xavier de Feller in the course of the 1780s and 1790s. The journal included many positive reviews of Gallican authors.[10] The defence of Gallicanism was explicitly taken in a piece on the most famous exponent of regalism in the latter half of the eighteenth century,[11] Johann von Hontheim (also known as Febronius) (de Feller 1822).[12] Feller accused the German bishop of denying the primacy of the authority of the pope of Rome over the Catholic Church, and thereby of defending the heretic vision of a church that is 'of a democratic rather than of a monarchical nature.' But whilst Feller adopted this pro-papal point of view, he equally made it clear that his rejection of the regalist propositions did not imply a rejection of the Gallican propositions. In criticising Hontheim's publications for their 'inconsistency,' Feller remarked that, what is defendable in Hontheim's work, he took from 'French theologians, in particularly Bossuet' (Jacques-Bénigne Bossuet, Bishop of Meaux and author of the Declaration of 1682), whilst what is erroneous, he drew from 'Jansenists, Protestants and other canonists.' Feller furthermore pointed to 'the error of those who confused the liberties of the Gallican Church with the ecclesiastical anarchy proposed by Febronius.' As important as the fact that this defence of Gallicanism testified for the positive reception of Gallican authors, is that this defence was made in the form of opposing *just tradition* and *erroneous innovation*. If Gallican propositions were considered respectful, by Feller, it was because they were firmly rooted in the history of the church in France.

One Gallican publication that was to be of fundamental importance for the later eighteenth-century ultramontane argument in the

[10] *Dictionnaire historique ou histoire abrégée des hommes que se sont fait un nom par leur génie, leurs talens, leurs vertus, leurs erreurs ou leurs crimes, depuis le commencement du monde jusqu'à nos jours* (published in 1781 at Liège in volumes, and afterwards several times reprinted and continued down to 1848).

[11] Among Jansenists and other reform-Catholics, the work of Jean-Nicolas de Hontheim, who was the bishop of Trier, became an important source of inspiration. This, for example, applied to Patrice François Neny, president of the Privy Council in the second half of the eighteenth century (Roegiers 1976, 451–452).

[12] As a source we used a re-edition of the *Dictionnaire* from 1822; the orignal 7th volume, which appeared in the 1780s could not be retraced.

Southern Netherlands was the work by the French abbé and theologian Jean Pey, *De l'autorité des deux puissances.*[13] The book of Pey was sponsored by Rome, where Guiseppe Garampi, former prefect of the Vatican Archive, was supervising the ultramontane counter-offensive against reform-Catholicism and the rationalist ideas of the Enlightenment in general. As such, it was intended for publication not just in France but on an international scale. The work was censored in France under pressure of the parliaments, but was subsequently published in Liège (successively in 1780, 1788 and 1790) under initiative of Bernard de Saive, and from there further distributed over the Netherlands and France.[14] The central idea in the work of Pey was that God had established two separate orders, a spiritual order and a temporal one, and that these orders therefore ought to be fully sovereign within their respective boundaries. At the same time, these orders were considered to be interdependent, as they rested on the same principle that 'God alone is independent.' It followed from this that man was 'in a happy state of subordination,' a state in which the principles of 'truth' and 'justice' were prevailing, and 'dominate, enlighten and command' all men. A specific notion of sovereign authority corresponded with this. It was described as 'the most extended power' on earth, but it would necessarily encounter limitations when used abusively, limitations induced by 'conscience, religion and Christian morals.'

Catholics in the Southern Netherlands received the work of Pey with unanimous enthusiasm. The popular theology professor of Leuven Jan Frans van de Velde personally distributed copies of it, and also acted as go-between for the distribution of Pey's book in France. According to Jan Roegiers, Pey's book became the manual of ultramontane Catholics, and remained so after the successful revolution of 1789. Pey's influence only increased after the abbé moved to the Southern Netherlands, when he was on the run for the French Revolution. Other works by

[13] Jean Pey, *De l'autorité des deux puissances* (Strasbourg, 1781), 3 vols.

[14] Bernard de Saive, just like Feller, was an ex-Jesuit who later became involved in the ultramontane cause. He became acquainted with Feller and contributed to no small extent to his *Dictionnaire*, as well as to his *Journal historique et littéraire*. At the beginning of the nineteenth century, at the occasion of Feller's death, Saive published an obituary, which was later republished numerous times: Bernard de Saive, *Notice sur la vie et les ouvrages de M. l'abbé De Feller, ex-jésuite* (Liège 1802). Saive later reappeared in the opposition against the constitution of the Kingdom of the Netherlands. On Saive: van Otroy (1911–1913, 177–178) and Roegiers (1984a, 26).

Pey were published in the Netherlands, and some were even translated into Dutch (Roegiers 1984a, 26–28). Feller, finally, gave a highly positive review of Pey's work in his journal (de Feller 1781).[15] Clearly, it was not the pro-monarchical but the pro-papal and devout element in Pey's work that made the Belgian scene receptive to it. What made Pey's work even more interesting was the conservative conception of man and society. This corresponded well with the identification of the radical Enlightenment with judicial Jansenism. But it also anticipated the anti-revolutionary thought of Edmund Burke and his famous *Reflections on the Revolution in France* (1790). What Burke would have in common with Pey, was a combination of the notions of 'liberty' and 'dependency,' a state of being that was generally identified with monarchical rule.[16] The work of Pey, however, would be situated at the crossroad of the different intellectual development of political Catholicism in France compared to Belgium.

5.3 Diverging Paths Between Political Catholicism in France and Belgium: Feller's Critique of Barruel

Pey's book reflected a tendency in the way the Enlightenment ideas became from the 1760s onwards intertwined with the religio-political debate. However, at that point the similarity in intellectual development of political Catholicism in France and the Netherlands ended. In France, Pey's book, as a defence of the absolute authority of the king and the sovereign power of the episcopacy, was considered a successful expression of absolutist thinking (Van Kley 1996, 281–290). Still, as Van Kley further insisted, something had 'been lost' since the 1750 s. In the debates which emerged from the controversy over *Unigenitus*, the exaltation of the king's powers was still accompanied by the idea that the monarch could be restrained by divine law and in relation to the spiritual power of the church. This dimension was also present in the work of Pey, and it explains the positive reception of his book within the ultramontane milieus of the Southern Netherlands.

[15] Apart from a positive review, Feller reprinted lengthy abstracts from the book in his journal over a period of many months.

[16] This intertwining of freedom and dependency can also be found in the work of Feller, for example in his review of the work of Pey (de Feller 1781).

However, from the 1770s onwards, the pro-monarchical discourse in France took a different turn. References to 'divinity' became gradually marginalised, and the monarchy's case more unconditionally defended, either (still) on the grounds of natural law or of historically demonstrated *utility*. This equally meant that literature in favour of monarchical absolutism in France actually moved away from the conservative Enlightenment that would prove to be crucial in the intellectual justification of the Brabant Revolution.

This development towards ultra-royalism was accelerated by the Revolution, and especially in the clerical reaction to the Civil Constitution of the clergy. Invoking a 'plot theory,' the revolutionary attack on the church and religion was condemned as a conspiracy of Protestant-Jansenist heretics and *philosophes*. At the same time, in the face of the challenge posed by the notion of popular sovereignty, royalist authors became equally incited to re-substantiate the doctrine of divine monarchical right. Most notable in this regard was the ex-Jesuit abbé Augustin Barruel. In his famous publication, 'on authority and the rights of the people in the government,' Barruel, acknowledged, in the first place, that 'all political authority … comes essentially, uniquely, and immediately from God' (Barruel 1791, 72). However, this rehabilitation of divine right no longer left any room for nuance with regard to the extent of monarchical authority. As Dale Van Kley explained, this was 'an integral royalism that no amount of subsequent conceptual back-pedalling or show of "flexibility" was able to negate' (Van Kley 1996, 365). 'Does my theory then make the king a kind of God? So much the better, then!' Barruel insisted (Barruel 1791, 61–62). The divine origin of secular authority had only concrete meaning for Barruel in the idea of 'constituting a man superior to his fellowmen' by conferring him with 'a title superior to that of a man.' In other words, it was necessary that 'God himself established his minister, he whose will must dominate.' The divine intervention through a minister appointed by him (a king) was necessary, as no contract between men who were equal could ever impose a right to command or the duty to obey (Barruel 1791, 224).

Whilst in France the ideas of the Gallican *parti dévot* developed in an ultra-royalist direction, an opposite development took place in the Netherlands. Here, as Geert Van den Bossche has argued, 'the organic,

anti-rational and anti-individualist conception of society' became applied to the definition of sovereign authority as such (Van den Bossche 2001, 181–182), in order to separate the notion of legitimate authority from the institution of the monarchy. This took place, of course, in the wake of events of 1787–1789, when the clergy joined the Statist opposition and revolution against the Habsburg monarchy. As early as 1787, François-Xavier de Feller attacked the monarch on conservative grounds. In an article at the occasion of a new work on Telemachus, a figure in Greek mythology, Feller discussed, having in mind Joseph's policies, the problematic nature of the interference of independent reason with the historical development of the law (de Feller 1787, 206–211). 'Your peoples are no longer in their cradle and the monarchy isn't born yesterday,' Feller instructed the Austrian ruler. There had been 'enlightened princes,' 'great men of state' and 'friends of the public good' in the past and 'their works subsist,' Feller insisted. He further thereby made it clear that the task of the ruler was limited to 'correcting the few abuses' which by the passing of time might have slipped into the government (de Feller 1787, 209). In these conservative arguments in defence of the established law the support for monarchical rule as the natural form of government was not (yet) abandoned. The social conservatism of the ultramontanes still informed the duty of subordination of Joseph's Belgian subjects. The divine origin of temporal government furthermore remained something which had no meaning outside of monarchical rule. This changed, however, when two years later an armed popular resistance gained control over the Belgian territory and all hope for a reconciliation with the Habsburg ruler was abandoned. From then on, Feller took a prominent role in justifying the Revolution, on the grounds that the 'entire nation' had opposed 'an authority which evidently tended to the destruction of society and religion' (Van den Bossche 2001, 182).[17]

The Gallican notion of the (immediate) divine origin of temporal power, as Pey had defended it in contemporary times, was in revolutionary Belgium reformulated in an anti-monarchical definition of sovereignty.

[17]Van den Bossche quotes from two articles of Feller: 'Quelle est la source de toute autorité?' and 'Publication du Manifeste du Peuple brabançon,' *Journal historique et littéraire*, January 1, 1790, 9 and 46, note a. A major contribution of Feller to the legitimisation of the resistance was his *Receuil des Représentations, Protestations et Réclamations faites à S.M.I. par les représentans et états des dix provinces des Pays-Bas Autrichiens assemblés* (Liège, 1787–1790), 8 vols.

For this, the ideas of Edmund Burke provided a crucial source of inspiration. Burke's book on the French Revolution was only published in 1791, but Feller studied the several speeches delivered by Burke before the British Parliament. Burke offered an account of contemporary politics informed by the fear of the dissolution of government and society. He did not identify a wise government with any particular well-defined model, but insisted that it was made up from 'those institutions, laws and manners which have grown out of time,' in other words, it was to be comprised of the institutions and conventions which resulted from the particular, historical, circumstances of a people. Elaborating on these beliefs, Feller, as well as his secular fellowmen from the Statist party, developed a justification for a republican form of government on the basis of the concept of the 'ancient constitution' (Van den Bossche 2001, 200).[18]

Confirmation of the different ways in which political Catholicism developed in France and Belgium can be found in the reception of Barruel's work (and that of his successors, as will be discussed in Chapter 8), in the Southern Netherlands. Although the book of Barruel was published in 1791, François-Xavier de Feller only reviewed it in May 1793 (de Feller 1793, 88–106). In 1793, Europe entered into War of the First Coalition (1793–1797), which resulted from the radicalisation of the French Revolution after the declaration of the Republic and the execution of Louis XVI. These international circumstances, together with successive occupations of the Belgian territory by the Austrian and the French armies, led to the demise of the Belgian independent confederal state. By the time the Austrian army reoccupied the Belgian country for the second time, after the Battle of Neerwinden in March 1793, the conservative and clerical notability in the Southern Netherlands were willing to be reconciled with the Habsburg monarchy, on the condition that the new emperor abandoned the reforms of his predecessor. However, this did not imply that the former spokesmen of the Brabant Revolution were equally willing to compromise their ideas on the foundations of a legitimate government. Belgian conservative authors continued to promote a constitutionalist form of government. Thereby, the continued justification of the Brabant Revolution was of crucial importance.

[18]Feller attributed two articles on Burke in his journal (March–June 1790), see *Mélanges*, Vol. 4, 76–77 and 154–156 (quoted in Van den Bossche 2001, 180–181).

The questions raised in the book of Barruel had always been treated in a manner that was 'obscure,' and the reason, Feller explained, was that 'insufficient distinction has been made between different types of governments and political constitutions.' The question had 'almost always revolved around the authority of kings,' but one had ignored that 'other governments are equally sacred and inviolable.' 'It was as much a crime,' Feller further insisted, 'to conspire against the Senate of Venice, the States of Holland, the Helvetian assemblies, as it was to conspire against a king'; one was 'as much a bad citizen for troubling a republic as for troubling a monarchy' (de Feller 1793, 89).[19] Feller quotes Bossuet in arguing that 'God protects all legitimate governments, whatever the form in which they are established.' The mistake that had been made, since then, was that one had attempted 'to make only kings into God's image on earth, without considering that every public administration, to the extent that it supported on the principles of reason and justice, is the image of his [God's] universal government and sanctioned by him' (de Feller 1793, 91–92).[20] The conclusion of Feller was therefore not, in the sense of the seventeenth century Jesuit Robert Bellarmine, that 'the people can change a kingdom into an aristocracy, or an aristocracy into a democracy, and vice versa' (Bellarmine 1586–1594, 27).[21] His point was, that 'every government, democratic, aristocratic, monarchical, all what could be called public order, held its authority from God'

[19] In a footnote (de Feller 1793, 89na) Feller claims not to ignore 'the respect and, to some extent, the liturgical consideration which inspires the sanctity of kings, and the holly anointment which made them being called *Christos Domini* …,' but subsequently marginalised this *type* of rule in time and place. The anointment of kings took only place in two or three monarchies of Europe, Feller pointed out. And he further specified that in these countries it had developed into 'a ceremony of state, a part of the inaugural pact,' and did not establish any longer 'a particular and isolated title.'

[20] Feller further elaborated, in a footnote, on the 'inappropriate use' of the term 'majesty,' which had 'in recent times' become attributed to kings as if one wanted to turn them into Gods. The term might have seemed appropriate in ancient times as 'pagan emperors' were recognised and adored as Gods, but under Christian kings this 'exaltation' had been abolished. However, in the course of the last centuries, and in the wake of 'new heresies and diverse attacks on Religion,' kings had re-appropriated the term 'majesty' (de Feller 1793, 92–93).

[21] The Jesuit Cardinal Bellarmine had defended the idea that, different to the pope, the authority of secular rulers did not immediately derive from God. God had only meditatively, via the people, conferred sovereignty on 'governments,' and monarchies represented only one category among the latter.

(de Feller 1793, 94). However, the challenge faced by Feller in responding to the work of Barruel exceeded the argument that every form of government is legitimate on the ground of its historical existence. Aside from legitimising republics, Feller needed to justify the revolution that had taken place in the Southern Netherlands against a *legitimate* monarchy.

In order to do so, Feller also differentiated, apart from between different kinds of government, between different kinds of monarchical rule. He first made the distinction between 'those who rule alone and with absolute authority,' and those in which a monarch either rules 'in conjunction and indivisibly with the States,' or 'by a conditional, reciprocal, bilateral and *synallagmatic* pact concluded with the people.' Finally, the ex-Jesuit added as a third category, 'where the ruler has engaged himself by way of an inaugural oath …,' and where 'the one who troubles a government constituted in this sense, who violates its laws and principles, becomes an enemy of the state, as he resists to God Himself…' On the basis of this distinction, Feller argued it was possible for the king to become the one who 'resists to God Himself, as he resists the public power ordained and sanctioned by him' (de Feller 1793, 90–92). What almost entirely disappears, at this point, is the distinction between this type of monarchy and the situation in well-known republics, which could 'elevate a man to the rang of prince, under the condition of observing such and such conventions.'

Apart from making the right of resistance dependent to the particular nature of government of each nation, Feller nevertheless still considered the existence of a general right to resistance, even against monarchs 'by divine right.' To that extent, he made the distinction between a 'harsh, unjust and corrupted government' and a government that was 'totally subversive' (de Feller 1793, 100). He argued that in the first case, 'by ending tyranny there were bigger evils to be feared,' whilst in the second case a justified end to tyranny became conceivable 'with regard to a prince who has decided upon the total ruin of the nation, of its rights, of its cult, of its customs …' (de Feller 1793, 100–101). At this point, Feller clearly wanted to draw a comparison between the Brabant Revolution and the French Revolution. He continued to make the distinction between the revolt of 'a nation as a corps' (or 'the assembled nation, the senate and its representatives & constitutional depositories of their laws and their rights') and 'the opposition of individuals,

of a faction assembled under whatever denomination' (de Feller 1793, 104–105).

Instead of endorsing a principle of divine authority, which would continue to pervade French Catholic thought from Barruel to (the early) Lamennais, Feller continued to defend the legitimacy of the Brabant Revolution and republican forms of government. Feller's criticism on the French Revolution was, in striking difference with those authors, that it had *not truly been the work of the nation*. Thus, it was clear that, in the aftermath of the Brabant Revolution, concepts as national sovereignty and right to resistance, even when defined in opposition to the French Revolution, had become part of the political culture in the Southern Netherlands. As a result of Feller's work, elaborating on the Statist justification of the Brabant Revolution and placing it in a comparative frame with the revolutionary events in France, political Catholicism in the Southern Netherlands would develop in a fundamentally different direction than post-revolutionary Catholicism in France.

5.4 The Relations Between the Government and the Church Under the French Government (1794–1814)

The twenty years of French rule in the Southern Netherlands fundamentally changed the relations between state and church. The French laws and policies became integrally applied to the Belgian territory.

In 1791 the French National Assembly promulgated the Civil Constitution of the Clergy. In the first place this resulted in the abolition of the old feudal rights of the clerical order, most famously the tithe. Certification of births, marriages, deceases and so on became the exclusive prerogative of the civil authorities, and divorce was made legal. The same applied to all kinds of public charity. Furthermore, the church's property was nationalised, which was considered to be the logical consequence of its abolition as a separate order. The regular clergy was dissolved and their properties and goods were sold. Finally, a radical process of secularisation was set under way: the public wearing of clerical outfits, as well as public processions, public trials and bell-sounding were forbidden; external signs of clerical service disappeared from the public scene. The Gregorian calendar was replaced with the Republican one (de Maesschalck 2004, 153–154; Van Kley 1996, 352–353, 361).

When the Southern Netherlands were annexed to France in October 1795, the government initially delayed the application of its legislation to the Belgian departments. Only in April 1797 was the law of 29 September 1795 on the exercise of the cults—an update of the Civil Constitution—enforced in the Belgian part of the Republic. One of the articles required that the clergy took an oath recognising 'French citizenship' and the 'sovereignty of the French nation,' and promising 'obedience to the laws of the Republic.' In the same year, however, the *Directoire* executed a coup d'état (of *18 Fructidor*) in which it purified the legislative assembly, after the royalists had won the elections. It subsequently demanded a new oath, a pledge of 'hatred to royalty and to anarchy' and of 'loyalty to the Republic and to the Constitution of the Year Three of the Republic' (1795). The French laws and the subsequent requirement of an oath drove the majority of the Belgian clergy towards intransigence. The massive refusal to abide led to the closure of the bulk of the churches. The majority of the priests went into hiding, although a large number were arrested and deported. In many towns and communes, clandestine masses and secret reunions of Catholic laymen replaced normal churchgoing. The open prosecution of faith only ended with Napoleon's coming to power, and even then most of the republican laws remained in force (Claeys-Bouuaert 1960).

Because of the republican legislation on religion and church matters, the clergy became divided in a 'constitutionalist' and a 'refractory' group. More importantly, the measures also alienated the church as a whole from the Revolution, as had happened in France. At the same time, the state's monopolisation of public functions implied the 'interiorisation' of religion and brought about the transformation of the old duality of temporal versus spiritual power into that of political versus 'social' power. In other words, the laicisation of the state and the 'privatisation' of religion were two sides of the same medal. This evolution was further intensified by the attitude of a refractory clergy, which, at least during the first years under French rule, boycotted the normal functioning of the public administrations, even (or especially) when administered by the (constitutional) clergy (Van Kley 1996, 367). The point of no return came when the former elites under the Habsburg Netherlands and the new regime gradually adjusted to each other. As a result of this, the period under the *Directoire* (1795–1799)

can be considered as a time of transition. As Luc François pointed out that, in this crucial phase in the development of a modern state administration in Belgium, the former elite functioned as a *trait-d'union* between the old and the new political situation (François 1997, 28–29). However, whilst the conservative notability disengaged their political involvement from the clerical interests, Catholicism and the clergy became more important for the masses (François 1989, 71, 76; 1994, 299–300).

Shortly after the coup d'état of *18 Brumaire* (9 November 1799), which brought Napoleon Bonaparte to power, the 'oath of hatred' was replaced with a simple oath of fidelity to the constitution. Priests who had been expelled or imprisoned were released, others came out of hiding, and the celebration of mass by refractory priests became tolerated. The Concordat of 1801 between the French government and the Holy See followed shortly.

As the Holy See had not recognised the introduction of a new ecclesiastical order by the Civil Constitution of the Clergy, two ecclesiastical structures had continued to exist simultaneously. Furthermore, the decree of 21 February 1795 on the separation of church and state had made the new ecclesiastical order into an independent, 'constitutionalist' Gallican Church, which excluded a reorganisation of the church by the government in newly acquired territories (such as Belgium). An agreement with Rome was therefore necessary in order to repair the chaotic situation. At the same time, such an agreement also implied that in the Belgian part of the Republic the ecclesiastical order would be reorganised according to the new administrative division into departments. Concretely, the Concordat established four dioceses and one archdiocese (Mechelen) for nine departments, with overlapping boarders: Ghent (*Lys* and *Escaut*), Mechelen (*Deux Nèthes*), Liège (*Meuse* and *Ourthe*), Namur (*Sambre-et-Meuse* and *Forêts*) and Tournai (*Dyle* and *Jemappes*). The bishops were to be nominated in concordance between the pope and the First Consul. The Concordat also aimed to restore order by the prescription of an oath in which reference to God was included, and which substituted subservience to the government for fidelity to the constitution (Claeys-Bouuaert 1960, 49–50; Preneel 1962).

The unilateral adoption by the French government of the 77 so-called Organic Articles, in addition to the general Law on the Organisation

of the Cults of 8 April 1802 (*Loi relative à l'Organisation de Cultes du 18 Germinal An X*), made it apparent that the French state was not to renounce its predominant position in the partnership with the church. These articles submitted all clerical decisions and publications to the approval of the government, and even authorised the government to issue regulations on liturgy and prayer. In the establishment of the new dioceses, the Holy See entirely relinquished the right to concord in the hope of keeping the goodwill of the French head of state, and some influence in the appointment of the bishops. From the point of view of the French government, the Concordat was an instrument on the road to nationalisation of the church in France and its integration, as an auxiliary corps, in the organisation of the new regime.

For the eventual reception of the Concordat among Catholics and the clergy, as well as of the republican institutions in general, it was to be of crucial importance that Bonaparte invoked the ancient Gallican tradition. The First Consul had initially not been interested in the traditions of the church in France, and had even considered them an obstacle.[22] But when the government was confronted with the ultramontane claims by a small part of the French clergy, it quickly understood the value of referring to the Gallican tradition.[23] In that regard, Napoleon later pointed out: 'What does it matter to me if the pope is above the councils, if he believes himself unfallible! But when it comes to temporal power, I hold the sword and I will not renounce it. It descends from God himself. Christ, even whilst descending from David, did not want to claim his right, he has recognised Caesar.'[24] The Gallican Declaration of 1682 was thus integrated in the Organic Articles, and therefore openly reclaimed as the official doctrine of the church in France (Milet 1996, 113).

As the French historian André Latreille argued, the French episcopacy was itself at this time 'little worried about defining Gallicanism' (Latreille 1944, 3). Moreover, what prevailed among the episcopacy was

[22]Consul Bonaparte had initially even demanded from the pope the 'abolition of the Gallican liberties'; see Latreille (1944, 2).

[23]The so-called *Petite Église*, which included dissident anti-Gallican and anti-Jansenist Catholic communities in Lyon, the Vendée and Poitou.

[24]This quote comes from an address by the emperor to the clergy of Rouan from 1810; see Milet (1996, 114).

an aversion to the danger that a schism would entail. However, the unity in the church was not primarily threatened by the ultramontane minority. The danger came rather from the 'constitutionalists.' The latter, heirs to the Jansenist tradition of the eighteenth century, consistently opposed the Concordat on the basis of the 'ancient liberties' of the church in France, of which they considered themselves to be the true defenders. In the wake of the Concordat, the constitutionalists called for vigilance with regard to ultramontane infiltrations in the church, aimed at the ruin of '*le dépôt précieux* of the ancient liberties.' It was precisely in the wake of this revival of a religio-political opposition (what Kley called 'judicial Jansenism'), that Napoleon was anxious to secure the revolutionary transformation in the relation between the temporal and the clerical order. Against the threat of a constitutional and independent church, the Concordat conveniently came to embody the conservative Gallican tradition. In the words of Latreille, 'the *concordataires* were not reluctant to invoke the ancient liberties themselves' (Latreille 1944, 4–5).[25] These defenders of the Concordat did not include the supporters of the new dictator among the former Jacobins; instead, they included counter-revolutionary firebrands as Boulogne and abbé Barruel (Latreille 1944, 4).

In sum, by dressing the Concordat in a Gallican suit, Bonaparte not only pacified the relationship between the Republic and Rome, but also paved the way for a reconciliation with the episcopacy and counter-revolutionary thinkers. The government thereby succeeded in making the Catholic bishops ignore the fact that at this point they were asked to accept much more than the *independence* of the temporal power. For, in fact, that which had the appearance of a restoration of the ancient Gallican regime signified the maintenance of a regime in which the Catholic Church and Catholics were only allowed to play a role on the terms laid out by the secular authorities.

Whilst in France the episcopacy and the secular government eventually found each other under the flag of Gallicanism, in the Southern Netherlands the reconciliation largely failed, most likely for the differences in the historical relations between state and church. It was in the first place the unilateral enforcement of the Concordat that came under heavy criticism, as Catholics compared it with the way Joseph II

[25] Latreille further remarks that the works of Gallican authors such as Bossuet and Fleury continued to be published and distributed on a large scale during the Napoleonic years.

had dealt with the church, not to mention the National Convention. At this point, the term 'Gallican' proved very inadequate to pacify the clergy in the Belgian provinces. Even when the Belgian clergy was anti-Gallican per se, acceptance of the post-revolutionary relation between state and church, whereby the latter became substantially more predominant, could expectedly not be obtained in the Southern Netherlands on the basis of invoking the Gallican tradition. To the extent that a notion of an autonomous temporal power, in which the latter obeyed to its own rules, had found introduction in the Southern Netherlands, it was wrapped up with a republican version of the discourse of ancient constitutionalism, especially since the Brabant Revolution. Bluntly proclaimed as it was in 1802, the expansion of the Gallican system to the Southern Netherlands was interpreted as the imposition of control by the State over the church. Therefore, a political anti-Jansenist condemnation of the Organic Articles and the policy by Napoleon joined the theological anti-Gallican one of the University of Leuven. In a sense, this was a revival of the religio-political ultramontane opposition of the 1780s against Joseph II, with the difference that now also 'Gallicanism,' as a foreign import product, became an object of attack, and was increasingly perceived as identical to regalism.

As soon as 1802 an anonymous brochure was published which denounced the '*gallicano-jansénistes*' influences in the imposition of the Organic Articles.[26] The resilience of the ultramontane political language of the 1780s in the Belgian departments became strikingly apparent when the appointed episcopacy, which was often of French origin and had been educated within a Gallican tradition, immersed itself in the culture of opposition. This mostly applied to Maurice de Broglie, the appointed bishop of Gent, and to François-Joseph Hirn, bishop of Tournay. Whilst the former found an important counsellor in Jan Frans van de Velde, former ultramontane theologian at the University of Leuven, the latter was to take advice from J. H. Duvivier, secretary of Cardinal Franckenberg in 1788 and co-author of his famous *Declaration* in opposition to Joseph II (Roegiers 1984a, 31). The pivotal exponent of the opposition, however, was Cornelius Stevens (1747–1828), canonist in Namur and disciple of Cardinal Franckenberg.[27] Stevens had equally been part of the

[26] It was titled '*Jansenismus-philosophico-politicus delarvatus*' (1802); see Milet (1996, 113).

[27] On Cornelius Stevens: Vercruysse (1975).

ultramontane political movement of the 1780s and he saw his opposition to the Organic Articles in clear continuation with his earlier political activity. He condemned the promulgation of the Organic Articles because of their 'Josephist' disposition. In his eyes, this meant that they represented an amalgam of the Gallican principles, Jansenism and the regalist theses of Febronius. Obviously, the Concordat itself remained mostly spared from criticism, as the actions of the pope could not be explicitly condemned. In the case of the Organic Articles it was the 'civil interpretation' of the pact that was attacked, that is the rules of application, unilaterally proclaimed by the government. The policy of Napoleon was plainly considered to be a continuation of the policy of Joseph II.

The opposition to the policy of the French government also involved the organisation of the Catholic education in the Belgian departments. In August 1806 a decree was issued by the Council of State concerning the organisation of ten metropolitan seminars for secondary education, which had already been foreseen by the law of 13 March 1804. Jean-Étienne-Marie Portalis, the Minister of Public Worship who authored the decree, emphasised in it the importance of the profession of the Gallican Declaration of 1682 in the seminars, which in the philosophical and theological courses at the University of Leuven as well as Douai had always been severely criticised.[28] It was at this point that the Gallican Declaration truly developed into a reviled symbol for the Catholic opposition against government. In a letter of March 1808, the bishop of Tournay expressed his doubts about the wisdom of the decree of 1806 and warned that among the clergy of the new departments 'there exists … much prejudice against the four propositions of the Assembly of 1682.'[29] Their imposition, he pointed out, threatened to revive the animated debates of the past and dissentions 'that had for a long time been left behind.' The imposed catechism of education and the issue of the Gallican Declaration was, moreover, a welcome opportunity for Cornelius Stevens to stir up Catholic opposition. In three major publications he developed his ideas on education, placing the policy of the

[28]Teaching of the Gallican Declaration had already been made part of the education of priests by the Organic Articles. On the rejection of the Gallican Declaration in the Belgian Netherlands: Milet (1996, 113–135).

[29]Letter addressed by François-Joseph Hirn to Bigot de Préameneu on 5 March 1808, after the minister of public worship, Portalis had reminded Hirn of his obligation to respect the Organic Articles (Milet 1996, 118–120).

imperial government on one line with the former policies of Joseph II (Vercruysse 1975, 303–306).

In the later years of the French Empire the policy of the emperor took a direction that seemed only to confirm the worst fears of Belgian ultramontane clergy. Not satisfied with the papal collaboration, the Concordat was progressively suspended and the emperor, in May 1809, integrated the Papal States into the French Empire. In July of the same year, the pope was banished from Rome and forced to take residence in France, at the Palace of Fontainebleau. The government then shifted its ideological policy, endorsing a more radical constitutionalist tendency within the Gallican tradition, and convoking the clergy of a lower rank in a 'General Synod of Christianity.' An imperial decree of 25 February 1810 declared the edict of Louis XIV on the Declaration of 1682 into a general law of the Empire, which especially provoked reaction among the Belgian clergy. Furthermore, by separating the Holy See from the church, Napoleon now also drove most of the French Gallican clergy into opposition against him. As André Latreille pointed out, Napoleon made the mistake of believing that he could obtain from the episcopacy what Christian rulers in the seventeenth and eighteenth century had not dared to impose (Latreille 1944, 22). In 1811 a National Council was established to make the Catholic Church submit to the viewpoints of the emperor. This finalised the definite rupture between the French imperial government and the Catholic Church, especially in the Southern Netherlands. The bishops of Ghent and Tournay, Maurice de Broglie and François-Joseph Hirn, as well as the ultramontane intellectuals Van de Velde and Duvivier, were arrested. But around the same time the military adventures of the emperor started to go from bad to worse. The clergy, therefore, was banking on 'regime chance' and in many cases went underground.

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CHAPTER 6

Ancient and Modern Rights: Continuity and Discontinuity in Catholic Political Thought After 1814

One of most important questions within historiography on the Restoration kingdom of the Netherlands has been, why Catholics in the Southern Netherlands by the end of the period supported and joined a liberal opposition. I believe the answer can be found, on the one hand, by situating Catholic political opposition during the Restoration in a *longue durée* development of political Catholicism. This involves both the religio-political battles that took place throughout the eighteenth century and culminated in the triumph of ultramontanism, as the Catholic contribution to the political thought of the Brabant Revolution. On the other hand, it needs to be inquired how the particular political circumstances further incited the development of political Catholicism, to the point where its thinkers endorsed liberal ideas in way that felt this was perfectly consistent with their core (religio-)political and constitutional beliefs.

6.1 The Catholic Opposition Against the Fundamental Law

In August 1815, the new constitution for the Kingdom of the Netherlands, drafted by a Dutch-Belgian commission in the previous months, was presented to a Assembly of Notables specially convoked

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for the occasion. A year earlier, the allied powers had drafted a memorandum, the so-called Eight Articles of London, under which conditions the North and the South were to be united. They had declared that, in the wake of the establishment of a united Netherlandish state, 'equal protection of all expressions of belief' would to be guaranteed. In line with this, the constitution of 1815 guaranteed 'liberty of religious opinions' as well as 'equal protection for all religious communities' (art. 190 and 191; Colenbrander 1909, vol. 2, 645). The government, foreseeing that these stipulations could stir unrest within the Catholic opinion in the Belgian provinces, strategically choose to make the Eight Articles public just one month before it submitted the constitutional draft to the Assembly. It simultaneously issued a royal proclamation guaranteeing 'the position and the liberties of the Catholic Church' in the Southern Netherlands would be guaranteed. But these efforts of the government to handle the issue of religion adroitly had little success.

Once it had been decided that the 'two Netherlands' would be united, and King William had taken over the provisional government, the Belgian clericals had already taken a stand. On 8 October 1814 the vicars of Ghent addressed a public letter to the Congress of Vienna, which pointed out that the clergy did not have any problem with the idea that a Protestant king would rule over the Southern Netherlands (Le Surre 1814). On the contrary, William of Orange had 'all the qualities to win the hearts of his new subjects' (Le Surre 1814, 11). But at the same time, it was deemed necessary, in view of the union with the North, that 'the declaration of 7 March 1814 by the General Council was adopted in the new constitution' (Le Surre 1814, 15–16). This declaration included a promise to the bishops of the Southern Netherlands that the spiritual power of the Catholic Church would be restored, 'according to the canonical laws of the church' as well as 'according to the ancient constitutional laws of the country.'[1]

Immediately after the Eight Articles had been made public, the bishops published their 'respectful reclamations,' authored by the vicar

[1]The declaration was issued by Eugène-Jean-Baptiste de Robiano (1741–1820), a former member of the (Habsburg) Council of Brabant and the (French) Council of State, who the allied provisional government had appointed as member of the General Council (*Algemene Bestuursraad*) and as substitute General Gouverner. See Terlinden (1906, vol. 1, 10).

of the diocese of Ghent, Jacques Le Surre (Le Surre 1815a). The clergy charged that the Catholic canonical laws proscribed forms of schism and heresy that threatened the true religion of the Catholic Church. These laws, they continued, had been maintained and assured by 'successive Christian rulers' over the Belgian provinces. Moreover, so the published letter continued, the bishops were bound by the Council of Trent to watch over the conservation of the Catholic creeds. If freedom of religion was to be established by the constitution, they were obliged to speak out against it. The pamphlet further argued that the principal of equality of different systems of belief could, in the Southern Netherlands, only be imposed by force. It was, provocatively, pointed out that the fate of Joseph II had shown the possible consequences of doing so.

In addition, the Belgian notables that were being convoked in an assembly to vote on the constitution were, in a number of printed '*Advices*' (equally attributed to Le Surre), urged to submit a negative vote. A first *Advice*, suggested that it had been the intention of the king, by proclaiming the Eight Articles at such a late moment in time, to discourage an open debate on the constitution (Le Surre 1815b). 'It is not allowed to imagine that Our August Monarch … deprives you of the faculty to express your vote on a point which essentially concerns the maintenance of the religion of the country,' the pamphlet sarcastically commented (Surre 1815b, 4). In a one-page *Second Advice*, the imposition of the London articles upon the nation was turned into the very reason to reject the draft. Would not the approval of the constitution imply 'this pretended right of the allied powers … to fix according to their ideas the religion of the country'; would it not at the same time be 'an outspoken denial of the rights of the spiritual authority …?'[2] After the constitution became enacted, in spite of a clear majority of the Assembly of Notables voting against it, the higher clergy published a *Jugement Doctrinal*, again upon the initiative of the diocese of Ghent, condemning it.

[2] *Second avis aux Notables* [unpublished flyer]. There were other publications with similar kind of argumentation: *Chapitre I: Pourquoi il faut une nouvelle Constitution?* [title is missing] (n.p., 1815); *Les Droits de la Religion Catholique et de son Clergé maintenus en Belgique, ou le vrai sens de la proclamation de Sa Majesté le Roi des Pays-Bas, en date du 18 Juillet 1815* (n.p., 1815).

The Ducth historian Johannes de Valk has remarked with regard to the conflict over the constitution in the Southern Netherlands, that 'the importance of the religious factor has been seriously overestimated' (de Valk 1998, 79). Indeed, the most important initiators behind the pamphlet-war had initially other than religious (or religio-political) motives. The opposition was organised from within the diocese of Ghent, where the Frenchman Maurice de Broglie had returned to his bishop seat, together with his equally intransigent vicar-general Le Surre. Broglie had already refused to swear a simple oath of loyalty to the provisional government, which the provisional government had demanded of him in view of his foreign identity. The French clerics launched a diplomatic action in favour of an (re-)annexation of the Southern Netherlands to France. In a *Mémoire* addressed to the Habsburg emperor, Broglie argued that in case a reunion with France would prove impossible, a return to the Habsburg Empire would be the only good alternative.[3]

A number of Belgian Catholic pamphleteers also embraced the language of ancient constitutionalism in a more secular sense, without much reference to religion at all. Their language was similar to the one of the conservatives discussed in Chapter 2. One example was a pamphlet written by the young Brussels aristocrat Louis de Robiano-Borsbeek (de Robiano-Borsbeek 1814), a descendent from former high officials of the Austrian Netherlands who would become one of the spearheads of the Catholic opposition. Claiming that the old Belgian constitution provided 'the basis of the English one,' he argued that this constitution had been adjusted to the 'spirit, mores, religion, principles and customs' of the nation (de Robiano-Borsbeek 1814, 8). Robiano pleaded for the old constitution to be restored and refuted the necessity to build the state on new foundations, arguing that the old constitution had already provided in the so-called achievements of the French Revolution. The old constitution had guaranteed 'general and individual liberty' and had secured 'that no person could be treated or sentenced but by law.' Furthermore, under the old constitution the different estates of the country had been justly represented and the Catholic cult had enjoyed its '*droits justes*,' even though this had not excluded the simultaneous exercise of other religions. The author also added a defence of his own class, as he argued

[3] For this *Mémoire*, see de Valk (1998, 573–574).

that the rank and place held by the nobility in society had been contested by nobody, and that feudal injustices had a since long time been abolished (de Robiano-Borsbeek 1814, 4–7).

Similar arguments could be found in a new Catholic journal, *Le Spectateur belge*, which was founded in the beginning of 1815 by the young Flemish priest Leo de Foere and appeared in two issues every month. It would continue to run until 1824 and develop into the most influential voice of political Catholicism.[4] Although it was advertised as a 'literary magazine,' possibly to bypass potential restrictions on the basis of the adopted press laws, it was from the start seriously involved with political issues.[5] In an announcement of the journal, Leo de Foere declared that 'this historical, literary, critical and moral publication will be dedicated to the revival of the national spirit and to keeping alive the memory of the customs and the religion of the Belgians.'[6] Once there was no doubt left that the Southern and the Northern Netherlands would be united, De Foere raised the question of the foundations on which the union between the two Netherlands should be established (de Foere 1815b).[7] 'What will be the constitution, what will be the laws that fix our political future?' De Foere then repeated Robiano's argument from the previous year in defence of the nation's historical constitution: 'One must, when making a government, take into account the differences of each nation concerning his spirit, habits, principles, mores, religion.' This was not a plea, as in the case of Van der Noot, for a return to the laws and institutions of the *Ancien Régime*, but for adopting a 'relativist' approach in the making of constitution, and for adopting a separate constitution for the Northern and the Southern Netherlands in view of their historic differences.

The endorsement by Catholics of a language of ancient constitutionalisme in 1814–1815 was informed by the contemporary political

[4] De Foere's preoccupation with the revival of the Flemish language and culture in this period has also made him a precursor of the later Flemish Movement. The French occupation, De Foere argued in the announcement article in *Gazette van Gend* (see footnote 6), had seriously undermined the 'popular character' ('*volkig aenwezen*') of the country by invalidating its literacy and literature ('*hunner tael- en letterkunde*').

[5] See on *Le Spectateur belge*: Lissens (2000).

[6] The publication was announced in the *Gazette van Gend*, 17 November 1814.

[7] See on this pamphlet also: Lissens (2000, 18–20).

situation of a union with a Protestant nation under the House of Orange-Nassau. But, primarily, this political discourse was indebted to the intellectual legacy of the Brabant Revolution in the Southern Netherlands. Since then Catholic thinkers no longer saw monarchy as the only possible legitimate form of government and had developed an a-monarchical perspective of the political and constitutional tradition of the Southern Netherlands. Catholic authors wanted to make it clear that the issue of the form of government was not of secondary importance, that the religious question could only be satisfactorily dealt with on the basis of a *secular* culture of constitutional rights. In the context of the debate on the required oath on the constitution, which would unfold in the following years (see further), the author of an anonymous pamphlet would point out that 'the personal character of the monarch might present some advantages in an absolute monarchy, [but] was of no importance whatsoever in a *constitutional* monarchy, [then] the authority and power of the head of a constitutional state are limited by the public laws, which it is not in his power not to execute, or to violate.' 'In a constitutional monarchy,' the author continued, 'it is only the public character of its head that counts,' adding that 'in religion, morals, justice, public right, wise politics, one has to act principles-based' (Anon. 1818b, 11–12).

The discourse of constitutionalism and rights was of course not independent of Catholic interest, but it was not without meaning beyond that either. The opposition by Catholics revived notions of national sovereignty and the legitimacy of popular resistance. These notions, when the political stakes increased, could easily take on a life of their own. The best illustration of this continuity with the political culture of the end of the eighteenth century came in the form of a true 'Feller revival.' From the 1820s onwards, numerous republications and translations of Feller's work would see the light. But especially relevant for the recovery of his political thought was the journal *Le Spectateur belge* founded by the Flemish priest Leo de Foere, with support of the episcopacy of Ghent. As Henri Haag has pointed out, 'the abbé De Foere… took up the political role played so brilliantly by Feller. His *revue* … clearly had the intention to be the continuation of the *Journal historique et littéraire*. Their programs were almost identical'

(Haag 1950, 49).[8] In a preamble to his journal, De Foere presented a patriotic sounding justification for the necessity of restoring the religious faith of the people. 'A nation without a sufficient amount of national energy is like a city without fortress, it surrenders with the first canon fire.' 'And how better to inspire … this national energy, which was once burning in the noble fire of Belgian patriotism,' so the author continued, '[than] through unity, based on eternal justice' (de Foere 1815a, 11).[9] To his patriotic conviction, De Foere added a number of general principles of politics, which equally reminded of Feller. From the general principle that 'a people is not made for its government, but a government for its people,' De Foere deduced two others: (1) the right to safety, property and stability; (2) the principle that laws should correspond with the customs of the people, and not with an ideal image created by the rulers (de Foere 1815c, 2–3).

Interestingly, De Foere also applied these ideas to the European order that had been established in 1815. In a review of a book by the French author Dominique de Pradt on the Congress of Vienna (1816), De Foere took issue with the principle of balance of powers that underpinned how the Congress of Vienna had redrawn the map of Europe (de Foere 1816a, b). 'It is of the highest importance,' De Foere argued, 'to treat the general interests of human society according to an unshakable rule; this rule can only be the eternal justice, the only fundament of political order' (de Foere 1816b, 151–152). From the neglect of the principle of eternal justice and its sacrifice to the principle of the balance of powers, De Foere explained, certain results would follow: 'secessions and divisions, so detrimental to nations and to the general welfare of Europe,' as well as 'shameful calculations whereby peoples are regarded as *troop for sail*' (de Foere 1816b, 151).

[8] At the time itself De Foere's journal was indeed often described as a successor of the *Journal historique et littéraire*. De Foere uncritically printed numerous articles of Feller's in his journal, and attributed substantial attention to the republications of Feller's works. For inspiration of Feller on De Foere see also Lissens (2000, 7, 15).

[9] On this notion of 'universal justice' De Foere, not surprisingly, argued that it was to be found in faith, more precisely, the Catholic faith (de Foere 1815a, 7–8).

He also clearly had the reunion of the Northern and the Southern Netherlands in mind:

> '[T]hose despicable principles of politics [such as of the balance of power] are being applied to the governments of states … Out of this [emerges] the paternal power of the sovereigns, which degenerates into despotism and the subordination of the people nto slavery. Add to these origins of our misfortunes those forced reunions of two or three peoples, … the destruction of all patriotic sentiment effected by the abolition of the national institutions, of the mores and the spirit of a certain people, in order to adapt them by force to another one.' (de Foere 1816a, 33–34)

De Foere warned about letting the 'highest interests of human society' depend on 'competitive claims … which mutually destroy each other.' This was 'the work of *the cabinets*, where the true interests of the peoples are not only isolated and disregarded, but totally destroyed' (de Foere 1816b, 153–154).[10] Interestingly, moreover, is how De Foere invokes the 'anti-social pretentions of the spirit of conquest' ('*esprit de conquête*') (de Foere 1816b, 154), and continues to write that 'the interests of the peoples have only been a nice phrase ('*un beau mot*') to colour the untidy pretentions of ambition and of the spirit of conquest' (de Foere 1816b, 156). This, most probably, indicated a familiarity with Benjamin Constant's work *De l'esprit de conquête*. Not surprisingly, in that regard, is that the article by De Foere received a positive review in *L'Observateur belge* (van Meenen 1816), which only criticised De Foere for arguing that the 'material forces of states always obtain more importance to the extent that moral forces decrease …' The liberal journal invited De Foere to put the blame for the demoralisation with those who deserved it, instead of with the people itself or with 'the times.' Was the '*basesse*,' the '*servilité*,' the '*folle ambition*' being promoted from below or were they being promoted from above? There existed no crime, the journal insisted, 'which the cabinets have not yet meditated.'

[10] De Foere also denounced the division of Poland, and predicted (quite accurately) a number of 'nationalist' eruptions which would take place in the following decades (de Foere 1816b, 158–159).

6.2 Opposition Against the Reorganisation of the Catholic Church: A Revival of the Ultramontane Discourse

On 16 September 1815, a decree was issued establishing a special commission at the Council of State for all matters relating to the Catholic religion. It also established the right of placet, the right of the king to supervise all forms of publication by the clergy. Secretary of the new commission became Dutchman Pieter van Ghert, who was known for his familiarity with the works of Febronius and ideas revolving around the notion of *Staatskirchentum* (see Chapter 5).[11] Most importantly, William I appointed at the head of the commission the Belgian Melchior Goubau d'Hoogvorst. Goubau had occupied, under the reign of Joseph II, the position of counsellor at the Privy Council, in which Neny had been the dominating figure. In his policies Goubau would consistently invoke the Jansenist-regalist legacy of of the eighteenth century, for which he primarily took cue from the writings of Neny, which revolved around the notion of a 'Belgian Church.'[12] Already in the decree establishing the new commission of which he became director his influence was apparent, as its role was described as 'safeguarding and maintaining the ancient liberties of the Belgian Church.' Goubau would in the early months of his new career present the king with a number of reports to convince him of his prerogatives in the appointment of the bishops on the basis of ancient canonical and constitutional law, which was confirmed by the government in a nota to the cardinal state-secretary of the Holy See in December 1815 (Bos 2009, 168). This confirmation was directly related to the attempts, and eventual success, of the government to obtain the appointment of François-Antoine-Marie de Méan, the former prince-bishop of Liège, as the archbishop of Mechelen (Roegiers 1982, 32–33). The proposals to reform the church were subsequently defended by Goubau in a number of journals, as well as in a pamphlet sponsored by the government, *Notices sur les libertés de l'Eglise Belgique* (de Raucour 1816). Also Van Maanen was to exert influence on how

[11] On Van Ghert: Riberink (1968, 329–342).

[12] For the enduring influence of eighteenth century regalist models on the policy of the government of William I: Roegiers (1982).

the government dealt with the Catholic Church. Van Maanen pleaded for continuity with the policy of the imperial administration. It was upon his initiative that, in May 1816, the government declared the Concordat of 1801 to be still valid, including the Organic Articles. Van Maanen, in May 1816, sent a letter to the judicial authorities to call upon them to work diligently for the suppression and punishment of violations that would be committed by the clergy against the imposed supervisions (Bos 2009, 169).

Jacques Le Surre wrote a lengthy pamphlet in reaction to Goubau's *Notices sur les libertés* (Le Surre 1816). Part of the ninety-five-page publication explained the 'character of the true faith' as well as the 'constitutive principles of the Catholic Church,' again mainly repeating the traditional religio-political idiom of the eighteenth century. From Bossuet, the author adopted the notion of an invariable church, separated from all other institutions in society (Le Surre 1816, 43). But the author also reflected, in an earlier chapter, on the recent events in political history and the new political context which confronted the church. After discussing the legislative legacy of Joseph II, the French National Assembly, Napoleon, and the decree issued by the new government, the writer insisted that princely rulers who oppressed the Catholic Church were equally 'tyrants to their people.' Consequently, they were also 'the artisans of their own downfall,' because rulers with tyrannical ambitions over the church and the people were inspired by the same people who eventually became the spearheads of the Revolution, 'today's liberals' (Le Surre 1816, 34). Most of these liberal writers had invented or propagated 'systems' which, under the pretext of assuring the independence of the sovereigns, had the destruction of the Catholic Church as their only goal. But these 'factions,' so the author continued, supported principles that were aimed at the destruction of the temporal powers as well. The originators of the 'maxims' were the authors of the early-modern English Reformation, but they had been endorsed subsequently by 'innovators' in Germany and France.[13] All these innovators had propagated that 'every jurisdiction, ecclesiastical as well as secular, originated in the royal power,' however, at a later date, they 'instructed … that the secular power had no other source that the sovereignty of the people.'

[13]The author mentioned 'the Paulo Sarpis, the M. A. Dominis, the Richers, the Jurieus, the Launoys, the Febronius's….'

It was Febronius who had made 'the compilation… that became the great arsenal for the troop of the canonists, theologians and publicists around Joseph II in their battle against the Catholic Church' (Le Surre 1816, 34–37).

Le Surre's French identity was obvious in his narrative. Especially in his discussion of Jansenism, he took a typically French-royalist, 'anti-parliamentary' perspective: 'Almost every page of the ecclesiastical history of France, during the century before the Revolution and even beyond that, attested to the manoeuvres of the [Jansenist] sectarians to destabilize and overthrow the Catholic Church.' Jansenists, Le Surre pointed out, had been the main exponents of the republican doctrine in France. They had taught that the parlements received the right to do justice from the body of the nation, and that they were the assessors of the throne. They had constantly brought into memory a presumed original contract of the monarch with his subjects, and, under pretext of defending the liberties of the Gallican Church, obstructed Roman policy and established a 'monstrous' canonical jurisprudence (Le Surre 1816, 38–39).

Another pamphlet in reaction to the new controls imposed on the church was by cleric and seminar professor Joseph de Volder (1816).[14] De Volder opposed the procedure of the royal placet on the basis of the mutual independence of the secular and the religious authorities, and the divine origin of each (de Volder 1816, 29–30). More important, however, was that the royal placet was further denied any justification on the basis of the political and legal history of the Southern Netherlands. The custom, the author explained, had been recognised neither by canonical law, the 'Christian doctrines of states,' Catholic theology, the promulgations by the Roman pope, and not even in the legislation by Catholic princes. The *placetum* exclusively resulted, so the author pointed out, from the (Jansenist) doctrines of Zeger Bernhard van Espen, the program of Joseph II, the doctrines of Napoleon I, and, finally, the subversive decree from 16 September 1815 on the establishment of a commission for the Catholic faith

[14] De Volder was mostly important because of his connection with the theology professor at the major seminary of Gent, Augustin Ryckewaert, who was one of the main intellectual spearheads of the revival of ultramontane opposition in Flanders after 1815. But of Ryckewaert himself no publications can be traced, and so the publication of De Volder is considered to be an important source on Ryckewaert's ideas (Roegiers 1984, 14–16).

(de Volder 1816, 77–114).[15] Furthermore, the author argued that in the new Kingdom of the Netherlands the Concordat of 1801 could no longer be legally binding. First of all, De Volder pointed out, the new ruler was simply not a Catholic, and this was the most important reason why the terms of the pact could no longer apply. De Volder also pointed out that the recent policy of the government contradicted 'the guarantees and decisions of the allied powers after Napoleon's defeat,' as well as the 'promises of the new monarch,' made towards the Catholic Church (de Volder 1816, 136–143). The importance of all this was that the legitimacy of the new government, from a Catholic point of view, laid in making a radical break with the religio-political legacy of Napoleon and on a return to the ancient legal tradition (from an ultramontane point of view) with regard to the relations between church and state.[16]

6.3 The Controversy Over the Oath and the Reconciliation Between Rome and the Government

Shortly after the constitution was proclaimed, the anti-constitutionalist clergy in the Southern Netherlands started to solicit the support of the Roman curie in its resistance to the government. They especially counted on Raffaele Mazion, one of the so-called 'zelanti' within the Congregation for Exceptional Clerical Matters (*Congregazione degli Affari Ecclesiatici Straordinari*).[17] One important correspondent of

[15] Both in the title and throughout the work, the author made references to Jean Pey's *De l'autorité des deux Puissances*, and a number of quotes of and references to Bossuet made furthermore apparent to what extent the French Gallican tradition remained part of the canon. An influence that was also pointed at by Jan Rogiers (1984, 286n76).

[16] Emo Bos has argued that De Volder's rejection of the Concordat and the Organic Articles was part of a Stevenist political action (Bos 2009, 187). Stevenism was a movement of Catholics who rejected any form of relation between state and church; which has improperly been called after Cornelius Stevens (Vercruysse 1975, 257–259). However, irrelevant of the question if De Volder was truly part of the Stevenist movement, the arguments presented against the justifications for maintaining the Napoleonic supervision over the Church were entirely situated within the traditional Belgian ultramontane discourse.

[17] The problems in the Netherlands were on the agenda of more than forty of the seventy meetings of the Congregation between 1814 and 1818, which is indicative for the importance that Rome attributed to them (Chappin 1984; de Valk 1998, 63, 65–66).

Mazio was the former colleague of François-Xavier de Feller from Liège, ex-Jesuit Bernard de Saive. Saive symbolised the continuity of opposition against the politics of Joseph II and the opposition against the government of William I. As Le Surre, Saive described the conflict as a new battle against a '*gouvernement philosophe*.' Bishop de Broglie, in a direct letter to the pope, described the 'amalgam' and the imposed liberty of religion as part of a satanic conspiracy to extinguish religion and to de-Christianise the Southern Netherlands. A sense of urgency also characterised these letters. Broglie wrote Mazio on 10 January 1816 that the united Catholic front had managed to keep the government in check, but that if the pope chose to remain silent much longer this could have dire consequences. However, also the government in The Hague was trying to get Roman support to make the clergy give up its anti-constitutional stance. In a note of 15 December 1815, it requested the institution of the former prince-bishop of Liège Comte de Méan to archbishop of Mechelen. Méan had taken the oath on the constitution to facilitate his appointment to the First Chamber of the kingdom. The anti-constitutionalist correspondents, in turn, severely criticised Méan, who, 'surrounded by the most fanatical Napoleonists and philosophers,' opposed the unanimous decisions of the Belgian higher clergy (de Valk 1998, 63–66).

In the spring of 1816 the Congregation for Exceptional Clerical Matters in Rome discussed in the course of four sessions the situation in the Netherlands. Although it in principle agreed with the anti-constitutionalist writers, the Congregation nevertheless suggested that the Holy See would seek a compromise with the government. The constitution was not condemned and negotiations were to be opened that could eventually lead to the conclusion of a new concordat. To resolve the question of the oath, Rome requested from Méan that he would provide a satisfying 'explanation' for his reasons for taking the oath. Simultaneously, the Holy See sent a letter of appreciation to Broglie (dated 1 May 1816), with the clear intention of keeping the opposition alive. After it thanked the bishop for informing the Holy See 'with preciseness of everything which had happened in the Kingdom of the Netherlands concerning matters of the faith, and especially with regard to the constitution,' it declared that the pope did not find it necessary to provide the prelate with instructions.

'We can clearly see how zealously you take care after the interests of God and the church.'[18]

The Southern clergy was undoubtedly disappointed over these successive papal interventions. Nevertheless, it wrote a letter to the king, describing the papal interventions as 'the justification of our actions and the purity of our intentions …' (de Valk 1998, 67–68). Goubau, however, presented an opposite argument. He responded that no conviction of the oath-takers had been issued by Rome, and that the continuation of the negotiations would doubtlessly further refute 'the false ideas which the Holy Father seems to have obtained about the state of affairs in this kingdom and about the policies of the government.' Following this, the anti-constitutionalists turned again to Rome to demand a fiercer condemnation of the constitution and the oath-takers. They pointed to the symbolic value of the issue, and insisted that a better occasion would not present itself soon to counter, with a declaration of principle, the evil of 'universal tolerance,' which was spreading in the whole of Europe and threatened to annihilate the Catholic faith (de Valk 1998, 68).

The efforts were to no avail. The appointment of Méan to archbishop, which the government had presented as the condition for the opening of negotiations, was accepted in early 1817 after preparatory work by Roman secretary of state Consalvi and Austrian chancellor Metternich. To make this appointment acceptable, it was accompanied by a declaration, elaborated by Consalvi and the Dutch envoy in Rome, J. G. Reinhold, containing the explanation by Méan of his endorsement of the constitution. This declaration, presented on 18 May 1817, was meant to make it clear that the abandonment of the opposition to the constitution was not to be seen as contradictory to the ultramontane views on the position of the church.[19] Méan explained that he had never understood the articles concerning religion in any other sense than that they established tolerance and freedom from a *civil* and not a *dogmatic* point of view, and therefore that they did not provide the legal foundation for an unjustified supervision by the government over the Roman Church.

[18] Quoted in de Valk (1998, 67).

[19] See on Méan's oath: Jürgensen (1963, 74), de Valk (1989, 571), and Simon (1963, 40–41).

A precedent had thus been created that paved the way for the eventual compromise: Catholics who pledged the oath would declare that they did so according to the explanation now given to the constitution by Méan on the basis of a distinction between 'civil' and 'religious' tolerance.

Most historians have considered this settlement as a critical conjuncture in the development of political Catholicism. De Valk argued that this settlement created 'a whole new situation,' because it (by default) reconciled the intransigents with religious freedom (de Valk 1989, 571). This, in turn, would have provided the conditions for the later emergence of a 'liberal-constitutional' opposition among the Catholic clergy, when the Catholics not only accepted the constitutional liberties, but positively endorsed them in support of their opposition. Also Emo Bos argued in his recent book that the declaration by Méan 'contained the origins of liberal Catholicism, as it manifested itself after 1825' (Bos 185). But this explanation is flawed. The Catholic clergy might have regretted the Roman inclination for compromise and the settlement with the government, because it undercut their position of opposition. However, the circumstances never forced them to abandon any core beliefs.

After the declaration by Méan advanced a positive (pro-Catholic) understanding of the constitutional articles, the spokesmen of the opposition first denied that anything had changed at all; they explained that Méan had merely been obliged to explain his *misunderstanding* of the constitution, and that the 'constitutionalist' clergy still found itself in direct disobedience with Rome. It was argued that the declaration by Méan would have been 'completely useless,' if it had not been meant to repair 'the scandal of which he has been the cause.' The declaration by Méan, therefore, had clearly been 'demanded by the Holy Father as a retraction of his oath …' (Anon. 1818b, 32). What confirmed this view, in the eyes of the opposition, was the fact that Méan requested of all those in his diocese who had sworn the oath that they would endorse the same declaration. 'Why did the Holy Father believe he had to demand a new explicative declaration of the sense in which the oath had been taken, if the original sense of the oath has by itself nothing reprehensible' (Anon. 1817).

Once the government finally accepted the 'Méan version' of the oath, in 1821, it became of course undeniable for Catholics that also Rome endorsed the compromise.[20] However, Catholic intransigents would from then onwards simply argue that, what had taken place was a revision of the meaning of the articles themselves, in an attempt of the government to establish good relations with Rome. In that sense, Leo de Foere insisted in *Le Spectateur belge* that it was the Holy See and the 'endurance and noble courage' of Mgr. de Broglie which had made the breakthrough possible (de Foere 1821). In other words, the government had finally been forced to accept reconciliation with the Catholic Church on the latter's terms. Evidently, ultramontane Catholics and the government continued to hold diametrically opposite views on the relation between state and church.

The discussion if the Fundamental Law was in violation with the right to autonomy of the church took place on the basis of the distinction between 'civil' and 'dogmatic' tolerance, a distinction which was already introduced in the debate shortly after the proclamation of the constitution. In the same month as the publication of the *Jugement Doctrinal*, the conviction of the constitution and the proscription of taking the oath, an anonymous pamphlet, *Réflexions sur l'intérêt général de tous les Belges en septembre 1815*, severely criticised the clerical rejection of the constitution (Anon. 1815). Catholics rejected the constitution, the anonymous author argued, because they did not want any other religion to be tolerated within the territory of the former Southern Netherlands. The pamphlet accused the Belgian clergy of being 'intolerant' and 'profoundly fanatical,' and of acting against the very spirit of Catholic faith itself. In an immediate reaction to this pamphlet, Jacques Le Surre wrote an '*Apologie des Évêques*' in defence of the Catholic position (Le Surre 1815c). Le Surre argued that the church made a distinction between 'theological' (in)tolerance and 'civil' (in)tolerance. As the Catholic Church had been entrusted with 'the sacred depot of the divine truths,' its 'intolerance' when it came to theological questions was inevitable. On the other hand, Le Surre continued, this theological intolerance did not exclude that the Catholic Church accepted the existence of other religious communities, on the basis of a 'civil' tolerance

[20]The government made its official endorsement of the settlement depending on the removal of Broglie, and although the latter was forced to leave the country in 1817, he remained officially bishop of Ghent until his death in 1821.

between individuals. The point now was, according to Le Surre, that the Fundamental Law had clearly endorsed the principle of 'theological tolerance.' By this Le Surre meant that it provided the basis for interference with theological matters that are the exclusive domain of the church, and therefore was a violation of the rightful independence of the church. Furthermore, Le Surre argued, for secular rulers to claim the right to demand from the followers of the church to take an oath on the constitution, and to deny the bishops the right to call upon Catholics not to take it, was a clear example of a violation of the autonomy of the church.[21]

The declaration by Méan was but one example of how the distinction between 'theological' and 'civil' tolerance was subsequently recuperated by the people who were preoccupied with reconciling the church with the government. Their assessment was that the constitution, as it only proclaimed tolerance from a 'civil' perspective, was not in violation with the laws of the Catholic Church. In a brochure titled *Cas de Conscience* this case was made the most eloquently. The author argued first that the constitution proclaimed 'tolerance for all the religions which exist in the kingdom, that is to say, the permission to exercise them publicly' (Anon. 1818a, 4–6). Nevertheless, so the author acknowledged, the controversy remained if the Fundamental Law had also proclaimed '*tolérance théologale*.' 'As long as the controversy is not resolved … it is possible to be erroneous but to defend the error in good faith,' the author pointed out in a conciliatory tone (Anon. 1818a, 28). The bishops and priests who agitated against the oath were called 'loyal and zealous chiefs,' who had 'accomplished their sacred duty,' as they had 'demonstrated one way in which the Fundamental Law could possibly [at worst] be understood.' They had pointed out 'how the constitution *could have been*

[21]This line of argumentation also clearly prevailed in reaction to the prosecution of clerics in the context of the resistance against the constitution and the oath, starting with the prosecution of Broglie. After Broglie was summoned to justify himself commission of the Council of State, a first step towards his eventual expulsion from the country, the bishop abstained but sent a letter justifying his actions (dated on 27 November 1816). He declared that he believed always to have acted according to the doctrine and the laws of the Catholic Church. When it came to the accusation of stirring up people against the lawful authorities, he argued that it belonged to the freedom of the citizens to choose if they wished to swear an oath on the constitution, and that an episcopal interdiction could therefore not incite people to civil disobedience. He could not be in violation with the Concordat or the Organic Articles, he further claimed, as the first had been revoked in 1811 by Napoleon himself, and the pope had never agreed with the second; and, furthermore, the declaration of 7 March 1814 had clearly abolished both (Bos 2009, 172–175).

interpreted… the dangers of the anti-Catholic consequences that one could draw from it, what the enemies of our faith could machinate on the basis of subtleties….' The actions of the intransigent clergy therefore had the benefit of 'arming the faithful against the despicable attacks of their adversaries' (Anon. 1818a, 34–36).

An anonymous pamphlet written in reaction to *Cas de Conscience*, titled *Lettre addressé à un ami*, acknowledged that the author of *Cas de Conscience* showed a tendency towards 'harmony, order and justice.' He furthermore pointed out the irony that 'principles first [developed] by the bishops… [see *Apologie*] are turned into the arguments of their adversaries' (Anon. 1818b, 1–3). However, irrelevant of the interpretation of the articles of religious freedom and equal protection, the pamphlet shifted the discussion to what, in the author's eyes, was really at stake, and also justified the continued resistance against the constitution. In fact, tolerance wasn't so much the issue, the author explained. In the *Jugement Doctrinal*, *eight* articles had been judged to be in violation with the Catholic religion. 'Five of these eight articles had nothing to do whatsoever with tolerance,' the author pointed out. These articles were refuted by the episcopacy for being 'in contradiction with the principles of Catholicism for completely different reasons' (Anon. 1818b, 3–4). The author of *Nouvelle théologie*, another pamphlet in reaction to *Cas de conscience*, developed a similar argument: 'Our prelates have found [in the constitution] different errors, different intrusions of the civil authority in the spiritual authority, still, [the author of *Cas de Conscience*] only discusses one error' (Anon. 1818c, 37).

What other articles in the constitution had been, according to these authors, problematic? Firstly, additional article 2 (*article 2 add.*) of the constitution established that all existing laws (i.e. French laws from the time of Napoleon) remained in vigour until they were replaced by new laws on the same subject. This article implied, among other things, that the 'Organic Articles' of the Concordat would be temporarily maintained. Article 19 of these established that the (at that time) First Consul had to agree with the appointment of the bishops (Anon. 1818c, 43).[22] If the Organic Articles remained valid, so it was

[22]The author insisted that the Organic Articles therefore violated the 'natural meaning' of the Concordat, which had merely established that the episcopacy would only appoint priests that were agreeable to the government.

argued, the new monarch would be allowed to appoint new bishops, which would reduce the episcopacy to a state of servitude towards the government. Additional article 2 further implied the maintenance of the penal code of Napoleon, and certain articles of this code granted the government the right to interfere in the direct communication of the pope with the episcopacy, as well as to supervise the expression of ideas by the clergy in their parishes and through the press. Secondly, article 226 of the Fundamental Law established that 'public instruction would be an object of permanent concern for the government.' This was unacceptable to the Catholics, as 'the instruction of morals, religion and theology,' which were integral parts of public instruction, belonged to the 'sacred trust of the Church' (Anon. 1818b, 7). Thirdly, the second part of article 193 established that 'no public exercise of faith can be interfered with, except when the public order and safety could be disturbed,' which gave the government a pretext to suppress the free exercise of religion (Anon. 1818b, 7–8). Therefore, it was clear, the authors insisted, that the civil authorities had been invested with the power of making and executing laws that were relevant to, and therefore could interfere with, the exterior or public dimension of the Catholic faith (Anon. 1818b, 9).

The articles on tolerance, therefore, should not be interpreted in isolation; the combination with other articles made it clear that, what they established was not 'civil tolerance' but 'legal indifferentism' (Anon. 1818a, 13; 1818b, 38). A supporting argument was that mere civil tolerance had been guaranteed by articles 164 and 167 on individual civil rights; which implied that the articles concerning religion could only be understood as a further specification (i.e. limitation) of the notion of tolerance with regard to religion (Anon. 1817, 30; Colenbrander 1909, vol. 2, 642). In a slightly different argument, Catholic writers also pointed out that, if the articles on religious freedom truly established tolerance in a civil sense, than this could only mean that the constitution was in contradiction with itself: 'If they grant a vain travesty of freedom for the Catholic faith, other articles destroy as much the sacred rights of the Catholic Church and put the exercise of its cult at risk' (Anon. 1818c, 41).

It was indeed but a small step from this last argument, to appropriating the articles on freedom of religion for the Catholic cause. The issue at stake had from 1815 onwards been the plan of the government to increase supervision over the church, especially since the creation

of the commission on Catholicism within the Council of State and the appointments of Van Ghert and Goubau; and that battle had already exposed the tensions between the policy of the government on religion and the principle of religious freedom. The settlement between Rome and the government on how Catholics would be allowed to take the oath on the Fundamental Law resolved for many ordinary citizens the dilemma they had faced until then: disobeying their religious leaders or missing a chance to a job in the civil service. But in terms of the intellectual development of political Catholicism, the settlement of the oath-issue was not a moment of rupture; it merely triggered ultramontane Catholics to expand their arsenal of arguments in the long-term religio-political battle with the state.

6.4 Catholics and the Notion of Tolerance: Religious Freedom as an Individual Right

If the issue regarding the constitution and the oath, and how it was resolved, did nothing to discontinue the track of political Catholicism in Belgium, there nevertheless was, from 1815 onwards, an discursive dynamic within the language of political Catholicism that can be described as 'proto-liberal,' which was largely attributable to the influential journal *Le Spectateur belge* of Leo de Foere. The point of departure was the distinction between the two forms of tolerance made by Le Surre.[23] In a review of the pamphlet by Le Surre, De Foere praised it as 'a masterpiece in the polemical genre,' and insisted that 'the author has engaged in the discussion with a rare force of reasoning and a tone of moderation, proper to disarm his antagonists and to convince the agents of government…' (de Foere 1816c, 222). But De Foere added new meaning to the arguments by Le Surre, to further refute the accusation

[23]It also had been frequently made by Catholic apologists in the eighteenth century, as part of a rejection of philosophical neutrality towards the claims of religion. It moreover corresponded well with the theory of the 'two sovereign powers' of Jean Pey. Pey had insisted, in *De l'Autorité des deux Puissances* (vol. 3, ch. 3, par. 1), that the competence of the two powers did not have to be established according to the question if a matter concerned an internal or the external aspect of the Catholic faith, but according to the question if a certain matter was in its nature directed towards a temporal or spiritual end.

aimed at the Catholics of being intolerant and remaining stuck in the past. De Foere pointed out that 'the political world, once it concerns a principle of religion or morality that can only be developed exteriorly, turns itself into the judge of both the explanation of this principle and in its application' (de Foere 1816c, 225). At this point, De Foere turned the argument into a defence of religion in general, and therefore of the *positive* freedom to religion of all people. 'Is it prudent, is it to the advantage of humanity, and does it correspond with our historical level of civilisation and enlightenment,' De Foere asked, 'to confuse religion and politics, to treat them as one, to deprive the former of its exterior power, in order to increase the power of the the latter?' (de Foere 1816c, 224). De Foere subsequently developed an argument on how the interference of a government with what belongs to the religious or, in an even broader sense, moral sphere, ultimately undermines religion, and therefore the state itself. 'A religion which adjusts itself to every political will, ceases to exercise its moral influence on the people' (de Foere 1816c, 223).

In a number of articles on the concept of 'tolerance,' De Foere further developped his arguments, and also made it clear to what extent this needs to be understood in relation to the political-constitutional context. The abbé insisted, in an article that was a reaction to an article by the government newspaper *Éphémérides* (de Foere 1816d), that to the simple opposition between 'theological' and 'civil' tolerance needed to be added the notion of 'political' tolerance. De Foere explained that whilst Catholics endorsed civil tolerance, they could accept neither dogmatic nor political tolerance. To explain what he meant by expanding the Catholic 'intolerance' from the dogmatic to the political sphere, De Foere used the metaphor of a Catholic 'family,' which wants to maintain 'both in its private and public relations, the fundamental principles of its religion.' A Catholic family can have Lutheran, Calvinist or Anglican domestics, as Catholic traders can have commercial relations with non-Catholics. Even a 'more striking example' of this, De Foere pointed out, was that, in Belgium, 'the Catholic religion does not oppose itself to a Protestant monarch; no protest has been made to that extent.' However, this family could not depart from its principles, neither in its private, nor in its public obligations which are only the expression thereof. Or, in other words, as Catholics rejected the official recognition

of the co-existence of multiple religions of revelation, they also did not want to 'protect constitutionally' this co-existence (de Foere 1816d, 365–366).

With this explication of political (in)tolerance, De Foere clearly seemed to give more ammunition to the view that Catholics outright rejected any form of constitutionally guaranteed religious freedom. However, this was only one side of his argument. What De Foere here did on another level, as becomes clear from how he further elaborated the point, was to make a link between the 'republican' constitutionalism that Catholics had embraced in the wake of the Brabant Revolution, with the religious issue: 'When a particular prince,' so De Foere suddenly shifted the argument, 'imposed by force and deceit a constitution without the concord of the nation, and when in this constitution tolerance and protection of all religious beliefs found themselves established, then… Catholics … can by no means concur, with their votes, or, even less, with their oaths, to the establishment, sanctioning, maintenance and protection of the errors condemned by their religion' [i.e. political intolerance] (de Foere 1816d, 367). The justification of the intransigence of the Catholics with regard to the constitution and the oath was in other words rooted in *the illegitimate way* the constitution had been adopted. In view of this, Catholics could not extent their tolerance beyond what kind of tolerance their religion positively induced them to endorse. The implication was, therefore, that in a constitutional order that was more solidly legitimate, Catholics could accept a much broader form of religious and moral freedom. In fact, De Foere further redefined the oath-issue into an issue of religious and moral *freedom* in general: 'We, who had to resign ourselves to the forced violation of our *political rights*, we who had to consent with supporting the enormous foreign charges imposed on us [the debt of the Northern Netherlands], do we now also have to abandon the exclusive sphere of our thoughts, consent with despotism and with the enslavement of our conscience?' (de Foere 1816d, 373). This excursion by De Foere showed, in other words, how the issue of legitimacy, in combination with the issue of the rights of the Catholic Church, could create a discursive dynamic towards an invocation of freedom and religious or moral rights as secular principles, in a way that transcended the traditional ultramontane agenda of the Catholic Church.

The liberal journal *L'Observateur* was very fast at pointing out the implicitly liberal dimension of the discourse in the articles of

Le Spectateur belge on tolerance (van Meenen 1815). *L'Observateur*, in spite of its strong freemason character, admitted that on the dogmatic intolerance of religion, De Foere, as Le Surre, presented some reasonable ideas. There was only one 'truth' and the notion that a number of religions of revelation could be simultaneously *recognised* was as absurd as in contradiction with human intelligence. But did it follow from this, 'that it was also an error to endorse, in the field of religion, [individual] freedom of thinking, believing and acting?' In fact, the author explained, the 'duty of tolerance' was essentially a consequence of the belief in the 'the one true religion.' 'Every man is beholden to worship God and to adjust to what his conscience makes him believe is the will of God. From this obligation of worshiping God according to the insights of our conscience, which is common to all, derives, to each and everyone's pleasure, the active right to the exercise of this freedom, and the passive duty of tolerance towards everyone else…' (van Meenen 1815, 6–7). With regard to De Foere's concept of 'political tolerance,' the journal insisted that this could be better defined as 'the guarantee assured by the state of the liberty of conscience and of religion,' and was therefore nothing to be rejected. De Foere, however, purposely defined (political) tolerance as 'the guarantee of the free circulation of religious opinions and the public exercise of *all* religions,' and, thereby, was 'substituting accidents, chosen by him, for the substance of things' (van Meenen 1815, 8–10).

De Foere, in his article, also pointed at the inconsistency and hypocrisy of those who invoked the principles of tolerance and individual rights against the Catholics. 'The fanaticism of political impiety,' so he wrote, 'will continue to proclaim the liberty of conscience, but, after the example of the frenetic demagogues of the eighteenth century, it will also continue, in its inconsistent and cruel conduct, to work from the *intolerant* principle, that everyone who does not think like us will be baffled, injured, slandered, persecuted and cut off their throats at the stake' (de Foere 1816d, 373). He also remarked, that 'liberal ideas could be considered from a different angle,' and that, 'tightened to the boundaries of faith, justice and truth, they would in fact be defendable.' 'Let's defend liberal ideas against their enemies, but also against their friends,' he further insisted (de Foere 1816d, 369). When De Foere touched upon the continued closure of the regular orders [i.e. the Jesuits], in his review article on the book of De Pradt, he wondered if it was 'very liberal, to create obstacles to the free choice of man …,

to prevent, by principles that were worth of barbarian times, the exercise of the most imprescriptible right of man, and to destroy, in this way, what was most sacred in politics, *individual freedom*?' 'As long as this right is being violated,' De Foere concluded, 'governments will imprint on their constitutions the seal of intolerance and of despotism' (de Foere 1816b, 169–170). In 1819 he wrote an article, titled *Droits de l'homme* (de Foere 1819, 180–181), in which he insisted that 'it is not because the intolerant philosophers have treated the rights of man in a horible fashion, even more so by their actions than by their political theories, that one has to conclude that man has *no* rights. He has incontestable rights.' And again, De Foere condemned those 'who recognise rights in theory, but who, powerful as they are, don't have any scruples in evading, violating and insulting them in practice.' These invocations of individual rights were, moreover, part and parcel of intransigent opposition against the government: 'One understands,' De Foere ascertained, 'that I have ministers and other functionaries of executive power in mind. One of them once had the nerve to tell me that only they have the right to interpret the laws. I gave him a smile, and took the courage to tell him that I did not agree. In fact, according to this principle there would be no more rights, no more laws' (de Foere 1819, 181).

6.5 The Battle Over Education and Against a 'National Church' After 1825

6.5.1 The Government Reforms in Education and the Opposition of the Higher Clergy

From 1815 onwards, King William has systematically worked towards bringing education under the control of the government, and towards establishing a state-run public education system that could replace the network of Catholic schools. By royal decree of 27 September 1815, universities were established in Ghent, Liège and Leuven, and a royal decree of 25 September 1816 trusted secondary and higher education to public colleges, athenaeums and the state universities. The system of primary education existing in the North was gradually introduced in the South, which met with relatively little resistance since primary education in the

Southern Netherlands had remained largely underdeveloped. The royal decrees of June 1825, however, provided a true shock, not only among the clergy and within the Catholic press but equally among public opinion in general. It stipulated the immediate closure of all Catholic colleges and seminaries, which constituted a dense network of Catholic education in the Belgian provinces, and concentrated secondary education entirely in state 'gymnasia.' Furthermore, the government established at the University of Leuven a *Collegium Philosophicum*, which would become the only form of preparatory education for future priests, regardless of the education they would later receive in the Catholic major seminary (*grootseminarie*). The government justified its imposed control on the instruction of priests on the grounds that it wanted to bring an end to the (undeniable) decrease in the general level of education among the Belgian priesthood. However, its true aim was turning the clergy and Catholic religion into instruments of an expanded control by the state over society.[24]

The measures of the government triggered in the first place a reaction by the higher clergy, especially in the North (de Valk 1998, 89). The unofficial leader of the opposition was Cornelis van Bommel, who presided over a seminary in Hageveld. Van Bommel was assisted by Charles van der Horst, a lawyer from The Hague, Cornelis van Wijkerslooth van Schalwijk, who was priest and docent in Hageveld, and Antonius van Gils, the president of the seminary for the education of priests in Den Bosch. All of them held traditional ultramontane views, which they had acquired during their education at the institute Willenghegge-Borg in Münster, Westphalia, an institute that had been supervised by *prêtres réfractaires* from France. The 'Dutch club' also established a number of crucial contacts in the South; most importantly, they succeeded in making Archbishop de Méan accept Engelbert Sterckx as his vicar-general, with the intended effect of appropriating the prestige of the archbishopric for the opposition. Van Bommel and his colleagues made, in their

[24]The level of cultivation and education among the lower clergy had undoubtedly suffered from the hard times experienced by the church since the revolutionary years. However, it was also the case that the government systematically prevented the Catholic Church to make improvements to its education system (Bos 2009, 197).

opposition to the decrees of 1825, a clear connection between the civil liberties in the constitution and the right of the Catholic clergy to establish public schools.[25] Catholics, so they argued, were only claiming the same liberties for themselves as the 'anti-Catholics' and 'liberals' enjoyed.[26] The right to organise education, so they argued, stood at the very centre of these liberties. The government, by monopolising education, imposed a control on the 'opinions, customs and mores' of the people, and thereby on 'the freedom of the people' itself. The Northern Catholics furthermore took the lead in organising a Catholic opposition in the Second Chamber (de Valk 1998, 91–93).

The opposition by the higher clergy against a state monopoly in education also inspired a number of Catholic representatives and journals in the South. Most remarkable in that sense was undoubtedly the intervention in the Second Chamber in December 1825 by Etienne Constantin de Gerlache, a conservative Catholic who was moderately supportive of the government and the king (de Gerlache 1825). Gerlache first of all invoked some general principles on the basis of which the government had no right to monopolise education. Natural right instructed that the faculty to provide education and instruction was reserved for the head of the family. This right was irreconcilable with the decree on secondary education, since it only left a *pater familias* with the choice to send his children to a school established by the government. Furthermore, Gerlache argued, the recent history of France showed what could happen if one allowed the government to create a monopoly: it resulted in a situation in which the public education system had constantly to adapt to an unending succession of different political regimes. It was necessary, therefore, to take 'a certain principle that stands above the politics and the passions of the moment,' and that rule was 'the freedom of education.' In his rejection of exclusive rights of the government in education, Gerlache also referred to the legacy of Bonaparte, 'who centralised everything, establishing in its wake a despotic and military government ….' He admitted

[25]The main source on Van Bommel's opinions is an anonymous pamphlet from 1829, which is attributed to him: [C. R. A. van Bommel] *Essai sur le monopole de l'enseignement aux pays-bas* (Antwerp, 1829).

[26]This argument was, among others, made by Le Sage ten Broeck in the *Godsdienstvriend*, the most important journal of political Catholicism in the Northern Netherlands (de Valk 1998, 90–91).

that the Napoleonic model 'is, to some extent, maintained in France,' but he insisted that it should 'not be an example to us, who live under a system that is both free and *paternel*.' Gerlache thus explicitly rejected a state monopoly on the grounds that 'it would be incompatible with our [current] institutions that consecrate liberty, and … the multitude of religions.'

The arguments of Gerlache would be backed up by the Catholic journal of Liège, *Courrier de la Meuse* (abbreviated CM) of Pierre Kersten, who stood in close contact with him. As in the case of Gerlache, the journal argued that the realisation of a state monopoly in education would only be thinkable under an entirely different constitution, and under a royal house that was Catholic (*CM*, 7 March 1829). Making a comparison with the United States of America, the journal argued that freedom of religion was the only possible principle upon which a successful integration of the North and South could be accomplished. Both countries (the USA and the Netherlands), so Kersten argued, were confronted with diversity in language as well as in religion. As in the United States, the union and integration of the Dutch and the Belgians in the Netherlands could only be accomplished if Protestants and Catholics 'have no reason whatsoever to envy one another, when the former as well as the latter would be free in the sense of the constitution' (*CM*, 22 January 1829).

What distinguished the politics of the Liège-connection Gerlache-Kersten, was that it was aimed at finding an accommodation with the government, where the Catholic opposition had generally been intransigent or confrontational. This can be explained by the strong Northern character of the opposition of 1825, but also, possibly, by a different political culture in Liège, which before the French period had been a prince-bishopric independent of the rest of the Southern Netherlands. Illustrative for this wish for accommodation with the new government was a report sent by Van Bommel to William I in 1829, in which he tried to convince the latter of the opportunity of the liberal viewpoint on religion, and which had the revealing title: 'System of unlimited liberty of the cults and religious opinions.'[27] The key of Van Bommel's 'system'

[27] *Système de liberté illimitée des cultes et des opinions religieuses, mis constitutionnellement en rapport avec la loi fondamentale du Royaume des Pays-Bas et spécialement appliqué au culte catholique*. See on this report: Monchamp (1905, 46–71) and Bornewasser (1977, 283–284).

was to combine 'freedom' with 'protection,' two principles which were inscribed in the constitution. Freedom meant the free exercise of all 'existing' religions, with the only restriction that public order could not be disturbed. The government needed to be completely neutral in religious matters, as it was the case in the United States of America. As Gerlache, Van Bommel suggested that this was the only possible solution to accommodate the religious division between the North and South of the Netherlands. The *Collegium Philosophicum* had to be closed, as it was in complete contradiction with the principles of a liberal-constitutional state. The government had to abstain from any interference with the appointment of clerical staff, and the re-institution of regular orders should not be obstructed. At the same time, Van Bommel explained, the government should offer protection for the 'established' religions, by redistributing part of its income to the churches. In return for this protection, combined with general religious freedom, religion and Catholicism in particular, would provide the solid bedrock for the throne as well as for public morality.

In a similar attempt to show goodwill towards the government, the Belgian representative Gerlache made in his speech a distinction between the new political movement of Catholicism and 'ultramontanism,' making it clear he opposed the latter. 'Ultramontanism, understood as an inclination of spiritual authority to invade the rights of temporal authority, does no longer exist,' Gerlache pointed out. He admitted that there had been a time that education was completely dominated by the clergy, but insisted that, 'since the time that the thrones and the governments had consolidated themselves … it would be historically false to insist that ultramontanism possesses the means to trouble seriously the tranquillity of states.' Already since the seventeenth century the Jesuits had no longer represented any threat, the author argued. Even if the 'Society of Jesus' were allowed to re-establish itself, it would be re-established in the pitiful position it had been left in by 'Jansensists, parlements, and *philosophes*.' However, the deputy still supported the continued interdiction of the order, since the simple evocation of their name was of a nature, in the Netherlands, 'to awaken devastating debates.' What Gerlache hereby did, therefore, was present a historical misrepresentation of ultramontane Catholicism in the Southern Netherlands, to argue that reclamation by the Catholics of the freedom of education could in no sense present a threat to the

government and public tranquillity. He seemed to imply that a conservative but transigent type of Catholicism had since some time prevailed in the Southern Netherlands, and the battles over *Staatskirchentum*, Jansenism and so on had become outdated.

King William initially commented positively on Van Bommel's rapport to his secretary of state, Jean de Mey van Streefkerk, and said that it had brought him into contact with a '*nouveau monde*.' But, as the Dutch historian Johan Bornewasser has pointed out, this was in the eyes of the king still a world of 'pure theory and sophisms' (Bornewasser 1977, 285). Part of William's rejection was predetermined by his monarchical interpretation of the constitution. In view of the refusal to accept ministerial responsibility and of the submission of the judiciary to the political powers, it was only logical that the government also denied that unlimited freedom of the printed press, of education and of religious opinions was in accordance with the constitution. In contrast to the United States, the country to which the 'constitutionalist opposition' around Van Bommel and in Liège referred, the king did not believe these ideas were applicable to 'the old Europe, where the vastness of the states is limited, which has a larger population, and where the laws and customs of centuries have created rights, claims, views, opinions, biases, habits etc.; which implies that matters have to be considered from the point of view *how they are*, and not *how they ought to be*…' William further insisted that 'unlimited freedom of religion' could in particular not apply to Roman Catholicism. No other church, so he insisted, 'engages more with worldly matters than the Roman-Catholic one.'

6.5.2 Classical-Ultramontane Opposition Against the Revived Idea of a 'National Church'

Whilst the liberal-constitutionalist opposition believed that freedom of religion, expanded to the field of education, was a necessity to a multi-religious state, King William chose a very different direction. He wanted to establish a unity of the different Christian churches in the Netherlands, as part of his plans for uniformisation and nationalisation. Not only language, law and education but also church and religion became considered as instruments for nation-building. The king, as became clear from a document that he sent to the envoy in Rome, envisioned a future in which the royal heads of state, Catholic or Protestant, would

also be 'spiritual leaders of their states,' and as such exercise the highest authority in spiritual matters for both Catholics and Protestants.[28] For the Catholics this meant that the king became the official negotiator with the pope, ending all direct contact between the clerical hierarchy and Rome. The pope, in turn, would become the symbolic head of the whole Christian world. The king believed it would be crucial for the realisation of religious peace to avoid henceforth all theological disputes. He explained that theological differences, for example about the absolution of the sins, would need to be resolved by recognising that the different denominations were ultimately inspired by the same scriptures. Furthermore, the king expressed his belief that a number of changes were required in the rituals of the different churches, to make it possible to introduce a common attendance of mass for all Christian believers. He concretely suggested that the use of the national language would have to be accepted, as well as the marriage for priests.

The first major challenge, however, was to bring the Catholic Church under the direct supervision of the state. For this the government started to prepare in the first half of 1826. The king tasked Van Maanen to come up with a plan to that extent, and, to make sure his most trustful minister got the right idea, provided the latter with a number of famous treatises on *Staatskirchentum*.[29] In the short term, William wanted Van Maanen to come up with a solution for the appointment of bishops for the episcopal seats that remained vacant, in a way that would grant the government a strong say in the matter. He also wanted full secularisation of the religious orders, secure clear primacy of the civil over the religious marriage, and the creation of a national council of bishops presided over by a royal commissar. Van Maanen produced a report on the organisation of the Roman-Catholic Church, containing elements borrowed from the Napoleonic legacy and the doctrine of *Staatskirchentum*. The result would have been a 'national church' with the government (the king) at its head (Bos 2009, 213). In the course of 1827, the plan of Van Maanen was however put on ice, as a breakthrough occurred in the negotiations on the Concordat. However, after a Concordat was indeed

[28]For an in-depth discussion of this source, 'Opstel des konings': Bornewasser (1977, 275–280).

[29]The most important was a treatise by Alexander Müller, an enlightened Catholic from Münster, titled *Beiträge zu dem Künftigen Deutsch-Katholischen Kirchenrechte*.

concluded, King William immediately suspended its ratification, with the excuse that its execution required a constitutional revision (Bornewasser 1977, 264–269, 271). As a result, the ultramontane-Catholic opposition in the Belgian provinces resurged. It was triggered by a brochure entitled *Observations sur les libertés de l'Église Belgique*, written by Piet Van Ghert (Van Ghert 1827), and distributed by Van Maanen to all public servants (Rogiers 1984, 16).

In the pamphlet Van Ghert endorsed similar arguments ushered by the king in reaction to the ideas on the necessary freedom of religion which Van Bommel had put forward. He argued that the Catholic Church 'has remained in complete ignorance regarding the boundaries between the temporal and the spiritual power,' and that it was therefore up to the secular authorities 'to prevent that public tranquillity would be troubled by encroachments of the spiritual into the temporal … to provide the victims of sacerdotal despotism with a recourse to the temporal power …' (Van Ghert 1827, 18–20).[30] The author conjured up ancient legal formulas as *droit d'appel comme d'abus* and *recursus ad principem*, and with them the ghost of the Jansenist reform movement and the *Église Belgique* doctrine (Van Ghert 1827, 21, 22, 50, 52, 53, 55, 94, 97).[31] He supported for his case in favour of an expanded control by the government over the Church on 'the ancient doctrine of Leuven,' emphasising that the suppression of the Faculty of Theology in Leuven in 1797 had deprived the young people from a proper instruction in the canonical law. He therefore implied that the contemporary instruction of clerics in the historical-legal position of the church in the Netherlands was flawed (Van Ghert 1827, 13–17). The legitimacy of the Organic Articles, the author further

[30]The author further wrote that 'the ecclesiastical censorship is a punishment which has temporal effects, since they touch upon the honour of citizens and are indistinguishable from the most terrible evils.' The implication, in the opinion of Van Ghert, was that it was a duty of the sovereign state to defend the citizens where they could not defend themselves against injustices inflicted by the clerical authorities (Van Ghert 1827, 57–58).

[31]Not surprisingly, Van Ghert referred in support of the legal-historical validity of *recours au prince* to the works of Zeger-Bernard Van Espen published in the beginning of the eighteenth century (see Chapter 5). The *appel comme d'abus* was a procedure of filling a complaint with a secular court about ecclesiastical affairs, resulting in a case being taken from an ecclesiastical court to a secular court, and, as such, constituted one particular type of *recursus ad principem*. The *appel comme d'abus* was of French late medieval origin, and,

argued, needed to be considered in light of the historical tradition of the placet in the Netherlands: 'one has always accepted, 1° that the laws promulgated by the Holy Father in Rome were not obligatory for the inhabitants of the Netherlands … that, before they could receive force of law, they had to be accepted and published [by the secular authorities]; 2° that the encyclicals, briefs or restrictions of the pope could not be received nor executed before having received the royal placet ….' The same duties had been attributed to the new head of state, in the author's view, by the Fundamental Law ('particularly articles 190, 191, 193 and 196').

Van Ghert's pamphlet was clearly in opposition with the discourse on the historical relation between church and state in the Southern Netherlands that since the late eighteenth century prevailed among Catholics (see Chapter 5). Furthermore, Van Ghert struck a clearly anti-liberal tone when he specified the cases in which an 'unlawful' intervention by the clergy in temporal matters would allow for an intervention by the public power. Having come to article 6 of the Organic Articles, the question at hand, Van Ghert insisted was, 'if [a government] must suffer that a priest inspires Catholics to defy the social institutions, that he motivates them, by all kind of occult means, to violate the fundamental laws…?' (Van Ghert 1827, 48). In the opinion of Van Ghert, a 'transgression' therefore took place at the moment that a priest took a critical position on the government or on the laws of the country. When it came to the relation between religious principles and secular laws, the author remarked: 'How many people in a country… are capable of passing judgement in such matters? The large majority has in these matters to rely entirely on the word of the priest, whilst the latter, either by ignorance, by prejudice or by any other reason is rarely a competent judge' (Van Ghert 1827, 49). This implied that, with regard to the fundamental political questions, the government was to be the only source of wisdom and, on the ground of the nefarious influence of the clergy, there could be no space for a free public discussion on such matters (Van Ghert 1827, 51).

after being abolished during the Revolution, was reintroduced in France by the Napoleonic Law on the Organization of the Cults of 1802. In the Southern Netherlands, the *d'appel comme d'abus* was therefore, in the words of Vincent Viaene, 'the concordat's successor to Van Espen's *recursus ad principem*.' See van Rhee (2003) and Viaene (2003, 367).

The publication by Van Ghert evidently stirred criticism in clerical circles. The most important reaction came in the form of a long pamphlet by the leading clericals in the major seminary of Ghent (van Crombrugghe et al. 1827). The authors tapped first of all into the ultramontane discourse on the historical relation between church and state. The plan of Van Ghert reminded of the *Église Belgique* project, a national church with its own rules and discipline ('liberties') with the prince as its guardian. The authors argued that it had since long been proven, that before the midst of the eighteenth century, the time when this plan first emerged, 'the denomination of *Église Belgique* was entirely unheard of in our country …' (van Crombrugghe et al. 1827, 5). Concerning the royal placet, the authors insisted that 'the church has the right to publish its dogmatic decrees independently from the secular authorities …,' and that 'in Belgium, … it is an incontestable fact … that all pontifical encyclicals … have always been published without any obstruction, without any civil authority claiming for itself any restrictive rights etc.' In the case of arguments to the contrary, the authors insisted, it would be easy to uncover their Jansenist origin. Jansenists had consciously aimed at inventing such an alternative tradition, in order 'to escape the condemnations of the errors of their new sect' (van Crombrugghe et al. 1827, 52–54).[32]

This reaction made it clear that political Catholics in Belgium were not disinterested in the ancient disputes, as Etienne de Gerlache had claimed. However, also the Ghent Catholics easily shifted from this historical-legal discourse to a more general argument on the relation between religion and the state, for which they were most likely indebted to the journalism of Leo de Foere. 'It is true that Protestants,' the authors explained, 'attribute to their political heads of state extended powers in the arrangements of their religion.' Catholics rejected this on the basis of their doctrine, but Catholics, so the authors pointed out, 'also know that, with these kind of liberties [i.e. the regalist tradition], nothing prevents a government, less wise

[32]The authors admitted that certain edicts interfering with papal decisions had been issued before the emergence of Jansenism by the councils, but Jansenists had exploited them in claiming the existence of a regalist tradition in Belgium. These older edicts, in the eyes of the authors, had only concerned so-called *matières mixtes* (van Crombrugghe et al. 1827, 54).

than that of our king, to proclaim [first] a union between the Church of Utrecht and the Catholic Church; and, once this step taken, … a union of these churches with the different sects of Protestantism, brought together under the impressive name of a *national church*.' The French Revolution had made the consequences of such a policy of nationalisation clear, when 'the violence and the new plans of ecclesiastical policy produced nothing but deplorable discussions that mutilated religion.' The authors then asked, 'if it was a wise and human policy to continue the prosecutions against those who resisted to [such] innovations?' 'Force … can obtain nothing against the soul, [and] acts of violence can create nothing in religious matters, but only be an instrument of destruction…' This critical assessment of the religious policy in the wake of the French Revolution resulted in an argument in favour of the necessary separation of church and state: 'A government always compromises its power when it makes the rewards and punishments of the law [on the one hand], and the rewards and punishments of religion [on the other], dependent on each other.' The authors easily shifted, therefore, from ultramontane arguments to arguments of a liberal nature. 'Has experience not made it abundantly clear,' the authors pointed out, 'that, by making use of terror and torture, one does not increase the number of good citizens, one only decreases the number of [good] men' (van Crombrugghe et al. 1827, 66–68).

6.5.3 Ultramontanes and a Discourse of Civil Rights on Education

Finally, also in the discussion on education, the Belgian clergy demonstrated that they easily shifted from a language of ancient rights to a language of individual freedom and civil rights. In fact, in this discussion, the latter clearly became dominant, presumably because, in contrast to issues such as the *ius placiti* and the *recursus ad principem*, education was less exclusively a Catholic matter. A clear illustration of this was a polemical discussion, situated in Ghent in 1827, between a Dutch professor at the Ghent University, Louis-Vincent Raoul, and journalists of the most important Flemish Catholic journal of the time *Le Catholique des Pays-Bas* (primarily the young priests Désiré-Ignace Verduyn and Joseph-Jean De Smet),

which was founded in Ghent in 1826 and was generally considered as a successor to Leo de Foere's *Le Spectateur belge*.[33,34]

In the government-friendly journal *Le Journal de Gand*, Raoul, a French exile who was appointed at the Ghent University as literature professor and also wrote articles in support of the government (Lemmens 2011, 1169), presented his argumentation why the government was not in violation with the law when it aspired to establish a state monopoly in public education. Raoul reacted against articles in the Catholic press, which had emphasised the Catholic right to organise education, on the ground that it was to the apostles and not to the princes that Christ had given the instruction to educate the people. Raoul acknowledged that the clergy had held an exclusive control over education in the past, but insisted that 'one would have to renounce to all kinds of social amelioration, if, in civil affairs, one only looked at past institutions as rules and models' (Raoul 1827, 24). Raoul further placed the Catholics, with their demands, in clear opposition to the constitution, since 'among us … one does not know a dominant religion, one only knows equal citizens, submitted to the laws and to common obligations, and free in their particular beliefs' (Raoul 1827, 25). At the core of the argument of the professor of Ghent was the idea that a 'liberal' state of affairs meant that religious education had to be banned entirely to the private sphere (i.e. to the masses on Sunday), on the ground of an absolute separation between the 'sacred' and the 'profane,' between religious 'dogma' and 'morality' (Raoul 1827, 25, 42). 'Is there [can there be] anything else,' Raoul asked, 'in

[33] Raoul afterwards published a brochure which contained (fragments of) the articles in *Catholique des Pays-Bas* and his own articles (under pseudonym M.K.) in the *Journal de Gand*: Raoul (1827). Our following analysis is on the basis of this brochure, and a brochure that the Catholic journalists published afterwards in response (see further).

[34] At the same time of the prosecution of Broglie (see pp. 164–165, footnote 20–21), the government also initiated a criminal case against De Foere (as well as his printer Corneille de Moor), which led to his conviction to two years imprisonment on the basis of the riot law of 1815. After his release from prison in 1819, De Foere revived his journalistic activities, but avoided henceforth direct confrontation with the government (see also Chapter 8). He had already been engaged with a lot of charitable work in Bruges (the profit of *Le Spectateur* had served to finance a school for lace-making for poor women), and became in 1823 rector of the English convent in the city. The publication of *Le Spectateur* ended in 1824.

a kingdom as ours, in which all religions are free, than public schools in which the children of all communions are admitted indistinctly?' (Raoul 1827, 65).

Le Catholique des Pays-Bas, the Catholic daily sponsored by the Ghent diocese, found it 'surprising… that one attributes to the priests an exclusive right, whilst it is us who are proving that this exclusive right does not exist' (Raoul 1827, 77). To make the point that the public authorities had no right to organise education all by itself, the authors came up with a series of encyclicals, proclamations and texts from the history of the Netherlands (Raoul 1827, 107–108). Moreover, the authors insisted, 'let's ask a Protestant, a Calvinist, a Lutheran, or any other non-Catholic, if his religion allows him to attribute to the sovereign the exclusive power of education.' Therefore, the conclusion was that the idea that the government had exclusive power was in violation with *any* religious doctrine (Raoul 1827, 121–122). The authors went on to argue that exclusive official education was harmful to religion in a general sense. The government justified its exclusive right to provide education on the basis of the distinction between civil and religious education, meaning that by organising the former, they did not claim a monopoly over the latter. This distinction, however, so the Catholics argued, was illusory. It was impossible, 'that the stability of religion would not be compromised, if one did not connect the instruction [in religion] with the one in literature and science' (Raoul 1827, 137).[35]

On the other hand, there was the issue of religious instruction in the schools established by the government, which was raised by the Catholic authors in a pamphlet they published following up on the debate with Raoul, and in which also Jean-Joseph Raepsaet had a hand (Raepsaet et al. 1827).[36] Raoul had insisted that the exclusive system would be 'a Christian but tolerant education.' But how did Raoul imagine, the Catholic authors inquired, 'that in our national schools the Christian religion could be taught, without offending the opinions

[35]The journal furthermore defended also the freedom of the press as an essential instrument to expose the abuses that 'sneaked' into the institutions of the state (Raoul 1827, 140).

[36]For the authorship see Rogiers (1984, 31).

of a Jew; that one would speak of the divinity of Jesus Christ, without provoking a Socinian … etc.' This was in fact an implicit recognition of the right of other (even non-Christian) religious communities to organise their own school system (Raepsaet et al. 1827, 47–48). In this regard they also pointed out the contradiction between the plans of the government and the Fundamental Law: '[T]he exclusive system is no less in contradiction with the Fundamental Law, which does not at all recognise an absolute right on education, a right that a liberal constitution necessarily excludes…' 'It would be insulting to the fathers of our constitution,' so the pamphlet continued, 'to assume that they consecrated this system with the same pact that guarantees our liberties and protects our rights.' Education, the journal concluded in a phrase that echoed Benjamin Constant, 'is a question of principle and of public right applicable to all sovereignties' (Raepsaet et al. 1827, 70–71).

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After 1825 the higher clergy, supported by a part of the Catholic press, embarked on a liberal-constitutionalist opposition against the government over its policies in education. This was commonly interpreted as the beginning of a new course of political Catholicism in the Southern Netherlands, a move that had already been prefigured by the accommodation of Catholics with the constitutional order in 1817. However, the picture is more complicated. After 1825 the ancient disputes over Jansenism, a national church and so on did not become obsolete, as Etienne de Gerlache wanted the political establishment to believe. They even revived over the renewed attempts by the government to impose control over the church. If Catholics after 1825 also increasingly turned to liberal arguments, this happened primarily in response to the fact that the neo-regalist policies by the government were at the same time outright illiberal and in violation with (a liberal interpretation of) the constitutional articles on religion. Moreover, rather than constituting a break from earlier political action against the Fundamental Law, the invocation of civil rights to a large extent originated in this 'anti-constitutional' action. Furthermore, there was also a thrust towards a secular endorsement of the civil liberties, spearheaded by the journalism of Leo de Foere, which needs to be understood within the political culture of the Southern Netherlands. The emphasis on civil rights emerged,

in this case, as an ersatz cause to compensate for the loss of 'political rights' and the lack of legitimacy of the new constitutional order.

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PART III

Revolutionaries

CHAPTER 7

A Union of Catholicism and Liberalism

7.1 *L'Observateur* and *Le Spectateur belge*: The Early Rapprochement Between Catholics and Liberals

Already during the early years of the Restoration, liberals and Catholics expressed, through their predominant political journals, sympathy for each other's ideas and arguments on numerous occasions.[1] Leo de Foere in *Le Spectateur* even openly expressed enthusiasm about a rapprochement between liberals and Catholics, writing about 'small forces that reunite and produce big results' and 'efforts isolated but aimed towards a common centre substituting a little bit the impotence of men.' De Foere acknowledged that 'whilst [*Le Spectateur*] was not able to study the general march of affairs of state in this country, other *observateurs* filled the void … with eminence,

[1] On the exchanges between *L'Observateur* and *Le Spectateur* and their mutual support, see also Bartier 1975. Bartier argued that the mutual respect between Leo de Foere and Pierre-François van Meenen can be attributed to the intermediary role of Norbert Cornelissen, another contributor to *L'Observateur belge*, and that, whilst there is no evidence that De Foere and Van Meenen effectively met, Cornelissen has definitely undertaken attempts to bring them together (Bartier 1975, 52–54). Bartier also pointed out that De Foere and Van Meenen shared a great admiration for Bossuet, which might have 'facilitated' their rapprochement.

S. Marteel, *The Intellectual Origins of the Belgian Revolution*, Palgrave Studies in Political History,
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talent and courage …'[2] Van Meenen in *L'Observateur* gave similar compliments to *Le Spectateur*. At the time of the trial against Leo de Foere, the editors of *L'Observateur belge*, as well as other liberal journals, organised a petition in protest of his conviction and in support of the continued publication of his journal (Bartier 1975, 52). The liberal press often struck a reconciling tone, even when certain clerics showed themselves from their most intransigent side. In an article of *L'Observateur belge* of early 1815, Pierre-François van Meenen insisted that 'the religious fanaticism and demagogy which were able to mislead one part of the Belgians, and, in 1789, impose terror on the other part, are today totally disarmed,' and that 'it would be unfair towards our contemporary clergy to bring back to mind the conduct of a considerable part of its members in 1789, unless with the intention of pointing out the spirit of wisdom, moderation, dignity and truly evangelical charity that characterise it today.' This development could be attributed to a 'fortunate revolution, the progress of enlightenment and sociability' (van Meenen 1815a, 221–222). The journal came with a similar defence of Christianity against ('a faction of') the clergy, when Bishop de Broglie issued his infamous *Instruction Pastorale*: 'Should the spirit of moderation, humility, tolerance, and charity, which pervade the gospels, have to surrender to the authority of one pope and the utterances of one bishop … [?]' (van Meenen 1815b, 399).

L'Observateur later also took issue with the government for interfering with religion and the church: Whilst Catholics needed to endorse Christ's affirmation that 'my reign is not of this world,' the journal insisted, everyone supported them in saying to 'the princes' that 'Your reign is *only* of this world' (Anon. 1818, 273). The issue of religion also became integrated in the discourse of the liberals against 'nationalisation.' In his article on the speech by Joan Melchior Kemper, Pierre-François van Meenen protested against the aspiration of the government to replace the existing (French) codes of law with 'national' ones, on the grounds that governments should not be primarily preoccupied with

[2]Quoted in Bartier (1975, 51–52); original source: *Le Spectateur belge* 7 (1819): 4. When *L'Observateur* ceased to exist, De Foere, in *Le Spectateur*, paid tribute to 'the most remarkable journal on the basis of its talent which was published under the kingdom, and the journal the most useful to the state'; quoted in Bartier (1975, 61); original source: *Le Spectateur belge* 10 (1820): 210–211. See also: Harsin (1930, 22).

developing an (artificial) 'national entity,' but should take guidance from 'universal civilisation.' Extending his argument to religion, Van Meenen then argued that, 'to the extent that we purge [our religion] of superstitions of so-called *religious nationalities* and of *intolerance* …, we witness the reappearance, in all its purity, of the true Christianity, which is but the eternal light that enlightens all men coming into the world…'[3] (van Meenen 1819, 339).

The approach of the religious issue by *L'Observateur* was comparable to its assessment by Benjamin Constant, the most influential French liberal thinker of the time. The French liberal has long held the reputation of a thinker of an egoistic individualism. He has been accused of defending ideas which unavoidably would lead to 'social dissolution' or 'atomisation' of society. But, as a number of historians in more recent times have convincingly argued, Constant was very preoccupied with the importance of individual morality for the public good, a concern which was perfectly complementary with his 'small government' liberalism.[4] As American historian Helena Rosenblatt has pointed out with regard to his *Principles of Politics* of 1810: 'Moral apprehensions pervade the entire manuscript from start to finish… What readers have overlooked is that such moral concerns lie at the very heart of Constant's liberalism' (Rosenblatt 2008, 126–127). The moral vision that pervaded Constant's thought was to a large extent indebted to his Protestant beliefs. As many French contemporaries, he also believed that the Catholic religion is better suited to monarchies, whilst Protestantism is better adapted to a republic. In his early years he even encouraged the republican government to actively promote Protestantism (Rosenblatt 2008, 51–52, 132). However, Constant soon became disillusioned with the republican notion of 'regenerating' the nation, the idea of morally transforming France's Catholic subjects into republican citizens, 'through a combination of legislation and republican institutions imposed from above'

[3]Van Meenen added that 'two books, the New Testament and the book of roman law, are the source and the foundation of all European civilisation' (van Meenen 1819, 339).

[4]This side of Constant's work has led George Armstrong Kelly to assert that Constant's real contribution to political theory lay not so much in any prophetic abilities regarding the 'excesses' or problems of modern democracy, but rather in his innovative attempt to 'spiritualise liberalism' (Kelly 1982, 514). Helena Rosenblatt supported Kelly's point of view, calling the 'extraordinarily pessimistic reading of Constant … truly baffling' (Rosenblatt 2004, 447). See further also Jaume (1997, 77–82) and Garsten (2018).

(Rosenblatt 2008, 125). Constant regretted in his *Principles of Politics* that, too often, religion in the hands of the government was used as a political tool. This instrumentalisation of religion, he now believed, led to its 'abasement' and gradual decline. For the sake of liberty and of religion, government should leave religion 'perfectly independent.' He quoted a member of the French Constituent Assembly of 1789, Stanislas de Clermont-Tonnerre, to make the point that 'religion and the state … are two quite distinct and separate things, which, when brought together can only distort both one and the other' (Rosenblatt 2008, 135; Constant 1810, 145–146).[5]

Of course, even when the intellectual roots of the later union between Catholics and liberals in these early journals is undeniable, their representativeness for the respective liberal and Catholic side of public opinion in the early years is therefore not ascertained. Even when both journals obtained high numbers of subscriptions (Bartier 1975, 59, 62–63), and were generally recognised for being very influential, they also encountered criticism and provoked controversy. With regard to *L'Observateur*, this concerned primarily people, sometimes even former collaborators to the journal (as Antoine Barthélémy and Jean Tarte), who found the journal, and Van Meenen in particular, increasingly too negative towards the new regime. In terms of social interest, many considered the journal in the beginning as the defender of all those who had served the government and the administrations under French rule, and who feared exposure to reactions and prosecutions. Gradually, however, these fears subsided and many former 'collaborators' now embarked on professional careers in the institutions of the Kingdom of the Netherlands (Bartier 1975, 63). Also, the improving economic situation in the early 1820s and the policies of the government in support of the industry in the Southern provinces attenuated (temporarily) the political dissatisfaction, and decreased the receptiveness for the discourse of *L'Observateur*. Many among the liberal middle classes, moreover, did not follow *L'Observateur*

[5] Altered translation by Rosenblatt. Constant also changed his negative views on Catholicism. In the second volume of *De la religion*, he insisted that 'nothing I have written can be misinterpreted, by those with good intentions, as an attack on priests.' The only thing he opposed was, 'the alliance of despotism and priesthood.' He paid tribute to a tradition within Catholicism of defying this alliance, consisting of people who 'never ceased to repeat to kings that the laws were the foundation and limit of their power [e.g. Fénelon, Massillon and Fléchier].' Quoted in Rosenblatt (2008, 210).

in its rapprochement towards the Catholics. However, what is noticeable at this point is that, to the extent that anticlericalism found political expression in the independent press, this was predominantly within the journals originating from within the considerable French exile community in the Southern Netherlands, and primarily Brussels, such as *Le Libéral* and *Le Vrai Libéral*.[6] Although these journals were important as a 'hatch' in the intellectual transfers that took place between French writers and intellectuals and the Belgian scene, they primarily wrote from a French perspective, taking aim at the Bourbon monarchy and Restoration conservatism in general; and they probably also looked at political Catholicism through French eyes, identifying it with the writings of Louis de Bonald and Joseph de Maistre.[7]

Le Spectateur belge, on the other hand, provoked controversy among Catholic writers for its critical stance towards the French Catholic authors as Joseph de Maistre (see next chapter). De Foere himself admitted often being accused of being 'a disguised Jansenist' (which he obviously was not) (Bartier 1975, 59). However, in spite of certain contentions in that sense, it is remarkable that the journal never lost its support from the higher clergy and continued to be the most important clerical press organ until it ceased to be published. In an article aimed at 'exposing' the attackers of *Le Spectateur*, De Foere made it clear where in his opinion his enemies had to be situated: the campaign was orchestrated by 'individuals that are abound with riches.'[8] Did they imagine, he asked, that 'their titles (of nobility) give them the monopole over those sentiments [of loyalty and delicacy],' did they not understand 'that honour is based on virtue and personal merit?' He continued to take aim at 'the ridiculous pretentions of those who would like that everything turns silent in front of their titles, that one sacrifices everything, including one's personal honour.' Unfortunately for them, however, 'those

[6] *Le Vrai Liberal* was a 'spinoff' from the journal *Le Libéral*, which itself resulted from a fusion between the *Nain Jaune Réfugié* and *Le Mercure-Surveillant* (Lemmens 2011, 1179).

[7] Systematic research on the importance and influence of the French exile community and their networking and journalistic activities is still missing, but a PhD-thesis is being written by Wim Lemmens at the Free University of Brussels which will probably fill the void. See Lemmens (2011).

[8] Quoted in: Bartier (1975, 59–60); original source: *Le Spectateur belge* 15 (1822): 273–282.

days of slavery and abjection are gone and won't come back.' It was clear to De Foere that the attacks against him stemmed primarily from aristocratic circles. They embraced a different strand of political Catholicism (as will be discussed in the next chapter), distinguishable from the mainstream ideas of political Catholicism represented by De Foere.

L'Observateur and *Le Spectateur* seem therefore to have been the quintessential publications for the intellectual development of, respectively, liberalism and political Catholicism in the Southern Netherlands in the years 1815–1825. However, this does not mean that in 1828 the *idea* of a union itself was not new, and non-conformist in the political context of the time. This chapter will explore how this idea took shape, and who were the people and the journals which introduced it in the political debate. In the next chapters, we will turn to the effects of the union.

7.2 The Second Phase of the Liberal-Republican Opposition

With the disappearance of *L'Observateur belge* in 1819 (for unclear reasons), the liberal opposition in the South remained bereft of its most important journal. Ferdinand van der Straeten, who because of his book and the following trial had become a figurehead of the liberal movement (see Chapter 4), established at the end of 1820 the journal *L'Ami du Roi et de la Patrie*. The daily newspaper, which in 1825 changed its name to *Le Belge, L'Ami du Roi et de la Patrie*, became renowned for its radical and populist language, but it failed to set the agenda of the opposition in a similar way as the *L'Observateur* had done.[9] Lucien Jottrand commented in his biography of Louis de Potter that the opposition, after the debate on the reform on the tariff system, remained behind in 'a climate of desperation' (Jottrand 1860, 23).

A number of reasons can account for why the liberal opposition failed in the midst of the 1820s to find a second breath. First of all, the new state seemed, from an economical perspective, increasingly successful. William's preoccupation with the expanding industry in the South, as well as with the development of a strong infrastructure of channels and

[9] On *Le Belge*, see Witte (2006, 225) and Vermeersch (1981, 481–495). Van der Straeten died in 1823 after he was prosecuted for his press-activities upon the initiative of Van Maanen.

roads, made the new government increasingly popular in industrial centres (Ghent, Antwerp, Liège). Secondly, in the debate on the future code of civil law the balance had shifted to the South, as Southern representatives were setting the tone in the newly established commission. Thirdly, the States General had in 1820, apart from rejecting the new law codes, successfully obstructed the passing of two laws that laid out the new organisation for the judicial system. Hereby they temporarily prevented the organisation of a judicial system which excluded the notion of the High Council functioning as a constitutional court. Although ministers continued to hide themselves in the parliament behind the (inviolable) king, they were nonetheless not always able to evade political responsibility (van Sas 2004, 418–421).[10] Anticipating the consequences of certain decisions, ministers at certain occasions took responsibility by resigning. Pressure hereby did not come from the chambers, but rather from a critical press, and in a rare case also from physical treats. The majority of the Second Chamber, on the other hand, continued to follow William I 'as a docile lion on a leach' (van Velzen 2005, 245–246).

If, after 1822, the opposition might have been relatively dormant in the South, it was inevitably to flare up again. At some point in time the government would have to push for a final settlement of the issue of the judicial organisation and to explicate its continued denial of ministerial responsibility, whilst the willingness to compromise on these issues remained among the Southern opposition as inexistent as that of the government. In Liège a new liberal journal, the *Mathieu Laensberg*, kept throughout these years the issues of the High Council and ministerial responsibility on the agenda. In August and September 1824, the journal published a series of articles on ministerial responsibility. In August 1826 it denounced a verdict by the *Cour de Cassation* in Liège, which denied courts the right to test the legality of administrative decrees (supporting on the Decree on Conflicts of 1822). The strategy of the government was generally to ignore such press. In any case, very little of what was written in the South in these years found resonance in the North (van Velzen 2005, 244).

[10]The actual influence which ministers had on matters of policy differed greatly according to the individual ministers. When ministers were able to exert influence, it was often thought threatening with resignation. The king, on the other hand, was in the selection of his ministers always searching for pliability.

The journal that did more than any other to revive the opposition in the South, in the spirit of *L'Observateur*, was *Courrier des Pays-Bas*. It was founded in 1821 as a continuation of *Le Vrai Libéral*, one of the major journals of the French exile community, but, as it was taken over by Belgians, first by Louis François Thonet and later Jean-Jacques Coché-Mommens, it turned increasingly to the political issues of the Kingdom of the Netherlands (Vermeersch 1981, 438–439). Initially the journal supported the government, especially in its policy on education and religion, and in 1824 Coché-Mommens even made contact with the government to obtain financial support. However, it changed course after 1825, as political-constitutional issues concerning the position of the judiciary, ministerial responsibility, freedom of the press and jury returned to the centre of the debate. Among the contributors would be a number of young lawyers, who, as we will later see, were strongly influenced, and mentored, by Pierre-François van Meenen. Furthermore, from 1828 onwards, the colourful Louis de Potter also joined the journal. He would become the spearhead and primary defender of the union with the Catholic-clerical opposition.

7.2.1 The Organisation of the Judiciary

In January 1827, the government presented the parliament a new law on the 'composition and organisation of the judicial power.' In the proposal, the High Council was not to have the function of a constitutional court, and, moreover, the new judicial organisation was to be established only after the introduction of the new ('national') codes of law. At the occasion of his address before the Second Chamber on the new judicial organisation, on 10 April 1827, Minister of Justice Van Maanen openly advocated the government's view on the constitutional order (van Velzen 2005, 260–263).[11] Van Maanen rejected the idea that the High Council could be anything more but the highest criminal and civil judicial institution. It was unthinkable to attribute the Council the role of final arbiter over the constitution. This would create an '*imperium in imperio*' and bring the court in direct confrontation with the monarchical power. 'Why is it that one wants to endow the judiciary with more inviolability … than that of the other institutions, or even of the king, who, in view of his elevated position, and from the nature of things, is the most impartial of all, and

[11] Original source: Handelingen Tweede Kamer 1826–1827, 10 April 1827, 362ff.

can have no other interest than the general interest of the state?' The king was not just the executive power, Van Maanen explained, but the '*tutor universae civitatis*.'[12] He anticipated the question about the possibility that the king himself would turn against the constitution: 'Gentlemen, when, God forbade, it would ever come to this, then the firmest principle of a complete independence of the judiciary… will truly be of no avail.'

Some in the North welcomed the law for its federalist character, as the judiciary would be organised on a provincial basis. The opponents, on the other hand, denounced the 'spirit of provincialism' and warned that the unity of the monarchy was being sacrificed in order to revive a 'federative aristocracy.' The most important spokesman of the opposition in the North was Willem Boudewijn Donker Curtius, who also published a pamphlet against the law.[13] As Jeroen van Zanten pointed out, the case by Donker Curtius for a division of powers and 'a strong but clearly defined state' was proof of an emerging political faction in the North that 'believed that good governance implied juridical, formal and rational politics, anchored durably in the constitution and the institutions of the state' (van Zanten 2004, 246). Nevertheless, the brochure by Donker Curtius at the same time exposed to what extent the legacy of the federative Republic continued to stand in the way of the endorsement by Northern representatives of new liberal-constitutionalist ideas. Donker Curtius presented his case against the law in the form of an apology for the archaic ideas that still influenced the political minds in the North. 'It should not surprise,' the author argued in his brochure, 'that the memory of the past, of a time when the Republic flourished, has left its mark on how the constitution of the monarchy was elaborated. One felt the need … to limit the legal authority, but the knowledge of the true constitutional monarchical government had still not fully gotten through to us. It was to be expected, therefore, that … one tended primarily to find a guarantee against monarchical absolutism [*alleenheersching*] in the provincial aristocratic principle' (van Zanten 2004, 241–242).[14] In sum,

[12]Van Maanen went even as far as invoking Benjamin Constant's notion of a 'neutral power,' to which Barhélémy immediately counter-argued that Constant's notion of a fourth power involved also 'responsible ministers.'

[13]W. B. Donker Curtius, *De verdediging der wet op de instelling der regterlijke magt van den minister van justitie getoets aan en wederlegt uit de grondwet, het belang des konings en dat der natie* (The Hague, 1827).

[14]Original source: Donker Curtius van Tienhoven 1827 (ft. 21), 31–32.

Donker Curtius, as well as the other members of the Dutch opposition, took the literal text of the constitution as their point of departure, and their national history as an excuse for its deficiencies. By implication, if modern constitutional principles were invoked, they were meant to be guiding principles for future political-constitutional development.

The Southern representatives rejected the organisation on a provincial basis, because they feared it would further restrict the autonomy of the courts towards the government. Furthermore, in the eyes of the Southern representatives, the new judicial organisation imperilled the idea of constitutional government, as it denied the High Council arbitration over the constitution. The insistence on a high judicial institution with authority to evaluate laws and executive acts on their constitutional legality was in the South further incited by a disappointment with the way judicial authorities had in previous years proved compliant with the political powers. The judges and the courts had rarely manifested itself as an independent power that could stand up in the face of the government, or the public prosecution. This has been attributed to a culture of *légisme*, which was introduced together with the Napoleonic reorganisation of the judiciary, and was, for that reason, particularly strong among within judicial institutions in the Southern provinces. From a principle of *légisme*, jurists limited their responsibility to checking if a law or decree had been drafted in accordance with legal procedures, and to subsequently establishing the content of the law on the basis of rules of grammar and the art of logic. Judges of this 'exegetic' school believed that a clear legal text required no interpretation by them, and that, in case of ambiguity, the legislator was to provide clarification. It meant that judges were inclined to follow the public authorities without criticism. They did not believe it was the task of the courts to judge on the legality of certain acts of government. They were not the guardians of the constitution, the protectors of the citizens against possible abuse of power, or the arbiters between the powers of the state; their sole assignment was to overview the procedure in which laws and decrees were made (Bos 2009, 225–226). The Blanket Law of 1818, which provided in penal sanctions for violations of executive decrees, as well as the Decree on Conflicts of 1822, which gave priority to acts of administration (at any level) over pronunciations by the judiciary, had confirmed the judiciary in this limited understanding of their task.

The government eventually succeeded in making the law pass, with 59 votes against 42, with a clear Northern majority in favour of it (only 7 Dutch voted against) and a clear Southern majority (35 members) voting against it (van Zanten 2004, 240).

7.2.2 The Jury and the Freedom of the Press

In the South, the rejection by the press and the representatives of the new judicial organisation was followed by strong criticism of the new criminal code of laws, proposed by the government in July 1827. This new code was considered in many ways a violation of individual rights. Most of all, the severity of the punishments, especially the preservation of the death penalty for an extensive list of offences, was denounced. The Southern press also started a campaign for the introduction of jury trials in criminal lawsuits.

The demand for a jury in the criminal court was inspired by the English example. A couple of articles on the question of the jury appeared in the Catholic journal *Le Catholique des Pays-Bas* (*LCPB*, 18–19 July 1827, 169–170), the Catholic journal that became the most important mouthpiece of the Catholics after the disappearance of *Le Spectateur belge*. The exclusion of the jury from the court was an 'illiberal' measure, according the journal. 'Men instructed and interested in the improvement of the social state have always taught that the trial by a jury is one of the most beautiful conceptions of the human mind, the best guarantee for the independence of judgments and a guarantee for the protection of innocence against power and intrigue.' The journal intended to present the readers a historical overview of 'the laws of different people,' in order to 'show the necessity of the institution of a jury in all government that is truly free.' It explained that the jury had already been well-known among the peoples of Antiquity: it existed among the Romans under the Consulate, among the Greeks of Athens and among the Germanic tribes. Trial by jury had subsequently re-emerged in medieval England. First it was brought to England by the Germanic tribes. Later, in feudal times under the Norman rulers, it had been suppressed, but the English had used the first favourable circumstance to reintroduce it, namely when the aristocracy imposed the Magna Charta on King John in 1215. However, it had still taken a long time to reach the level of perfection, which it finally did under the reign of Charles II. In sum, the history of England demonstrated that the jury-system was an inevitable

part in the history of a free nation, and that the public authorities always end up 'surrendering to the influence of public opinion.'

Trial by jury, however, found little support in the North. Most of the Northern representatives in the Second Chamber considered the arguments of the Belgians outdated. Moreover, they thought that, as an institution, trial by jury did not corrode well with the Dutch 'national character.' The institution might have been part of the constitutional traditions of England, France and the United States, but within the Netherlands it was a '*fremdkörper*.' In April 1829, the Belgian representatives Barthélemy and Van Combrugghe, with support of the Dutch representatives Donker Curtius and Pieter Carel Schooneveld, submitted a proposal for a jury-system. As a result of the general opposition of the Northern members, it was rejected by 66 to 31 votes (van Zanten 2004, 264–266).

The importance attached to trial by jury was also linked to another concern: that of the freedom of the press. A trial before a jury was seen as a possible guarantee against the use of arbitrary power against journalists who engaged in political opposition. Simultaneously with the debate on the trial by a jury, Belgian representatives also initiated a debate on the freedom of the press. The young liberal Charles de Brouckère intervened a first time in the Second Chamber in December 1827, and again in January 1828, to demand the abolition of the exceptional press laws of 10 and 25 April 1815 and 6 March 1818, the Riot Law of the time of the Hundred Days and the laws penalising agitation against foreign governments. In March 1828, Brouckère again held a discourse on freedom of the press, at the occasion of the discussion on a petition sent to the Chamber by the student Edouard Ducpétiaux. Ducpétiaux was being persecuted for violating the press laws after publishing a negative comment on a pamphlet in favour of the death penalty by Dutch public servant Carel Asser, *Apologie de la peine de mort, par M. Asser, avec quelques observations critiques*. In it, Ducpétiaux argued that it was inappropriate for a government civil servant to publicly defend the government with regard to a political matter (Wils 2007, 217–218).

Although the government announced in October 1828 that it would come with a proposal to replace the Riot Law of 1815, Brouckère submitted in November his own proposal for a clean abolition of the law, arguing that the penal code was a sufficient basis for persecution of the abuses made in the name of the freedom of the press. In his discourse before the Chamber, Brouckère recounted fifty cases where someone had

been tried on the basis of the Riot Law of 1815, which illustrated, apart from the extent of the policy of repression, to what degree the courts were compliant with the authorities (Bos 2009, 227). The urgency had recently been demonstrated again by judicial cases against the publisher and contributors to the liberal journal *Courrier des Pays-Bas* of the same month. The proposal was debated for five days under lots of public interest, from 27 November to 3 December, but rejected by 61 votes against 44, opposing the Dutch members against the majority of the Belgians (Wils 2007, 219–220). In the aftermath of this debate, the first of two major petition actions was initiated by the Catholic and liberal opposition forces: 378 petitions were sent to the Chamber signed by approximately 80,000 people, to demand, in order of frequency, freedom of education (320), freedom of the press (254), restitution of the jury (163), independence of the judiciary (131), ministerial responsibility (37) and freedom of language (about 40) (Wils 2007, 211).[15] Although the Second Chamber, after long debate, voted in favour of transmitting the petitions to the government (with 55 to 44 votes), this was eventually blocked by the First Chamber (Bos 2009, 218).

Eventually, a new press-law was proposed by the government and debated, and adopted, in April–May 1829. The new law was less restrictive that the previous laws, as only the direct provocation of public disturbances became prosecutable, and prosecution for insults or slander would only take place in case the grieved party filed a complaint. As Lode Wils pointed out, the government probably took a conciliatory position with regard to the issue of press-freedom in light of the upcoming challenge to pass the second decennial budget through the parliament (Wils 2007, 225–226).

7.2.3 Ministerial Responsibility

With the debates on the jury and the press, the issue of ministerial responsibility equally resurfaced. When *Courrier des Pays-Bas* declared that it held the ministers responsible for the address by the king delivered in Brussels on 19 October 1828, a brochure was published in response, later attributed to the Dutch author and teacher in literature Tielman Olivier Schilperoort (1828). Asking ‘what is sovereignty in the

[15] For the frequency of the different demands: de Jonghe (1943, 324).

Kingdom of the Netherlands,' the author insisted that 'the general aim of a Fundamental Law of a constitutional state is to prevent such shocks and revolutions, by determining expressively the exercise of sovereignty, not … in the sense of a separation of powers, but in the sense of their union' (Schilperoort 1828, 10–11). It was furthermore clear, the pamphlet continued, that 'after the liberation of the French usurpation, the exercise of sovereignty emanates, by right and by fact, from the king' (Schilperoort 1828, 11). The pamphlet further denounced 'this constant adversative juxtaposition of terms "power" [i.e. the public power] and "nation",' which he ascribed to the journalists of the *Courrier*. This was senseless, 'as the Fundamental Law does not attribute any prerogative of action to the nation' (Schilperoort 1828, 41).

Interesting was also a pamphlet by J. F. Wap, a professor at the military academy of Breda. It expressed not the government point of view, but that of the independent liberals in the North who rejected the radicalism of the opposition in the South (Wap 1828). Wap first came back on the question of the liberty of the press. He defended the provisional maintenance of the press laws of 1815 and 1818, reflecting the opinion of the majority of the Northern representatives. The question was, according to Wap, whether the opposition wanted a wise liberty of the press or 'licentiousness … without any repression.' In the first case, they should recognise that the provisional maintenance of the exceptional laws of 1815 and 1818 was required. The opposition itself proved that the penal code was not sufficient to limit press freedom, as it seemed that 'today one can write everything one likes about a minister; one almost doesn't consider him to be a human being' (Wap 1828, 15–16). The author further formulated what was a broadly shared opinion in the North about the political opposition in the South: 'Whilst one declares to be so attached to our Fundamental Law, one invokes, one reclaims with high voice, which applies only to the constitutions of other countries.' If it was true, therefore, that in the light of these principles there were some imperfections with regard to the Fundamental Law, the author insisted, 'then there exist legal and secure ways to remedy them, adopted at the time of its redaction […].' The author added that 'the success of constitutional oppositions depends on national trust' (Wap 1828, 30).

The core of the argument against the Southern opposition contained therefore a rejection of the idea that there existed a number of general principles, which were applicable to all constitutions. 'Even if we

suppose, which is far from sure, that your principles are applicable to certain constitutions, does it follow that they are equally so to all constitutions indifferently?' (Wap 1828, 39). Nevertheless, the author did recognise the need for 'some form of ministerial responsibility.' But even if this implied the recognition of a general principle, then the question still remained about the proper time to introduce it: 'A wise legislator must be able to proportion liberty to the social forces and their progressive development, as an experienced doctor makes a prudent choice of doses and quality in his supplies, which are all salubrious but not all equally appropriate to the hygienic state, the strength, the age and the digestive faculties of different individuals' (Wap 1828, 43).

As the Belgian representatives in the Second Chamber increasingly adopted the habit of the opposition press of constantly going after the ministers, and therefore implicitly reclaimed ministerial responsibility, Van Maanen also stepped into the arena. In the session of 2 December 1828 he formally denied, in reaction to a speech by Etienne de Gerlache, that in the government of the Kingdom of the Netherlands ministerial responsibility existed (van Velzen 2005, 289–290).[16] Van Maanen accused the Belgian journals of 'acting as some sort of magistracy' ('*eene soort van Magistratuur*'). He insisted that the press was claiming ministerial responsibility, in order 'to bring about the unconstitutional doctrine of an undetermined and unlimited freedom of the press,' as if that would be 'a particular and undeniable feature of a constitutional government.' At the core of the matter itself, Van Maanen repeated the argument that in the discussion of the issue 'only the constitution counted,' exploiting the fact that the constitution did not mention anything about ministerial responsibility. Moreover, in Van Maanen's view, the constitution was certainly not in need of improvement. The introduction of responsibility would result in the prevalence of the will of the people over that to the government, Van Maanen believed. This required that the people, on the basis of opinions and information in the press, would actually be able to form a will. This was impossible, according to Van Maanen. In his view, a political nation did not exist independent of the government.

In reaction to the intervention by Van Maanen pamphlets were published in the South by two young liberals on the issue of ministerial responsibility. One was by Jean-François Tielemens, a contributor to *Courrier des Pays-Bas*, written in April 1829. Tielemans, as van Meenen

[16] Original source: *Nederlandse staatscourant*, 5 December 1828.

in the past, agreed with Van Maanen that article 177 of the constitution did not provide in ministerial responsibility: 'It is impossible to find there a formal declaration of responsibility….' Article 177 only settled 'the jurisprudence and the procedure' for the persecution of ministers (for *normal* violations of the law), it did not relate to anything such as ministerial responsibility (Tielemans 1829, 3). But it was clear, to Tielemans, that in settling the matter of ministerial responsibility, one not only had to take the text of the Fundamental Law in consideration. The point of departure had to be, that 'our country possesses a Law that is supreme, sacred, general and above all people.' This fact by itself, regardless of the positive stipulations of the constitution, implied that 'whoever violates this [Law] is responsible towards society of which he has endangered its fundaments, and towards the individuals of which he has violated the interests and the rights' (Tielemans 1829, 5).

As ministerial responsibility, in Tielemans' view, supported on the general principles of a constitutional government, it followed that holding ministers responsible should not require a legally outlined juridical procedure to bring them to justice. But how then were ministers in practice to be held accountable? Here also Tielemans adopted Constant's theory of ministerial responsibility as a 'moral responsibility,' which was not to be imposed through parliament or through a court, but by the pressure of 'public opinion.' Responsibility, in general, so Tielemans explained, 'applies to all actions that man may commit in life indifferently.' But all actions of man 'do not always bring about a judicial conviction; more often they only bring about shame or public reprobation.' Therefore, there existed in fact 'two kinds of conviction,' whereby both were 'as important for the preservation of the social order.' As responsibility, and accountability, applied in this double sense to all individuals, it was self-evident that ministers, whose actions could bring much more harm to society, were not exempted (Tielemans 1829, 4). This resonated with Benjamin Constant's concept of responsibility for 'legal actions.' Tielemans summarised it at follows: 'In truth, you are only justifiable by the High Council for those [actions] which are punishable under the penal code or any other law; but you are no less responsible towards society for all others, and if they are unconstitutional …, you will suffer, instead of civic degradation, moral degradation, which means eternal unpopularity' (Tielemans 1829, 13). The author, furthermore, when

describing ministerial responsibility as dependent on 'public reprobation,' imagining some kind of tribunal of the public opinion, also made it clear that ministerial responsibility and freedom of the press were entirely intertwined. 'The one combined with the other they obtain an irresistible force,' Tielemans argued. This, moreover, Van Maanen had 'understood all too well,' as he had 'fought against the liberty of the press with the same and maybe even more determination as [he had fought] against ministerial responsibility.' 'You fear much more the public opinion than you fear the High Council,' Tielemans concluded (Tielemans 1829, 49).

The second pamphlet was from the Brussels lawyer Adelson Castiau, and published in June 1829. Castiau set out by explaining how 'ministerial responsibility' historically developed into one of the fundamental principles of political society, in a way that was reminiscent of the discussion of the subject by Antoine Barthelemy in 1815. Castiau explained how in the past the powerful would often 'turn against society the means that it has trusted upon them for its defence…,' which inevitably provoked insurrection and 'the iron bondages [being] broken …, most likely in a sea of blood.' In recent history, however, 'a generous and restoring power' had been established on 'the bloody ruins' created by such events—i.e. the monarchy that was restored after the years of revolutionary turmoil. It was from this historical perspective that one had to understand the value of the principle of ministerial responsibility. 'Ministerial responsibility, an ingenious invention of the constitutional monarchy, elevates the monarch above human jurisdiction and, at the same time, prevents digressions of the executive power' (Castiau 1829, 1–3). In this way, Castiau defined ministerial responsibility in a neo-republican sense, understood in terms of a permanent need for mistrust and vigilance towards all political authority, but at the same time as essential part of a form government that brought stability after revolutionary times. Furthermore, he used the same 'anti-ministerial' language that had been so typical for the journalism by Van Meenen: ministerial responsibility, Castiau insisted, was 'sanctioned by the judgement of the ages, which had exposed [the ministers] as the causers of all the hardship that nations encountered' (Castiau 1829, 5). The question if the constitution provided in ministerial responsibility could moreover not only be answered in terms of general political principles, but also in light of the political tradition of liberty that belonged to 'the Belgians':

> Degenerated sons, would we have repudiated the independence of our ancestors, and the heroism with which they have versed their blood for defending it! Would we have torn apart our national charters, through which power was limited and the Belgian people knew its rights! Heirs to so many glorious memories, would we not be also to this mortal hatred for every form of tyranny! (Castiau 1829, 11)

As Tielemans, Castiau subsequently made it clear that ministerial responsibility did not have to be defined in a legal sense. 'We believe that a law on ministerial responsibility of the ministers is futile, and will not add anything to our guarantees' (Castiau 1829, 24). Addressing himself to the representatives in the Second Chamber, Castiau wrote:

> In despair and despondency, you turn yourselves to the laws! You invoke their intervention! But do laws prevent the wrongdoings of the government? Will they give you the power to denounce them? Will they triumph over the general apathy? And can they recreate this national spirit, without which all institutions are useless, the public and private laws delivered with impunity to all sorts of attacks, and the responsibility of the ministers, even when a hundred times written in a law, a vain word? (Castiau 1829, 29)

The guarantee for ministerial responsibility, as for freedom in general, was not in the laws, but in the national spirit. And this meant in a strong public opinion. 'There exists one [guarantee],' he insisted, 'which [ministers] will never be able to withstand, [namely] the one that results from the same [public] opinion to which we now address ourselves.' 'Let us never forget,' Castiau insisted, 'that representative government means government by opinion.' Castiau therefore called for a new form of patriotism, as the denial of ministerial responsibility, in his eyes, was only possible due to a lack of public vigilance. 'Let us not focus on the absence of ministerial responsibility but let us focus on the absence of patriotism; for the general interests are only being compromised if the nation lets itself down' (Castiau 1829, 27–28). The guarantee for the acceptance by the government of ministerial responsibility was not to be found, according to the author, in new laws, but in the full use of the guarantees which the nation already possessed. First among them was 'an animated and virulent press, which scares away all possible assaults …' (Castiau 1829, 29). Secondly, a lot depended on the States General, which were called upon to make the most of its legislative powers as well as its control over the decennial budget, and Castiau still had hopes that

they were finally to come in action: 'All eyes are fixed on the travails of our States General, their [usually] deserted tribunes are populated with many listeners, and their debates have acquired a solemn magnitude that have obtained the admiration of Europe. A new era begins for our ministers' (Castiau 1829, 35).[17]

The views presented in these two pamphlets, in opposition Van Maanen's 'literal' reading of the constitution, were strongly indebted to the theory of Benjamin Constant and the debates on the issue in the 1810s involving Antoine Barthelemy and Pierre-François van Meenen.[18] At the same time the pamphlets made it clear that the opposition no longer considered the issue in purely theoretical terms, but had come to believe that only through a mobilisation of the public opinion, or the 'nation,' in a way that was not possible according to Van Maanen, the matter would ultimately be resolved. This meant that the considerations of the issue were couched in a language with strong republican undertones, revolving around terms as 'vigilance,' 'patriotism' and 'tyranny' and the expectation of the people 'reclaiming its liberties.' For this reason, the claim for ministerial responsibility was also firmly connected to the claim for freedom of speech, and with calls upon the States General for assertive action.

7.3 The Catholic-Liberal Union Explained

7.3.1 Liège

What triggered the Catholic opposition in the Southern Netherlands in 1827 to join the liberal battle for political and civil liberties was the controversy in which they were involved with the government over education, as well as the government's attempts to impose secular supervision over religious institutions (see Chapter 6). The idea of a 'union of oppositions' became first explored among liberal and Catholic circles in Liège. It needs needs to be taken into account that the political culture

[17] He further added: 'The right to make proposals … does it not extent to the right to demand the removal of an uncapable or badly intentioned minister? And if this would not be sufficient, would the refusal to accord subsidies to ministers who have lost the trust of the nation not result in the rectification of the grievances?' (Castiau 1829, 31–32).

[18] Van Velzen pointed out that Constant was in the Second Chamber the most frequently quoted political thinker (van Velzen 2005, 292).

in Liège was substantially different from that in Brussels and Flanders. Liège, as a former prince-bishopric (whose last prince-bishop had been the new archbishop François de Méan), had not been part of the Habsburg Netherlands. It had known its own 'Liège Revolution' in 1789, which was much more oriented towards Paris than the Brabant Revolution. The orientation towards Paris did afterwards not disappear, and during the Belgian Revolution a strong movement would emerge in Liège which favoured the annexation to France. At the same time, also political Catholicism here differed from political Catholicism in the rest of the country (mostly the 'two Flanders,' i.e. the provinces of West- and East-Flanders). Political Catholicism in Liège was less rooted in the eighteenth-century ultramontane movement and in the national-populist language of the Brabant Revolution, of which *Le Spectateur belge* was the major heir. Consequently, this was a branch of political Catholicism that was less intransigent as its 'Flemish' counterpart, and which therefore, in 1825, easily connected with the 'constitutionalist,' but politically conservative, opposition of the higher clergy (see Chapter 6).[19]

The idea of a union between liberals and Catholics was expressed for the first time in the Liège liberal journal *Mathieu Laensbergh*. An article by Paul Devaux of 21 March 1827 has generally been regarded as a first opening towards a union. Devaux was clearly inspired by the position taken by the political Catholics in Liège in the debates over education. As we saw in Chapter 6, Etienne de Gerlache had insisted, in his famous address before the Second Chamber, that the Catholic religion had become entirely disinterested in the 'scholastic' debates of the previous century (de Gerlache 1825, 16). Devaux, for his part, responded positively to this opening, and turned against those who, within the liberal family, remained preoccupied with the need to combat the 'Jesuit threat' (*Mathieu Laensbergh: gazette de Liège*, 21 March 1827).[20] He demanded 'a conscious suspension of questions of a religious nature,' in order to 'educate the people first in the matters of tolerance and freedom.'

[19]Vincent Viaene has described this strand within political Catholicism as 'transigent ultramontanism,' primarily focusing on the period after 1830. In the words of Viaene, this strand was concerned 'primarily about authority rather than about liberty' and 'remained more oriented towards the historical ideal of the "Union of Throne and Altar" inherited from the ancient regime' (Viaene 2001, 104–105).

[20]Devaux was also influenced by the French liberal journal *Le Globe*, which since 1825, wrote in favour of 'freedom of thought under all its forms and in all its manifestations' (including education) and the complete separation of church and state (Miroir 1994, 102, 104).

If one feared the Catholics 'as enemies of liberties, of tolerance, of civilisation,' Devaux argued, 'then teach the nation to appreciate these liberties, to embrace tolerance and civilisation, and you will have no more need to teach her to hate the Jesuits.' By making people better understand their rights, and the guarantees of their rights, they would also come to understand, 'the connection between all ideas of liberty, industry, of truth and morals.' The idea was that only a persistent exposure of the people to freedom and tolerance could eventually overcome the dangers that certain kinds of religiosity represented to these values. Free institutions would create a free society. Therefore, liberals should no longer be seduced to compromise (with the government or the 'ministerial party') on 'the principle goal in politics: the guarantees [for freedom], which one has the right to demand of the public authorities, and the need for the development of a public spirit.' Instead, it should welcome the support of all people and associations who were willing to fight for these guarantees. The most important of these was the freedom of the press.

The invitation of the *Mathieu Laensbergh* to the Catholics to enter into a union with the liberals remained initially without response. The reason for this was possibly the reopening, over the summer of 1827, of the negotiations between the government and Rome over the conclusion of a new Concordat. Only once it became clear that the king delayed the ratification of the Concordat, the Catholics responded positively to the opening made in the liberal press. In the autumn of 1827, Van Maanen sent a circular letter to the governors of the provinces, which stated that for the time being the Concordat would not be put into effect, and, consequently, the decrees of 1825 on education would remain in force until the appointment of new, 'wise and enlightened' bishops (Jürgensen 1963, 90). On this note, Etienne de Gerlache has commented afterwards: 'Until this note was distributed, our opposition had been moderate, patient, and respectful; but it changed tone after we recognised that no peace was possible with people who imprudently violated all their promises' (de Gerlache 1842, 408). *Courrier de la Meuse*, on 23 September, republished Devaux' famous article that called for a union, thereby responding positively to the liberal opening (*CM*, 23 September 1827).

Catholics in Liège would however define the union in a minimalist sense. *Courrier de la Meuse*, under direction of Pierre Kersten, emphasised that the union was only forced upon them by the circumstances: 'It are the circumstances in which we have successively found ourselves, the

apolitical projects of our men of state, the instinct for self-preservation, in one word, it is necessity itself, which has given this newspaper the character it has today. The path which we are following is not one we have traced for ourselves' (*CM*, 5 November 1828). The goal of the union with the liberals remained strictly limited to the execution of 'the Fundamental Law in its entirety and all its consequences.' What *Courrier de la Meuse* furthermore insisted upon, was that liberals and Catholics were 'uniting their program and their methods, without confounding their principles and their doctrines' (*LCM*, 25 December 1828; 23 January 1829). This meant, primarily, that Catholics would never support the ideas of democracy and popular sovereignty. The Catholics urged the liberals to, for the time being, abandon these ideas, elaborating that 'the permanent proclamations of popular sovereignty, of the rights of man … frighten and exasperate the government, push it in the direction of despotism and make it to oppose even what is right' (*CM*, 19 October 1828). It was clear, from these reflections, that the *Courrier* in fact never abandoned its conservative political position, perfectly illustrated by the admission that 'we ask no more than to combat impiety and revolution alongside the government' (*CM*, 5 November 1828). Kurt Jürgensen has in this regard pointed out, that 'the fundamental recognition of the royal dynasty and of the existing constitution underlies all [Pierre] Kersten's reflections, until the very day on which the Revolution in Belgium occurred' (Jürgensen 1963, 99).

7.3.2 Le Catholique des Pays-Bas

If the conclusion of a union with liberals in Liège seemed to have depended on the failure of the government to execute the new Concordat, and on the enduring hostility towards the church, elsewhere, it is not certain that the non-execution of the Concordat meant that much at all. The authors of *Le Catholique des Pays-Bas* went to great length to explain why the conclusion of a Concordat did essentially not change anything with regard to the position of the Catholic Church in the Netherlands: '[W]hen William the First concluded the Concordat, nothing new was created.' It only meant that 'the Catholic Church was confirmed in its present position and the pope was recognised as its only lawful authority.' The Concordat could only be interpreted as in line with the earlier promises of the government to 'restore' the

Catholic Church in its legitimate position. Firstly, the infractions performed by Joseph II and the successive French governments on the legitimate position of Catholicism had been annulled at the moment of liberation, the journal insisted. Secondly, at that same moment, the future king had 'moved quickly to assure to the Belgian people the recognition of its religion.' Finally, the Fundamental Law had cemented these 'promises' with security and inviolability (*LCPB*, 14 December 1827). In other words, no comparable will to compromise with the government existed among the Catholics in the North of Belgium, as it did among the Catholics in Liège. *Le Catholique des Pays-Bas* also went into an argument with the liberal press over the question if the Concordat, as an alliance between the throne and the church (which in liberal eyes evoked the situation under the *Ancien Régime*), was in contradiction with the constitution. It thereby made it clear where it stood with regard to the modern principle of freedom of religion. The journal explained how the conclusion of a Concordat related to the principle of freedom and equal protection by arguing that, 'as the communions are different among each other, also the protection which has to be accorded to them cannot be the same.' 'Protection,' it continued, 'is but illusionary if it does not take into account the nature and the fundamental principles of each religious cult.' 'Freedom of religion,' therefore, meant that the government should deal with every (recognised) religion on the terms of that religion itself. This argument was in fact an effort to transact between the secular meaning of the principle of 'freedom of religion' and the traditional ultramontane doctrine of the 'two powers' that are mutually independent. It prefigured the outcome of the constitutional debates with regard to religious freedom in 1830–1831 (*LCPB*, 28 September 1827; 3 October 1827).

In the course of 1827, the Catholic press endorsed a liberal-oppositional discourse on a series of issues, irrespective of possible collaboration with the liberals. This was already discussed with regard to education in Chapter 6. But Catholics, in the aftermath of the law on the organisation of the judiciary, also openly adopted the liberal demands for political liberties. This was illustrated, for example, by another polemic between the government-friendly *Journal de Gand* and the *Le Catholique des Pays-Bas*. When the government placed under arrest the superior of the Catholic seminary of St.-Barbara in Ghent, after the later had publicly attacked the government over its policy on education, a pamphlet

was published, originating within the Ghent seminary circles, in support of the accused school-head (Lamberts 1972, 38).[21] In response to this, the *Journal de Gand* pointed out to the Catholics the obligation they had to be loyal subjects of the monarch. Hereupon *Le Catholique des Pays-Bas* retorted, if it was 'because we owe obedience to all legitimate government, even when it abuses a right or appropriates a right it has not, that this government has a right to violate *all rights*?' (*LCPB*, 9 April 1828). The journal also inquired, in a polemic with another government-sponsored journal, *La Sentinelle*, 'why political opposition, which is essential to all representative government, [would be] a bad thing when it served the wishes of the Catholics?' In any case, it added, the government did not seem to bother too much: 'When there is any opposition in the Chamber, the ministers remain silent, when there is any opposition in the press, the official journals remain silent …' (*LCPB*, 23 March 1828). The journal therefore recognised that ministerial responsibility had become a political issue of the highest importance.

In spite of this liberal discourse of opposition, the Catholic newspaper did not yet consider itself in alliance with the political liberals. It even insisted that the public liberties would help the Catholics to defend themselves against the attacks of the 'liberal party.' Thus, *Le Catholique* argued that, although they had always been in favour of freedom of speech, '[…] today we acknowledge its indispensability [*even more*]. And how could it not be so, when so many writers, most of them foreigners [i.e. press in the hands of French exiles], spread perverse doctrines among us, attacking religions and its ministers without restraint, promoting fear through the impiety and the immorality of their writings?' (*LCPB*, 23 September 1827). The Catholic press furthermore regularly denounced the alienation of their 'liberal' opponents from their own principles. An article on 'liberal inconsistencies' pointed out how liberals, although in principle supporting 'sovereignty of the people,' were quick to submit to a monarch once they found it convenient to do so. Liberty of the press, the article further explained, was something the liberals only appreciated as long as they were not in power. Once in power, they would be very quick to revoke it, in a way comparable to the Jacobins during the French Revolution. Freedom of religion, thirdly, meant in liberal eyes that the state had a right to interfere with the principles of a religion.

[21]The pamphlet concerned *Sermoen over de godsdienstige opvoeding der Katholyke kinderen* by Bernard De Smet (Ghent, 1827).

How many times, the journal asked, did the liberals cry fury over the government legislating by royal decrees. When, however, the government put its education-reform in place by royal decrees, the liberals 'could not wait to see them implemented' (*LCPB*, 28 October 1827).

At the same time, the people of *Le Catholique* also observed the revival of the attacks by liberal press against the government, as well as a renewed respect for the Catholic political agenda. In a following number, *Le Catholique* rejoiced in its polemic with *Le Journal de Gand*, that 'today it are no longer only [so-called] "ultramontanes and Jesuits" which oppose [the public authorities] ….' In the same number, the journal adopted a long extract from an article on the freedom of the press in the *Matthieu Laensberg*, the liberal journal in Liège: 'As long as the regime violates our rights, as long as the abrogation [of the restrictions of press-liberty] will not be pronounced, we are at the mercy of the virtue of moderation by which the government will use this homicidal weapon … Never will the public know of these salutary [principles – i.e. liberty of the press], which solidify a union between the government and the people …' (*LCPB*, 27 September 1827).

7.3.3 Courrier des Pays-Bas

By 1828, *Courrier des Pays-Bas* was the primary liberal journal in the South and its offices increasingly developed into a headquarters of the liberal opposition.[22] After formally joining the Catholic-liberal union in August 1828 (Wils 2007, 218), the journal adopted a number of guidelines for its contributors. A first guideline provided that articles would show no excessive animosity towards the church or the political opinions of Catholics. Secondly, the journal would sympathise with the opposition in France against the Bourbon government. And thirdly, the newspaper would consistently criticise the government agenda of nationalisation and *Néerlandisation*, including in the fields of education and religion. It is therefore clear that the revived liberal opposition needs to be understood as in continuity with the liberal opposition of the 1810s. This continuity was embodied by the person of Pierre-François van Meenen, former editor of *L'Observateur belge*, who became the pivotal figure in determining the political line of the *Courrier*. Arthur Vermeersch has pointed out that

[22] On the origin and the development of *Courrier des Pays-Bas*, see Vermeersch (1981, 504–509).

the young contributors of the newspaper—Pierre-François Claes, Sylvain Van de Weyer, Lucien Jottrand and Antoine-Edouard Ducpétiaux—depended a great deal on 'the legal and philosophical erudition of Van Meenen.' Sylvain Van de Weyer described himself, in one of his letters to Van Meenen, as '*le premier après vos enfants*.' A similar father-son relationship existed between Van Meenen and Pierre-François Claes, who acted as 'a kind of secretary' to the former (Vermeersch 1981, 511–529).

The journalistic spearhead of the union of Catholics and liberals was Louis de Potter, who started writing for *Courrier des Pays-Bas* in 1828. De Potter, born in Bruges in 1786 within a family belonging to the lower nobility, had in 1811 embarked on a study of Catholic theology and ecclesiastical history in Rome, and even published an outspoken anticlerical history of the church councils from the beginning of Christianity to the Great Schism.[23] He returned to the Southern Netherlands in 1823, where he was recruited by the government on the basis of his expertise in Catholicism and his strong anti-clerical credentials. He published in 1826 a new extensive study on the moral decline and the intolerance of the clergy in the eighteenth century.[24] However, his alliance with the government came to an end soon afterwards, and De Potter, in the climate of revived tensions and liberal opposition, turned over a short period of time into a vociferous critic of the government, joining *Courrier des Pays-Bas* in 1828. In this context, he completely reconsidered his views on political Catholicism.[25]

In November 1828, De Potter wrote two articles on the union of the Catholics and the liberals, which were subsequently also published as a pamphlet (de Potter 1829). The union, in his view, was one between 'sincere and disinterested friends of the political institutions and public liberties, who profess different opinions in the speculative and religious matters' (de Potter 1829, 2). In the contemporary situation in the Netherlands, with a government who denied the people the public liberties, the union was 'necessary' as well as 'inevitable.' De Potter invited the liberals and the Catholics to rise above themselves, defending the

[23] Louis de Potter, *Considérations sur l'histoire des principaux conciles, depuis les apôtres jusqu'au Grand Shisme entre les Grecs et les Latins* (Brussels, 1816).

[24] Louis de Potter, *Vie et mémoires de Scipion de Ricci, évêque de Pistoie et Prato, réformateur du catholicisme en Toscane, sous le règne de Léopold* (Bruxelles, 1826), 4 vols.

[25] On the life of Louis de Potter: Vermeersch (1981, 457–489) and Dalemans and Potter (2011).

'common good' instead of striving exclusively for the realisation of their respective particular interests. From the accomplishment of the common goal, De Potter pointed out, 'it will follow that *philosophy* and *religion* have the same right to complete independence, an unlimited liberty to manifest themselves as they want…, to spread and propagate [themselves] by the word and through publications…' (de Potter 1829, 2–3). That Catholics and liberals had so long, wrongly, looked at each other as natural enemies was something for which the blame entirely belonged with the government. It was the government which had always manoeuvred to keep the two families artificially apart, by 'having evoked, alternatively, the phantom of Jesuitism and of Jacobinism' (de Potter 1829, iv).

What distinguished De Potter's view on the union was that he did not reflect upon it simply from a prefixed liberal perspective, merely reconsidering the approach in advancing liberal ideas, as Devaux had done. For De Potter, in the alliance between religion and freedom itself lay the promise of a new liberal vision of society. Having been a fierce anticlerical, and coming to the liberal opposition very late, De Potter now saw 'the Catholic question' as of 'vital importance to the country' (de Potter 1829, ii). The religious question was not a problem to be resolved, but part of the *answer* to the problem (of the absence of freedom). A free society was a society in which religion and freedom could be reconciled on a permanent basis.[26] The union, therefore, was not only necessary and inevitable, but 'natural' as well (de Potter 1829, 2), as a prefiguration of liberal society itself: 'Beyond the conquest of civil liberty, it has as its goal the liberation of all intelligences, the freedom of all opinions' (de Potter 1829, 21). The result of the new concord would be that 'the moral and the religious order, that is the order of opinions, is strictly the domain of man, of the individual, and that society or men [as a collectivity] do not have any jurisdiction over it; that consequently there are no powers, no institutions, no laws that can intervene in it' (de Potter 1829, 3).

[26]In this light De Potter did not distinguish between the historical credentials of liberals and Catholics in the fight for freedom. If he insisted that Catholics had previously 'anathematized freedom of the press, religion and opinions,' he also pointed out that it had been the Catholics who, by working for 'the demolition of the gothic edifice of a monopolized education,' had helped the union to come about. On the other hand, De Potter acknowledged that liberals had often been wrong in the past, for example by 'wanting to change opinions by using the law.' He also evoked 'the regrettable attempts to establish the so-called national churches on the ruins of ultramontanism, on the basis of principles that one either calls *Gallican*, or *Joséphist*' (de Potter 1829, 7–8).

De Potter's justification of the union resonated with the central arguments of Benjamin Constant with regard to morality and religion. Constant believed that government should at all time abstain from interfering with the moral values of the citizens and remain neutral in any moral debate. He saw two principle reasons for this. First, the judgment by the government was not above error; on the contrary, Constant believed that 'there is something about power which more or less warps judgement.' Members of government were very likely to hold 'views which are less just, less sound, and less impartial than those of the governed' (Constant 1810, 54). A second reason was that, in the eyes of Constant, individuals must be allowed to strive for the truth by themselves, to strive to know what is true and just. This argument contained the assumption that intellectual and moral progress were inextricably linked with each other, and the search for knowledge, and therefore the freedom to make mistakes, constituted an essential part of man's moral improvement (Rosenblatt 2008, 125–129; Jaume 1997, 77–82).

In line with De Potter's articles, the commonly shared idea of the union would not be that of a temporary postponement of differences, or of a transaction of interests, but would be underpinned by a coherent vision of a liberal society. De Potter did not write about 'Catholicism' and 'liberalism' as two competing political movements, he wrote about 'philosophy' and 'religion' as two philosophical systems. He insisted that there is no reason why adepts of the one or the other ought to be politically divided. In fact, the core of his argument consisted of saying that politics should play no role in the opposition or interaction between philosophical ideas, which ought to flourish or perish through 'the might of the pen' alone. Fundamentally liberal about this vision was the idea of a limited role for the government and of a free society where the battle of ideas should be played out *independent of* government and politics. Politically speaking, therefore, there would be no reason any longer for Catholics and liberals, as well as 'people of every other conviction,' to oppose each other. 'There will undoubtedly be from time to time some *exagéré* from one or the other party, who temporarily compromises the common interests by compromising the concord, but this will resemble nothing more than light clouds that will rapidly dissipate again' (de Potter 1829, 21).

7.4 Towards a Symbiotic Discourse of Opposition

In the second half of 1828, the liberal and Catholic discourse became increasingly indistinguishable. Liberals made it clear that they rejected 'nationalisation' as much with regard to education and religion, as with regard to language and the code of civil law. After the conclusion of a union with the liberals, Catholics went further than before in combining classical-ultramontane arguments on the non-right of public authorities to interfere with morality and religion, with liberal-republican conceptions of individual rights, free society and free government. Two pamphlets in 1829 further illustrated this development.

In a pamphlet written on the occasion of the major petition-movement in the Flemish provinces at the end of 1829, Louis Glorieux repeated the Catholic argument that the distinction between religious and civil education, upon which rested the exclusion of the church from the latter, was incorrect, as 'it is indispensable that religious education penetrates and animates civil education …' (Glorieux 1829, 6). This point of view, which implied that every religion or every church should be allowed to set up its own school-system, did not exclude 'the right of the government to supervision […], on the condition that this supervision is a reasonable supervision.' It would involve, not preventive but repressive measures, only applied by judges on the basis of the law (Glorieux 1829, 7). The government, furthermore, had the right 'to organise schools by itself, and increase their quality to perfection.' What it did not have a right to do, was 'to impose these perfections, which are neither provided for by the Fundamental Law nor by any other law,' upon other schools (Glorieux 1829, 9). The author further insisted, in a way that was clearly indebted to the discourse of the liberals, that it would be unlawful for the government to establish 'a special code [of laws] on education,' since any new law could only be 'an application of the constitutional pact, and therefore has to be informed by the principles that [this pact] establishes' (Glorieux 1829, 8).

Glorieux then continued to relate these views on education with the importance of a free public space in which the government can be challenged. 'It cannot be rightful,' the author insisted, 'to prohibit schools which refuse to teach the opinions or the favoured *system* of the government.' This even applied, the author insisted, to the interpretation of the Fundamental Law (Glorieux 1829, 10). Government, should not have

the right to suppress schools on the basis that they spread opinions that it believes are not conform to the Fundamental Law. Otherwise, 'how could one improve the laws and the constitutions, if one is not free to examine them, to confront *what is* with what could replace it … etc.' (Glorieux 1829, 10). And as free education was essential for a free society, the other way around, 'executive government [is] always inclined to extend its powers to the detriment of the public liberties' (Glorieux 1829, 20). The Catholic fight for freedom of education and against supervision over the church, on the one hand, and the political fight for a free political society, on the other, were therefore one and the same: 'All the decrees and regulations emanating exclusively from the executive government, which are shrinking the public and individual liberties, are not only illegal as a result of their matter [i.e. education, religion], but also by default of authority' (Glorieux 1829, 22). What the opposition demanded, therefore, was 'the simple and pure annulment of all these decrees, regulations, instructions, etc.,' whereby Glorieux primarily meant all political legislation on public education. This would be 'an act of justice rendered to the Belgian People, which has already remained impeded and frustrated in its freedom for a too long time…' (Glorieux 1829, 22–23).

Also in 1829, a discussion again erupted revolving around the Philosophical College, which was established by the government for the education of priests. The clergy opposed this college vehemently and did as much as possible to boycott it. A pamphlet was published which took issue with the opening discourse for the academic year 1829–1830 by a professor at the College, Rodolph Winssinger (Anon. 1829). The pamphleteer recognised the influence of eighteenth-century teachings of *Staatskirchentum* in the ideas of 'Docteur Winssinger.' At the same time, he argued that the pretentions of the contemporary rulers went far beyond ancient ideas on state and religion. 'Compared with the ideas of M. W. [*Monsieur Winssinger*],' so the author insisted, 'those of Febronius almost appear to be papist' (Anon. 61). In fact, so the author explained, the education provided at the College corresponded 'with no particular religion,' or religious doctrine; 'it is neither Catholic, nor Protestant, nor Gallican; it is *Belgico-Ministérielle*' (Anon. 1829, 53). In reality, the 'gentlemen of the official College' had as their only mission 'to level all the differences between the religions, to determine

the relations between the different cults, to sanction their organisation according to the views and arbitrary wishes of the government' (Anon. 1829, 53). This, moreover, was aimed at accommodating the plans of the government of establishing a 'universal monopole over everything that belongs to the religious, moral and intellectual life of the people' (Anon. 1829, 62). What the government and the teachers at the College had in mind was for 'civil power [to be] an absolute power […], unlimited in its action and independent from any pre-existing pact or law.' This represented a modern despotism which 'threatens all religious and moral liberties' (Anon. 1829, 63). All these 'illegalities' which the government committed, moreover, were 'introduced by ordnances, decrees, circulars, under the pretext of defending the rights of the public authority […] as well as of the rights of the citizens, the ancient customs, the maxims and pretended liberties of Belgium …' (Anon. 1829, 36).

So what kind of society did the author oppose to this vision of the government, in which morality and religion would entirely be its own prerogative? 'We oppose,' so the author insisted, 'that civil society, or the state, is a society of free men, united under one government with regard to their temporal needs [only].' The author made the distinction between the 'official liberalism' for which the government stood, and the 'true liberalism' of the opposition. The liberalism of the government taught, with regard to religion, 'that the public and religious matters are separated by the text of the constitution'; with this, it did not acknowledge that 'our religious freedom is *pleine et entière* … that the Fundamental law does not impose any other restrictions to this than the criminal laws of the state' (Anon. 1829, 26). The liberalism proposed by the government, so the author explained, implied that 'everybody enjoys complete liberty in reference to himself [only],' meaning in the limited sphere of the private life. The real free society, on the other hand, depended on the recognition that 'everybody enjoys complete liberty towards all his fellow citizens, for the education of his children [as well as] for the [choice of] religion which he [rightfully] professes publicly […]' (Anon. 1829, 14). Finally, the absolute freedom in religion and education in the private and public sphere, apart from being a fundamental civil right, was the only guarantee for political freedom, as 'this universal monopoly' on intellectual, moral and religious life would give the government 'all the means to submerge the nation to its political views' (Anon. 1829, 62).

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CHAPTER 8

The Reception of French Catholic Thought: Towards a New Intellectual Matrix

The conclusion of the Catholic-liberal union sparked political Catholics to explore new venues in political thought, a development that would find culmination in the Belgian Revolution. This involves the influence of the political thought of Joseph de Maistre and, especially, Félicité de Lamennais, which involved a secular, 'modern' version of ultramontanism. Their ideas would ultimately encapsulate the major part of Catholic opinion in the Southern Netherlands. In the pre-revolutionary development of political Catholicism in Belgium, the French ultramontane authors did not receive an unequivocally positive reception, and the criticism towards their ideas was in many ways a continuation of the criticism by François-Xavier de Feller of the work of de Augustin Barruel. However, the modern ultramontanism of the French authors, revolving around the principle of 'authority,' was promoted in Belgium from early onwards by a young generation of aristocrats.[1] They were the spearheads of the new intellectual development in the wake of the Catholic-liberal union.

[1]This was thoroughly explored by Vincent Viaene in his book on the relation between Belgium and the Holy See in the nineteenth century (Viaene 2001).

S. Marteel, *The Intellectual Origins of the Belgian Revolution*, Palgrave Studies in Political History,
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8.1 The Thought of Louis de Bonald and Joseph de Maistre: Monarchy Re-divined

The first important French 'Catholic' political author after Augustin Barruel was Louis de Bonald, who is considered the founder of the 'traditionalist school.'[2] The pivotal Catholic 'reactionary' thinker of the post-revolutionary era, however, was Joseph de Maistre. As Louis de Bonald, Joseph de Maistre embraced unconditionally the idea of a divine monarchy, but whilst the former still argued in favour of absolute monarchy in early-modern terms on the basis of natural law, the latter came up with, what has been called, a 'theology of history.' The work of Maistre was imbued with the idea that the French Revolution had not merely been a setback in an inevitable historical development towards monarchism, but that it had been an event of a providential nature. This historical reflection was linked with an understanding of the unity of religion and politics, or the religious essence attributed to politics in Maistre's work. The victim of the revolutionary sacrilege had primarily been sovereign authority; in fact, the Revolution had been an attack on the principle of sovereignty as such. But exposing the principles of this attack, in Maistre's opinion, was precisely what allowed a philosophy of the Counter-Revolution to emerge. Maistre believed in a regeneration of the monarchy on the basis of a worldwide religious revolution. He therefore developed a kind of political theology, based not so much on the subordination of the secular to the divine, but on their correlation. As Jean-Yves Pranchère described it: 'Theology and politics are (in Maistre's thought) in a circular relation; human sovereignty resembles divine sovereignty, which is a reflection of the first, and both are reflected in the human and divine sovereignty of the pope.'[3]

From a series of early-modern political thinkers, especially Hobbes and Rousseau, Maistre adopted the theoretical concept of an absolute sovereign and the idea that there was no possibility for society to exist without it. Since it was at the origin of the law, sovereignty could

[2] The collected works of Bonald have been published as: *Oeuvres complètes*, ed. J.-P. Migne (Paris, 1859–1864), 3 vols. See also Pranchère (2004, 172–173).

[3] See for this paragraph: Pranchère (2004, 92–93, 95 and 103). As Pranchère further explained, Maistre's 'political theology' resembled to a large extent the 'civil religion' of Rousseau's *Contrat Social*. Maistre appropriated this notion whilst claiming the necessity of a religion of state—or, more precisely, a *religion of the state* (Pranchère 2004, 95).

not itself be submitted to the law—to *any* law, and therefore even the notion of divine law became irrelevant. The self-evidence of the need for a monarchical system, in the eyes of Maistre, followed logically from this concept of sovereignty, which presupposed a 'unity of will' (Pranchère 2004, 132–133, 142). But if Maistre accepted the meaning given by Hobbes to the notion of sovereignty, it was, in the words of Pranchère, with the goal 'to correct it, meaning, to undo the liberal and democratic dimension attached to this notion' (Pranchère 2004, 124–125). Hobbes's theory of sovereignty implied that political power had developed out of a state of nature by way of the irrevocable alienation of man from his natural rights. At the core of Maistre's political doctrine and his concept of sovereignty stood the idea of a monarchical 'will,' which found affirmation entirely in itself, even when originating in the divine.

Did the French thinkers recognise any limits to monarchical authority, and was there any legitimate ground for resistance? The absence of a clear distinction between the law and the will of the sovereign made this notion of legitimate resistance problematical. However, Bonald still held on to a concept of universal moral law, and even Maistre repeatedly used the notion of innate divine law. But, as Panchère has explained, even if Maistre and Bonald accepted some form of 'natural law' as the source of the positive law, neither attributed to it an independent existence next to the positive law, or (potentially) against it. There was no appeal possible against a ruling monarch and the superiority of the divine law could only display itself through the 'force of events.' 'Universal conscience,' a notion used by Maistre, was maybe something which every individual could take part in, but it could not be political. It belonged entirely to the private sphere. Bonald, however, still made an exception for the case where the monarch outright violated the 'fundamental laws' of the monarchy. He gave a positive judgment on the insurrection of the Catholic League in France at the end of the sixteenth century. The Leaguers rightfully refused to recognise Protestant King Henry IV as the legitimate sovereign, as the Catholicity of the monarch had been a 'fundamental law' of the French monarchy. A different answer to the question was given by Maistre, whose 'pen refused to outline a legitimate case of insurrection' (even though the Catholic League had his sympathies). To Maistre a true transgression of the fundamental laws by the monarch was impossible, for the reason that the fundamental laws

remained always 'intangible.' Maistre believed that it was simply not possible for a sovereign to subtract himself from the beliefs unanimously shared in the state (Pranchère 2004, 161–172).

8.2 The Reception of Catholic Monarchism in the Southern Netherlands

The writings of Bonald, and especially Maistre, became in Belgium very popular among the young generation of high nobility. These young nobles—most famously Henri and Felix de Mérode, Ernest de Beauffort and Louis de Robiano-Borbeek—were much more detached from the religio-politcal battles of the eighteenth century than the mainstream Belgian clergy. They brought to their political engagement a profound feeling of 'displacement,' which was the result of their loss of a traditional sense of identity, as well as their privileged status, under the years of the French Empire. In these crucial years they in fact started their intellectual journey as a search for a restoration of legitimate sovereignty, in a similar way as Bonald or Maistre. As they became impressed with the resistance of the papacy to Napoleon, it very quickly became clear to them that this 'restoration' would have to originate in the spiritual authority of the Catholic Church. As Vincent Viaene pointed out, it was the symbolic stature assumed by the pope in the later years of the Empire that triggered their endorsement of 'modern ultramontanism.' It was argued that 'civilisation would only be saved if the church became the ultimate arbiter of both society and politics' (Viaene 2001, 42–44). By intellectual predisposition, these nobles were predestined to be influenced by the new ultra-Catholic Right in France. They became initially adepts of the work of Maistre, and later also of that of Félicité de Lamennais.[4]

Nevertheless, inspiration came initially from the German-speaking world, where many young nobles had spent time during the Napoleonic years. A crucial personality in this connection was Ferdinand Eckstein, a German Protestant convert who, before becoming a Catholic journalist

[4]The influence of Louis de Bonald on the Belgian scene was more ambiguous. Most of the Belgian nobles, although they were often initially great admirers of Bonald, remained sceptical, as he saw the church primarily as an instrument of a despotic monarchy (Viaene 2001, 43, 48; Haag 1950, 51–53).

in Paris, spent a few years in Belgium (1814–1816).[5] Vincent Viaene has pointed out that 'Eckstein's writings in Paris were instrumental in spreading German romantic thought in French Catholic circles, and contributed to the resurgence of French ultramontanism.' Furthermore, Eckstein became essential in establishing contacts between young Belgian noble conservatives and the French Catholic and counterrevolutionary writers and journalists (Viaene 2001, 46). The publications of Maistre, especially *Du Pape* (1819), and later of Lamennais, especially *De la Religion Considérée dans ses Rapports avec l'Ordre Politique et Civil* (1826), became widespread in Belgium due to the relentless efforts of Louis de Robiano-Borsbeek's *Bibliothèque de Propagande Catholique*. Two members of the group, Ernest de Beauffort and Henri de Mérode would also establish direct contact with Lamennais. At the suggestion of Lamennais, Beauffort and Mérode published the correspondence between them as *Lettres de Deux Ultramontains*. In turn, their ideas have influenced the intellectual itinerary of Lamennais, resulting in *Des Progrès de la Révolution et de la Guerre contre l'Eglise* (1829) (Viaene 2001, 46; Jürgensen 1963, 110–111).

Similar as their French counterparts, the modern ultramontanes among the Belgian nobles endorsed a historical imagery of how 'the errors of the present had been paved by Gallicanism, the central error of the past' (Viaene 2001, 47). The basic premises of their ideas found expression in an essay by Ernest de Beauffort, *De la Civilisation* of 1816. De Beauffort explained that rulers in early-modern times, by subjecting the church to their authority, had transformed the medieval monarchy into an oriental despotism, paving the way for the French Revolution (Viaene 2001, 47). Henri de Mérode wrote in 1826 that he considered autocracy a greater enemy of the church than liberalism.[6] The theocratic vision of future which the people around Mérode (who was the spill of the social network) endorsed, revolved around an idealisation of the Middle Ages, and around the bull *Unam Sanctum* issued in 1302 by Boniface VIII, which was one of the most radical statements of papal supremacy ever made.

[5] Eckstein came to Belgium as an officer of the allied authorities. On Eckstein: Viaene (2001, 45–46), Haag (1950, 56), and Guillou (2003).

[6] P. E. de Beauffort, *Lettres de deux ultramontains* (Bruxelles 1826), 51; quoted in Viaene (2001, 47).

Viaene pointed out that the Belgian modern ultramontanes, in fact, held 'much more concrete, if less prophetic views on the theocratic order of the future' than Maistre himself. In what sounded like a perfect evocation of the theories of Robert Bellarmine, they imagined a political order in which 'the pope should have the power to depose a wayward prince, thus releasing his subjects from their duty of obedience.' They added to their theocratic ultramontane ideal 'hazy memories not only of feudalism but also of the urban charters of the high Middle Ages,' a historical reference that might very well have been borrowed from Eckstein, who, whilst staying in Belgium, published a *Mémoire adressé à S.M. le Roi des Pays-Bas* (1815) that contained similar ideas. As Viaene explained, 'if Mérode and friends wanted a strong king, they also wanted a weak state, overshadowed by more organic social units like family, corporation, local government and the church' (Viaene 2001, 51).

Outside of these aristocratic circles, the ideas of the French ultramontanes received a completely different reception among (clerical) Catholics.[7] Emiel Lamberts pointed out that in the seminar environment around Augustin Ryckewaert in Ghent the publications by Maistre and Lamennais (whose political thought was until the late 1820s still very much in line with Maistre) were hardly discussed at all. Generally, the independence of the state on the basis of natural law theory was not questioned, and therefore theocratic ideas were rejected out of hand (Lamberts 1972, 20, 22–25). The conservative Catholic newspaper from Liège, *Courrier de la Meuse*, consistently ignored all the French Catholic thinkers (Jürgensen 1963, 118). Lamennais' first major publication, *Essai sur l'Indifférence en Matière de Religion* (1817–1821) was praised by Leo de Foere in *Le Spectateur belge*, but the political implications were largely ignored (Jürgensen 1963, 106). The first truly political work of Lamennais (*De la Religion […]*, 1826), did, as far as we know, not receive a single review in the Belgian Catholic journals (Jürgensen 1963, 109). An article by Lamennais on education of 1818 in the journal *Le Conservateur* was published a number of times as a brochure in the Southern Netherlands, and inspired a similar brochure by

[7] The difference in political opinions between clergy and nobility also had a social dimension. By the beginning of the nineteenth century, the secular clergy, as a result of the loss of its material status, hardly any longer recruited among the nobility. To the extent that nobles still entered the clergy, they tended to show their preference for certain prestigious regular orders (Lamberts 1972, 25–26).

Louis Robiano-Borsbeek (Torfs 1999, 103; de Moreau 1928, 578).[8] This brochure argued in favour of an independent religious-Catholic education as an essential condition for the conservation of society; however, it did not develop an argument in favour of the freedom of education as a general principle, nor as a solution to accommodate religious diversity. It therefore cannot have been of major importance with regard to the later endorsement of liberal-constitutionalist arguments by Catholics and the higher clergy.

In 1821–1822, after he had been acquitted and took up again his journalistic occupation, Leo de Foere attributed a number of critical reviews to Maistre's most famous work of the time, *Du Pape*, which Robiano-Borsbeek's *Bibliothèque* had introduced in the Netherlands (de Foere 1821a, b, c, 1822). De Foere started, in a first review, with criticising the principle of the 'infallibility' of the pope, which Maistre defended (and would eventually become adopted by the First Vatican Council in 1870). De Foere claimed that Maistre was 'ignorant on theological science,' invoking the fact that the principle of papal infallibility was de facto not a part of Roman orthodoxy (de Foere 1822, 115). De Foere pointed out, correctly, that Maistre was defending papal authority on the basis of 'analogy' with the civil world. 'The necessity of submission to the civil laws is not contested … It is on the basis of this analogy that the author establishes in the religious order the authority of the head of the church and the obligation to obey.' But, 'to make the supremacy of the pope more intelligible, Mr. Maistre searches to find analogies in [his opposition to] the Estates General, the parlements or the States, and in consideration of their relation with sovereign.' It was clear therefore, to De Foere, that Maistre was outlining Catholic doctrine in correspondence with secular monarchical, anti-representative and anti-constitutional views. Refuting this analogy, De Foere suggested that 'the necessity of the papal government and of his authority are better emphasised … by considering it as the only authority which exists in the church, as is in fact demonstrated by the history of Christianity … that it is the only [institution] to whom belongs the high administration of the church' (de Foere 1821b, 23–28). In accordance with this historical argument De Foere also defended Bossuet and the Gallican Church of France against the anti-Gallican attacks of Maistre and other modern ultramontanes of his time. Maistre, in De Foere's opinion, wrongly accused the French

[8] Félicité de Lamennais, *De l'éducation du peuple* (1818); L.-J.-M. de Robiano de Borsbeek, *Des systèmes actuels d'éducation du peuple* (Brussels, 1819).

theologians when he insisted that they had arbitrarily 'fabricated their own canons.' It was totally inappropriate to attack Bossuet on this point, De Foere insisted, because the bishop, whilst pointing out that 'the exercise [of apostolic power] must take place according to the canonical laws,' had all too well recognised the authority of the popes 'to maintain the unity in the entire body of the church' (de Foere 1821c, 278–281).

The respect De Foere expressed towards the Gallican tradition reflected the strong influence of Gallican authors in the Southern Netherlands, and especially in Flanders (Lamberts 1972, 19–20). But in his attack on Maistre, De Foere went far beyond this defence of ecclesiastical tradition. The Flemish priest continued to express scepticism towards the argumentative style of the French author. De Foere insisted that Maistre was driven 'by abstract ideas and by a purely romantic style, by illusions in which one perceives neither reality nor restrictions.' The problem with Maistre was, according to De Foere, that 'he does not deem it worthy to undertake any research, to make any objection based on facts' (de Foere 1821c, 284). At different moments, De Foere invoked Alfonso Muzzarelli's *Il buon uso della Logica in materia di Religione* (1787–1789, 6 vols.),[9] a respected collection of philosophical-theological treatises, and insisted that many questions discussed by Maistre could simply be clarified by reading the work of 'this man of learning.' It was not 'through the insignificant declamations by Joseph de Maistre that one can become informed on the historical authority of the popes.' In an announcement of later articles on the subject, De Foere further insisted that he would again discuss Maistre's work, 'to neutralise the harm that the count could afflict to the true theological and historical sciences' (de Foere 1821c, 285–286). In response to the accusation by one of the readers of his journal of defending Gallicanism, most likely originating in the aristocratic group of ultra-Catholics, De Foere insisted that 'our observations on *Du Pape* … have been written in a spirit that is totally independent from any system [of thought].' The criticism of

[9]Alfonse Muzzarelli (1749–1813) had been an Italian Jesuit who, in the eighteenth century, wrote a number of treatises in which he presented sketches on the most important theological questions of the day; abuses in the church, the temporal power of the pope, primacy and infallibility of the pope, religious toleration etc. A number of his treatises, originally in Italian, were translated into Latin and bundled in the following publication: *Bonus usus logiae in materia religionis* (Kaschau 1817–1818). Most likely De Foere has quoted Muzzarelli from this translation.

the work resulted not from the fact that 'the author defends the opinion of the ultramontanes; but because … he defends it without principles and without sufficient knowledge.' De Foere further declared that he himself only paid attention to 'principles of faith,' and that he was 'used to ignoring questions that are purely of a speculative nature.' The latter applied to the question of the infallibility of the pope. 'Sufficient is, in our minds, to acknowledge the authority of the head of the church, which we have the obligation to obey' (de Foere 1822, 116–117).

In defending the historical credentials of Gallicanism, De Foere in fact rejected the eschatological and utopian dimension in modern ultramontanism. The French Revolution, in the eyes of Maistre and his followers, had been too great a catastrophe to just condemn it through an anti-Jansenist lens, by simply placing the Civil Constitution of the Clergy in the same category as previous 'Josephist' and 'Jansenist' attempts at church-reform. To Maistre, the French Revolution was a divine intervention to correct the errors of the past, a godly intervention to make people rediscover the religious essence of society and politics. The French thinkers embedded anti-Gallicanism with entirely different meanings than traditional anti-regalism or classical ultramontanism had done. De Foere understood this very well, and he described Maistre's view on ecclesiastical history as if 'until today there have only existed troublemakers within the church, firebrands of heresy and schisms, enemies of the authority of the Holy See …' This view was entirely irreconcilable with the condemnation of Jansenism and reformist Catholicism on the basis of a language of historical continuity. Against Maistre's attempt to 'eliminate the past,' De Foere argued that, with regard to the question of the infallibility of the pope, 'one has, no doubt, to regret that, regardless of cautious restrictions and strong precautions, the clergy of France, in a moment of collision, has inconsiderably thrown this stone of discord in the church's lap.' 'But it remained nevertheless an acknowledged fact,' De Foere continued, 'that it were only firebrands inciting a schism, people of *political religion*, and, to say it plainly, religious *canaille* which have subsequently exploited [the ensuing disputes]' (i.e. to advance an anti-papal agenda) (de Foere 1822, 118–119).[10]

[10]De Foere further pointed out that Maistre, by focusing exclusively on the viewpoints of heretics concerning theological issues, paradoxically provided them with historical credibility (as for example on the issue of papal infallibility). It would be better therefore, in the eyes of De Foere, to leave certain scholastic issues undiscussed.

De Foere's determination in countering the influence of Maistre was further illustrated by the numerous pages he dedicated to uncovering the unorthodox interpretation provided by the count on the ecumenical validity of the decrees of the Council of Constance (whereby Maistre anticipated once more the ultramontane orthodoxy that was established later on the matter during the First Vatican Council).[11] But apart from the historical-ecclesiastical argument, which only indirectly had a political dimension, there was also the political argument itself. Maistre's work revolved around the principle of authority, the principle which in *Du Pape* he elaborated into a principle of 'spiritual authority.' As we have seen, he construed his principle of authority around a notion of inalienable sovereignty, which he adopted from Hobbes and Rousseau, and which he identified with the 'will of the monarch.' De Foere, in his second article on *Du Pape*, asked if Maistre 'would not have reasoned more correctly by defending the necessity of a just and wise government, which observes the laws religiously, whatever may be the form in which this government is constituted.' In a way that clearly reminded of Feller, De Foere denied that monarchy (or 'sovereignty' understood in the sense of Maistre) was the only possible form of government: 'The millions of men governed by the United States of America … or by the Swiss cantons, do they not exist as a nation?' 'Sovereignty,' De Foere added, 'is only one form of government and not a necessity; …' He went on to attack Maistre's Hobbesian belief that society comes only into being in the act of submission to a sovereign will: 'From the necessary existence of the human society and government [Maistre] concludes that people have no choice in their sovereign, sovereignty not being, in his eyes, any more

[11] Maistre argued on the Council of Constance (1414–1418) that it was legitimate only after it was convoked by Gregory XII, the Roman claimant, in order to argue that the decrees *Haec Santa* and *Frequens*, issued at an earlier date, were invalid. These decrees were issued to safeguard the work of reunification and of reform, and later were used to justify the attempt of the Council of Basel to enact an anti-curial reform of the church. This argument of Maistre, however, found little supporters before the nineteenth century and the triumph of modern ultramontanism (see Izbicki 1986). De Foere, in a way that echoed his denunciation of Maistre's case for papal infallibility, accused the count of interpreting the Council 'in the sense attributed to it by the heretics and the enemies of papal power,' instead of in its 'natural, circumstantial and authentic sense.' Instead of rejecting the validity of decrees of the fourth and fifth session, it would be better, De Foere pointed out, to 'confine' these acts and decrees to the meaning which, according to the evidence, the Council had attributed to them. De Foere here in fact endorsed the line of argument, followed by many papal apologists, of 'the good Constance against the bad Basel' (de Foere 1821c, 285–286; 1822, 116–117).

the result of their will than society itself.' This was the same, De Foere explained, as if 'from the acknowledged need for nourishment, one would deduce that man does not have a choice in his alimentation' (de Foere 1821b, 285–286). Instead, according to De Foere, societies or nations existed independent of governments, and men, therefore, did have a choice in their form of government: 'If nations would be left to themselves … could they not give themselves a social existence? Could they not lift themselves up out of anarchy?' When it came to the form of government to be preferred in his day, De Foere made an argument that was typical for his republican-liberal contemporaries: 'One would judge me wrong if one concluded from my observations that I am favouring a republic. I am, it is true, not inclined to condemn the republican form of government in itself. But it would need a big change in the men of our days before I could prefer it to a wise and righteous monarchy … If I therefore oppose the false ideas and exaggerations of Mr. Maistre, it is above all because I like accuracy' (de Foere 1821b, 287).

The distinction made by De Foere between society and government (or 'sovereignty') was not essentially 'liberal.' That is to say, it was not born out of a preoccupation with natural or individual rights. However, by grounding legitimate political authority in custom and tradition, De Foere adopted the same duplicity with regard to the notion of rights that pervaded in the political thought of Edmund Burke. De Foere pitted the 'liberty of the social contracts' against Maistre's 'sovereignty,' which emanated from a mysterious source. As in Edmund Burke's work, the social contract functioned here as the imaginary origin of every government that had acquired legitimacy through its political history, and was characterised by a just balance of (particular) rights and duties. Nevertheless, this Burkean conservatism inevitably includes a liberal and democratic dimension, as the recognition of 'real rights' within a certain state carried with it the awareness of pre-existing 'natural rights.' De Foere, on the one hand, seemed to endorse, in a very similar way as Feller, a kind of political-constitutional relativism, the idea that not only the monarchy, but 'all kinds of government' are legitimate, as long as they correspond to 'the principles of eternal justice' (de Foere 1821b, 286). At the same time, De Foere, by pitting the concept of the social contract directly against Maistre's notion of sovereignty, was unavoidably pointing at its universal relevance, regardless of time and place and of the chosen political order. The tension, similar as the one present in the work of Burke, became apparent when he insisted that justice 'requires the liberty of the social contracts in all its

general and particular meanings, as well as their scrupulous execution' (de Foere 1821b, 286). 'I believe,' so he continued, 'that the sovereign power resides with the individual, or with the individuals, according to the many modifications established by these contracts, regardless if these pacts have been freely concluded, or if the wisdom and equity of granted charters have acquired the tacit agreement of the nations' (de Foere 1821b, 292).

The journal *Le Catholique des Pays-Bas* (further abbreviated as *LCPB*), which in the late 1820s became the most important exponent of the Catholic opposition in Flanders, would to a large extent keep the discourse of De Foere alive, even when it also allowed space for other voices (see further). One article from 1827, '*Quelle est la forme de gouvernement que doit préférer un Catholique*?' was clearly written in the spirit of De Foere's criticism on Catholic monarchism (*LCPB*, 23 February 1827, no. 46). The article rejected the opinion of 'ultra-liberals' with regard to Catholics. Catholics, in the eyes of the liberals, looked at 'absolutist government as the only one that could be legitimate,' and at 'constitutions as inventions from the devil.' The journal insisted that Catholics, instead, believed that 'God takes under his guard all legitimate government, regardless of its form.' It pointed out that in the past 'more republican states existed than in our times,' and that the English Magna Charta had come into existence in a time that 'England was entirely Catholic.' The journal then also shifted easily from this constitutional relativism to presenting a liberal theory of government. Reflecting the spirit of the time, the journal did not invoke the 'liberty of the social contracts' to that extent, but adopted a liberal interpretation of the contemporary Fundamental Law: 'We attribute our love and respect to the sacred king, we hold the two legislatives and everything which emanates from these constitutional powers in high regard, but *ministerial infallibility* is not a principle of our Fundamental Law!' The journal continued further to discuss the essentiality of a 'public debate' and of an 'unlimited liberty of the press' to every form of constitutional government.

8.3 A New Strand in Catholic Thought: Lamennais in Belgium

With regard to the ideas of Félicité de Lamennais and their influence in Belgium, it has uncountable times been argued, and is still the generally accepted wisdom, that the ideas of the French abbé pushed many

Catholics in the Southern provinces to abandon their reactionary or counterrevolutionary political beliefs, and endorse liberal-Catholicism—and a union with the liberals—instead. However, the notion that it was Lamennais' political Catholicism that made the union possible revolves around a misconception of Lamennais' political thought of that time (1829–1830). There was nothing 'liberal' about Lamennais' ideas in 1829. In fact, the union which in the Southern Netherland Catholics concluded with liberals was one of the important factors influencing Lamennais in developing a liberal variant of political Catholicism—albeit from an entirely different angle than the classical ultramontanes in Belgium. Only afterwards, in the wake of the Belgian Revolution, did his liberal-Catholic political thought also become influential among a major part of the Belgian political-Catholic 'party,' partly as a result of the social and political turmoil itself and the Catholic *réveil* that followed, and in view of the fact that it was a younger generation of Catholics that came politically to the forefront. Nevertheless, the aristocrats around Mérode and a number of young Belgian Catholic authors, also around *Le Catholique des Pays-Bas*, read and were influenced by the political thought of Lamennais before 1830, before he entered into liberal waters. And some of these authors, in the context of the coalition with the liberals and the polarising political situation, preceded Lamennais in outlying a new type of liberal-Catholic political thought.

Félicité de Lamennais' first major work was *Essai sur l'Indifférence en Matière de Religion* (4 vols., 1817–1823), which immediately made him, next to Joseph de Maistre and Louis de Bonald, into an exponent of modern ultramontanism. The largest part of Lamennais' work was, however, philosophical rather than political; and it was also received as such within Flemish clerical circles. Lamennais introduced in his *Essai* his notion of '*sens commun*' or '*raison général*.' Common sense, which Lamennais opposed to the notion of 'individual reason,' was handed over from one generation to another, and was ultimately a manifestation of the 'divine truths.' Furthermore, Lamennais turned his theory of common sense into argument of proof for the existence of God, as, since no judgement of man was historically more generally accepted as that of the existence of the one Christian God, it had to be so that (only) this God existed. The *Essai* was, however, also an elaboration of the principle of authority, which had previously found expression in the writings of Bonald and Maistre. Lamennais insisted on the need for a 'general authority' that would guard over 'general reason,' and this authority

was embodied by the Catholic Church. As Lucien Jaume pointed out, a central place in the work of Lamennais was reserved for the conflict between Catholicism and liberalism, a conflict between individual judgment on one side, and 'belief' and 'obedience,' on the other (Jaume 1997, 194–195).

If Lamennais later moved in the direction of proposing an alliance with liberalism, this cannot be understood independent from his definition of the 'principle of authority,' which he continued to elaborate in his publications *De la religion* of 1826 and *Des progrès* of 1828. To Lamennais, as to the other French ultra's, this principle was not just about papal authority within the church, in defence against all kinds of regalist and Jansenist attacks, but also about society itself. At the time of his move into liberal waters, a *displacement* was performed by Lamennais, which, in the words of Lucien Jaume, 'did not mean that the Catholic spirit became seduced by liberalism, but that the authoritarian vision of Catholicism gave a certain space to ideas of freedom' (Jaume 1997, 195). Maistre had primarily been a staunch defender of the legitimacy of absolutist monarchical rule and an opponent of any theory of justified resistance. It was the essence of the work of Lamennais, on the other hand, that he wanted to 'establish the authority of the spiritual power as much within the religious as within the social order,' which, as we saw, leaned closer to the ideas of the Belgian modern ultramontanes than to Maistre or Bonald. An unconditional theocratic spirit informed Lamennais' search for a common origin of society and faith.[12] But placing the sovereignty of the pope at the centre of his political beliefs meant, unavoidably, that Lamennais increasingly depreciated the sovereignty of the monarch—which became apparent in his writings from the late 1820s. He in fact came to believe that kings had, since the Middle Ages, illegitimately emancipated themselves from the sovereignty of the Roman bishop. Ultimately, Lamennais simply identified his notion of 'general reason' with the sovereignty of the pope. As Jaume has explained, this constituted a projection on the figure of the pope of

[12]A famous slogan of Lamennais, elaborated as titles of consecutive paragraphs in *De la religion*, was: 'No Pope, no Church. No Church, no Christianity. No Christianity, no religion, at least for all peoples who were Christian, and in consequence no society' (de Lamennais 1826, 49, 53, 56).

the identification made by Bossuet between the king and the people. The theocracy of Lamennais, therefore, was also of a 'populist' nature, '*une sorte de césarisme démocratique*' (Jaume 1997, 201–204).

Before 1830 the 'democratic and populist potentialities' of Lamennais' thought remained hidden, but in the wake of the July Revolution of 1830, and with the foundation of the journal *L'Avenir*, Lamennais finally moved to liberalism, and even to a democratic republicanism. In the face of the alignment of most of the French clergy with the Bourbon monarchy, *L'Avenir* called for a revival of Catholicism through endorsing the legacy of the French Revolution (Jaume 1997, 205).[13] In speaking out for complete liberty of the press, against any restriction on the right to association, for a radical decentralisation of the state, the Catholics around *L'Avenir* positioned themselves (a lot) more to the left than the doctrinal liberals around Guizot, who rose to political power in 1830. The paradox of the ideas of Lamennais and his followers from then on was, as much as their political doctrine still revolved around the principle of authority, that the authority they reclaimed became entirely 'imaginary,' projected into an unforeseeable future. In *L'Avenir* it was argued, for example, that sovereignty of the people was synonymous with anarchy among Protestant nations, but in Catholic nations would be perfectly instrumental to public order. In a Catholic nation, 'that is to say, a nation which adopts common sense as its principle in human affairs, and the authority of the universal church in divine affairs […], the sovereignty of the people will be the sovereignty of general reason, or rather of God from whom it emanates.'[14] It seemed as if liberal-Catholics, rather than embracing popular sovereignty, wanted to suppress the notion of sovereignty altogether, to demonstrate the fiction of the sovereign state. No wonder that, in their political engagement, their attention turned primarily to the realisation of, what Jaume has called, 'a new decentralist and federative utopia.' Liberal-Catholics around Lamennais in the 1830s dreamt of a liberated community of

[13] As Jaume explained, 'they believed, in a sense, to speak in the name of God, which allowed them to address themselves directly to the Christians, circumventing the priesthood.' Consequently, it was not surprising that Rome was 'horrified to see so much authority exercised outside of the church, in a discourse that invokes constantly the church itself, and even pretends to speak in her place …' (Jaume 1997, 205–206).

[14] *L'Avenir* of 14 December 1830; quoted in Jaume (1997, 205).

Christians, a community that would nonetheless be 'dominated by a high authority that no longer represents constraint' (Jaume 1997, 208).[15]

The young aristocrats who had previously come under the influence of the political thought of Bonald and Maistre also received the first major political work by Lamennais, *De la religion*, with great enthusiasm. Beauffort wrote Robiano-Borsbeek: 'If you haven't read the book of the abbé Lamennais, read it! And after you have read and reread it, meditate on it and take it to your heart!' (Jürgensen 1963, 110). Their correspondence makes it clear that the Belgian nobles fully agreed with the theocratic principles in *De la Religion*, the civil and judicial authority of the pope and the indirect power of the church over the political order. Lamennais' book had in their eyes undeniably established that 'a Catholic prince, when changing his religion, loses his right to rule over a Catholic nation,' and that 'no non-Catholic prince has a definitive, inalienable right to rule' (Jürgensen 1963, 110, 339n16). In the aftermath of the publication of *De la religion*, Henri de Mérode and Beauffort established direct contact with Lamennais, and even for a while took up the idea of writing a book together with the French abbé. On the other hand, the influence of the coalition which Catholics in Belgium entered into with the liberals, as well as the writings of Beauffort and Mérode, became clear in *Des Progrès de la Revolution*, the following major publication by de Lamnennais of 1828. Lamennais expressed his support for the union of Catholics and liberals in the Netherlands (in which the aristocratic Catholics had not yet been involved), but he made it clear that he saw civil liberties purely as a 'palliative' for the situation which secular society found itself in. If there was nothing to expect from these liberties themselves, Lamennais contemplated that a temporary situation of anarchy might bring Catholics, through renewed contact with the 'unspoiled people,' to rediscover 'true inner freedom.' Lamennais' message was for the Catholic Church to withdraw entirely from a society headed towards

[15]Their concept of liberty also corresponded with this. Human liberty, instead of a principle of natural right, was seen as inseparable from the history of salvation. It was, in the words of Vincent Viaene, 'a political translation of the moral freedom to choose between good and evil, which God had bestowed on mankind.' The liberal-Catholics had no doubt that, once 'liberty for all' was admitted in the state without limitations, this would contribute to the realisation of the Kingdom of Christ. Thanks to the common sense which resides with the people, religion would finally prevail (Jaume 1997, 195–201; Viaene 2001, 66–67).

disaster. From this position, the church might eventually emerge triumphantly, after a long period of revolutions, wars and military dictatorship, 'the tempest purifying the air, the fever saving the patient …' (Viaene 2001, 55).

For most of the young nobles of the Brussels circle, among others Henri de Mérode, *Des Progrès* became the charter for a conditional commitment to the 'union of oppositions.' In a note on the petition action of 1829, Mérode supported the fight for modern liberties with the argument that, under non-Catholic governments, repressive measures would always be directed primarily against the church.[16] In specific circumstances freedom was necessary to counterbalance irreligious forces. But Mérode acknowledged that freedom still contained 'considerable danger,' and that it could never be thought of as anything but 'a palliative for a patient unable to receive pure and healthy nourishment.' Others, as Henri's younger brother Felix, started to develop a more positive attitude towards the modern liberties; inspired by the momentum of the union between the opposition-groups in the Southern Netherlands. They also came under the influence of the writings in the French journal *Le Catholique* of Ferdinand de Eckstein, who earlier had resided in Brussels and was a close acquaintance of the Mérode circle (Viaene 2001, 54–55).[17]

In Paris in May 1829, Felix de Mérode published a brochure titled, *Un mot sur la conduite politique des Catholiques belges […]*.[18] The young nobleman criticised Lamennais' attacks on the French Charter, which the French abbé had mistakenly denounced as 'republican' and 'atheist.' Whilst Lamennais had called upon the Catholic Church to turn its back entirely on modern society, in view of the inevitable downfall towards which it was headed, Mérode staunchly rejected this strategy. Mérode welcomed Lamennais' acknowledgement that, in current times, state

[16] Henri de Mérode, *Sur les pétitions dans le Royaume des Pays-Bas* [1829], quoted in Jürgensen (1963, 125 and 343n.), Viaene (2001, 55), and Haag (1950, 269–271).

[17] Eckstein himself, according to André Miroir, adopted liberal dispositions under influence of the French journal *Le Globe*, which, from 1825 onwards, pleaded for a complete separation of church and state and urged Catholics to endorse this as a way of reviving their religion (Miroir 1994, 102–103).

[18] Félix de Mérode, *Un mot sur la conduite politique des catholiques belges, des catholiques français et l'ouvrage de M. de La Mennais […], suivi d'un article sur le genie de La Mennais, par le Baron d'Eckstein* (Paris, 1829); quoted in Jürgensen (1963, 124–128, 343n57).

and church could no longer form a unity. He followed Lamennais to the point where he taught that the spiritualisation of political authority would have to be realised *against* the governments of the Restoration, rather than in collaboration with them. In line with modern ultramontanism he believed that these governments were too stained by 'Gallican principles.' But he disagreed with Lamennais, when the latter insisted that the return of a Catholic society would only arrive through a series of catastrophic, apocalyptic events. Mérode replaced Lamennais' apocalyptic vision with a belief in modern liberties as the *essential condition* for the realisation of a Catholic utopia: 'The charters provide us with what is maybe an uncertain basis, but, all considering, it is still better than the void which Mr. Lamennais irrevocably suspends us with.'[19] Felix de Mérode was exceptional among the circle of nobles for having moved into liberal-Catholic waters before the events of 1830, and before Lamennais himself.

Although the move by Felix de Mérode was highly original, he would receive back-up by some journalists of *Le Catholique des Pays-Bas*. If *Le Catholique* primarily engaged seminary priests who wrote in the spirit of De Foere, such as Constant Van Crombrugghe, J. J. de Smet and Désiré Verduyn (many of whom became unemployed as a result of the closure of the clerical seminaries after 1825), the journal also enjoyed considerable support among the prominent aristocratic families in Flanders, such as d'Hane-Steenhuyse, Dellafaille-d'Huysse, Vilain XIIII and Rodriguez d'Evora y Vega (Lamberts 1972, 33–34). The sporadic publication of articles by Charles Vilain XIII and Louis de Robiano-Borsbeek meant that also the modern ultramontanism inspired by the French authors was given a broader audience. Within this circle could be found many of the later well-known liberal-Catholics in the wake of the Belgian Revolution, such as Charles Vilain XIIII, the Dechamps brothers and Bartélémy Dumortier. However, there were a number of young collaborators to *Le Catholique des Pays-Bas* in Ghent who, already in the late 1820s, embraced similar ideas as Felix de Mérode; the priests Désiré de Haerne and 'P.' Verbeke, and above all Adolphe Bartels.[20]

Throughout 1828 Adolphe Bartels, who came from a German-Protestant family and converted to Catholicism after studying the contemporary Catholic authors, wrote articles in *Le Catholique* which made

[19] Quoted in Jürgensen (1963, 343n68).

[20] On *Le Catholique des Pays-Bas*, see Bartels (1836, 15–24, 443–444), Lamberts (1972, 30, 39–40), and Breunesse (2014, 60–68).

it clear that he had read Lamennais, and endorsed the latter's vision of how the political turmoil in the modern age could eventually lead to the triumph of a pure Catholic society. Bartels, in an article under the revealing title '*Parlons aux masses*,' pointed out that 'in passed centuries, the church has often invoked the support of the secular arm to preserve itself ….'[21] 'The alliance between the secular and clerical authorities, could in the past have had its utility,' Bartels pointed out, but, 'since the time that kings believed that they are the indispensable supporters of the church, the position of the Catholics has changed, and they have come to reject these humiliating conditions ….' (*LCPB*, 12 December 1828, no. 295). Previously, Bartels had insisted that 'the state monopole, which we still consider to be natural in southern states, becomes intolerable under a constitutional government …' (*LCPB*, 9 April 1828, no. 86).

As Lamennais, Bartels at this point still thought in terms of a period of transition, and considered the modern liberties as essentially in contradiction with Catholicism. Challenged by *Courrier des Pays-Bas*, Bartels acknowledged that 'indeed, by reclaiming general liberty we hope to gain power in the future,' and that 'sooner or later we hope to make our doctrine prevail.' Bartels therefore admitted that Catholics had 'a hidden agenda.' He made it furthermore clear that, ultimately, the anticipated Catholic revival and liberal society were irreconcilable. Bartels pointed out that, if somebody would argue that 'the spirit of our sermon is subversive to the established order,' his answer would be that 'it is to be regretted for this order if it cannot coexist with the Catholic faith …' (*LCPB*, 19 July 1828, no. 172). Clearly in tune with the eschatological views of Lamennais, Bartels insisted that for Catholics 'the matter is not to approve nor to improve the foundations upon which support the civil authorities, it's a matter of choosing between going under with it, or prevailing without it' (*LCPB*, 12 December 1828, no. 295).

In 1829, however, Bartels' discourse evolved gradually in the same direction as Felix de Mérode, and around the same time. Bartels admitted as much himself afterwards in his work *Les Flandres, et la révolution belge* of 1834. He pointed out that, once the Catholic-liberal union concluded,

[21]This article accompanied the first of the two major petition actions that were being organised by the Catholic-liberal union between December 1829 and March 1830, and to which *Le Catholique* contributed with a petition obtaining 40,000 signatures (Wils 2007, 222).

which *Le Catholique des Pays-Bas* joined in July 1828, 'liberty' was no longer viewed as 'a transitory instrument,' but as a 'Catholic value' per se (Jürgensen 1963, 132). His most clear statement of this came in the form of a review of a pamphlet by the then most famous liberal opponent of the government and defender of the union of Catholics and liberals, Louis de Potter. De Potter argued, addressing the Catholics, that their mission 'from now on should only be … to awaken and uplift the public spirit, to consecrate patriotism with religion, to explain, in one word, the love of liberty and all the virtues of the citizens as obligations originating in human conscience' (de Potter 1829). In a reaction, Bartels stepped up to this, and argued that 'liberty is only possible for religious people, because an irreligious people is ungovernable and can only escape despotism by returning into a state of anarchy' (*LCPB*, 1 July 1829, no. 169). 'Liberty concords naturally with the spirit of Catholicism,' Bartels wrote some time later (*LCPB*, 13 December 1829, no. 333). Early in 1830 he insisted that the 'Catholic faith, which is inseparable from true liberty, has already reunited many friends in our country,' implying that the union of oppositions was in fact a Catholic construct (*LCPB*, 29 January 1830, no. 29). In August 1830, only shortly before the revolts in the Belgian cities broke out, Bartels insisted again that 'liberty … is of divine right, and in its original form exists only in religion' (*LCPB*, 16 August 1830, no. 227).

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In the history of political Catholicism, the conclusion of the union between Catholics and liberals presented a clear moment of rupture, but not in the sense that it has often been presented. It let to the manifestation of a different type of Catholic political thought. Paradoxically, this Catholic strand had its roots in the counter-revolutionary French Catholic tradition, which the majority of Belgian Catholic authors had ignored or even (in the case of De Foere) criticised, but which had been popular within circles of aristocratic youngsters. Elaborating upon the thought of Félicité de Lamennais, the latest exponent of this tradition, and in a way that anticipated Lamennais' own later intellectual development, a number of Catholic authors presented a political discourse, in which freedom was considered an essentially Catholic principle. This, however, would have unforeseen consequences and help to push the opposition into an outspoken pro-Belgian direction. If only Catholics could be free, how could freedom ever be accomplished in a Great-Netherlandish, half Protest, half Catholic nation under a Calvinist monarch? Did this future nation not have to be a 'Belgian' nation?

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CHAPTER 9

Towards Belgian Nationalism and a National Revolution

If the conclusion of a union of Catholics and liberals did not require any serious reconsideration of the ideas underpinning the two oppositions in the Southern Netherlands, it nevertheless triggered a further radicalisation of the political positions on all sides. In the discourse of the union of oppositions, this created a dynamic towards Belgian nationalism.

9.1 The Intensification of the Language of the Opposition: The Last Bulwark of Freedom

The Southern opposition had from the beginning embraced a number of principles as the fundament of their politics. This was linked with how public opinion in the South had digested the establishment of the Kingdom of the Netherlands in 1815. An impression took hold in the South that the 'Belgian' provinces had not been involved to a sufficient degree in the making of the Fundamental Law and the establishment of the new constitutional state. In the North, on the other hand, the actual text of the constitution prevailed as the main guideline in politics. From this difference in perspective followed a difference in what was believed to uphold the constitution and the rule of law. To the Southern liberals, not the legal safeguards ensured that the constitution was upheld, but the will of the people to confront a government that overstepped its legal boundaries. A republican public culture was essential to uphold

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the constitution, or, rather, the general principles which the constitutional order was supposed to encapsulate. When the crisis increased towards the end of the 1820s, the opposition, under severe attack from the government-supporting press, would increasingly justify itself in those terms. One clear example was the pamphlet by Adolphe Castiau from June 1829 (Castiau 1829), discussed in the previous chapter, who argued that the real problem with regard to ministerial responsibility was the 'absence of patriotism.' Especially in the wake of the pact between Catholics and liberals, this classical-republican emphasis on the necessity of a vigilant citizenry became much more important.

At the end of 1828, Louis de Potter was brought to trial on the basis of the laws restricting the freedom of the press, for his articles in the *Courrier* on the union between Catholics and the liberals. Other important liberal journalists, Pierre-François van Meenen and Sylvain Van de Weyer, represented De Potter as his defence lawyers (de Potter 1829a). The defence took primarily issue with the press decrees (de Potter 1829a, 14–15).[1] De Potter himself, in his final address, presented a broad argument in favour of the necessity of a free opposition. 'I have preached the doctrine of the pure constitutional opposition, against the abuses which frustrate and hold back our progress in the process of civilisation, against the attacks of the powers whose victims we and our children threaten to become ….' De Potter did not, in his defence, outline where or how the government had overstepped its boundaries. Instead, he emphasised the necessity of the very existence of an opposition: 'The opposition makes sure that the boundaries are never crossed by the public power. It makes sure that it [i.e. the government itself] is constantly vigilant against the enterprises and the usurpations of this power … Defiance is synonymous with prudence, and prudence is the wisdom of people.' De Potter's defence also identified the '*ministériels*' as the main target of the attacks of the opposition, meaning, not the government or the ministers themselves (let alone the king), but those who defended them and, in his view, depended on the public authorities. He furthermore made a direct comparison between the *ministériels* of the modern times and the courtesans of the old monarchies, a typical classical-republican stereotype:

[1] In response to the view that a too unrestricted freedom of speech was a revolutionary principle bound to bring anarchy, Van Meenen replied, in tune with his previous journalistic publications, that, in fact, the real novelties were 'our political state, our institutions, our situation ….'

'The ministerials in the modern constituted monarchies are but what the courtesans were in the absolute monarchies … that is, servants, valets of whoever commands and pays them' (de Potter 1829a, 68–79).

De Potter was found guilty on 20 December 1828 and condemned to 18 months' detention. According to *Courrier des Pays-Bas* (abbreviated *CPB*), he was accompanied by a large crowd when he entered into the prison, which was followed by some violent eruptions (*CPB*, 22 December 1828). The government for the first time felt intimidated by the growing unrest in the South, and William I considered removing Van Maanen and appointing him as the president of the High Council (which had still to be formally established). This move would relieve him of an unpopular minister as well as secure the compliance of the High Council with the role the government had preserved for it (van Velzen 2005, 306–308). From prison, De Potter wrote another pamphlet in the form of a report of a minister to the king on 'the current state of mind and situation in Belgium' (de Potter 1829b). In it, he further elaborated on the views he had outlined in his address during the trial. He took the position that the king, to the extent that he remained faithful to the constitution and to the pact with the nation, could only rejoice in the emergence of a strong, united opposition. 'The ministry,' he explained, had 'without knowing, and certainly without wanting so, accomplished the constitutional education of the nation.' In the current circumstances, 'some of your ministers cry out that "the government is lost." I, Your Majesty, on the contrary, affirm: "The nation is saved"; and the government, to the extent that it becomes prudent and opportune, will have gained everything by the fusion of opinions …' (de Potter 1829b, 4–5). 'The nation,' De Potter further insisted, 'only demands from you the total execution of that Fundamental Law, which you have imposed on her in disregard of her wishes, and which she has come to accept, whilst at the same time declaring that she has finally understood it, and that, from now onwards, she will not allow anymore that you exploit it against her, and make it into an instrument of oppression and slavery' (de Potter 1829b, 6).

The union resulted in an increasing self-awareness among opposition, the awareness of finally being able to awaken the public spirit; in the words of Castiau of, 'recreating this national spirit, without which all institutions are useless, the public and private laws exposed to all sorts of attacks, and the responsibility of the ministers, even when written in a hundred laws, inexistent' (Castiau 1829, 29). A pamphlet published

under the pseudonym Henri van Herberghen (later attributed to Charles Froment), *Coup d'oeuil sur le royaume des Pays-Bas en 1829*, made similar arguments (Van Herberghen 1829). The author stated about the Belgian people 'that tyranny has to push its impudence too far, the *spirit of conquest and usurpation* to extend its ravages beyond measure … before they would let themselves become distracted from their habit of domestic activity that involves their existence' (Van Herberghen 1829, 18). Nevertheless, he insisted that it was a blessing for the country that the nation had finally risen up, and that it would no longer let itself be divided between 'pure liberals' and 'religious liberals' (Van Herberghen 1829, 53). The possibility to oppose, thanks to an absolute freedom of the press, and the determination of the opposition to fight for these principles, were essential to the maintenance of free, constitutional government, so the author continued: 'Who can stop [the ministers] when they make a perilous excursion outside of the constitutional boundaries, and who forces them to retreat? … The press is, in a certain sense, their second conscience.' In fact, the existence of 'the social pact' itself depended on the existence of a free press: 'If one suppresses it, the constitution fades. If one extinguishes it, the constitution will soon be a corps' (Van Herberghen 1829, 23–24).

An emphasis on the importance of the existence of a strong opposition for the maintenance of a free, constitutional government substituted therefore increasingly the emphasis on the concrete demands of the opposition, be it in the field of social policy (education, language), or in the field of political rights (freedom of the press, jury, ministerial responsibility). It was the logical development of an opposition that was driven by a liberal-republican idea of political freedom that, to a large extent, was inspired by the political thought of Benjamin Constant. Famously, Constant was one of the first to make a distinction of two types of liberty, in his famous Address from 1819 *The Liberty of Ancients Compared with that of Moderns* (Constant 1819). The kind of freedom that people desired in contemporary societies could best be understood in contrast with the kind of freedom that was cherished in ancient societies, Constant believed. For the people of Antiquity, freedom resided in 'exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws, in pronouncing judgments; in examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing,

condemning or absolving them' (Constant 1819, 311). This collective freedom was accompanied with the total submission of the individual to the authority of the community. In contrast, in modern, commercial societies citizens were interested in personal welfare and happiness: 'The aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures' (Constant 1819, 317).[2]

Nevertheless, Constant did not think that political freedom, the right of citizens to participate in politics, had in any way become redundant or irrelevant. For one thing, it was necessary to secure the cherished individual rights: 'Individual liberty, I repeat, is the true modern liberty. Political liberty is its guarantee, consequently political liberty is indispensable' (Constant 1819, 323). But, furthermore, political liberty also remained most valuable in its own right: 'Political liberty, by submitting to all the citizens, without exception, the care and assessment of their most sacred interests, enlarges their spirit, ennobles their thoughts, and establishes among them a kind of intellectual equality which forms the glory and power of a people … political liberty is the most powerful, the most effective means of self-development that heaven has given us' (Constant 1819, 327).[3] Political institutions in a free, representative state had therefore a double obligation towards individual citizens: 'By respecting their individual rights, securing their independence, refraining from troubling their work, they must nevertheless consecrate their influence over public affairs, call them to contribute by their votes to the exercise of power, grant them a right of control and supervision by expressing their opinions; and, by forming them through practice for these elevated functions, give them both the desire and the right to discharge these' (Constant 1819, 328).

When it came to the question what political liberty concretely meant, Constant had not so much the right to vote in mind, but a

[2] Constant attributed the derailment of the French Revolution to a large extent to the fact that the revolutionaries had still thought and acted in the name an anachronistic, ancient concept of liberty.

[3] Some students of Constant have argued that even his preoccupation with individual liberty needs to be understood as part of a redefinition of political liberty, in a liberal sense. Lucien Jaume summarised Constant's program in that sense as the 'necessary individualisation of political liberty' (Jaume 1997, 63). Michel Huysseune has argued in a similar sense: '*Laissez faire-laissez passer* has more than an economic meaning to Constant, as it also refers to the political activity of citizens, which he clearly valued in a positive sense and did not want to see subordinate to the legislator' (Huysseune 2015, 115).

vibrant public debate, a strong and contestatory public culture. Hence, his interest went to issues such as ministerial responsibility, or how political decision makers were to be held accountable, freedom of speech and of the press, penal trials by jury, the right of association, the right to petition and so on—demands whereby, as Lucien Jaume explained it (Jaume 1997, 84), the emphasis in the quest for more political freedom shifted from the '*amont*' to the '*aval*' of the political process; from the participation in the establishment of the government to the control of the government and the evaluation of the law and her application. In Constant's mind, a distinction should always be made between the prerogatives of society and those of the government, and the representative could never completely replace the represented (Constant 1810, bk. 1, ch. 5). Regardless of the form of government and the democratic procedures by which it had come about, it remained essential that the government was at all times confronted with a contestatory culture among the citizenry, to which it remained accountable. To Constant, an essential aspect of a modern-representative government was therefore a high level of 'publicity' about political affairs, something which in his view concerned all layers of society, especially those who were disenfranchised.[4]

In their constant emphasis on issues as ministerial responsibility, freedom of the press and court judgment by jury, rather than on the extension of the very limited right to vote, the Belgian liberals were good students of Constant. Now that they also reflected on the cruciality of political opposition through a free press, the theoretical underpinnings of their demands became more visible. 'If the printing house did not exist, would representative government exist?' Van Herberghen wondered, thereby declaring the press to be the essence of representative government (Van Herberghen 1829, 25). *Le Catholique des Pays-Bas* insisted that political opposition was 'essential to representative government' and Adolphe Castiau argued that 'representative government means government by opinion' (*LCPB*, 23 March 1828; Castiau 1829, 28). As Constant, Van Herberghen made a comparison between the (political) freedom fitting for modern times with the freedom which citizens had enjoyed in classical republics, emphasising the crucial element of 'publicity': 'In the small republics of old times, the citizens

[4] Article of Constant in *Minerve*, 18 March 1818; quoted in Jaume (1997, 103–105).

mingled personally with the government, went to the square to discuss affairs of state, and those oral communications were sufficient to sustain among them a national spirit. All the required *publicity* necessary so that freedom would not be endangered was therefore present among those peoples. But in the big states of Europe, in those vast deserts of men where the torrent of private affairs keeps attention elsewhere, where so many millions of individuals cannot manage liberty themselves and are forced to delegate their rights, how would *publicity* be possible without the press, or, what comes down to the same, how could a representative government be created without the press?' (Van Herberghen 1829, 25).

9.2 From Representing the Nation to Belgian Nationalism

One of the implications of the new self-awareness of the opposition of presenting a last bulwark against despotic government was the increasing claim of representing and speaking in name of 'the nation.' The united challenge of the press towards the government became consistently presented as the sign that the nation was finally 'rising up.' Looking back on the origins of the opposition, Van Herberghen wrote in his pamphlet that 'one day the independent journals became a force, because the nation, for whom they spoke, became a force' (Van Herberghen 1829, 52–53). The opposition seemed to emulate the argumentation of the representatives of the Third Estate who in France, during the convocation of the Estates General at the eve of the French Revolution, had claimed to represent the whole nation, and on that ground had established a Constituent Assembly. This new claim opened up a new discussion, however, as it seemed at odds with the resistance by the opposition, going back to 1815, against any policies aimed at bringing about national integration and national unity. *Which nation* was it then exactly that the 'union of oppositions' claimed to represent? The government press exploited this apparent contradiction, especially with regard to the issue of a national language. It was not the least of the particularities of the opposition, Tielman Olivier Schilperoort pointed out in the pro-government pamphlet that we already discussed in Chapter 7, that 'whilst at every possible moment one pretends to speak in name of 'the nation,' one moves heaven and earth in order to oppose that what

is the most indispensable to every nationality [i.e. a common language]' (Schilperoort 1828, 44).[5]

In the opposition press and the pamphlets, opposition against the language policy indeed continued. The arguments against imposing Dutch as the only public language in the Flemish provinces of the Southern Netherlands were diverse. In two articles published in June 1829, *Courrier des Pays-Bas* argued that the language laws were in contradiction with *additional article two* of the Fundamental Law, which provisionally maintained the rules and laws from the French period (*CPB*, 10 June and 27 June 1829). And even if this did not apply to the language of the land, so the newspaper insisted, 'than we have to return to natural and common law, which grants everyone the use of the language that he chooses.' But the language policy also continued to be attacked in a pluralistic idiom, and as part of an argument for gradual change that came about spontaneously. 'Even if it would not be impossible to make this diversity in language and mores disappear,' so *Courrier des Pays-Bas* insisted, 'then we still would have to conserve them preciously, as a safeguard of our liberty and our future happiness.' In a pamphlet on the freedom of education, but preceded by a general overview of the 'current situation in the kingdom,' the lawyer Adolphe Bosch, journalist of the radical journal *Le Belge, ami du roi et de la patrie*, envisioned a situation of bilingualism and argued that 'by persuasion, rather than by force, one will arrive at developing simultaneously the knowledge of the two languages, which are both equally useful and have both their particular beauty' (Bosch 1829, 47).

Already in the debate on the need for a new 'national' civil code that would replace the Napoleonic *Code civil*, an issue on which the Southern opposition had obtained some success, Pierre-François van Meenen had in *L'Observateur belge* addressed the question of national identity, and how important it was to a nation (van Meenen 1819). Van Meenen had criticised Joan Melchior Kemper, who had conceived the proposal of replacing the French codes of law with national ones, for arguing that

[5]The pamphlet furthermore defended the efforts at *Neerlandisation* of the whole country on the following grounds: 'Let us suppose that … in ten, twenty, or maybe a hundred years from now, the majority of the people has retaken its rights in the Flemish provinces, would it then be a good idea to keep the inhabitants of the small part of the country, that is called *Walloon Land*, in perfect isolation?' (Schilperoort 1828, 45–46).

a 'national and independent existence' was 'closely attached to the idea of a national body of law and a national language' (van Meenen 1819, 324). In fact, so Van Meenen ironically remarked, the idea was probably 'to leave to the doctors in law [to create] a *national law*, to the theologians a *national religion*, to doctors in philosophy a *national philosophy*, to doctors in medicine a *national hygiene*, to the doctors of gymnastics a *national march* [etc.]' (van Meenen 1819, 327–328). He then commented that, surely, it was 'by imprinting a cachet of originality to language, cult, sciences, arts, industry, mores, opinions, habits, that we will … reconquer global commerce and stimulate industrial development.' In the same way as a person cannot have laws, habits and manners only for applicable to himself, he continued to explain, a nation could not in every domain be entirely original. 'Peoples civilise, they do not nationalise,' and 'a nation … that would have only knowledge, experience, means that are properly hers, would be a wild nation.' To this attack against the nationalisation of society in the name of social progress and Enlightenment, Van Meenen added also his familiar distrust towards any ambitious plans of the government for social reform, this time also from the perspective of universal progress. People indeed civilise *themselves*, so he stressed in a footnote, and 'without their governments! *In spite of* their governments…' ('with exception of the United States,' he added): 'Thus read the history of Europe, and find out if nations have made progress toward tolerance, industry, Enlightenment, liberty, without that it has cost them a century of combat against the ruling class, kings, priests or nobles' (van Meenen 1819, 330–333).

Similar to how Van Meenen rejected national identity as 'the fictitious and artificial personification of a nation' (van Meenen 1819, 333), the opposition press made in 1829 the distinction between the 'public' and the 'national' spirit of a country, insisting that 'the public spirit might be very strong and demonstrate unity, in a country of which the inhabitants do not share the same memories, mores or language…(i.e. the national spirit).' In fact, the preoccupation of the government with national unity, in the eyes of the liberal press, or its eagerness to create a 'national spirit,' was nothing more than a sinister way of covering up the 'extinction of the public spirit' (*CPB*, 20 June 1829). In general terms, the journal explained that an 'artificial national spirit' was often created to 'provide support for a despotic rule,' after 'injustices had extinguished the public spirit.' The creation

of a national identity was therefore considered in direct contradiction with the existence of a strong public spirit, or, in other words, a culture of political awareness and civic spiritedness. Adolphe Bosch insisted in his pamphlet that, rather than the 'impossible unity of language,' the true rapprochement of the North and South would have to come from 'the community of our interests in industry and commerce, and the realisation of the edifice of our constitutional liberties' (Bosch 1829, 47).

Interestingly, however, simultaneous with this defence of national unity through public spiritedness, the opposition press, throughout 1829, also became less reluctant in emphasising the 'insurmountable differences' between the North and the South, between the Belgian and the Dutch (or 'Batavian') part of the kingdom. *Courrier des Pays-Bas* published in March 1829 a series of articles under the title '*Le Nord et le Midi*,' in which it argued that 'what nature and history have divided, politics will not easily unite.' 'Two customs, two centuries, two different peoples, two preponderant religions: one Northern and one Southern,' thus the *Courrier* summarised the 'national situation' (*CPB*, 18 March 1829). Also in the Second Chamber, partly as a result of the way Northern and Southern representatives opposed each other in the debates on the freedom of the press, relations between Belgian and the Dutch members deteriorated. Etienne de Gerlache described the political problems in terms of the differences between North and South, and insisted that the different policies of the government, at odds with the constitutional liberties, had aggravated the differences: 'It is high time to return to the Fundamental Law! Let's destroy those labours of trouble and darkness, those decrees of 1815 and 1825 which categorised the citizens according to language, origin, religion and opinions!' (Wils 2007a, 220–221). Thus, as the opposition accused the government of aiming for national unity in order to crush civic spiritedness, in a reverse sense, the emphasis on civic culture appeared in the opposition press increasingly as an excuse for insisting on the impossibility of unity in terms of national identity.

Increasingly, the press even expressed its opposition to the government, not in liberal-republican terms, but in Belgian-nationalist terms: they denounced the subjugation of one national group in

the country to another. In his pamphlet written after his conviction, Louis de Potter already pointed out that the language laws of the government were meant 'to disguise the revolting partiality that it holds toward the Dutch.' 'Language,' De Potter added, 'seems only to have been an instrument and a pretext to submit the provinces of the South to the North, as one submits a subjugated people to the exploitation of its conquerors.' If the monarch would only take 'one look at the activities of the ministerial departments,' he would see 'the North dominating, humiliating, destroying and devouring the South' (de Potter 1829b, 20). Also Adolphe Bosch insisted that the government 'has unwisely imagined that by introducing Dutch mores and customs, it will succeed all the better in nationalising *Belgium* and detach it from France' (Bosch 1829, 16). *Le Catholique des Pays-Bas*, writing on the causes of the Catholic-liberal opposition, exclaimed: 'The ministry, being Dutch, wished to impose to the Belgians the language of the minority. Being Protestant, it took a hold over public education and has tried to establish a national church. It has made us share in the burden of an enormous public debt, and the interests of agriculture and industry have been sacrificed.' In conclusion, the article noted, 'heading over twelve to fifteen thousand Dutch Protestants, the ministry has attempted to impose a yoke on four and a half million Belgians and Catholic Dutchmen' (*LCPB*, 18 March 1829). The journal commented, in other articles, that it had been the aim of the ministry to 'de-catholicise, disfranchise, and demonetarise Belgium' (*LCPB*, 7 September 1829). Also the liberal press increasingly framed the violations of the freedom of religion and the freedom of language as attacks against the Belgian people, of which they now emphasised its exclusively French-speaking and Catholic character. 'It is not acceptable,' insisted the *Courrier des Pays-Bas* on 8 March 1829, that in a marriage 'one spouse imposes on the other its language or its mores' (*CPB*, 8 March 1829). The journal further wondered if it was by 'humiliating the Belgians, by obliging them to abandon their antic and glorious traditions,' that one hoped to unite the country (*CPB*, 7 September 1829). A day later the *Courrier* called the 'free use of the French language … a means of conservation, a sign of our *national personality*' (*CPB*, 8 September 1829).

9.3 Independence as the Path to Freedom

9.3.1 The Royal Message of 11 December 1829 or 'Revolution from Above'

One of the reasons why the discourse of the opposition shifted towards a Belgian-national perspective was that the intransigent stance against the government had little support among independent and liberal political forces in the North. The reason for this was twofold. First of all, the resistance against the unification and nationalisation of the Belgian and Dutch societies was evidently more outspoken in the South, as it generally implied the introduction of Northern institutions and culture in the Southern provinces. Secondly, since 1815, the oppositions in the North and the South continued to hold different views regarding constitutional rights and the need for more control of the government.[6] The press in the South increasingly, throughout 1829, criticised the lack of fervour of the Northern opposition. Henri van Herberghen noticed in his pamphlet that 'the behaviour of the deputies of Holland … was little honourably,' and contrasted the political passivity the 'citizens of Holland' with the 'privileged position' they were in: 'Do you lack the number of deputies that your interests justify? Do we impose on you a language that you do not speak? Is it you that is being oppressed under the weight of exceptional laws, whilst the state of law only applies to us?' (Van Herberghen 1829, 74–79). Also *Courrier des Pays-Bas* wondered 'why the journals of the North do not help those of the South in the generous battle which the latter have initiated?' The explanation was to be found in the political culture of the North: 'The majority of the deputies of the Northern provinces resemble

[6]Some historians have also attributed the reluctance in the North to the fear that a reform of the political system in a liberal-parliamentary sense, for example through the introduction of parliamentary ministerial responsibility, would lead to a dominance of the Belgian part over the Dutch part in the kingdom. In other words, they argue that also in the North the independent, or 'liberal,' political forces increasingly looked at the political situation through a subnational, in their case Dutch or North-Netherlandish, lens. For Northern Protestants, the Catholic-clerical participation to the opposition in the South would in that sense have been considered as intolerable. In October 1829, a new journal *Nederlandsche Gedachten* by Groen van Prinsteren was established, according to Lode Wils with the 'exclusive aim … to maintain the Dutch-Protestant supremacy in the state' (Wils 2007b, 305, 310; van Velzen 2005, 355).

still too much an egoistic oligarchy that supports the ministry' (*CPB*, 11 December 1829).

The different approach of the opposition in the North and in the South led, towards the end of 1829, to an overt fracture. The catalysator was the infamous Royal Message of 11 December 1829, read out loud in the Second Chamber, which was in fact an explanatory memorandum regarding the proposal for a new press-law. In it, the king announced that, with regard to public language and education, the government would make substantial concessions to the demands in the South.[7] The declaration was therefore, to some extent, part of a larger campaign to win more sympathy in the South for the king and the government.[8] Some concessions had also already been made, primarily with regard to the Catholic issues. On 20 June 1829, a royal decree had made the curriculum at the *Collegium Philosophicum* for future priests non-obligatory, and a promise was made for the eventual closure of the college altogether. In October 1829 the nomination of the bishops of Namur, Ghent and Liège was accepted (Wils 2007b, 303–304). However, the Message also reaffirmed the monarchist views on government and sovereignty. Ministerial responsibility, in any form, was declared in violation with the constitution, as it would frustrate the powers of the monarch. 'The Netherlands cannot be compared with other countries, where ministerial responsibility was introduced under circumstances that are entirely unrelated to this kingdom …'[9] Furthermore, the new law proposal was to restrict again the liberty of the press (after the more liberal law of May 1829), which in the eyes of the king was a regrettable but necessary consequence of the circumstances in which the country found itself.[10]

In reaction, in the Southern press all the familiar arguments against the monarchist views on sovereignty and government were recycled. A series of articles were published simultaneously in the *Courrier* and in

[7]The reopening of seminaries for the education of priests would be allowed and the facilities for French speakers in the Flemish provinces, primarily with regard to court cases, extended (Wils 2007b, 314).

[8]To that extent, the king had also made a visiting tour through the Belgian cities and provinces in May and June 1829.

[9]Quoted in: Velzen (2005, 329).

[10]The new law was eventually adopted on 1 June 1830. On the Royal Message, see Velzen (2005, 329–332), Sas (2004, 432–433), and Wils (2007b, 309–311).

Le Catholique on 'the Origin and Nature of the Fundamental Law and of the Monarchy,' arguing that neither in the Northern nor in the Southern Netherlands absolute monarchism belonged to the national political tradition (*CPB*, 13 January 1830). Similarly, in an anonymous pamphlet titled *Observations on the Message of the King*, it was pointed out that 'the [Southern] Netherlands have enjoyed since time immemorial a *liberal* constitution, which solemnly consecrated the rights of the people, and destroyed the sovereignty of the princes that violated them' (Anon. 1829, 6). On the circumstances of the creation of the kingdom, the pamphlet argued that 'both the ancient rights of the house of Orange as the ancient rights of the States have been erased by the events that took place between 1795 and 1814' and that the prince had 'set food on Dutch soul as a regular citizen' (*CPB*, 23 January 1830). In a reaction, *La Gazette des Pays-Bas* confronted the opposition with the argument that the Dutch people had in 1813 voluntarily submitted to the monarch, as the prince, in a proclamation by Joan Melchior Kemper of 2 December 1813, had received, at the time of his entrance in Amsterdam, the title of 'William the First, Sovereign of the Netherlands.' The *Courrier* retorted, predictably, with the question, 'why one replies to us by invoking a document that only concerns Holland?' (*CPB*, 12 January 1830). In another article of *Courrier* it was further pointed out that the kingdom was eventually established as a union between two countries on conditions that had been determined by the London Protocol. According to this Protocol, 'there could be no other Kingdom of the Netherlands than under the constitution adopted in Holland, *modified in common agreement*.' The '*origins* of the original constitution of Holland' were therefore, so the paper insisted, 'of no relevance'; all what mattered was the endorsement of the new constitution by the peoples of Belgium and Holland. The journal also ammended that this popular concourse around the Fundamental Law had been 'at least presumed': '*Notre royaume n'a été fondé que par le concours (presumé du moins) des volontés du peuple et du roi*' (*CPB*, 17 January 1830). The point was that, in light of the fact that the true wishes of the Belgians had not been respected in 1815, there was all the more reason now to honour the principle of popular sovereignty as the fundament of the constitutional edifice.

It is clear from the reactions in the press to the Royal Message, that the announced concessions regarding language and education were not of a nature to soften the opposition. This was not surprising, as the preoccupation with these concrete issues had always been part of a broader

discourse on political rights and the nature of public power. After the conclusion of the liberal-Catholic union, the opposition even reformulated its demands for more political liberty, primarily involving channels that allowed the emergence of a strong public spirt (free political press, free associations, juries), into the very conditions for the creation of a political community of the North and South. Moreover, the government itself had always defended its legislation through executive decrees (especially in the fields of religion and education) on the basis a vision of the prerogatives of royal power. In defence to the laws on education, Jacob-Joseph Haus, a law professor at the University of Ghent and supporter of the government, explained in pamphlet that the constitution had only been meant to 'specify' in certain areas the sovereign authority of the monarch (Haus 1829, 45–51).[11] In matters that were not explicitly discussed in the constitution, the monarch held exclusive power, according to Hauss, and this was something that undoubtedly applied to the matter of public education. It could not have been demonstrated better that the way the government had come to interpret the nature of the constitutional government was wrapped up with its nation-building program. As a result, a number of (anticipated) concessions, made in a Royal Message that equally reconfirmed the monarchical principle, could hardly have made the opposition in the Belgian provinces less intransigent.

In fact, the *Courrier*, a week after the Royal Message, wrote that the government had simply placed itself in 'a state of revolution,' an argument that harked back to the language in which the Brabant Revolution of 1789 had been justified. Paradoxically, in view of the explicit denial of ministerial responsibility in the Message, the journal subsequently emphasised that one could thank the 'doctrine of ministerial responsibility' for a continued situation of peace in the kingdom, as without it, it 'would have been the king who declared himself in a state of revolution' (*CPB*, 18 December 1829). In an article a couple of months later, the same argument was made in a direct comparison with the Brabant Revolution, 'the last moment that signalled our national existence.' It was pointed out, with regard to the revolutionaries of that time, that, 'in the absence of the two major principles of modern (political) society, the liberty of the press and ministerial responsibility, there existed regretfully for them only an extreme, but nonetheless legal, remedy' (*CPB*, 2 April 1830).

[11] For an analysis of this brochure, see also Velzen (2005, 272–276).

Also Louis de Potter published another pamphlet, in reaction to the Royal Message, arguing along similar lines as the *Courrier* (de Potter 1829c). First of all, the declaration by the government came down to a 'revolution from above': 'We who have never demanded anything but the maintenance of the established order, the conservation of that what exists, are we supposed to be the revolutionaries? … No, Sire; the true revolutionaries are your ministers themselves, who want to destroy the regular temple of the law in order to replace it by the chains of slavery… who propagate the anti-social systems of thought that our Fundamental Pact repudiates…' (de Potter 1829c, 7). De Potter subsequently put the blame for the Message entirely with the vilified ministers and not with the king, adding, nevertheless, that the biggest danger came from 'ministers that dare to present as *Your* opinions the plan that emerge from their despotic imagination and delirium, dare attach *Your* august name to the work of their dement impiety, their expiring tyranny.' But what if the ministers could, ultimately, not be stopped, if it would undeniably be proven that the king himself did not want to be restricted by ministerial responsibility, and therefore a formal violation of the fundamental pact took place. At that time, De Potter continued, the Belgians could do nothing but make their conclusion, and tell to the government: 'As you have torn up even the last page of the book of the law, and stamped with your feet on the remains, we, at our turn, will cease to submit ourselves to a contract that you have broken the first, and which therefore can no longer bind us… From that day, we retake our *independence*, from which we never gratuitously departed' (de Potter 1829c, 16–17). It was, as far as we know, the first anticipation of an upcoming revolutionary event.

9.3.2 The Decennial Budget or the Last Chance for a Parliamentary Revolt

In the North, however, the reaction to the Royal Message went entirely the other way. The reason for this, according to Dutch historian Jeroen Van Zanten, was that 'one could appreciate … that William I had finally clarified his positions, and his agenda with regard to education and religion.' On the royal position regarding these issues, the general feeling was that, 'taken aside his ideas about the freedom of the press, ministerial responsibility and the law on conflicts, "our second Father William"

had shown himself to be a "liberal" ruler' (van Zanten 2004, 276).[12] The differences between Northern and Southern political opinions became highlighted in the same month during the discussions on the second decennial budget, which needed to be approved by the parliament. In May, the Second Chamber had a first time rejected the decennial budget. The Belgian deputies had rejected it out of hand, as a signal of distrust towards the government, whilst among the Dutch many representatives were unhappy with the fiscal policy and the general financial situation of the country. But after the deliberations had been restarted in the autumn, the Royal Message had the effect of making the Dutch representatives more agreeable. Moreover, the position of the Belgians, who under the motto 'no subsidies without rectification of the grievances' remained as principally opposed as before, unnerved the Dutch representatives. Some Dutch members of parliament insisted, during the debates, that it was this kind of principled stance that had led to the execution of Charles I of England in 1649, as well as to the bloodshed of the French Revolution, which underlined again the identification of the Dutch with the new monarchy and their aversion of political instability (Wils 2007b, 311). A crucial difference was also that, from a constitutional point of view, the Dutch representatives continued to believe that parliament had no tools to hold the ministers responsible, how regrettable this might have been (Bos 2009, 221). The Dutch also thought, according to Van Zanten, 'that it would be very detrimental to the welfare of the kingdom if no budget would be established' (van Zanten 2004, 277). Political, constitutional and socio-economic considerations, therefore, resulted in the fact that the Dutch representatives (with the exception of three) voted in favour of the budget.[13]

[12]The relatively few negative reactions were limited to the new repressive law concerning the liberty of the press.

[13]The Dutch king had initially made an attempt, through the Liège Bishop Van Bommel, to persuade the Catholic members of parliament to change their mind, but the opposition press boycotted the effort. The reluctant Southern representatives were exposed, and, according to Lode Wils, were 'whipped' into compliance with the opposition by the vigorous opposition press and the petitions sent to the Second Chamber (Wils 2007b, 307). On the other side, the government also made threats and took repressive actions to frighten enough representatives to take its side (Bos 2009, 220). The budget was approved with 61 to 46 votes (Wils 2007b, 312).

This was the decisive moment in transformation of the unionist opposition into a Belgian-national movement, aimed at ending the 'discrimination' or 'oppression' of 'the Belgians' or the Belgian provinces, and eventually at separation. First of all, it had become undeniable that the demand for a change in the nature of government was a demand coming exclusively from within the Southern provinces. But, secondly, the vote for the budget made it clear that, because of the division between Northern and Southern representatives, the opposition in the South could, in the foreseeable future, not count on the parliament to confront the government on any of the fundamental issues. 'It is becoming exhausting,' the *Courrier* argued a week after the Royal Message, 'to bombard the administration with complaints and reproaches.' 'It is therefore to you, representatives of the people, that we address ourselves, as you alone are still in a position to arm our resistance with the forces of legality.' Specifically addressing the Northern representatives, the journal insisted on 20 December 1829 that 'today it is about the future of your and our country for many years to come.' In case of a failure of standing up to the government, the journal added, 'the fusion of the two people will be postponed indefinitely and maybe made for always impossible' (*CPB*, 19 December 1829). Four days later the journal wrote that, 'if our representatives do not make haste in drawing the line that separates the ministry from the monarchy itself, if they continue confusing the irreconcilable interests of the one and the other, the Fundamental Law is finished. Responsibility will evaporate, and the monarchy will be subjected to continuous troubles' (*CPB*, 23 December 1829).

After the budget was approved, the *Courrier* insisted that, henceforth, the opposition would further 'rely only on itself' (*CPB*, 24 February 1830). *La Gazette des Pays-Bas* attributed some months later the following quote to Louis de Potter (in the context of a new trial): 'The people will reach its goals with or without the opposition in the chambers; it will reach them by its own energy…'[14] However, with regard to who 'the people' were which the opposition claimed to represent, it was clear that the gradual shift of the last year was now complete: it was no longer the abstract entity of 'the nation,' it was a defined geographical part of the country, as the opposition, in the words of the *Courrier*, 'covered the

[14]Quoted in: Wils (2007b, 316–317). Original source: *Gazette des Pays-Bas*, 21 April 1830.

area from Breda to Mons,' and the people that were a part of it consisted of 'up to three to four million [citizens]' (*CPB*, 24 February 1830).

9.3.3 The Belgians, an Oppressed People

In the aftermath of the adoption of the budget, the Belgian liberal press occasionally addressed directly the Dutch liberal press, not to implore them to ultimately still join the union of oppositions, but to emphasise the differences and explain these in terms of different national identities. Addressing *De Noordstar* and *De Bijenkorf*, the two most outspoken liberal journals of the North, the *Courrier* made two points: 'First, you are Dutch, and as such you are, without being conscious of it yourself, more or less partisan ... Secondly, you are Protestant, at least in origin and education … For that reason it is only natural that you have a defined common interest with your *co-religionnaires*, who govern against Catholicism' (*CPB*, 28 February 1830). Some weeks later, the journal published an article that had appeared in *De Bijenkorf*, followed by the comment that 'this extract … is of a nature to further confirm our belief that the constitutional cause, as it is generally understood in Belgium, is in Holland increasingly in retreat' (*CPB*, 25 March 1830). Only a couple of months before the events of August 1830, the journal would argue that 'if the fusion [of the North and the South] depended only on Belgium, it would today have been accomplished.' It published statistical evidence to show that, in the Second Chamber, the Belgians had always voted with the Dutch on issues that concerned them, but that the Dutch had systematically frustrated 'the defence of the Belgian interests.' The journal added in the same article that national integration implied 'reconciling the needs and interests of the two peoples, whilst respecting their mores, customs, beliefs, language, in one word their individuality' (*CPB*, 4 July 1830).

The cry of the 'oppressed Belgians' took off most clearly in the first months of 1830.[15] Interestingly, the articles in the *Courrier*

[15]The political situation became increasingly tense. Petitions for a 'rectification of the grievances' continued to be addressed to the Chamber in great numbers; the second coordinated petition action, from November to December 1829 onwards, obtained over 300,000 signatures (Wils 2007b, 307). In February, six prominent members of the opposition were prosecuted and exiled for attacks against the state and conspiracy to overthrow the government, among them Louis de Potter (who was still sitting out his previous sentence), Jean-François Tielemans and Adolphe Bartels.

that explicitly questioned the future of the kingdom and anticipated a Belgian-national revolt were, for the most part, articles copied from foreign newspapers, which maybe was a way of avoiding further prosecutions of individual journalists, or maybe indicated a continuing reluctance to adopt outspoken revolutionary language. According to an article from *Le National de Paris*, published in early May in *Courrier des Pays-Bas*, the constitution of the Netherlands had been 'badly conceived.' It was predestined to 'divide politically two countries that were already divided nationally.' The union, concluded by the liberals and the Catholics in 1828, had 'added a political battle to a social battle.' The social battle, which had been fought by 'the Catholics and the people,' had lasted from 1815 to 1828, the year when it turned into a political battle. The 'Dutch' government could, however, have avoided both, 'by not treating Belgium as a *conquered* country, by accepting the conditions and the liberty of representative systems, by improving the laws instead of improving the administration' (*CPB*, 4 May 1830). A few days later, extracts were published from *Le Correspondant de Paris* celebrating 'this union concluded between Belgians of all opinions aimed at their defence against a government, which, in spite of a sworn promise, is treating their country as if it had been *conquered*, as much as it is oppressing their religion, their language and their liberties.' The journal commented that 'we do not wish to see a revolution anywhere,' but that, on the other hand, 'in Belgium it is not a matter of insolent pretences, of a partisan spirit …'; it was 'a matter of finding out if the minority will pulverise the majority' (*CPB*, 14 May 1830). Eventually, the *Courrier* itself started to adopt the language of the articles it selected from foreign newspapers. Late June the journal wrote that 'a revolting partiality is weighing on Belgium,' and that the ministerial press 'dared to insist that Belgium, having been united to Holland, was some kind of conquered nation.' The Belgians themselves, the journal insisted, 'have always been very attached to their liberties and their *national individuality*,' and only asked 'not to be oppressed' and 'an equal repartition of all rights between the inhabitants of the kingdom' (*CPB*, 16 June 1830).

In August 1830, only weeks before the Revolution, a remarkable debate unfolded on the pages of the *Courrier* on the question if 'liberty' was still attainable without 'national independence,' involving the intellectual father of the liberal opposition, Pierre-François van Meenen. After the Revolution in France in July 1830, which led to the overthrow of the Bourbon monarchy and some liberal adjustments to the constitution

(the '*Charte*') of 1815, the suspicion took hold within public opinion in the North that the Belgian opposition might be contemplating a separation of the Belgian provinces from the Kingdom of the Netherlands and their annexation to France. In the *Courrier* a journalist reacted to these rumours by insisting that the Belgians were not French, and that 'the Belgians have a nationality that cannot be denied.' The author admitted that 'this nationality has not always been strong enough to maintain their independence,' but, that this was not a reason 'for denying their nationality…' Belgians had two characteristics; on the one hand they had 'the will to remain Belgian,' on the other hand, they had 'the disposition to prefer always the kind of government that will give us the most space to live and act as Belgians' (*CPB*, 11 August 1830). Even though the author did not demand anything in the sense of political autonomy for the Belgians, he did imply that a strong sense of nationality and political independence were ideally linked to each other.

Pierre-François van Meenen replied to this article in disagreement. 'Nationality,' Van Meenen explained, was 'a fact which public authority has to accept and take into account.' The question of nationality, or of the national identity of people, was not something that belonged to the realm of politics, it was something that, in the words of the author, 'has to be left to the influence of mores, social positions and interests.' With an eye on the political situation of the Netherlands, Van Meenen continued to argue that liberty 'is not always guaranteed by independence.' The solution to the problems in the kingdom laid still primarily in the realisation of the political program: '[L]iberty for everyone and in everything is the only real and durable bound between peoples and governments' (*CPB*, 14 August 1830). A further reaction, probably by the same author of the first article, illustrated to what extent the debate had nevertheless shifted to the question of Belgian autonomy or independence. Sure, liberty is more important than independence, the author first acknowledged, then adding that the liberal principles were exactly what had brought together 'the whole of *independent Belgium*' (*CPB*, 17 August 1830). On 21 August, four days before the Opera was held that trigged the Revolt, a letter by Louis de Potter was published that further elaborated on this exchange (in which he was probably the second party). It was up to the king, the author insisted, to 'preserve the independence of Belgium': 'I will feel the most complete satisfaction knowing that Belgium is happy and worthy to be so, independent and proud to owe its independence and prosperity to itself' (*CPB*, 21 August 1830). The point

was that nobody should doubt any longer what would be at stake if the country experienced a similar revolutionary event as in France or Poland. The Belgians, in the discourse of the opposition, wanted *independence*.

9.4 Belgium for the Belgians

It remains unclear who, on the evening of 25 August, at the time the Opera *La Muette de Portici* was showing in the Royal Theatre at *Place de la Monnaie*, incited the uproar that resulted in the destruction the offices of the government-journal *Le National*, as well as the houses of eminent Dutch political notables such as Van Maanen. According to Els Witte, the uprising was an example of so-called 'charivari,' a modern political version of attacks that had in the past been directed against people of so-called dubious sexual morality (Witte 2006, 52). The middleclass 'mutineers' (as they were referred to in official reports) were joined in the following days by working-class people, wearing blue keels as a kind of uniform, who went on plundering a number of food and armoury storages. Missions were undertaken into the industrial outskirts of Brussels to attack factories and destroy industrial machines. According to Helmut Gaus, the leaders were most likely French revolutionary exiles (Gaus 2007). They may have decided to remain in Brussels after the July Revolution, with the specific purpose of helping to create a revolutionary climate. Slogans that were used such as '*Vive la France! Vive Napoléon! Vive le duc d'Orléans!*' seemed to confirm this (Gaus 2007, 10). Also the French tricolour turned up in the streets.

Whatever the exact circumstances of the revolt during these first days, the leading journalists of the opposition press reacted swiftly to take control of the events. In the night of 25 on 26 August, a civil guard was established to restore the peace, with formal agreement of the city council. Among the volunteers were five to six members of the editorial board of *Courrier des Pays-Bas*. An advisory council was added to its formal leader, Emmanuel Vanderlinden d'Hoogvorst. This consisted of five people, among whom two associates of the *Courrier*. As Gaus pointed out, 'Sylvain Van de Weyer would no longer leave d'Hoogvorst alone, and help and advise him in everything' (Gaus 2007, 18). *Courrier des Pays-Bas* discerned in the immediate aftermath two phases in the revolt: On 25 August, the 'people lit the fuse,' but the people had 'out of hatred for Holland chosen France' (*CPB*, 3 September 1830). 'The bourgeoisie,' who subsequently took things in their hands, desired

'independence from France as well as from Holland.' The first action of the civil guard was indeed to replace the French flag at the city council with the Brabant tricolour black-yellow-red, which had been the flag of the Brabant Revolution of 1789–1790. An Assembly of Notables, consisting of about fifty members, convened in the city hall, among them the entire editorial staff of *Courrier des Pays-Bas.* There were also a few representatives of the highest nobility and some members of the States General.

A small committee of five was established within the Assembly, consisting of Alexandre Gendebien, Sylvain Van de Weyer, Félix de Mérode, Joseph d'Hoogvorst and an ex-mayor N. Rouppe. This group drafted the text containing the 'grievances,' which a delegation would bring to the king. The delegation itself consisted of the same people, except for Sylvain Van de Weyer who stayed behind to supervise further developments in Brussels. Regardless of the formal grievances, the true plan was now to obtain 'administrative separation' of the Northern and Southern Netherlands, of 'Holland' and 'Belgium,' which would come down to a complete separation of government whilst retaining the monarchy. In a direct conversation with King William, Gendebien threatened that if the king sent his army, 'the whole of Belgium' would rise up. The monarch referred the delegation to his son, who was stationed with the Dutch army on the outskirts of Brussels. Thereupon Gendebien repeated the demand for a separation in the night of 1 September to the prince, and even offered him the throne of an independent Belgian kingdom. After the prince made a dramatic entry in Brussels the next day and established in the palace a 'consultative commission,' Sylvain Van de Weyer made him the same offer.

In the Belgian press, the events were consistently described as a legitimate fight for freedom of the Belgian people against its Dutch oppressors. On 29 August, *Courrier des Pays-Bas* presented a 'Portrait of the Belgians.' The Belgian was 'true to the religion of his fathers,' so the journal argued. Freedom was 'inscribed in his heart' and he preferred 'a glorious death above a life marked by ignominy.' His 'love of liberty' would 'never cease to inflame his heart' (*CPB*, 29 August 1830). On 5 September, the journal declared that 'separation of Belgium *had* become inevitable.' 'The Dutch refused us every guarantee of our liberty, and they exposed us to all the hardship of a true conquest.' Against this hardship, the journal added, 'we have risen *en masse* and, from the first moment of our glorious resurrection, we have confronted the enemies

of order and of liberty with impressive forces.' 'In the future,' the article concluded, 'everything in Belgium will be Belgian; we will be ruled by the men of our choice, our prince will be endorsed by the country, everything will be separated except the ruling dynasty.' On the same day, the journal included a note by Louis de Potter (who was still in exile): 'The freedom of the Belgians means the separation from the Dutch. This separation constitutes everything the Belgians want, and which [in a country together with the Dutch] will be refused to them for eternity' (*CPB*, 5 September 1830).

As the king sought to buy time, in attendance of the reopening of the States General on 13 September, and simultaneously prepared for a military intervention, the events in Brussels entered a new phase. On 7 September, *Courrier des Pays-Pas* wrote: 'A clear and positive task now rests upon the popular masses … our patriotic revolution will result in the institution of a Belgian government with a political legislation and an administration that are equally Belgian.' It called on the people to 'establish the great foundations of our new social edifice!' (*CPB*, 7 September 1830). A Comity of Safety was established, consisting of the same people that had taken the initiative before (Van de Weyer, Gendebien, Mérode and some others), as well as a revolutionary club, the *Réunion Centrale*. Both had the similar goal of organising the defence of Brussels against the expected military intervention. People among the popular social classes were mobilised for the defence of Brussels, barricades were elevated and strategic positions manned with armed volunteers. As similar events were taking place in other cities, especially Leuven and Liège, Brussels became secured of further support from outside.

Not coincidentally on the day the States General opened its discussion on the future of the kingdom, the *Courrier* published and commented the articles of the London Protocol. The Protocol, it insisted, had 'wanted to blend the Belgians and the Dutch into one people.' 'Although there is a lot to say about this way of disposing with a people without even asking its advice,' it continued, 'the Belgians have cooperated as much and as long as they could.' 'Who was to blame?' was the next question. In the first place, 'the clumsy diplomats who believed they could integrate with a treaty the material interests and moral needs of two nations.' But it had particularly been the government of the kingdom itself, which had 'simply tried to subjugate Belgium to Holland.' This 'subjugation,' which at first had only been of a 'political' nature,

had quickly 'degenerated into a total exploitation of Belgium for the profit of the most commercial people of Europe' (*CPB*, 13 September 1830). The perspective, therefore, was by now entirely nationalistic: in the first place, it had been a bad idea to unite two nations into one state; secondly, the Belgian demand for independence was entirely justified in view of the subjugation of one people, one nation, to another.

9.5 Defining 'the Belgian Revolution'

The conflict escalated when, end of September, the king decided to send troops to crush the revolt. Heavy fighting between 22 and 27 September in and around the central park of Brussels ended with the retreat and eventual disintegration of the Dutch occupying force. The leaders of the 'revolution' (as by now it had become clear that this was in fact a revolution) now chose to work towards a total separation between the North and the South, and the establishment of an independent, sovereign Belgian state. A Provisional Government was established, which, on 4 October 1830, issued a Proclamation of Independence. Its members became those who had headed the revolutionary events. Louis de Potter joined them afterwards, after he returned from exile and made a celebrated entry in Brussels. The new revolutionary government announced elections for a National Congress which would be authorised to work out a new constitution.

The most urgent question in the time leading to the constitutional debates was *what kind of* revolution it was that the former leaders of the Catholic and liberal oppositions were leading, not in the least in light of inciting goodwill and sympathy abroad. This task of 'defining' the revolution inevitably took place in reference to the major event in recent history, the French Revolution of 1789–1794. As Keith Baker pointed out, the French Revolution had effectively changed the meaning of the term 'revolution' (Baker 1990, 203–224). Regardless of the different pre-revolutionary meanings which the word revolution might have known, the idea of 'performing' or 'outplaying' a revolution as a political act was something that only became thinkable as a result of the French Revolution. What this idea of a revolutionary act played out in historical time came to stand for, in the nineteenth century, was the 'decisive expression of the will of a nation reclaiming its history' (Baker 1990, 223). *Courrier des Pays-Bas* was indeed very early to define the revolution in the Belgian provinces in that sense, when it wrote on 23 September: 'For half a century Belgium has been confronted with

increasingly severe circumstances. What it now has to do is to take a hold again of its national existence, to be reborn into political life, to become oneself again' (*CPB*, 23 September 1830). Nationalism, in this sense, had also been a central inspiration of the French Revolution, but it had nevertheless evolved since then. As Princeton historian David A. Bell pointed out, whilst the French revolutionaries had 'envisaged the construction of the nation as an entirely new process, set upon foundations swept clean of the corrupt historical detritus of despotism and feudalism, nineteenth century nationalists for the most part preferred the language of "regeneration" and "recovery." Like many of their eighteenth-century predecessors, they envisaged a new structure, but one lovingly put together out of hallowed, ancient material.' This distinction is, however, not as fundamental as it may seem, for the difference merely highlights 'the odd paradox at the heart of modern nationalism: claiming as justification and legitimation a nation which, as even its adherents admit, is not yet there' (Bell 2001, 200–201).

In the midst of the revolutionary separation of the Kingdom of the Netherlands, the potential identification of the Belgian Revolution with the French Revolution provided a great challenge for the revolutionaries. The French Revolution had evidently not ended with the declaration of the sovereignty of the nation, but had resulted in Jacobin dictatorship (or at least the concentration of exceptional powers in a committee dominated by Jacobins), Terror and civil war. The preoccupation with 'ending' the Belgian Revolution, and distinguishing it from the terrifying French Revolution, became urgent when a faction emerged in the aftermath of the events of September that was self-professedly 'republican.' It could count on Louis de Potter as its pivotal spokesman. A series of articles under the title 'Course of Events' in the *Courrier des Pays-Bas* made it clear that the term 'republican,' in this context, corresponded with a certain idea of how a revolutionary event was supposed to unfold. 'The Revolution,' it was pointed out, 'must remain loyal to its principle: destruction of the past' (*CPB*, 21 October 1830). A revolution was 'a succession of facts, or rather accidents, of which the outcome has almost no relation with the point of departure.' The 'revolutionary drama' that had unfolded until that moment consisted of four 'acts,' so the author continued: first there had been the presentation of the grievances; second, the endorsement of the principle of separation; third, the outbreak of 'the war' and the proclamation of independence. However, there were 'still some acts to come,' possibly a 'foreign war' or a

'parliamentary revolution.' Until now, the author explained, 'the republican and the monarchical anti-Orangist parties are fighting side by side against the Orangist and the French party.' But this would most likely be followed by 'a new *31 May*'; a reference to the day in 1793 when the French National Convention was purged of moderate Girondins under pressure of a coalition of the Jacobin faction with the Commune of Paris (*CPB*, 31 October 1830). It was clear, therefore, that the French Revolution had not only provided the language to define a disruptive, radical political event, but also, to some, provided a detailed script for future revolutions.

Eventually, it did not turn out too difficult to come up with a reading of the Belgian Revolution that distinguished it from the French Revolution. Different to the French Revolution, the 'nation reclaiming its history' meant equally that the nation became independent for the first time in its history. As different voices had outlined from the very beginning, the Belgian Revolution had been about 'Belgium becoming Belgian.' If 'becoming Belgian' was truly its alpha and omega, this also meant that the Proclamation of Independence, the first official act of the Revolution, should at the same time be its last act. Since the wish of the Belgians to be liberated from the Dutch was at the origin of the Revolution, how could the Revolution possibly survive its own purpose, independence? On 9 November, *Courrier de la Meuse* of Liège urged the Provisional Government and the future National Congress 'to, as quickly as possible, exorcise the monster of anarchy.' The pivotal task of the future members of the Congress was 'to avoid at all times everything which might excite the passions.' In any case, the article added, 'where are these *cris de gueux* supposed to lead us?' 'The Dutch are defeated … the remaining inhabitants are Belgians, they are your brothers!'[16] It was also believed that, since the Belgian nation had resurged from the past, the Belgians had also rediscovered their true nature, and that excluded taking off on adventurous political paths. *Courrier des Pays-Bas* expressed it in the following way: 'In the Belgian character is inscribed this respect for the past, this cult of its precedents, which does not prevent revolutions, but does regulate them …' (*CPB*, 1 November 1830).

It was this prevailing discourse in the opinion press that shielded the Belgian Revolution from being appropriated by radicals in the

[16] Quoted in *CPB*, 9 November 1830.

Jacobine mode. After the Revolution, legislative authority was easily transferred from the Provisional Government to the National Congress. *Courier des Pays-Bas* inquired at the beginning of its convocation, 'why there would still be a need for another [political] agent [apart from the Congress]?' adding that 'for this agent there could be no more possible action left to undertake' (*CPB*, 17 November 1830).

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CHAPTER 10

Conclusion and Epilogue: The Belgian Constitution and Post-revolutionary Politics

10.1 The Liberal and Catholic Origins of Belgian Nationalism

In 1814–1815, the political debate in the Southern Netherlands on the future of the country revolved around the question of the need to restore the 'ancient constitutions,' in combination with the question to what state the Southern Netherlands could best be united. In view of the totally different nature of the political debate in later years, primarily after 1825, which revolved around the liberal issues of civil and political liberties, historians have often emphasised the discontinuity in the political culture of the period. Recent Dutch studies, moreover, have also shown that in the Northern Netherlands there was at times a vibrant political debate in which liberal opinions and demands for political and constitutional change emerged. The Belgian Revolution of 1830 has consequently been often considered as a liberal crisis, aimed at the modernisation of the political system, which only incidentally ended up in the break-up of the country.

Our inquiry of the political ideas, debates and discourse in the pamphlets and journals from 1815 onwards confirms that there was no strong nationalist drive behind the liberal opposition in the South, until only late in the 1820s. However, it also shows that from the beginning the legitimacy and place in national history of the 'united' Kingdom of the Netherlands, established in 1815, was perceived in the North and the

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South very differently. This meant that not only the establishment of the kingdom was discussed in very different terms, but also that the liberal thinkers, writers and journalists from very early onwards adopted very different political-intellectual and constitutional views as the fundament for their engagement in politics. That this eventually resulted in a national movement for Belgian independence needs further to be understood in relation to the politics in the fifteen years that the kingdom existed. Belgian nationalism was, eventually, not so much the result of the failure to create a new national state, in the sense that this would have allowed the older nationalities to continue to exist, but rather the outcome of *the way the government went ahead* with creating a Great-Netherlandish national community, primarily because of how it legitimised the predominance of monarchical power in order to pursue its nationalist reform agenda. As the North and the South responded very differently to this, they grew politically further apart, and the context emerged in which the opposition in the South, especially once it united the Catholics and the liberals, could develop into a movement for national independence.

In 1815, the general perception in the South was that the government failed to convince the Belgian people that the new constitution truly safeguarded its interests. Independent of the actual articles and provisions of the constitution, which they generally evaluated positively, liberal journalists turned this crisis into a political moment, by tracing a line between the new 'ministerial' party that represented a new despotic threat, and the independent political forces in society that had the rights and interests of the nation at heart. This furthermore meant that the liberals, in their politics of opposition, would not primarily support on the provisions in the constitution, but turn to general principles. Only the complete abidance by the government to these principles could guarantee that the rights of the Belgians in the kingdom were truly safeguarded, after their wishes had been disregarded at the time of the formation of the kingdom and the adoption of a constitution. Popular or national sovereignty as the founding principle of government was the most basic of these principles, but was little debated. The opposition urged the government primarily to recognise ministerial responsibility, and understood this responsibility in terms of the accountability of the ministers towards a free public opinion. In combination with this, it believed the freedom of the press an absolute requisite of a constitutional government in modern times, a further guarantee of which was seen in the adoption of a jury-system in the application of the criminal law.

The political thought that inspired these beliefs was primarily of French origin and has been described as 'liberal republicanism' (e.g. Jainchill 2008). It is the French liberal strand that emerged in opposition to Napoleon and blended elements of liberal and republican political thought, of which Benjamin Constant was the pivotal intellectual spearhead.

The political circumstances that explain why the liberal-republican discourse in the South would become predominant and carry a broad movement of opposition involved the unfolding legislative projects of the government aimed a 'uniformisation' and 'nationalisation' in many social fields. The resistance against these projects emerged as a consequence of the attachment to certain institutions and characteristics of the Belgian society. Borrowing from Montesquieu, and primarily Benjamin Constant's essay *The Spirit of Conquest and Usurpation* ('the spirit of conquest' became a topos in political discourse), this resistance was couched in a language that defended diversity and pluralism in the name of political freedom. Also, popular ideas about the distinction of the civil and political order, and the danger of the latter invading the former, were used to defend Belgian society as it existed in 1814, before the unification with the Northern Netherlands. But apart from a defence of the pre-existing social realities against a 'revolutionary' politics of 'uniformisation,' the legitimacy problem of the new state at this point again became relevant. Pierre-Francois van Meenen went to great length to argue that the unification of the North and South only legitimised political authority to take care of 'new interests' created by the new state. Beyond that, political power was illegitimate by default, and the will of the people had to be presumed to be in favour of the pre-existing order of things. The need to control the government if it did not overstep its boundaries of legitimate political action, is what consequently made ministerial responsibility into such an important issue for the opposition, and the possibility to keep the government accountable through a free press and an informed public opinion. In the words of Van Meenen, 'one [had] to ensure that the execution of a law would not be a signal for the subversion and the violation of all the anterior laws and the rights of citizens.'

The political culture in the North contrasted starkly with that in the South. A major difference with the South was that in the North the new kingdom and constitutional order obtained unquestioned legitimacy, primarily because, in spite of the diverging political and constitutional views, the Dutch nation was considered to have reclaimed its

own destiny. The constitution specifically was successfully presented as embodying continuity with the national past, which, paradoxically, encapsulated both the forms and customs of the old republic as the modern central state that emerged in the years after 1795. From this followed two crucial differences among liberal and reformist circles in comparison with the South. First, considering the new constitution as the indisputable point of reference in politics, they took a much more incremental approach to the challenge of improving the political system. Principles were not something to be reclaimed with a high voice, but to be realised through small legislative steps and, possibly, constitutional revision. Secondly, when things did not go their way, they took a much more apologetic view, invoking the Dutch traditions as a reason why not everything could be realised at once.

The North-South division in political and constitutional culture, combined with the fundamental problems with the text of the constitution itself, led to an increasing polarisation between the opposition in the South and the government. The issue of ministerial responsibility stood at the centre of these developments. In the North in the 1810s there were initiatives to settle the question of ministerial responsibility through a constitutional revision. The idea was that an article would specify a number of causes for which ministers could be indicted by the parliament before the constitutional court, the so-called High Council that still had to be established. On the Belgian side, this initiative was opposed. First of all, they rejected the juridical nature in which the Dutch understood ministerial responsibility, as they primarily took their cue from the writings on ministerial responsibility of Benjamin Constant. But in combination with this, they rejected the idea that ministerial responsibility needed to be adopted in the constitution in the first place. As with a free press, ministerial responsibility was simply an essential attribute of a constitutional government, and in a functioning constitutional government ministers were held responsible by default, not only for illegal actions (or actions that would be made illegal by the constitution) but also for (the consequences of) legal actions.

As a result of these divisions, there did not emerge a productive nationwide opposition to the government, and the government exploited this situation to advance its own monarchical doctrine of government. To achieve this goal, it turned to a number of old legal instruments that could upset the balance of powers and increase the power of the executive branch of government. First of all, it revived the formula

of *recursus and principem* or recourse to the prince, which allowed the highest political authority, in this case the monarch, to intervene in sentences passed against the state by the judicial power. It equally became a clear strategy of the government to postpone the establishment of the High Council, which it justified by claiming that first the whole judiciary system needed to be reformed and unified and new codes of law needed to be drafted. Eventually Van Maanen would also make it clear, but only end of the 1820s, that the High Council would ultimately not replace the monarch as the highest constitutional authority. The government also reintroduced, by royal decree, the so-called *conflictenstelsel*, which prohibited directly any judicial power to interfere with administrative decisions at all levels. The Royal Message of December 1829 became the clearest confirmation of the prevailing constitutional doctrine at the highest level of government.

Crucial to the genesis of Belgian nationalism was the development of political Catholicism in this period, which ended up joining the liberals in a union. The default position of political Catholicism was outlined in terms of an opposition between a dominant, monopolising state, that was placed by Catholics in a tradition of regalism and Jansenism, and the church that wanted as much freedom (or 'autonomy') to maintain and expand its place in society, especially in the fields of education and charity. In the early years of the Restoration, Catholics claimed its rights to 'autonomy' on the basis of the ancient laws of the country. They thereby reconnected with an ultramontane discourse against the regalist-Jansenist political tradition in the Southern Netherlands (or, rather, a discourse that *disclaimed* the historical legitiamcy of this tradition). This, however, did not imply that Catholics wanted a restoration of the political society of the *Ancien Régime* in a positive-legal sense. To the extent that Catholics took the 'ancient constitution' seriously (especially Young Turks among the political Catholics), it was out of a wish to question the legitimacy of the new state, in continuity with how, in the aftermath of the Brabant Revolution, François-Xavier de Feller defended secular constitutionalism and republicanism against the ultra-monarchical, counter-revolutionary ideas of French Catholic authors. However, the rejection of the new constitution of 1815 was primarily motivated in religio-political terms, as Catholics considered the new constitutional order to be a continuation of the previous Josephist and Napoleonic regimes of state supervision over the church.

The endorsement by Catholics of a discourse of civil liberties against the policy of the government on religion started, somewhat paradoxically, with the very controversy over the constitution, and more particularly the oath. In justifying their intransigence (or refusal to compromise), the clergy claimed that civil tolerance was not the real issue in their objection to the constitution, but the articles that provided a maintenance of the supervising system over the church of the French period. The constitutional provision of religious freedom could, from this perspective, according to the Catholics, only mean the declaration of religious indifference, the positive statement that no religion could claim to possess the truth. Catholics furthermore invoked the civil right of citizens not to swear the oath, and therefore the freedom of the Catholics under the new order. Consequently, when Catholics started to invoke more consistently the constitutional articles to advance their demands (primarily with regard to education), they did not see this to be in contradiction with their earlier opposition against the constitution or their references to the ancient rights of the church; instead of claiming ultramontane independence/autonomy of the church on the basis of 'ancient rights,' Catholics now (also) invoked the freedom of the Belgian citizens, under the new law of the land, to establish *their* church in accordance with ultramontane, anti-regalist doctrine. Every time the government justified its policies aimed at controlling the church and monopolising education by invoking the early-modern regalist tradition, it was confronted by a classical-ultramontane discourse. But as the government increasingly turned to repressive and penalising actions towards Catholic journalists and clericals, Catholics increasingly invoked *simultaneously* the 'rights' laid out in the constitution.

Aside from this continuity between the Catholic opposition after 1815 and eighteenth-century Catholic politics, and the primarily instrumentalist way in which Catholics supported on constitutional liberties, some Catholic intellectuals also increasingly engaged with politics on the basis of secular-liberal beliefs. This owed nothing to French liberal-Catholic thinkers and even took place in clear rejection of the movement of modern ultramontanism in France (to which also Félicité de Lamennais at that time belonged). The development of political Catholicism in Belgium in a liberal direction was spearheaded by the journal *Le Spectateur belge* of Leo de Foere. The way Catholics in an

apologetic way advanced the distinction between 'civil' and 'dogmatic' tolerance to justify their initial rejection of the articles on religious freedom, became wholeheartedly embraced by De Foere to broaden the debate to a general discourse on the relation between religion and politics. De Foere attacked the government for 'confusing' religion and politics, and turned the accusation of being anti-Enlightenment and -progress around to attack the government. His argument that interference with religion could only lead to moral deprivation was comparable with the liberal arguments against uniformisation and nationalisation in other areas, and obtained applause from liberal journalists. De Foere furthermore appropriated the 'republican' legacy of the Brabant Revolution as a springboard for a new secular political engagement: Having been 'imposed by force and deceit a constitution without the concord of the nation,' and therefore having been deprived of 'our political rights,' should Catholics also accept, so De Foere asked, being deprived of 'the exclusive sphere of our thoughts, consent with despotism and with the enslavement of our conscience?' A political battle for civil rights was thereby advanced as a kind of 'ersatz cause' in view of the violation of the 'political rights' of the Belgians in 1815, or the disrespect for their political traditions.

Eventually, in the late 1820s, the Catholic press would join the liberals in demanding civil liberties as well as political liberties (next to freedom of religion and education, also freedom of the press, ministerial responsibility). They were furthermore stirred in that direction by the liberal opposition, and the attractiveness of a discourse on the lack of legitimacy for policies aimed at uniformisation and nationalisation. Liberal-Catholicism in the sense of Lamennais emerged in Belgium primarily *in response* to the political radicalisation, and would only truly experience a breakthrough in the wake of the Belgian Revolution; leading, as we discuss further in this chapter, to a fundamental rupture in the intellectual history of political Catholicism in Belgium.

Once Catholics and liberals declared a formal union, it was buttressed by liberal views on the relation between government and society, and between politics, on the one hand, and morality and religion, on the other (as these views would continue to inform the founders of the Belgian constitution of 1831, we come back on them further). But also the dynamics of the politics of opposition in the Southern Netherlands

fundamentally changed. Whilst the debates in the early years of the Restoration were still primarily of a theoretical nature, the opposition, when it became more organised but also more exposed to public attacks and prosecution, increasingly described itself as the last bulwark of the constitutional order, as well as the only hope for the realisation of a *true* national unity anchored in the constitutional liberties (as opposed to the artificial unity advanced by the government, on the basis of language, culture and religion). At this point, however, the contradiction became obvious between the claim of representing the whole nation and the lack of support and even negative reactions in the North, which resulted in a gradual transformation of the union of opposition into a movement in defence of the rights of 'the Belgians,' and against their discrimination and 'oppression.' The moment of critical conjuncture was the passing of the second decennial budget in December 1829, as this ended permanently the hope that the government could be made to convert to the views of the opposition through parliamentary action, as well as made clear that this path was blocked due to the North-South divide that also manifested itself in the Second Chamber. Finally, it was the 'catch 22' situation in which the opposition found itself, claiming to represent the national will but incapable, even after the Catholic-liberal union, of truly embodying a national insurgence against the government, that explains the turn to Belgian nationalism.

10.2 The New Constitution: A Break with the Fundamental Law of 1815

Before the Revolution, the political opposition against the government of King William never explicitly criticised or took issue with the Fundamental Law of 1815. When the monarchical principle increasingly prevailed in the official discourse and in the political praxis of the kingdom, this was considered in flagrant violation with the constitution. However, their opposition against the government by the liberals was never 'constitutionalist' *in strictu sensu*: the opposition newspapers seldom referred explicitly to constitutional articles or pointed out contradictions between the literal text of the constitution and the actions or the discourse of the government. As pointed out before, they had adopted political ideas that did not so much see the constitution as the primary safeguard for individual rights and free government, but the

willingness of a vigilant public opinion to confront the government in case of the use of arbitrary power. The adoption of these views sprang from the ambivalent relation held by public opinion in the South to how the constitutional regime had been established in the first place. The liberal theorists had of course been well aware of the weak points and blank spots in the text of the constitution, and knew very well that neither certain articles, nor the original spirit that lay behind it, corresponded with their fundamental beliefs. They refused, however, any engagement in a constructive debate on the constitutional text in order to improve it (which was the approach taken by the Dutch liberals), first of all because this very approach contradicted their non-literal approach to constitutional politics, and secondly, because they feared that exposing the weaknesses of the constitution could be exploited by the government (invitations in that regard were, significantly, called 'a trap,' illustrating the deep-seeded distrust towards the government).

After the Revolution, however, the Belgian revolutionaries discussing the constitution for a new state were (evidently) no longer reluctant to acknowledge the shortcomings of the Fundamental Law of 1815, and their primary objective now was, consequently, to draft a new constitution that clearly broke with the monarchial principle and left no room for doubt in the future regarding this intent. A number of articles, in the words of Brecht Deseure, 'combined in an arrangement where sovereignty no longer worked top down but bottom-up' (Deseure 2016, 99). Article 25 stated that 'all powers emanate from the nation,' whilst article 32 specified that the members of the representative chambers represented 'the nation, and not uniquely the province or provincial subdivision that nominated them,' a clear break from the imperative mandate of the *Ancien Régime* and in all likelihood derived from the French revolutionary constitutions of 1791 and 1795. Finally, in a direct reversal of the crucial argument of those who had defended exclusive monarchical power in specific matters, article 78 declared that 'the king has no other powers that those which the constitution, and the laws adopted by virtue of the constitution, formally attributes to him.' All residual powers, therefore, belonged to the nation-represented-in-parliament. Also, the structure of the new constitution was revealing: whilst the Fundamental Law had started with a chapter 'On the sovereign monarch,' the Belgian constitution first discussed the territory, secondly the personal liberties and, thirdly, the powers, and, within the chapter on the

powers, first the representative chambers and then the king and his ministers. The preamble of the Belgian constitution stated: 'In the name of the Belgian people, the Nation Congress decrees,' contrasting the Dutch preamble 'We, William, by the grace of God' (Deseure 2016, 98). That the nation or the people was the source of all powers also was made manifest in the chronology of the constitution-making process. When, in February 1831, the National Congress adopted a final text of the constitution, the search for a king was still ongoing. The constitution came into force 'with the name of the future king provisionally left blank' (a regent was appointed to temporarily fulfil the constitutional duties of the monarch) (Deseure 2016, 118), which effectively meant that the head of state was denied any 'negotiable leverage' with regard to the content of the constitution (Maes and Leijssenaar 2018, 23–24). In that regard, Pierre-François van Meenen pointed out that, if one understood the relation between the nation and the monarch as 'a contract,' the 'object of this contract was *not* the constitution,' but 'the mandate that the nation conferred to the king' (Deseure 2016, 109).[1] The constitution was, in the words of Christophe Maes and Bas Leijssenaar, 'a self-contained charter which could not be made dependable of its acceptance by the monarch' (Maes and Leijssenaar 2018, 24).

If the constitutional fathers unequivocally rejected the monarchical principle and endorsed the principle of popular sovereignty, they also intended to preclude parliamentary despotism and to adopt the English system of checks and balances, as it had been interpreted by Montesquieu and Benjamin Constant.[2] Henk de Smaele has in that regard pointed at the 'eclectic' combination, in the Belgian constitution, of elements from the French, republican constitutional tradition on the one hand and the Anglo-Saxon tradition on the other. This 'inconsequent' eclecticism, according to De Smaele, caused a 'hybrid' marked by the absence of a holistic concept of 'the nation' (de Smaele 2005). However, as Brecht Deseure pointed out, the constitutional fathers made a distinction between 'the origin' and 'the exercise' of sovereignty (Deseure 2016, 99, 121). Indeed, if article 25 declared that all powers

[1] This corresponded very well with the constitutional views outlined by Van Meenen in 1815, in particular his opinion that 'the establishment of government … changes for nobody, neither the social safeguard (of the pact), nor the pre-existing rights to this safeguard, which it has as its goal to assure' (see Chapter 2, p. 54).

[2] On the influence of Montesquieu on the debates of the National Congress: de Dijn (2002).

emanate from the nation, it added that 'they are exercised in the manner established by the constitution.' This was a distinction that was comparable with what the American founding fathers had conceived, and by which it might have been inspired. In response to the argument by the anti-federalists for one supreme legislative power in every state, the federalists had defended a (federal) system of checks and balances on the basis of the argument that sovereignty always remained in the people at large, 'it resides in the people *as the fountain of government*.' Not one political institution, therefore, and even not all constituted powers united, could at any time claim full sovereign power (Wood 2006, 621–622). A similar way of thinking might have led the Belgian drafters to divide legislative powers between two chambers and the monarch; institutions which were meant to counterbalance each other (Deseure 2016, 99). The idea that the parliament could not be a substitute for the people informed the choice for an absolute royal veto (as in the case of the US President), meant to safeguard the will of the nation in the occurrence that the parliament did not correctly reflect the nation's opinion. The king was also granted the power to dissolve the chambers and call for new elections (Deseure 2016, 110; Witte 2016, 40). Even more remarkably, in view of the insistence of popular sovereignty, was that the king was granted a share in the constituent sovereignty in the case of a constitutional revision (Deseure 2016, 123).[3]

From the perspective of the need for checks and balances, it would also have made sense to choose a hereditary first chamber as an intermediary between monarch and the elected chamber, after the example of the French Chamber of Peers.[4] However, in the debates of the Belgian National Congress such an understanding of the first chamber found little support. Congress members were tapping into a language of social progress in a way that was reminiscent of the debate on the restoration of ancient rights and privileges from the early years of the Kingdom of the Netherlands, to argue that Belgium had developed into a modern nation with no particular

[3]The Belgian constitutional fathers were for their conception of the role of the monarch also inspired by Benjamin Constant's notion of royal power as *pouvoir neutre*, a neutral power who stand above the political *mêlée* and moderates between the other powers (Deseure 2016, 122; Geenens and Sottiaux 2015, 313).

[4]The main source in support of an 'aristocratic first chamber' was Montesquieu. In his comment on the English constitution in *The Spirit of the Laws*, the French philosopher defended the idea that the nobility required a separate political representation within the state. A hereditary *Chambre des Pairs* also existed under the French Charter of 1815/1830.

interests in society that could possibly justify a separate representation for the nobility.[5] Nevertheless, the members simultaneously continued to believe in the need for a chamber of reflection that would provide a bulwark in an open confrontation between the nation-in-parliament and the government, and equally to prevent the legislative, consisting of only one body, from falling under the spell of the executive (Huyttens 1844, 395–398 and 435–440; Stevens 1981; de Dijn 2002, 239–244). Even when the Senate was eventually conceived as an elected chamber, such high censitary requirements for eligibility were adopted that it did in fact become largely occupied by members of the higher nobility. Nobleman Felix de Mérode argued that he was in favour of 'a senate of notable property holders, not in order to defend special interests, but because one can rightly expect from their part a more calm and prudent zeal for the public good' (Huyttens 1844, 419). But liberal congressmen also invoked the necessity to take into account 'social realities' and took what Larry Siedentop has called a 'sociological approach to political theory' (Siedentop 2012, 19). Recognising that society was increasingly divided between 'two classes of men, those who buy labor and those who sell it,' Jean-Baptiste Nothomb insisted that, 'unless one gives up the idea of property altogether, one should not ignore the natural hierarchy within society' (Huyttens 1844, 425). The liberal Paul Devaux insisted that, although some had 'pretended to have searched for an aristocracy and not to have found it,' he himself had 'not searched for it' (i.e. he had no need for it), but had 'found it nonetheless' (Huyttens 1844, 468). Devaux explained that, if the old elites were, indirectly, to be granted a privileged political role, this was to put limits to their political influence and to avoid their 'invasion' of the Second Chamber.

10.3 The Belgian Constitution and Her Origins in the Political Thought of the Opposition Against William I

When it comes to the question of the sources of the Belgian Constitution, authors consistently start off by referring to an old article by the legal historian John Gilissen (1968). Gilissen concluded that about 90% of the

[5] In that regard, indirect elections were also replaced by direct elections, as the former had meant that the nobility had been guaranteed a number of seats in the Second Chamber (independent of the noble status of the First Chamber). On the other hand, the right to participate in elections for both the Chamber and the Senate remained censitory, meaning that only a very small portion of the population could vote.

articles were simply borrowed from other examples, primarily the French Constitution of 1791, the French *Charte* of 1814/1830 and the Dutch Fundamental Law of 1815. When it comes to the crucial concept of sovereignty, it is generally believed that the Belgian constitution, and more specifically the above discussed article 25, supported primarily on the French constitution of 1791, which equally declared powers to emanate from the nation. However, this view tends to ignore the political-intellectual debates and developments in both the Netherlands and France in the time that passed between the French Revolution and Belgian independence. In view of how ideas had evolved, it is hardly likely that the Belgian founding fathers reached back to a model from the early phase of the French Revolution to pin down their most fundamental ideas.

In the political thought of the liberal opposition, the locus of sovereignty was never an issue of real concern (the concept was hardly ever discussed), and this was entirely in tune with how the French political and intellectual debate had evolved since 1789 (Geenens and Sottiaux 2015, 303; Gauchet 1995, 42–51). The preoccupation was primarily with individual liberties, the relation between government and civil society and the necessary limitation of the scope of political action; and the source of inspiration was to a very large extent the political thought of Benjamin Constant. Recently, Leuven philosophers Raf Geenens and Stefan Sottiaux have also pointed at the different ways the influence of Benjamin Constant on the Belgians' understanding of the fundamental concepts of sovereignty and government *can be assumed* also in 1830. One crucial point is the absence of the very term 'sovereignty' in the constitution. This did not undermine the principle of popular or national sovereignty, but what it does imply, in the words of the authors, 'is a strong suspicion towards everything the term "sovereignty" connoted at the time (and according to many authors, still connotes today): a supreme monolithic power that is by its very nature indivisible, that serves to express a unified will ('à la Rousseau'), and that stands by definition above any possible constraint' (Geenens and Sottiaux 2015, 311). This indeed is in line with 'post-revolutionary sensitivities.' Constant wrote on sovereignty in the unpublished 1810 version of *Principles of Politics* that it 'exists only in a limited and relative way. The jurisdiction of this sovereignty stops where independent, individual existence begins' (Constant 1810, 31). The interest of the Belgian constitutional fathers can therefore be assumed to have been 'primarily negative: they wanted

to *restrain* power … and not construct a strong state or *empower* the sovereign people' (Geenens and Sottiaux 2015, 312), or, as Constant had written in his *Principles of Politics* (1810 version): 'The degree of political power alone, in whatever hands it is placed, makes a constitution free or a government oppressive' (Constant 1810, 20).

In line with this negative view on sovereignty, there was according to Geenens and Sottiaux another element in the Belgian constitution that can be attributed to Constant. If the constitution of 1791 had made it explicit that the nation retained the imprescriptible right to change the constitution, the Belgian constitution excluded any genuine role for the people or nation in the constitutional order. It looked as if 'the people had … already devolved—or simply lost—their "*pouvoir constituant*" with the election of the National Congress in the autumn of 1830' (Geenens and Sottiaux 2015, 310–311). There were, however, two dimensions to this approach of distinguishing 'constituent' and 'constituted' power, and one, although it was clearly also in line with the political thought of Constant, is generally overlooked. On the one hand, it has to be understood in the light of the apprehension, after the experiences in the later phase during the French Revolution, that any form of constituent power, by claiming to represent the 'general will,' can lead to new forms of despotic, even tyrannical, power (Maes and Leijssenaar 2018, 21–22).[6] But, on the other hand, if the people were not meant to ever intervene in the constitutional order, neither to play an active role in the legislative process, they were nevertheless still considered to have constituent power through a 'right of resistance.' In an oft-quoted phrase, Jean-Baptiste Nothomb spoke of royal heredity and inviolability as 'two political fictions…, two exceptions to the social order,' adding that 'the sovereignty of the people, in extreme cases, comes and destroys them' (Deseure 2016, 107–108). Furthermore, even regardless of a right to rebellion as a last resort, the vigilance of an energetic citizenry was also in normal times considered an essential element of constitutional and free government.

[6] Remarkable in this regard, is that also at the time of the convocation of the National Congress, which exercised constituent power in an exclusive way, a Congressional Regulation was adopted to prevent abuse and misdirection by the Congress. The regulation, in the words of Van Meenen, 'dictated law' to the Congress, i.e. regulated the constituent power.

In that regard, the members of the Congress spoke more of a 'republican monarchy' than of a 'constitutional monarchy,' demonstrating, very likely, their indebtedness to republican political ideals. In that regard, Hippolyte Vilain XIII, for example, insisted on 'the power of republican manners' and 'the ever prompt and active energy of the citizens' as essential conditions for guaranteeing the pact with the monarch (Deseure 2016, 117).

This reflected the 'Constantian,' neo-republican conviction, which had been essential to the self-awareness of the opposition against the government of William I, that the solution to restrain the exercise of sovereignty was not primarily to be found in a written constitution, but in the pressure of a well-informed and vigilant public opinion.[7] A thoughtful system of checks and balances was considered by republican liberals as a necessary but insufficient guarantee for the constitutional liberties. Another crucial element was an informed public opinion, which, additional to parliamentary control, was to function as a form of 'public tribunal' that held political actors accountable. Constant himself had described freedom of speech, and specifically freedom of the press, as '*une question politique beaucoup plus que littéraire*,' an essential pillar of parliamentary government (Delbecke 2012, 37). In the liberal-republican view, as we abundantly discussed in the book, freedom of the press and ministerial responsibility were intrinsically linked, not only from the point of view of holding government accountable, but also in order to nourish republican mores in the people—in the words of Constant, 'a spirit of inquiry, a habitual interest in the maintenance of the constitution of the state, a constant participation in public affairs, in a word a vivid sense of political life' (Constant 1815, 239).[8]

[7] On the importance of the concept of 'public opinion' in the political discourse and the constitutional articles of 1831 regarding the freedom of the press, see Delbecke (2012, 33–81) and Geenens and Sottiaux (2015, 308, 314).

[8] This probably also explains the lack of effort by the congressmen to define in more exact terms ministerial responsibility, even though it had been so hotly debated in previous years. Brecht Deseure argues that '[b]y not inscribing the political responsibility of ministers into the Constitution, the Congress did however create ambiguity' (Deseure 2016, 125). It is however doubtful that a majority of congress would have agreed with Paul Lebeau's idea of ministerial responsibility in terms of a vote of confidence by a parliamentary majority (which meant pure parliamentary government). More likely, a subtler idea of ministerial responsibility, as Van Meenen had discussed it in *L'Observateur*, continued

The constitutional fathers acted on these liberal-republican ideas by excluding the possibility for the government to take any preventive measures against the press, and, secondly, by arranging for the prosecution of possible abuse of press-freedom (of which the modalities were to be established by specific laws) to be taken place in a trial-by-jury, so that any restrictions on freedom of the press could be seen as a form of self-regulation by civil society. What the Belgian founders had in mind (or at least some of them), as Bram Delbecke pointed out, was a 'perfect deliberative democracy' in the way described by Jürgen Habermas. They imagined a 'two-tier political system,' in which the formal political system would interact with a spontaneous, informal public space' (Delbecke 2012, 94).

10.4 Catholicism and Religious Freedom in the New Constitution

The work of the National Congress was probably the most ground-breaking with regard to how it dealt with the religious issue. This relates to the way how it managed to configure the articles on religion in a way that combined the Catholic religio-political ultramontanism, with its emphasis on autonomy and mutual independence, with the way how the religious question had become integrated in a progressive-liberal discourse of civil rights, and furthermore to compromise with a small group of 'anticlerical' liberals who were preoccupied with preventing the Catholic Church to obtain any legal instruments to secure or expand their dominance in civil society. Article 14, declaring that 'the freedom of the cults, of their public exercise, as well as the freedom to manifest his opinions in all matters, are guaranteed, in exception of the penalisation of offences committed at the occasion of the use of these liberties,' identified freedom of religion as a specification of the civil right of freedom of opinion, understood in a sense that it was the *expression* of this freedom that was declared free; it did not concern the naked opinion, which, in this view, the state had even

to dominate the minds, considering Van Meenen's pre-revolutionary influence and his prominent role in the constitutional debates. Either way, constitutionally fixing ministerial responsibility would have been thought of as unnecessary, and possibly even undesirable.

no business to declare anything about. But if at this point a liberal-unionist perspective prevailed, the article also clearly accommodated the classical-ultramontane view in declaring free the 'public exercise' of religion, which was the constitutional fundament for the right of the Church to build its own network of schools and other social organisation, and to secure and expand its place in civil society. By not conceiving religious liberty as a strictly individual right, the Congress broke with the French *légiste* tradition 'that left the state towering above the churches' (Viaene 2007, 122).

Article 16 of the constitution meant that the same ultramontane perspective would apply to the matter of communication within the churches and their internal organisation, as it stated that 'the State does not have the right to intervene in the nomination and installation of its ministers of any cult, nor to defend them of corresponding with their superiors and to publish their acts, with exception of the normal jurisprudence in matters of press and publication.' What this article, as well as article 14, implied was that, whenever in the exercise of religion a transgression of the law would take place and the state needed to take repressive acts, this could never go beyond the ascertainment of individual citizens breaking the ordinary penal law; religion itself stayed at all times beyond the horizon of the law. As Vincent Viaene pointed out, the National Congress hereby established 'a personal framework for religious liberty,' meaning that religions were not conceptualised as communities or corporations that were subject to protections as well as surveillance: 'The dominant sentiment in the National congress was to arrive at "church autonomy" by making the churches, as such, legally intangible, rather than by accommodating them' (Viaene 2007, 122–123). The Congress believed, as Rik Torfs has formulated, that 'there is no true liberty for a religious society if it does not go in pair with independence' (Torfs 1999, 110). The fear of anti-clerical liberals that the social order would be left unprotected from a total invasion by the Catholic Church informed article 15, which declared the 'negative freedom' that no individual could be 'constraint to concur … to the acts and ceremonies of a cult'; as well as the exception in article 16 to the principle of non-interference, that the conclusion of a religious marriage always had to be preceded by civil marriage.

In the discussion of the National Congress there were some fierce confrontations between 'anticlerical' liberals, led by Eugène Defaqz, and Catholics pursuing an aggressive agenda (primarily regarding the question of the precedence of civil over religious matrimony and the legality of the latter). Whilst the first group argued for an undisputed prevalence of the state over organised religion, the second aimed at official recognition of and a privileged position for the Catholic Church.[9] Generally, when historians highlight these confrontations, they consider them as proof for the fact that the constitutional settlement of the religious question constituted a 'transaction' between Catholics and liberals, an 'ill-defined compromise that made further conflict between church and state inevitable' (Viaene 2001, 36). This is moreover consistent with the other traditional view, as Els Witte formulated it, that 'although Catholics and liberals [had] concluded a collaborative union, they [had] kept their philosophical identity, which they both wanted to impose on society' (Witte 2006, 148). The question is to what extent this is not a retrospective assessment in view of the polarisation of the political landscape in the following decades.

Against the background of the intellectual history of liberalism and Catholicism between 1815 and 1830, it seems reasonably to argue that liberals and Catholics largely shared a common understanding of the articles concerning the relation between church and state. The Catholics held on to the notion of mutual independence, in continuity with the historical tradition of the Southern Netherlands. Nevertheless, among those same Catholics, or at least a lot of their publicists, there had been a thrust towards a secularised political engagement with pursuing civil and political liberties. Most liberals, in their turn, generally held an optimistic

[9] The most important expression of this was a pamphlet entitled *Considérations sur la liberté religieuse par un unioniste*, which emanated from the environment of the higher clergy around Archbishop de Méan (Cornelis Van Bommel etc.), who, as we saw, had in 1825 endorsed liberal constitutionalism as part of a political strategy aimed at accommodation with the government. The pamphlet argued that free exercise of a cult could only be fully realised if legislation did not contain 'any principle opposed to the principles of the cult it declares to be free' (Viaene 2001, 31). The state, in other words, should adopt a number of positive arrangements in order to guarantee 'freedom of religion' for the Catholic Church in particular. In the National Congress, a number of Catholic conservatives followed the pamphlet in claiming that free exercise of religion should be understood as a *Catholic* liberty, safeguarding the rights of the 'religion of the nation,' and extending free exercise to non-Catholics merely as a measure of 'Christian tolerance' (Viaene 2001, 31–32).

enthusiasm about the benign character of religion, in correspondence with a belief in the ability of human genius in general.[10] The intellectual father of Belgian liberalism, Pierre-François van Meenen, who according to Vincent Viaene was the 'principal author of article 14,' emphasised in one of his interventions in the Congress that religion was '*le lien principal de la société*' and that the state should 'defer to the religion of the Catholic majority as long as this did not harm the rights of other citizens' (Viaene 2001, 33, 2007, 131; Torfs 1999, 112–113), hardly an illustration of a 'transactional' mindset.[11] Before the Revolution, the defenders of the Catholic-liberal union had staunchly rejected the view that this was an opportunistic alliance between political opponents who would soon be again at each other's throats. The argument was that the opposition between Catholics and liberals had become obsolete, or at least that the division over moral issues should not be of a political nature. In line with this, Jean-Baptiste Nothomb argued in the National Congress that an era had arrived in which 'nobody exercises the dictatorship of intelligence, and in which the reason of everybody has proclaimed itself to be sovereign' (Huyttens 1844, 651). This unionist pluralism corresponded with the strand within liberalism described by Lucien Jaume as 'liberalism against the state' (Jaume 2012, 43). The belief that moral and ethical questions, although at root an individual matter, were no less important to the public good, combined with a deep mistrust in these matters towards government, led to the view that certain issues which are 'to the interest of all' are not necessarily to be subjected to a representation of the 'general interest' incarnated by the state. This meant that there had to be place, as Lucien Jaume defined it, for '*une zone d'autonomie sociale*,' outside of the direct confrontation between the general interest expressed and magnified by the state and the particular interests reduced to a status of inferiority or suspicion (Jaume 1997, 80).

[10]Moreover, Viaene pointed out that the pro-Catholic expression 'reciprocal independence' was used in the congress by liberals as well as Catholics; and that the first serious liberal commentary of the constitution acknowledged the 'independence' of the churches from public authority (Viaene 2007, 120, ft. 10).

[11]The positive liberal view on religion also led to the adoption of article 117, which entitled ministers of religion to public support. These entitlements were therefore not considered in terms of an indemnity for the nationalisation of clerical goods under the French Republic (a revendication which Archbishop de Méan had made), as this would have implied that only the Catholic Church would be eligible to state support (Torfs 1999, 112).

10.5 Discontinuity in Liberalism and Catholicism Before and After 1830

In view of the above, we need to understand the ensuing polarisation between Catholics and liberals, primarily from the 1840s onwards, in terms of a rupture in the intellectual development of both movements, or at least in terms of a reconnection with older strands of thought, rather than in terms of an anticipated clash of philosophical systems between two political entities which, in 1830, had merely 'changed the rules of the game.'

Liberal writers, from the midst of the nineteenth century onwards, in a reaction against the Catholic *réveil* that was taking place in Belgian society, argued for stepping up the role of the state in preserving a social sphere outside the control of the church, and increasingly returned to the levers that were still at their disposal from Napoleonic times to bring back the control of the state over the temporal aspects of the church. Rather than being anti-Catholic, which applied rather to liberals later in the century, they were often committed to religious reform, and in that regard even revived similar sources of eighteenth-century reformist Catholicism (which in the Southern Netherlands became inseparable from Jansenism) that had been appropriated by William I's advisors in religious matters (which of course increased the distrust of the Catholics towards liberal politics). Thereby, an important affinity laid in the fact that also reformist Catholics or Jansenists in the eighteenth century had attributed a crucial role in religious affairs to the state (as a buffer against the influence from Rome) (Viaene 2001, 130–133). Towards the middle of the century, liberal academic publications also advanced a more individualistic interpretation of the modern liberties in the constitution. To that extent, the work of the National Congress was reinterpreted as being in continuity with 'the principles of 1789.' The constitutional articles on religion had to be understood, liberals argued, against the background of article 25 which declared that all powers emanate from the state. The sovereign state alone was the guardian of the general interest, and guarantees the liberties of the citizens, including religious freedom. In contrast, specific religious bodies or 'cults' were but representatives of 'particular interests,' and therefore subordinated to the state (Viaene 2007, 125–127). Liberals, in other words, just as the revolutionaries of 1789, now pitted the state as the

embodiment of the general interest, and the sole guardian of individual freedoms, against the 'inferior' particularistic interests of which religion was considered an expression.

The picture on the Catholic side is more complicated. In the immediate aftermath of the revolution, a great number of Catholics turned to the particular and new political-intellectual strand of liberal-Catholicism, under influence of the priest Lamennais and his journal *L'Avenir*. Whilst this turn, on the one hand, led many Catholics (temporarily) to a full-hearted embrace of the individual liberties, it also brought them within the intellectual matrix of modern ultramontanism, originating in the ideas of Maistre and Bonald. This meant that they believed that traditional religion was the essence of society, and that their engagement with modern liberties had an exclusively religious inspiration. In the National Congress, some outspoken 'liberal-Catholics' admitted as much. When Vilain XIII expressed that it was essential to let 'all opinions, all doctrines' free, to be debated and to allow them 'to clash with each other,' so that, ultimately, 'the truth will end up prevailing on its own,' nobody misunderstood that what he meant was the *Catholic* truth (Viaene 2007, 124). Désiré De Haerne declared, similarly, that 'free debate' would decide on 'the triumph of one system over the other,' in other words, the Catholic system over the liberal one (Viaene 2001, 36). However, once revolutionary enthusiasm subsided, the movement of liberal-Catholicism came under great strain. First of all, domestic political factors, such as the resurgence of anticlericalism among progressive liberals, and the resulting combats on social issues that pitted Catholics against liberals, stimulated liberal-Catholics to embrace a more 'conservative' political stance. Furthermore, the papal encyclical *Mirari Vos* (1832), without mentioning Lamennais or the liberal-Catholic movement, spoke out against the alliance of Catholics with liberals and the unconditional endorsement (even from a purely religious and prophetical perspective) of liberal principles as freedom of conscience, instruction, assembly, and the press.

Vincent Viaene has pointed out that the encyclical, in Belgium, 'helped create a favourable climate for the building of a broad-based conservative front around the government' (Viaene 2001, 75–76). What replaced 'mennaisianism' as the (shortly) dominant strand in Catholic political thought was, in the words of Viaene, a 'transigent' version of Liberal-Catholicism; 'a sober and essentially conservative vision which

lost prophetic promise what it gained in realism.' Secularising Lamennais' vision of the dialectics between Catholicism and liberty, they were able to arrive at 'a more clear-cut notion of the separation between religion and politics' (Viaene 2001, 85–86). Their approach of the modern and constitutional liberties became more secular and less religious and prophetic, but also more relative and less absolute. In that regard, the liberal constitution of 1830 would no longer be considered as the declaration of absolute principles, but as the fruit of a Belgian tradition of liberties and self-government tracing back to the Middle Ages (Viaene 2001, 97).

Even when in this turn of liberal-Catholic intransigence to 'transigence' laid the birth moment of modern political conservatism in Belgium, also in view of how it corroborated with the 'invention' of a Belgian national tradition (Viaene 2001, 77), it is remarkable to what extent this post-revolutionary, conservative Catholicism resonated with the discourse of *Le Spectateur belge* in the early years of the Kingdom of the Netherlands. In their recognition of a political sphere independent of the religious sphere, the distinction between the civil order and Revelation, the new Catholic political doctrine returned to what had been at the core of the intellectual engagement of Leo de Foere. Moreover, the points of comparison went beyond 'the general thrust towards secularisation of their political commitment' (Viaene 2001, 97). When, in the 1840s, the first Catholic manual appeared on the Belgian constitution at the University of Leuven, its author, Jean-Joseph Thonissen, underscored that religious liberty was primarily 'a constitutional principle of individual liberty,' but, in line with the classical-ultramontane doctrine, he also felt that the Constitution had established the 'independence of the two powers' in their respective sphere; in other words, as Viaene pointed out, 'if the State wanted to respect the religious liberty of the great majority of the citizens, it had to take the church seriously on the church's own terms, as an equal entity, sovereign in its sphere' (Viaene 2007, 128). De Foere, who, as we saw, defended religious freedom in terms of constitutional rights and civil liberties, made in 1816 an almost similar statement: 'From the moment that her fundamental principles [of the church] are in alliance with the constitutional fundaments of the state, its genius, natural friend of order and conciliation, is prepared to all kinds of modifications, all kinds of sacrifices' (de Foere 1816a, 230).

What also traced back to De Foere was that Catholics, in breaking with the theocracy-oriented engagement with modern freedoms by intransigent liberal-Catholicism, returned to a 'piety for the past'

and attempted to provide their endorsement of modern liberties with roots in the history of Christianity (Viaene 2001, 99). When in 1837 another Leuven professor, Charles de Coux, wrote in *Revue de Bruxelles*, a journal that spearheaded the liberal-Catholic turn to transigence, that Christianity was, and had been, the motor behind 'the law of human progress,' precisely by separating religion from politics and rejecting the theocratic character of non-Christian civilisations (Viaene 2001, 84), the exact same arguments had been made by De Foere in 1816, in a polemic with the government-sponsored newspaper *Les Éphémérides de l'Opinion* (de Foere 1816b). De Foere had consistently claimed that the 'true' enlightenment and civilisation were products of Christianity and Catholicism, and insisted that the ministers of the church never worked for the propagation of religion by any other means other than 'persuasion, charity and moderation' (de Foere 1816b, 362). With regard to the separation of church and state specifically, De Foere insisted that 'it had been the popes, as well as the united church and the Catholic theologians who had favoured a separation of the powers in the first place' (de Foere 1816b, 341). And whilst it was 'the church, in concert with wise and reasonable rulers who for centuries traced the line of demarcation between the two powers' (de Foere 1816b, 352), it had been 'the princes' who, in recent times, 'chose to return to the centuries of ignorance and confusion, by uniting in their hands the two powers' (de Foere 1816b, 352–353).

On the basis of these points of similarity, De Foere emerges as the unaccredited intellectual father of the prevailing strand within political Catholicism around the middle of the nineteenth century. But there does remain one fundamental difference between the liberal-Catholics of the midst of the nineteenth century and the earlier 'liberal turn' of classical ultramontanes, and it relates to the point earlier made with regard to liberal-Catholicism inspired by Lamennais. Liberal-Catholics, as Viaene pointed out, also after abandoning their 'intransigence,' still remained 'children of Maistre and Lamennais,' in their claim that 'only an immutable religion anchored in dogma could provide society with adequate armour against the chaotic human passions unleashed by the French and Industrial Revolution' (Viaene 2001, 83). This providential dimension, wrapped up with the cultural pessimism of the Romantic era, had been completely absent in the writings of De Foere, who, as his classical-ultramontane colleagues, still thought much more in terms of continuity with the period before the French Revolution (and precisely on this point,

as we have seen in Chapter 8, De Foere had expressed elaborate criticism against Maistre's *Du Pape*), and wrote in a time when the social disruptions of the Industrial Revolution had still to begin manifesting themselves. Faithfull to the ideas of the French ultramontanes, the Belgian conservative Catholics would also refuse to break completely with the idea of a state religion; with what would become known as the *Catholic thesis* (van Isacker 1955). Especially the latter point leads to the conclusion that, between 1815 and 1830, what took place was a true 'liberal moment' in the history political Catholicism. In the way how an insistence on the 'inalienable rights of man' was combined with the pursuance of political freedom, in Catholic journalism from *Le Spectateur belge* to *Le Catholique des Pays-Bas*, laid the origins of what could have developed into a political doctrine of *Catholic liberalism*. Paradoxically, the Belgian Revolution seems to have been the cataclysmic that pushed political Catholics in a different political-intellectual direction.

10.6 Bipartisanism and the Erasure of Popular Sovereignty

The increasing duality in the political landscape had also consequences for the prevailing theory of government. In the spirit of the opposition and of the constitutional fathers there had clearly been a belief in the spontaneous formation of a strong public opinion, formed 'bottom-up' through the exercise of freedom of the press, which had been considered essential to the mutually reinforcing relation between a vigilant citizenry and an accountable government. In the years after the Revolution, however, public opinion became shaped 'top-down' by the two establishment parties, as a result of the all-consuming bipartisanism. The emergence of two families of newspapers, isomorphic to the existing parties, responded to what the conservative French *doctrinaires* had in mind, not Benjamin Constant, who, as Lucien Jaume pointed out, 'hoped that an extensive range of newspapers would be established across the country' (Jaume 2012, 52). Giving away government civil service jobs to party-supporters as a reward (the so-called 'spoils system') became considered as a legitimate practice in the majority's attempts to impose its will (de Smaele 2002, 34). Not surprisingly, freedom of the press soon encountered all kinds of new restrictions, as its unbounded exercise became considered a threat to the new social hierarchy (Delbecke 2012, 478–479). Changes in voting rights, as any other change to the electoral system,

consistently took place on the basis of party-political considerations (Van Eenoo 1979).

These changes in the political reality, marking the development of an increasingly oligarchic political system, seem to have found their culmination in a constitutional interpretation that *denied* popular sovereignty had been a founding principle, even to the extent that the revisionist reading has become 'the consensual understanding of sovereignty in the Belgian constitution,' endorsed even by the Council of State (the supreme administrative court of Belgium). The origin of this interpretation is still unascertained and somewhat disputed. According to Geenens and Sottiaux (2015, 302), it originated ('probably') in 1950 and 'took its cue' from a work by the French constitutional scholar Raymond Carré de Malberg, *Contributions à la théorie générale de l'état*, published in 1920–1922. Malberg argued that the French revolutionaries of 1789, when they were deliberating the first constitution, made a clear distinction between 'popular' and 'national' sovereignty, which would have emanated from, respectively, the works of Jean-Jacques Rousseau and Emmanuel-Joseph Sieyès. By choosing 'national' sovereignty, the revolutionaries consciously did intent to grant sovereignty, not to the concrete, physical people, but to a trans-historical entity, 'the nation.' Since 'the nation' in this understanding was a clear 'fiction,' the sovereign power of the nation could only express itself through representative institutions, and no participation of the people in the government, outside of the election of the representative assemblies, was required. Geenens and Sottiaux believe that Belgian scholars, after reading Malberg, became convinced that the Belgian founders had simply followed the constitution makers of 1789–1791.

However, according to Henk de Smaele liberals in Belgium felt uncomfortable with the implication of popular sovereignty in article 25 from the beginning and 'gradually erased' it from the constitution. De Smaele refers to the work of Guillaume Bacot from 1985 (*Carré de Malberg et l'origine de la distinction entre souveraineté du people et souveraineté nationale*), a refutation of the Malberg's theory, in which the 'invention' of the distinction between popular and national sovereignty is situated at the time of the French *doctrinaires*. The latter, as is well-researched, did no longer consider the will of the people as the fundamental principle of their political action, but 'reason,' 'justice,' 'morality,' 'truth,' in short, the 'general interest.' De Smaele argues

that also in Belgium the principle of popular sovereignty became increasingly criticised at this time. The Catholic politician Etienne de Gerlache, former president of the National Congress and the constitutional commission, wrote in a pamphlet published in 1852: 'The dogma of the sovereignty of the people, on which support all our constitutional theories, is prone to revolutions, irreconcilable with order and peace, and with any stable form of government' (de Gerlache 1852, 65). The pamphlet was heavily attacked by the liberals for its ideas on church and religion, but not for its criticism of popular sovereignty. However, De Smaele still presumes that in Belgium the interpretation of the constitution of 1830 in terms of a distinction between national and popular sovereignty was only explicitly made toward the end of the nineteenth century (de Smaele 2002, 29–38).[12]

10.7 Quid Nationalism?

As the new Belgian state was justified on the basis of the imagination of a pre-existing, 'trans-historical' Belgian nation, nationalism inevitably in 1830–1831 became predominant in the political debate in the wake of the Revolution.[13] This, however, was a problematic, paradoxical situation, as nationalism had not only been alien to the core political-intellectual ideas of the opposition (in spite of its radicalisation in a nationalist direction in 1830), but in some ways even completely contradicted them.

The liberals before 1830 fervently attacked the agenda of the government to unify the country when it came to 'laws, language, customs and religion.' National customs and habits, if desirable at all, were 'to be acquired by the people itself, over time and slowly and imperceptibly, and according to needs and circumstances.' 'Nationality' was only the 'fictitious and artificial representation of a nation.' The source for many

[12] De Smaele quotes from a brochure *La Revision de la Constitution* by a Catholic member of the provincial council from 1891: 'Defiant, with reason, of all omnipotent authority, the illustrious assembly […] abstained from proclaiming the principle of popular sovereignty and choose instead this phrase more precise in its modestly: "All the powers emanate from the nation"' (de Smaele 2002, 31).

[13] I follow here the definition of nationalism from Princeton scholar David A. Bell: 'the idea of the nation as a political artefact whose construction takes precedence over all other tasks' (Bell 2001, 198).

of these arguments against the creation of a national identity was the famous pamphlet of Constant *The Spirit of Conquest and Usurpation*, in which he warned that the new 'spirit of system' of (post-)revolutionary governments dissimulated a new thirst for absolute power. 'Patriotism exists only by a vivid attachment to the interests, the ways of life, the customs of some locality,' Constant had argued (Constant 1814, 74). In a similar sense, the Belgian liberals had insisted that the 'artificial national spirit' was a modern invention 'to provide support for despotic rule,' in the wake of the 'extinction of the public spirit.' In contrast to the artificial nation which the government had in mind, a 'constructed' cultural unity, the opposition held on to a republican idea of the nation: the nation of citizens united, in spite of their national, cultural and religious diversity, around the 'edifice' of the constitutional liberties and through an active involvement in the political debate. The union of oppositions, in bringing together people from different political-intellectual traditions, was presented as a prefiguration of the only possible kind of national unity that the new Restoration state could accomplish. By not joining this union, the Dutch had only themselves to blame if national unity within the united kingdom remained an unfulfilled goal, and if legitimate resistance against the government would lead to a separation in two countries.

The young Belgium, on the other hand, became captured by what Jo Tollebeek has called 'a romantic euphoria … the conviction that the new nation-state had an incontestable right to exist' (Tollebeek 1998, 334). It became the major preoccupation of the political and socio-cultural elites to give the new state a historical foundation. This related primarily to a concern that Belgian identity was considered abroad as merely '*une nationalité de convention*,' and that for that reason the fragile state of independence was not considered durable (and therefore not well respected). But there was also the concern to bind the Belgian population, in all its diversity, to the new regime, to give the new state legitimacy in the eyes of the people. The new nation-state became therefore a 'paradigmatic example' of what Eric Hobsbawm famously called the 'invention of tradition' (Hobsbawm and Ranger 1983; Koll 2012, 520). This took place through all the forms associated with this process: from symbols to the organisation of national festivities (generally commemorating the Revolution and Independence), historical paintings and lithography, the erection of monuments and the creation of a National Museum (Koll 2012, 520–524). There was an explosion of national

histories, which were without exceptions meant to be 'a contribution to the formation, consolidation and confirmation of a national identity' (Tollebeek 1998, 330). This all took place with strong support by the government, which conducted an active cultural policy to deepen and diffuse the knowledge of the national heritage, and took all kinds of initiatives to coordinate and stimulate national historiography (Tollebeek 1998, 337). The preoccupation with 'inventing tradition' and giving the young state a historical foundation also applied to the making of the constitution, as several authors have pointed out.[14] In spite of the fact that the congress members were systematically tapping into foreign political thinkers and constitutional models, they were nevertheless very concerned to present their work as primarily inspired by ancient Belgian mores, customs and institutions.[15] Jo Tollebeek has even pointed at an explicit political agenda: 'to strip the freedom they had won of its revolutionary character.' They acted according to the adagio of Madame de Staël 'that freedom was old, and that it was despotism which was new' (Tollebeek 1998, 333).

The question of how one approached the idea of national unity was not independent from the more political-intellectual issues of sovereignty and freedom. In that regard, it is important to understand what exactly Constant, and the Belgian liberals, had in mind when they rejected national 'uniformisation.' During the French Revolution, there had been an overwhelming preoccupation from the start with the unity of the new republic (or at first 'republican monarchy') that one was about to create. Emmanuel-Joseph Sieyès, the most important constitutional theorist within the National Assembly, warned for the danger that one would 'cut, chop and tear France into an infinity of small democracies, which then join together simply by the ties

[14] Both Annelien de Dijn and Brecht Deseure have made clear that the members of the National Congress primarily practiced a 'pragmatic conservatism' (de Dijn 2002; Deseure 2017). There was no direct influence of the ancient constitutions, but the point was to root the new constitution in 'the history, the character and the customs of the Belgian nation' (Deseure 2017, 28). Deseure furthermore made clear that the ancient constitutions were sometimes even appropriated from a radical-democratic point of view.

[15] As Remieg Aerts pointed out, it was the paradox of the nineteenth century, the age of nationalism, that all these claims to national originality were in fact outdated: 'This was the age par excellence of transnational movements and processes, of international exchange in the fields of culture, economics and politics …' (Aerts 2009, 582).

of a general confederation, rather as the thirteen or fourteen United States of America formed a confederation in a general convention.' Instead, Sieyès favoured 'a general administration spreading from a common centre and falling in a uniform manner on the furthest reaches of the realm.'[16] In order to make this possible, it was considered a necessity to engineer the people into one nation.[17] When Sieyès became entrusted with the design of the territorial reorganisation of the French administration, this is precisely what he aimed at, calling this process of nationalisation '*adunation politique*' (Hont 2005, 485).[18] The introduction of a uniform system of cantons, communes and departments, as Istvan Hont pointed out, was meant to ensure that 'the civic spirit could be properly replenished at the lower levels without giving rise to any democratic separatism' (Hont 2005, 485). All future initiatives at institutional, social or cultural nationalisation took place in the same spirit, with as the most illustrious example the attempts by the Jacobin government to 'annihilate the dialects and universalise the use of the French language' (as it was formulated in a report to the National Convention by Henri Grégoire).[19]

Modern scholars have found in the discourse of the French Revolution, and especially in the political thought of Sieyès, that a preoccupation with a system of unitary representation blended perfectly with an absolutistic notion of sovereignty, which was only being transferred from the monarch to the people (Baczko 1988; Baker 1990, 244–251).[20] Sieyès not only authored the revolutionary claim that sovereignty resided

[16] *Dire de l'abbé Sieyès, sur la question du veto royal, à la séance du 7 septembre 1789* (Paris, 7 September 1789). Quoted in: Fosyth (1987, 137).

[17] 'The assimilation of men,' Sieyès wrote in 1793 in the context of a debate on national education, 'is the primary prerequisite for the great national union into a single people.' Emmanuel Sieyès, 'Sur le project de décret pour l'établissement de l'instruction nationale,' *Journal d'instruction sociale*, 6 July 1793, 146. Quoted in: Rosanvallon (2007, 268).

[18] Pierre Rosanvallon noted that Sieyès introduced this word in French, which in English was recorded as early as 1551 and 'denoted the process by which a group of individuals comes to form a "nation"' (Rosanvallon 2007, 268).

[19] Henri Grégoire, *Rapport sur la nécessité et les moyens d'anéantir les patois et d'universaliser l'usage de la langue française* (Paris, 1794).

[20] In this regard, some disagreement exists among intellectual historians about how to interpret Sieyès' famous distinction between *pouvoir constituant* and *pouvoirs constitués*. According to Baker and Baczko, this distinction implies that the nation or people permanently possesses the constituent power and remains unlimited in its actions, which in their view resulted in the political instability of the French Revolution. But Sieyès' distinction

exclusively in the nation, but also considered the nation to be the undivided source of sovereignty with a single general interest. The nation was to Sieyès, in the words of Michael Sonenscher, 'not a body, but an abstraction represented by a body' (Sonenscher 1997, 313). From this perspective, the nation in the work of Sieyès becomes identical to 'the state' in the work of Hobbes; as Istvan Hont pointed out: 'Sieyès's nation is Hobbes' Leviathan.' The term 'nation-state' was in the view of Hont 'a plain tautology' (Hont 2005, 489). On the opposite side, also Constant's criticism of this obsession of unity and uniformity in *The Spirit of Conquest* needs to be read in light of this intellectual debate. In his *Principles of Politics Applicable to All Governments* (Constant 1810, 17–24), Constant argued that, in order to remedy 'the evils of unlimited power,' one had failed to break substantially with the past. Enlightenment thinkers and revolutionaries alike had only re-legitimised the Hobbesian notion of an absolute, indivisible power. '[T]heir wrath' had been 'directed against the wielders of power and not the power itself.' By considering power as 'the abstract right of the whole society' the danger that power eternally poses with regard to freedom had in fact been seriously aggravated. In order to abuse its power, for example in the case of prosecuting innocent citizens, what does a (modern) government do? 'It quotes the imprescriptible prerogative of the whole of society, of the all-powerful majority, of the *sovereign nation* whose well-being is the highest law.' 'The government can do nothing, it says, but the nation can do everything,' and therefore, in Constant's view, '[t]he omnipotent nation is as dangerous as a tyrant, indeed more dangerous.'

In sum, the issues of nationalisation and unification were directly related to the intellectual debate on sovereignty and freedom. From this regard, the intellectual legacy of the Belgian Revolution

has also been interpreted as intended to counter the absolutistic sovereignty of Hobbes' Leviathan. Pasquale Pasquino and Lucia Rubinelli have argued that Sieyès wanted to replace the *Ancien Régime* with a constitutional system with limited powers, and attributed unlimited power to the nation merely as a pretext (a '*flatus vocis*') to legitimise the new system (Pasquino 1998; Rubinelli 2016; Müssig 2016a). Sieyès would indeed, after the radical phase of the French Revolution, show increasing awareness of the implications of an absolutist notion of sovereignty, and conceive new institutions to limit political power within the constituted system (such as a '*jury constitutionnaire*'). Benjamin Constant would moreover acknowledge his indebtedness to the views of (the later) Sieyès. See for an overview: Maes (2018,13–14).

was contradictory: it led to a situation in which the ambition of creating a nation-state took centre stage, but it also resulted in a constitutional government that was built largely on ideas that rejected the very notion of national unity, or, at least, the creation of an 'artificial' national unity through political voluntarism. In this context, in a country that was socially and culturally divided as Belgium, sub-nationalist challenges to Belgian nationalism could be expected to emerge. The defenders of Belgian national unity, moreover, would be left with neither the political will nor the constitutional levers to counter them. If Belgium was therefore an early and paradigmatic example of modern nationalism in the nineteenth century, it equally developed, as Marnix Beyen has described it (Beyen 2005), in 'a state that failed to be ethnic.'

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