

From pragmatic conservatism to formal continuity. Nineteenth-century views on the Old Regime origins of the Belgian Constitution¹

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Although, philosophically, I join in the admiration for these principles, as a Belgian I have as much admiration for the traditions of my country, which to the merit of consecrating most of the public liberties acclaimed in 1789, join the merit of their high age. [...] It is from the traditions of our ancestors that we have drawn our constitutional liberties, liberties to which the single principles of '89 would not have led us so directly².

These lines were written by Victor Van den Broeck in his 1859 book on the Belgian Constitution. The book's subtitle tellingly reads: *Its roots in our history before the French Revolution of 1789*. Belgian intellectuals of the nineteenth century had an uneasy relationship to the French Revolution, and especially with regard to the question of the origin of political liberty in their country. The Belgian Constitution of 1831 was famously liberal among contemporaries, counting as a model modern constitution in Europe³. By establishing royal inviolability and ministerial responsibility, it instated an early example of parliamentary monarchy⁴. Also, it explicitly proclaimed

personal liberty, as well as the freedoms of press, religion, association and education.

To Van den Broeck's disenchantment, most of his countrymen seemed to think that the political and civil liberties enshrined in the Constitution had their origin in the French Revolution. Belgium had indeed known twenty years of French rule as a result of the revolutionary and Napoleonic wars. For Van den Broeck and many fellow patriotic intellectuals however, it was outrageous to think that liberty had been brought to the Belgians by foreign hands, let alone French hands. Belgian historians generally painted the so-called «French period» as a brutal occupation and as a violation of Belgian sovereignty and identity, especially after the events of 1848⁵. Denouncing the occupation was a way of historically legitimising Belgium's independence. The chances of survival of the young and small state were precarious at times. While Holland had only recently abandoned its claims on Belgian territory, the threat of a second annexation to

France grew rapidly as Napoleon III came to power⁶. On the other hand, French rule had ended the injustices of the Old Regime and had opened the way for the liberal bourgeois society which these intellectuals themselves embodied⁷.

The challenge then was to prove that the Belgians had not actually needed French intervention in order to incorporate the great modern principles of liberty into their Constitution. This is where the ancient constitutions came in. In the nineteenth century, Old Regime constitutionalism was reactivated to shore up the legitimacy and independence of both the United Kingdom of the Netherlands (1815-1830) and of its revolutionary successor in the South, Belgium.

This article investigates, first, the formal continuity thesis defended by nineteenth-century Belgian intellectuals such as Van den Broeck. The voluminous and varied field of nineteenth-century Belgian historiography will not be analysed here in its entirety. Rather this article focuses on the work of those authors who, from a legal historical point of view, posited a direct connection between the ancient constitutions and the Belgian Constitution⁸. This thesis has until now scarcely received scholarly attention. The second aim of this article is to assess the real impact of ancient constitutionalism on the genesis of the Belgian Constitution. This will be done by analysing the constituent debates of the Belgian National Congress of 1830-1831 and their repercussions in the press. Paradoxically, these were much less concerned with the ancient constitutions than Van den Broeck and likeminded historians often presumed. Lastly, an unexpected and little-known defence of the ancient constitutions by a radical Belgian revolutionary in 1830 will be discussed.

1. *The legacy of the ancient constitutions*

The political culture of the Belgian provinces under the Old Regime was marked by a specific manifestation of ancient constitutionalism; the idea that the wellbeing of the nation depended on the conservation and continuation of a body of ancestral privileges and customs which together formed a country's constitution⁹. Geographically isolated from the larger empire to which they belonged, and ruled by a non-residing monarch, the Belgian provinces were governed according to the principle *dominium politicum et regale*¹⁰. Representative institutions had a relatively strong position, especially in matters of taxation and the enactment of legislation. Acting as the guardians of the constitutions, the Estates of the different provinces jealously staved off constitutional innovation on the part of the government, occasionally even reverting to armed revolt. Both the sixteenth-century Dutch Revolt and the Brabant Revolution of 1789-1790, leading to the deposition, by the Estates, of King Philip II of Spain and the Austrian Emperor Joseph II respectively, had been legitimised on the grounds that the monarch had violated the ancient constitutions. It had earned the inhabitants of the old Netherlands a rebellious and freedom-loving reputation¹¹.

Apart from being a powerful weapon to prevent the establishment of royal absolutism, the ancestral privileges had over time also acquired a large symbolic value. Proto-national authors in the eighteenth century considered the ancient constitutions and the "free" political principles they enshrined, together with Catholicism, as the founding elements of Belgian national identity¹². Count Patrice-François de Neny,

president of the Secret Council in Brussels, famously identified the Belgian national character with the old constitutions in the opening lines of the treatise on the government of the Southern Netherlands he wrote for the instruction of the future Emperor Joseph II:

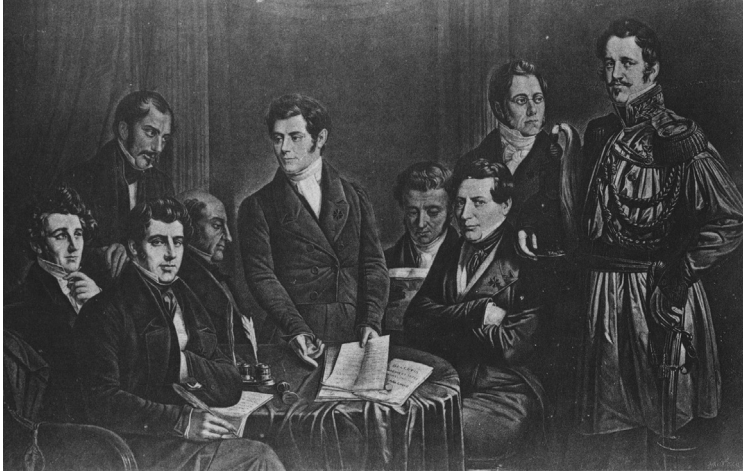
A country's constitution is its history put into action. A country's history is essentially linked to its political constitution, to such a degree that it is impossible to separate these two objects. That incontestable truth is especially true with regard to the Netherlands¹³.

In the second half of the eighteenth century, proto-national Belgian historians elaborated on this thesis by writing the history of the ancient constitutions and representative institutions. These historians invariably claimed that the historical origins of the constitutions were immemorial, and thus they supported a "parliamentary" interpretation of Belgian institutional history¹⁴. They were encouraged by the yearly historical competitions organised by the Royal and Imperial Academy in Brussels, many of which focused on the history of the constitutions and the Estates. These texts came in handy in 1787-1791, when the Brabant revolutionaries opposed imperial plans for institutional reform with the argument that Belgian nationality was grounded in the immutability of the constitutions and of the institutions founded upon them¹⁵. The continuity of the political principles and the «old habits» of the Belgians developed into founding elements of (proto-) Belgian nationality. As such, these ideas survived the formal abolition of the Old Regime and the ancient constitutions under the rule of the French Convention in 1794.

2. *Bridging the divide: the national origins of the Constitution*

After Belgian independence in 1830, national historians were quick to establish the link between the Belgian Constitution and ancient privileges. This theme was already present in the national histories and historical culture of Belgium's predecessor, the United Kingdom of the Netherlands¹⁶. It could easily be adapted to the new rule, especially given the parallel drawn between King William I's "deposition" by the Belgian revolutionaries and the revolts of their ancestors against Philip II and Joseph II. The defence of liberty, formerly enshrined by the ancient constitutions, became one of the classical arguments for the legitimization of Belgian independence. The Catholic, French publicist Waille went to great lengths to prove that the Belgians had always been a free and autonomous nation, whose liberty was rooted in its immemorial customs and its inherent Catholicism¹⁷. He argued that the present Belgian institutions were «essentially» identical to the ones of their Frankish ancestors. In his view, the National Congress of 1830-1831 had been wise enough to «embrace the old constitutions» and to combine these with the institutions of modern times. Waille alleged that the Constitution of 1831 was entirely made up of «custom and tradition» and perfectly incarnated the old principle of «lex et consuetudo». Variations of what we could call this "continuity thesis" remained characteristic of Belgian historiography until well into the twentieth century¹⁸.

A number of authors took this argument further by postulating a formal continuity between the Belgian Constitution and the ancient charters. Most of them, writing



Belgian interim government, engraving of 1830

before the establishment of history as an academic discipline in Belgium, were legally trained intellectuals. By systematically comparing the Constitution to the medieval privileges, they tried to prove that all of its major provisions were directly rooted in the national past. One of the earliest and most influential accounts of this kind was published by Charles Faider, a legal historian and later general prosecutor at the Court of Cassation and Minister of Justice¹⁹. Faider's vision was a nuanced one. He readily admitted that the ancient charters had been far inferior to the modern Belgian Constitution, and that they did not contain such vital guarantees as the liberty of the press and religious liberty. He also underlined the essential difference between the limited scope of medieval privileges on the one hand and the universality of the modern concept of constitution on the other²⁰. Nevertheless, he maintained that the degree of liberty conferred to the people by

the ancient constitutions was unsurpassed in the Old Regime, and that they had directly informed the creation of the Belgian Constitution. He attributed the genesis of the latter and its immediate acceptance by the Belgian public to the indigenous «tradition of liberty»²¹.

To stress constitutional continuity between the Old and the New Regime in Belgium was not only a way of legitimising the Belgian Constitution of 1831, but it was also a claim about the historically grounded unity of the territory and its people²². Modern-day Belgium comprised the territories of the historical Southern or Austrian Netherlands, a confederation of sovereign principalities united under a single dynasty ever since the fifteenth century. Added to it were the territories of the formerly independent Prince-Bishopric of Liège, the Principality of Stavelot-Malmédy and the Duchy of Bouillon. Before the annexation to France following the French Revolution, no formal

ties had existed between both groups of territories, and this seemed to undermine the idea of Belgian state grounded on historical unity. But Faider found a way around this problem by pointing out the many similarities between the constitutions of the various Old Regime principalities. Following Léonard Pycke, he identified a list of seventeen principles and provisions that had been common to the public law of all the Austrian Netherlands' principalities, and many of which could also be found in Liège (the largest and most important of the three "additional" territories)²³. In his book, Faider compared the two most famous medieval charters: the 1356 *Joyeuse Entrée* of the Duchies of Brabant and Limburg and the 1316 *Paix de Fexhe* of Liège. He asserted that the same spirit pervaded the unwritten constitutions of the other principalities, thus turning them into vectors of early Belgian national unity²⁴.

Faider claimed that the continuity with the old constitutions was evident both in the form of government and in the constitutional guarantees for personal liberty. The combination of representative constitutional monarchy and constitutionally guaranteed personal liberty was precisely what made the Belgian Constitution of 1831 so famously liberal in the eyes of contemporaries. Drawing on eighteenth-century pro-Estates literature, Faider contended that the old Belgian principalities had known a mixed form of government. Sovereignty had been shared between the monarch and the nation, as proven by the Estates's necessary consent in matters of taxation and legislation. Apart from being representative, government had also been constitutional, since the prince was bound by his inaugural oath on the ancient char-

ters. Despite being of feudal origin, the inauguration of the Belgian princes had, according to Faider, acquired the value of a fully-fledged social contract, entailing a binding contractual obligation between the prince and the people²⁵:

Although the inauguration has its roots in feudal law, the goal of the inauguration, and its real result, were to definitely establish, not a feudal bond, but the social contract, popular guarantee, the government of the country by the country, and the rule of law²⁶.

The keystone of the system was the famous *jus resistendi*, the right for the subjects to suspend all duties and services to the monarch for violation of his augural oath on the constitutions, which had led to the rightful deposition of such mighty rulers as King Philip II of Spain and Emperor Joseph II of Austria²⁷.

Far-reaching guarantees of individual liberty were seen as the other main element that linked the Belgian Constitution to its medieval predecessors. Among the most famous of these were individual liberty, the guarantee of property, the free use of language, the inviolability of the home and the right of petition²⁸. They were enhanced by guarantees for juridical protection including justice according to the rule of law («selon loi et sentence» in the Joyous Entry) and by the natural judge, protection against unlawful detention (*habeas corpus*) and protection against citation before foreign tribunals.

Faider's work influenced many later authors, who frequently referred to it when arguing for the continuity thesis. However, these texts usually lacked the nuances of their example, and often argued that the ancient charters had been true constitutions in the modern sense, containing all

or almost all the dispositions and guarantees of personal liberty and representative government. As Lode Wils has shown, cultivating the national historical origins of the Constitution served various political goals. First and foremost, it served to legitimise the independence of a young and small state surrounded by powerful neighbours. French annexationism under the Second Empire made the need for this sort of legitimisation seem all the more urgent²⁹. Proving the historical origins of Belgium's nationality and Constitution thus became a matter of national security³⁰. Progressive Catholics like Van den Broeck, who supported the modern liberties and secular state as set out in the Constitution, had a particular interest in emphasising their national origin³¹. Foregrounding the long Belgian tradition of liberty allowed them to downplay the influence of the ideas of the French Revolution on the genesis of the Belgian Constitution and thereby to circumvent the dilemma posed by their allegiance to these ideas on the one hand and their loyalty to Rome, whose anti-liberal pope Pius IX condemned modern constitutionalism, on the other. Pro-Flemish politicians also turned to the old constitutions and cited the clauses on the use of the «national» language as a historical justification for their campaign in favour of Dutch.

Van den Broeck motives were not purely historical, when he claimed that «our ancestors were masters in liberty since centuries and we had no need whatsoever for foreign inspirations [...] to arrive [...] at the state of relative perfectibility which characterises our actual Constitution»³². In his investigation into the origins of Belgian constitutional law (1861), H. Bosch made a similar announcement about his intention

to «look up in the ancient institutions the principles which have traversed time to take up their place in our fundamental law, to show the bond which links the present to the past»³³. Rejecting the idea that the great principles of the Belgian Constitution exclusively stemmed from the French Revolution, he pointed to what he saw as the slow and unbroken development of liberty through the centuries. The Constitution of 1831 was only the culmination of that process. Contrary to Faider, Bosch argued that the celebrated liberties of association, press, religion and education had also been guaranteed under the Belgian Old Regime. He took their omission from the old charters as a sign that the acceptance of these liberties was so widespread that to recognise them formally would have been redundant³⁴. Since liberty is one and indivisible, Bosch argued, to admit one aspect of liberty was to admit all liberty³⁵. Bosch systematically matched articles from the Belgian Constitution to passages from the old charters. He posited that the former's article 27, which placed the state budget under the exclusive competence of the Chamber of Representatives, directly sprang from the old Estates's vote over the royal subsidies, just as the article 25, stipulating national sovereignty, could be traced back to the *jus resistendi* in article 59 of the Joyous Entry and a similar provision in the *Paix de Fexhe*³⁶. He even argued that the Brabantine charter bridled princely power more severely than did the Belgian Constitution, by requiring the Estates's approval in all matters of coinage, treaties, war and pardon, where in the current Constitution the King was only bound to inform Parliament about his actions in these domains.

Gustave Pergameni repeated most of these arguments in an article written in celebration of the country's fiftieth anniversary³⁷. In his patriotic enthusiasm, Pergameni warned against exaggerating the importance of foreign influences on the genesis of the Belgian Constitution, especially of the French Revolution. While admitting that «our ancient charters and Joyous Entries» were not the only source of Belgian constitutional law, he readily called them the most important ones³⁸. Like Bosch, Pergameni systematically juxtaposed the liberties stipulated in the second title of the Belgian Constitution to the old charters in order to highlight their similarities, commenting that:

Almost all the liberties consecrated by this title are already present in our ancient charters, if not formulated in express terms, at least in the form of precious germs which were one day to be fertilised by the action of time and the development of the institutions³⁹.

He concluded that, in matters of constitutional law, modern generations had only had «to collect and revive the traditions of justice and liberty left to us by our ancestors»⁴⁰.

Joseph Kupfferschlaeger, meanwhile, asserted that the laws of the old Belgian provinces and Liège assured «perfect personal liberty», but he did not go so far as Bosch in suggesting that all the liberties were already guaranteed at that time⁴¹. He sought to compensate for the non-existence of the freedom of religion, opinion, press and education in the ancient constitutions by asserting that contemporaries had nonetheless longed for their introduction. According to this argument, the legislators of 1831 had «responded to the wishes» of their ancestors when they inscribed

these liberties into the Constitution⁴². Kupfferschlaeger agreed with Bosch's argument about the existence of equality before the law, albeit in a form that was an earlier stage of development than the equality that existed in his own day. Like Faider, he ascertained that the principles of *habeas corpus* could be found in the ancient Belgian constitutions, and were thus of much older date than the famous English act of Parliament⁴³. The organisation of ministerial responsibility in Old Regime Liège had even been superior to the arrangements of the Belgian Constitution in this regard. He furthermore slighted French influence by stating that the people of Liège had lived in liberty until 1793, the year of the prince-bishopric's annexation to France.

3. *Ancient versus modern liberty*

Authors typically cited the German school of legal history in support of their quest for a national origin of the Constitution. The historical perspective allowed them to present the modern constitutional principles as the fruits of an evolution which had started centuries ago. If they had not yet reached modern standards under the Old Regime, their seeds were at least clearly present in the old privileges. According to this view then, the French Revolution had brought nothing new to Belgium. Its real effect was only to speed up, through the use of force and unnecessary violence, a process that would naturally have resulted in the same outcome: «When making its journey around the world in 1789, Liberty didn't need to pass through Belgium», Van den Broeck wrote⁴⁴. Even Edmond Poulet,

who's *Histoire de la Joyeuse-Entrée de Brabant et de ses origines* (1863) was a serious historical inquiry in medieval feudal law, let go of his rigorous objectivism when concluding that «the Joyous Entry essentially consecrated almost exactly the same rights as our Belgian Constitution»⁴⁵. The march of time would inevitably have brought these rights to full fruition. Since «all the public rights indispensable for the development of the individual» had seriously been protected by the famous charter, he claimed that the constituent assembly of 1830-'31 had not imported any foreign liberties but had simply recycled and updated «our old national franchises»⁴⁶.

In support of their claims, these authors were keen to cite several statements made by French revolutionaries praising the ancient Belgian constitutions. Merlin de Douai, later French Minister of Justice, had famously pointed out: «Both ancient and modern sources depict Brabant as a state in which the exercise of sovereignty was shared between the prince and the nation»⁴⁷. And the Count of Mirabeau had rhetorically asked the inhabitants of Liège what more they could desire, living as they did under such free institutions: «What more can you want, messieurs? We try to make a revolution only to obtain some of the guarantees that you possess since centuries»⁴⁸.

The patriotic connection established between the modern constitutional liberties and the old charters was not accepted by all. In his 1851 history of the Belgian Constitution, the liberal philologist Jean Stecher for example wrote:

I say it with sadness, but I have to say it: that so-called *democracy* or people's government was an *aristocracy* or law of privilege. I value the history

of my country most highly, when comparing it to Europe at that time; but how small those giants seem compared to our present constitution!⁴⁹

The ancient constitutions had prepared the path for liberty, he contended, but never would the Belgians have reached it without French intervention. The liberal, anti-clerical jurist and historian Pierre Gérard was also amongst those who celebrated the French Revolution for having opened the Belgians' eyes to the true principles of liberty. He wrote with distaste about the «fatal results» of the «worn out constitutional regime» that had existed before:

The Joyous Entry had become the palladium of all abuses. Established with a view to conservation, she served to accommodate every usurpation, every infringement, every privilege⁵⁰.

Law professor, liberal politician and rector of the University of Ghent Albert Callier spoke out strongly against the idolisation of the ancient constitutions in his speech for the opening of the academic year 1884-1885. Callier thought it only natural to look for the origins of Belgian liberty in the privileges so energetically defended by the forefathers, since he too considered the struggle for liberty to be one of the defining principles of Belgian history. However, an impartial comparison of the modern Constitution to the ancient charters simply disproved the reality of that connection⁵¹. Much as Callier objected to rejecting the Old Regime in its entirety, for it had not been altogether devoid of positive qualities, he found it even more dangerous to worship it blindly. Under the Old Regime the French had had good reasons to be jealous of Belgian privileges – but privileges they remained: they were nothing compared to the rule of law and the great principles of liber-

ty introduced by the French Revolution and the Declaration of the Rights of Man: «[...] these fertile principles didn't exist in our country before the Revolution, amid all the miseries of foreign invasion, introduced the inappreciable treasure which 1789 bestowed on France»⁵². Callier went on to enumerate all the contemporary constitutional guarantees that were lacking from the old constitutions, if they didn't explicitly rule them out. His militant anticlericalism undoubtedly informed his diatribe against the idealisation of the Old Regime and its fundamental laws, as reactionary Catholics used it to denounce modernity. Typically linking his liberal message to a different phase of Belgian history than his Catholic adversaries, he concluded that while the seeds of liberty had existed in Belgium at the time of the protestant Reformation and the revolt against Spanish rule, they had been extinguished by the subsequent restoration of Catholicism⁵³.

Charles Vercamer, author of a popularising history of the Belgian people and its institutions, made a counterattack on the Ghent rector's speech⁵⁴. Vercamer indignantly spoke out against the assertions of Callier, whom he accused of denying the light of day⁵⁵. Vercamer, himself of liberal convictions, acknowledged the deplorable state of lethargy and backwardness into which Belgium had slipped under Spanish influence. Nevertheless, he stated that the whole modern constitutional edifice had been present latently. Time was all that had been necessary to make it blossom, just as has been the case in England. While admitting that equality for the law was an absolutely new concept brought to Belgium by the French Revolution, Vercamer confirmed that everything else would au-

tomatically have followed from the gradual correction and completion of the ancient constitutions over time.

4. *From Fundamental Law (1815) to Belgian Constitution (1831)*

As Vercamer's response to Callier illustrates somewhat superfluously, historical accuracy was second to patriotism in the nineteenth-century debate over the continuity thesis. It is not the aim of this article to systematically refute the assertions of Faider and his likes, since their legal-historical argumentations possess historical value in their own right. Instead, a closer look will be taken at the constituent process in order to assess the real influence of ancient constitutionalism on the genesis of the Belgian Constitution. A fair number of more or less recent publications on the intellectual and political context of the Belgian Constitution touch upon this issue in one way or another. This article will take the inquiry further by systematically analysing the influence of ancient constitutionalism on the constituent process of 1830-1831⁵⁶.

At the fall of Napoleon, the restoration of the ancient constitutions was still a matter of debate, the French constitutions of the years III (1795) and VIII (1800) and their Napoleonic supplements having failed to produce widespread support within the Belgian departments⁵⁷. As soon as the French troops retreated, an assembly of notables petitioned the allied commanders to restore the ancient constitutions⁵⁸. In the context of Restoration Europe, this was not so naïve a request as it may seem⁵⁹. Since many members of the privileged

classes considered French rule in Belgium an illegal intermezzo, they expected a return to the legal order of the Old Regime. Henri Van der Noot, erstwhile revolutionary leader in the Brabant Revolution and president of the Sovereign Congress of the short-lived United States of Belgium, pleaded for a pure and simple return to the Old Regime⁶⁰. So did another veteran of the Brabant Revolution, the reactionary functionary and historian Jan Jozef Raepsaet, who published historical treatises in defence of the ancient constitutions⁶¹. While some Catholic conservatives argued that the ancestral privileges enshrined all the may- or liberties of the French Revolution, most used the Montesquieuan argument that the ancient constitutions, being the fruit of history, were perfectly adapted to the character and the customs of the Belgian people⁶². However, it became apparent that those times were not going to return. Austria had no interest in regaining the Belgian territories and Restoration monarchs such as William I fully understood the advantages of administrative centralisation and indivisible sovereignty brought about by the French Revolution. Although he was not insensible to the reactionary pleas, a fact illustrated by his appointment of Raepsaet in the Constitutional Commission of 1815, he ultimately preferred a Fundamental Law based on the French *Charte* of 1814 over the moth-eaten ancient privileges⁶³.

In the 1820's the leading Belgian intellectuals definitively parted ways with the old privileges. Modern constitutional monarchy yielded a range of social and political advantages which the thriving liberal bourgeoisie was not willing to relinquish. Occasional pleas for a restoration of the old privileges by intransigent reactionaries were

ridiculed⁶⁴. Even Catholic conservatives, influenced by De Lamennais, embraced the possibilities offered to the Church by its emancipation from state intervention⁶⁵. The Joyous Entry and the other famous charters were progressively looked upon as documents of historical rather than legal value⁶⁶. Thus, when the Belgian opposition started to formulate its griefs against the rule of William I in the 1820's, it did so not in the language of the ancient constitution, but in the one of modern constitutionalism *à la* Benjamin Constant⁶⁷. This was true for the debates in the Estates General as well as for the many pamphlets and articles in oppositional newspapers. Major theorists of the later Belgian constitutional monarchy, like Pierre Van Meenen and Joseph Lebeau, took their cue from modern constitutional thinking, rather than from the old charters⁶⁸. Van Meenen explicitly criticised the people of the Middle Ages for clinging blindly to their charters and privileges while remaining blind to the underlying natural rights⁶⁹.

In 1815, the Fundamental Law had been introduced against the opinion of a majority of Belgian notables, becoming the subject of a bitter feud between the Belgian bishops and the Crown⁷⁰. By the next decade however, it had grown into the central document upon which the Belgian opposition based its claims⁷¹. The opposition went at great lengths to prove that the Fundamental Law guaranteed freedom of speech, parliamentary government and ministerial responsibility, among other things, all of which were incompatible with William I's ideal of autocratic monarchism⁷². Their systematic endorsement of the constitution earned them the nickname «constitutionals», as opposed to the «ministerials» siding with

the government. Only when the opposition took on a revolutionary character and culminated in Belgian independence, did the legitimising potential of the Fundamental Law subside in favour of a new legal order based on the Belgian national will⁷³.

5. *The ancient constitution in the Belgian Revolution*

While Faider *cum suis* cited the medieval charters abundantly in order to prove the identity of their principles to the ones instated by the Belgian Constitution, they did not quote from the deliberations of the National Congress of 1830-'31, Belgium's constituent assembly. The obvious reason being that the old privileges had been conspicuously absent from the debates at the time. Paradoxically perhaps, contemporaries of the Belgian Revolution had fewer scruples about emphasising the newness of the Constitution of 1831 and the principles it enshrined. The earliest constitutional manuals, while occasionally invoking the ancestral spirit of liberty of which the Constitution was considered to be an expression, never harked back to the old charters⁷⁴.

It is true that the Congress' president, Etienne-Constantin de Gerlache, praised the Joyous Entry charter in his closing speech on 21 July 1831 and even linked the spirit of the medieval charters to the one of the new Belgian Constitution:

When proclaiming all those guarantees in our Constitution, you have in fact done nothing but reconstructed on its original basis the social structure built by our ancestors, adding to your piece of work all such things which the march

of time, the experience of other peoples and our own experience have taught us⁷⁵.

The deputies had indeed more than once invoked the spirit of liberty of their ancestors in the debates, occasionally referring to the famed old privileges. There were no suggestions to restore the latter however, nor were articles cited or borrowed from them. When the deputies drew on the national constitutional tradition, they did so not for the restoration of Old Regime privileges but to suggest continuity with the legacy of their ancestors and thus to anchor the new Constitution in the national past⁷⁶.

Not surprisingly, Montesquieu was (with Benjamin Constant) one of the two political theorists most often cited in the debates⁷⁷. The Congress debates were pervaded by the argument that the new Constitution needed to be adapted to the character and the history of the Belgians. While rejecting any formal institutional or juridical continuity with the Old Regime order and insisting on tailoring the new Constitution to contemporary society, the delegates did seek to retain the specific spirit of the Belgian Nation, which was rooted in its history. This concern informed the debate on such fundamental issues as the choice for a monarchy and a conservative Senate, which were considered to be more in keeping with the Belgian character than the republic and a unicameral system. Annelien De Dijn has termed this attitude «pragmatic conservatism», expressing the National Congress's concern to retain the historically grounded character of the Belgian people while simultaneously allowing for legal innovation⁷⁸.

The lack of formal continuity with the Old Regime is made all the more clear by the textual origin of the Constitution's 139 arti-

cles: 40% were drawn from the Dutch Fundamental Law of 1815, 35% from the French *Charte* of 1830, 10% from the French Constitution of 1791 and 5% from English constitutional law. The remaining 10% were entirely new⁷⁹. None of the famous stipulations of the old privileges were included, nor was their inclusion even suggested. In the context of the Belgian Revolution of 1830, this can hardly be surprising.

The Belgian revolutionary opposition consisted of a seemingly incongruous alliance of liberal and Catholic forces. Despite having radically opposite worldviews, both groups agreed that a small government and a maximum degree of civil liberty offered the best means for realising their respective goals. The resulting Belgian Constitution was remarkable for its formal limitation of royal power and its inclusion of extensive civil liberties. In that way, it substantiated the revolutionaries' battle cry: «liberty in everything and for everyone»⁸⁰.

The commission charged with drawing up a first draft Constitution mainly consisted of young liberal lawyers of less than thirty years of age, who had not even been born under the Old Regime⁸¹. Although they too prided themselves on the Belgians' age-old freedom-loving reputation, they considered themselves to be children of the French Revolution all the same. Medieval privileges were hardly relevant for them. The minutes of its meetings refer exclusively to modern constitutions. In the Congress too, references to the ancient charters were extremely scarce⁸². Although the Congress delegates were young on average, a fair number had been born and educated under the Old Regime, a few of them being veterans of the revolutions of Brabant and Liège⁸³. However, the debates were dominated by a group

of young intellectuals educated at French or Dutch universities.

This did not prevent the ancient constitutions from being mentioned in the plenary debates from time to time. As Marteel remarks, Belgian liberals were less radical in their rejection of the national past than their French counterparts⁸⁴. In France, the destruction of the Old Regime had been considered a necessary condition for the advent of the age of liberty. In regions where royal absolutism failed to develop, such as the Southern Netherlands, representative institutions remained strong, nurturing indigenous traditions of political liberty⁸⁵. Although French occupation uprooted these institutions, the tradition was a welcome symbolic resource for the founders of the Belgian state, which allowed them to claim that political liberty was essentially home grown rather than an import, and thereby to legitimise national independence.

References to the ancient constitutions in the National Congress remained general however, and usually concerned their spirit or underlying principles rather than concrete articles or stipulations. In the debate over the Senate, the Count de Celles typically invoked the spirit of the Joyous Entry while rejecting its restoration:

If I plead for one single legislative chamber, I do so because I conceive the administration of my country, not with the whole system of the Joyous Entry, but with all the liberties [...] of this charter which has served as a model for all the others⁸⁶.

Like many of his contemporaries, De Celles called the Belgian Revolution the third revolution in the nation's history, after the ones against Philip II and Joseph II. All three were driven by the same principle of legitimate uprising against a despotic government. Regardless of the deposed mon-

archs's intentions or the qualities of their ideas, all had forfeited their rights to the Belgian throne by violating the contract sealed by their inaugural oath on the Constitution.

The contractual nature of the Constitution was the most frequently cited topic in relation to the ancient constitutions. In the discussion over the inviolability of the head of state, François and De Foere referred to the conditions for deposition stipulated in the ancient constitutions, while Destouvelles proposed to include the *jus resistendi* clause of the Joyous Entry in the inaugural oath of the monarch on the Constitution⁸⁷. The oath had not been included in the draft by the Constitutional Committee, but was introduced by amendment on the proposal of the Baron Beyts, who referred to the national traditions:

She [the inauguration] has been part of our customs for eight hundred years; she consisted of the reciprocal signature of the constitution and of the taking of the oath in open air, in the presence of the assembled people, thus making the oath more sacramental⁸⁸.

Thereafter, the assembly made the taking of the constitutional oath before the united Chambers a precondition for being vested with the royal constitutional powers⁸⁹.

The inauguration ceremony visibly suggested continuity with the Old Regime⁹⁰. The reception of Leopold of Saxe-Coburg in the Belgian cities on his route to Brussels in 1831 abounded with references to tradition. Upon offering him the keys to the city, Brussels mayor Nicolas Rouppe echoed the terms of the old «contrat synallagmatique»: «You will, Sire, maintain our charter and our immunities. We, for our part, will defend your throne and keep your royal prerogatives intact»⁹¹. Like William

I before him, Leopold's inauguration took place in the Place Royale in Brussels, on the spot where the Dukes of Brabant used to take the oath before the Estates of Brabant. Although it was inaugurated by this neo-traditional ceremonial, the constitutional system was decidedly modern. The promoters of the reintroduction of the oath and the inauguration framed revolt against despotism and contractual monarchy as universal, natural rights based on the sovereignty of the people, of which the ancient Belgian constitutions had been an early and incomplete expression.

There were occasional invocations of the ancient constitutions in the newspapers at this time. But these were generally limited to calls to draw inspiration from the national past and national character for the drafting of the new Constitution⁹². Suggestions to copy stipulations from the old charters were extremely rare⁹³. These findings dovetail with Els Witte's conclusions that Old Regime terminology was as good as completely absent from newspaper debates in the period leading up to the Revolution, the debates being waged in the language of modern constitutionalism⁹⁴. It should moreover be noted that the Belgian revolutionaries were much less concerned with the origin of the personal liberties in the Old Regime than were Faider and his colleagues later in the nineteenth century. In the 1830 uprising against the rule of William I, the legitimising potential of the Old Regime contractual monarchy was more relevant. Nonetheless, there was no question of formal continuity, and references to the ancient constitutions were rare. Only later did the ancient constitutions grow into a major theme in the historical imagination of the Belgian nation state.

6. *An unexpected alliance: radical liberalism and the ancient constitution*

Nevertheless, even in 1830, the old privileges were a source of political inspiration for some people. Surprisingly, the most outspoken call for a return of the Joyous Entry was not heard on the right side of the political spectrum, but on the far left. Moreover, it resonated outside rather than within the meeting hall of the National Congress. Leopold I is known to have called the authors of the Constitution of 1831 «a herd of mad democrats»⁹⁵. The members of the National Congress were far from that, however. Due to very high census suffrage requirements, their constituency was limited to rich landowners, clerics and holders of university degrees, altogether representing 0.7% of the population⁹⁶. Unsurprisingly, the Congress was overwhelmingly socially conservative. Its foremost concern was the interest of the propertied classes. The very few republican and democratic voices that were present, hardly weighed on the debates.

The moderate, conservative orientation of the Congress greatly frustrated radical democrats and progressive liberals. Despite having actively contributed to the Revolution, they had not managed to obtain a sizeable political representation. The revolutionary hero Louis de Potter stepped down from the Provisional Government when his plans for a Belgian republic failed⁹⁷. His friend and follower Jean-François Tielemans gave up his post in the Constitutional Commission after his colleagues unanimously voted for the monarchy⁹⁸. Not being in a position to directly influence the debates, the radicals took recourse to founding political clubs and

newspapers, petitioning the Congress with alternative constitutional proposals and, in a desperate last attempt, plotting a coup.

The loosely organised group of radicals was united by a desire for democratic and social reform. Most of them were younger than forty, belonged to the middle class, especially to the liberal professions, and held university degrees, often in law⁹⁹. They drew intellectual and political inspiration from progressive and egalitarian thinkers such as Buonarroti and Saint-Simon¹⁰⁰. It is therefore all the more surprising to see some members of this group turn to the medieval charters for inspiration. Shortly after the election of the Congress, a new edition of the Joyous Entry charter appeared¹⁰¹. Its editor was Joseph-Ferdinand Toussaint, a convinced Saint-Simonian¹⁰². He had made a splash among the radicals with a speech directed against the establishment of the Senate and the royal veto in the republican club *Réunion Centrale*¹⁰³. Breaking a lance for popular sovereignty, the equality of all and the social contract, he rejected the introduction of privilege, «aristocratic» institutions and the monarchy. In his view, the Senate and the royal veto could only serve to infringe on the will of the people, the only legitimate source of law. On another occasion he spoke for the introduction of free primary education for all children¹⁰⁴.

In an article in the radical newspaper *Le Belge*, Toussaint called for making the new Constitution «at least as liberal as the Joyous Entry of our forefathers»¹⁰⁵. It followed that the head of state, far from being «a contracting party», should be nothing more than «the agent of the national will». In his new edition of the Joyous Entry, Toussaint further encouraged his fellow

countrymen to look back on their history for adequate constitutional recipes:

Instead of aping foreign countries, why don't you go digging into you own archives, why don't you consult your own charters and your own history, with all its beauty and happiness, to create truly free and national institutions! The germ of that ancient and astounding prosperity of your country, you would have found in the Joyous Entry¹⁰⁶.

The modern concept of constitutional monarchy was a chimera which did not allow for real liberty according to Toussaint. The people of the nineteenth century were wrong to consider their own inventions superior to the ones of the preceding centuries. The modern disdain for their ancestors was misplaced, for the latter had in fact been much freer. Modern constitutions were nothing but «Machiavellian transactions» which allowed the monarchs to reclaim, in the name of the law, all the rights they used to hold in the name of God. The medieval constitutions by contrast had been truly liberal.

With a Constitution modelled after the Joyous Entry the despotism of the Dutch King William I would have been inconceivable, Toussaint alleged. According to him it contained the whole list of liberal dispositions so longed for by the Belgian revolutionaries, including individual liberty, the right of property, the rule of law and impartial administration of justice. Indeed, the guarantees for liberty of the medieval charter reached further than those in the draft Constitution of the Constitutional Commission, especially regarding the declaration of war by the Head of State, the absence of a Senate, the liberty of language and the right of legal resistance stipulated in the monarch's constitutional oath¹⁰⁷. Toussaint addressed a copy of his edition to

the National Congress, hoping that it would inspire them and the modern Belgians might show themselves worthy of their free ancestors¹⁰⁸.

Conclusion

Despite having been abolished at the introduction of French revolutionary rule, the ancient constitutions continued to be politically relevant in nineteenth-century Belgium. Apart from historically grounding the independence and institutions of the young Belgian state, the ancient constitutions constituted a welcome symbolical resource for a range of parties and pressure groups seeking to lend legitimacy to their own particular claims. While the political and historical appropriation of the ancient constitutions has been discussed from a deconstructivist perspective before, the specifically legal historical line of argument has hitherto received scant scholarly attention.

The work of such authors as Van den Broeck or Vercamer has rightly been called 'untrustworthy' from an objectivist point of view¹⁰⁹. However, their meticulous, point-by-point comparisons between the Constitution of 1831 and the ancient charters are more than that. Although recognising that the Belgian Constitution was modern as to form and formulation, these patriotic intellectuals claimed that it was essentially identical in character to its predecessors and had been inspired by them in a literal and formal sense. By drawing special attention to the individual liberties and the form of government, they attempted to anchor

the most famously liberal elements of the Belgian Constitution in the national past.

The authors who argued for the formal continuity thesis were united by a politically inspired concern to downplay French influence on the genesis of the Belgian Constitution, claiming instead that all the major principles of modern constitutionalism and civil liberty had already been present in the ancient constitutions, either literally or in potential. The similarities between the ancient constitutions of the former provinces of the Southern Netherlands and the adjoining principalities allowed them, moreover, to historically ground the unification of this heterogeneous group of territories in 1830.

It can come as no surprise that the debates of the National Congress and the minutes of the Constitutional Commission of 1830 do not reveal any direct influence of the ancient constitutions on the genesis of the Belgian Constitution. The Congress delegates took their cue from modern political theorists and contemporary constitutional documents. When calling for continuity with the spirit of their ancestors, they meant to ensure the new Constitution would be adapted to the history, the character and the customs of the Belgian nation. The few mentions of the ancient constitutions in the Congress concerned the contractual nature of the monarch's mandate, not the individual liberties.

Much more surprising than the "pragmatic conservatism" of the National Congress was the appropriation of the ancient constitutions from a radical democratic point of view. Far from being a nostalgic for the Old Regime, Toussaint nevertheless called for a restoration of the Joyous Entry charter. Disappointed by the moderate and

conservative tendency of the draft Constitution, he found inspiration in the medieval privileges, whose provisions seemed to enshrine his progressive political ideals.

Although his proposal and other similar ones were by no means influential in the debates over the Belgian Constitution, a radical's espousal of the medieval privileges is enlightening. It illustrates the remarkable interrelatedness of old and new constitutional languages in the revolutionary period. By constructing an artificial divide between so-called progressive and conservative languages, modernist readings of constitutional and revolutionary history have obscured this interrelatedness. In constitutional history, the old and the new have in fact been intimately connected for a long time.

- ¹ This article results from the research project ReConFort, which has received funding from the European Union's Seventh Framework Programme for research, technological development and demonstration under grant agreement no. 339529. My sincere thanks to Kenan Van De Mierop and Wessel Damen for their comments, as well as to the anonymous reviewers of the Journal of Constitutional History.
- ² V. Van den Broeck, *La Constitution et l'unionisme en Belgique. Leurs racines dans notre passé antérieurement à la Révolution française de 1789*, Brussels, Verbruggen, 1859, p. 4.
- ³ J. Gilissen, *Die belgische Verfassung von 1831. Ihr Ursprung und ihr Einfluss*, in W. Conze (Hg.), *Beiträge zur deutschen und belgischen Verfassungsgeschichte im 19. Jahrhundert*, Stuttgart, Klett, 1967, pp. 38–69; J. Koll, *Belgien*, in W. Daum et al. (Hg.), *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis in gesellschaftlichen Wandel*, Vol. 2: 1815–1847, Bonn, Dietz, 2012, pp. 485–542; B. Mirkine-Guetzévitch, 1830 dans l'histoire constitutionnelle de l'Europe, in «Revue d'histoire moderne», n. 34, 1931, pp. 241–256.
- ⁴ Gilissen, *Die belgische Verfassung*, cit., pp. 38–69.
- ⁵ M.R. Thielemans, *Les historiens belges et la période française*, dans H. Hasquin (éd.), *La Belgique française, 1792–1815*, Brussels, Crédit communal, 1993, pp. 437–458; J. Tollebeek, *De Franse Revolutie in de negentiende eeuw. Over de politiek als spiegelpaleis van de geschiedenis*, in H. de Smaele, J. Tollebeek (eds.), *Politieke representatie*, Leuven, Leuven University Press, 2002, pp. 171–186.
- ⁶ G. Deneckere, *Leopold I. De eerste koning van Europa*, Antwerp, De Bezige Bij, 2011, pp. 417–431; L. Wils, *Het beroep op "de oude Belgische vrijheden" in het midden van de 19de eeuw*, in *Album E. Lousse*, Leuven, Nauwelaerts, 1961, p. 117.
- ⁷ Thielemans, *Les historiens belges*, cit., pp. 448–447.
- ⁸ For an introduction into nineteenth-century Belgian historiography: J. Tollebeek, *Historical Representation and the Nation-State in Romantic Belgium (1830–1850)*, in «Journal of the History of Ideas», n. 19, 1998, pp. 329–353; R. de Schryver, *Tussen literatuur en wetenschap: tweëntwintig maal Belgische geschiedenis, 1782–1872*, in «Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden», n. 87, 1972, pp. 396–410; H. Hasquin (éd.), *Histoire et historiens depuis 1830 en Belgique*, Brussels, 1981; E. Peeters, *Het labyrint van het verleden. Natie, vrijheid en geweld in de Belgische geschiedschrijving (1787–1850)*, Leuven, Leuven University Press, 2003.
- ⁹ M. Finley, *The Ancestral Constitution. An Inaugural Lecture*, Cambridge, Cambridge University Press, 1971; J.G.A. Pocock, *The Ancient Constitution and the Feudal Law. A Study of English Historical Thought in the Seventeenth Century*, Cambridge, Cambridge University Press, 1987. For the Southern Netherlands: T. Verschaffel, *De traditie in de Brabantse Omwenteling. De oude constitutie en het lange leven van artikel 59*, in H. de Smaele, J. Tollebeek (bewerkt door), *Politieke representatie*, Leuven, Leuven University Press, 2002, pp. 153–169.
- ¹⁰ H.G. Koenigsberger, 'Dominium Regale' or 'Dominium Politicum et Regale': Monarchies and Parliaments in Early Modern Europe, in Id., *Politicians and Virtuosi. Essays in Early Modern History*, London, Hambledon, 1986, pp. 1–25.
- ¹¹ Peeters, *Het labyrint*, cit.; T. Verschaffel, *De hoed en de hond. Geschiedschrijving in de Zuidelijke Nederlanden, 1715–1794*, Hilversum, Verloren, 1998.
- ¹² J. Roegiers, *Tusschen vrijheid en trouw: het identiteitsbesef in de Oostenrijkse Nederlanden*, in K. Deprez, L. Vos (bewerkt door), *Nationalisme in België. Identiteiten in beweging, 1780–2000*, Antwerp, Houtekiet, 1999, pp. 29–42.
- ¹³ P.F. de Neny, *Mémoires historiques et politiques sur les Pays-Bas Autrichiens*, Paris, Moutard, 1784, vol. I, p. 1.
- ¹⁴ G. Van den Bossche, *Historians as Advisors to Revolution? Imagining the Belgian Nation*, in «History of European Ideas», XXIII, n. 3, 1998, pp. 213–238; J. Van den Broeck, *De historiografie van het recht in de Zuidelijke Nederlanden tijdens de 18de eeuw*, Brussels, Koninklijke Academie voor Wetenschappen, Letteren en Schone Kunsten van België, 1990, pp. 36–69; Verschaffel, *De hoed*, cit., pp. 91–98.
- ¹⁵ Van den Bossche, *Historians as Advisors*, cit., p. 221; Verschaffel, *De traditie*, cit., p. 161.
- ¹⁶ *Rapport présenté au Roi par la Commission chargée de la révision de la Loi Fondamentale des Pays-Bas*, in *Projet de Loi Fondamentale pour les Pays-Bas*, The Hague, L'imprimerie Belgique, 1815; P.J. Destriveaux, *De l'histoire nationale dans ses rapports avec l'étude de la loi fondamentale*, in J. Ackersdyck et al., *Bibliothèque du jurisconsulte et du publiciste*, Liège, Lemarié, vol. I, 1826. Despite their anti-historical agenda, even representatives of the French revolutionary regime had recognised the legitimising potential of the ancient constitutional tradition when occupying the Southern Netherlands: B. Deseure, *Regional Memory in an Age of Centralisation. French Identity Politics in Brabant*, in R. Esser, S. Ellis (eds.), *Region, Memory and Agency in Eastern and Western Europe*, Hannover, Wehrhahn, 2013, pp. 217–246.
- ¹⁷ V.A. Waille, *Essai sur l'histoire politique et constitutionnelle de la Belgique*, Brussels, De Mat, 1838.
- ¹⁸ E.g. the commemorations of the Joyous Entry charter in 1956. See A. Vranckx, *De Blijde Inkomst van 3 januari 1356 en ons publiek recht, in 1356–1956. Plechtige herdenking van de Blijde Inkomst*, in «Stan-

den en Landen», XVI, Leuven, Nauwelaerts, 1958, pp. 143-164. The echoes of the continuity thesis resound in the works of such eminent modern practitioners of Belgian constitutional history as John Gilissen and Michel Magits. Despite dismissing the political and nationalistic overtones in the works of their nineteenth-century predecessors, both referred to the Joyous Entry as the origin of the liberties guaranteed by the Belgian Constitution. J. Gilissen, M. Magits, *Les déclarations de droits dans l'historiographie du droit des provinces belges*, in J. Limpens, *Rapports belges au IX^e Congrès de l'Académie internationale de droit comparé*, Brussels, Centre interuniversitaire de droit comparé, 1974, p. 131.

¹⁹ C. Faider, *Études sur les constitutions nationales (Pays-Bas autrichiens et Pays de Liège)*, Brussels, Gregoir, 1841. On Faider and juridical historical culture: B. Delbecke, *Gerechtighe nationale cultuur en haar blinde vlek. De mercuriales en gelegenheidsredes van Charles Faider als procureur generaal bij het hof van cassatie (1871-1885)*, in «Tijdschrift voor Rechtsgeschiedenis», n. 75, 2007, pp. 363-394.

²⁰ Faider, *Études sur les constitutions nationales*, cit., p. 11.

²¹ C. Faider, *Nouvel étude sur l'application des lois inconstitutionnelles*, Brussels, Stiénon, 1851, p. 24.

²² On the problem of unity in early Belgian historiography: Peeters, *Het labyrinth*, cit., pp. 115-117; S. Dubois, *L'invention de la Belgique. Genèse d'un état-nation, 1648-1830*, Brussels, Racine, 2005; Tollebeek, *Historical Representation*, cit.

²³ L. Pycke, *Mémoire couronné en réponse à cette question proposée par l'Académie Royale de Bruxelles: quel était l'état de la législation et des tribunaux ou Cours de justice dans les Pays-Bas autrichiens, avant l'invasion des armées françaises dans ce pays?*, Brussels, De Mat, 1823, pp. 47-50. See also: *Suite au coup*

d'œil sur la situation des Belges au 1^{er} février 1815, in «L'Observateur politique, administratif, historique et littéraire de la Belgique», I, n. 13, 1815. Almost a century earlier, De Ghewiet already treated all territories together in his overview of public law: *Institutions du droit Belgique tant par rapport aux dix-sept provinces, qu'au pays de Liège*, Lille, Cramé, 1736. After Belgian independence, this line of reasoning culminated in systematic comparisons of both public and private law in all the former «Belgian» principalities: E. Poulet, *Les constitutions nationales belges de l'ancien régime à l'époque de l'invasion française de 1794*, Brussels, Hayez, 1874; J. Britz, *Code de l'ancien droit Belgique*, Brussels, Van Daele, 1847.

²⁴ Faider, *Études sur les constitutions nationales*, cit., 98. The idea of constitutional unity between the Belgian provinces went a long way back. It was first developed in the Dutch Revolt and was later reactivated in the Brabant Revolution. P.A.M. Geurts, *Het beroep op de Blijde Inkomste in de pamfletten uit de Tachtigjarige Oorlog, in 1356-1956. Plechtige herdenking van de Blijde Inkomst*, in «Standen en Landen», XVI, Leuven, Nauwelaerts, 1958, p. 9; Van den Bossche, *Historians as Advisors*, cit.

²⁵ Faider's account echoed the parliamentary interpretation of the ancient constitution developed by the Estates, which was reformulated in the language of social contract theory in the eighteenth century. During the Dutch Revolt and the Brabant Revolution, the Estates subsequently radicalised their claims and developed a theory of parliamentary sovereignty. Verschaffel, *De traditie*; G. Van den Bossche, *Enlightened Innovation and the Ancient Constitution. The Intellectual Justification of Revolution in Brabant (1787-1790)*, Brussels, Paleis der Academiën, 2001.

²⁶ Faider, *Études sur les constitutions nationales*, cit., p. 94.

²⁷ Raepsaet and Poulet refuted this legitimization, since the *jus resistendi* only concerned the seigniorial rights and duties of feudal origin, whereas sovereignty was passed down on the monarch via inheritance. E. Poulet, *Les constitutions nationales belges de l'ancien régime à l'époque de l'invasion française de 1794*, Brussels, Hayez, 1875, pp. 61-66; J.J. Raepsaet, *Recherches sur les inaugurations des princes souverains des XVII^e provinces des Pays-Bas*, Brussels, Stapleaux, 1814. See also: D. Heirbaut, *Galbert of Bruges on the Flemish 1127-1128 Crisis: an Early Experiment in Constitutionalism, Parliamentarism and Popular Sovereignty Inspired by Feudal Law*, in J. Oyrehaugen Sunde (ed.), *Constitutionalism before 1789. Constitutional Arrangements from the High Middle Ages to the French Revolution*, Oslo, Pax, 2014, pp. 49-59.

²⁸ The inviolability of the home, granted for the first time by prince-bishop Albert de Cuyck in his charter of 1196, was famously known under the formula «pauvre homme en sa maison est roi». L. Dewez, *Mémoire sur le droit public du pays de Liège au moyen âge*, Brussels, Hayez, 1829, p. 6.

²⁹ M. Beyen, *1830 in de Belgische parlementaire geschiedenis. Het vertegenwoordigde verleden*, in H. de Smaele, J. Tollebeek (bewerkt door), *Politieke representatie*, Leuven, Leuven University Press, 2002, p. 190.

³⁰ Wils, *Het beroep*, cit., p. 117.

³¹ Ivi, p. 119.

³² Van den Broeck, *La Constitution*, cit., p. 36.

³³ H. Bosch, *Des origines du droit constitutionnel belge*, in «La Belgique judiciaire», XIX, 1861, pp. 290-310. Bosch was a lawyer. The article contains the text of his speech at the opening session of the *Conférence du Jeune Barreau* in Brussels on 10 November 1860.

³⁴ Ivi, p. 299.

³⁵ On the conceptual unity of the «four cardinal liberties»: S.

- Huygebaert, *Les quatre libertés cardinales. De iconologie van pers, onderwijs, vereniging en geloof in België, als uitdrukking van een populariserende grondwetcultus vanaf 1848*, in «Pro Memorie», XV, n. 1, pp. 154–180.
- ³⁶ Bosch, *Des origines du droit*, cit., p. 307. In his 1856 history of Liège, Ferdinand Henaux called the *Paix de Fexhe* «the greatest monument of our political legislation» and presented it as a true modern constitution including national sovereignty, representative government and legislative competence for «le pays». F. Henaux, *Histoire du pays de Liège*, Liège, Desoer, 1851, pp. 115–118.
- ³⁷ G. Pergameni, *La constitution belge et nos anciennes institutions nationales*, in «La Belgique judiciaire», XXXVII, 1879, pp. 1345–1360. Pergameni was a doctor in political and administrative sciences and worked as a lawyer at the Brussels Court of Appeal.
- ³⁸ Ivi, p. 1347.
- ³⁹ Ivi, p. 1356.
- ⁴⁰ Ivi, p. 1360.
- ⁴¹ J. Kupfferschlaeger, *Les origines nationales de la Constitution belge*, in «La Belgique judiciaire», XXIX, 1871, pp. 1521–1541. Kupfferschlaeger was a doctor in political and administrative sciences and worked as a lawyer. The article contains the text of his speech at the opening session of the *Conférence du Jeune Barreau de Liège* on 31 October 1871.
- ⁴² Ivi, p. 1535.
- ⁴³ Ivi, p. 1528.
- ⁴⁴ Van den Broeck, *La Constitution*, cit., p. 5. The quote paraphrases the words of representative of the people Delfosse in a speech about the French Revolution of 1848. Belgian Chamber of Representatives, session of 1 March 1848.
- ⁴⁵ E. Pouillet, *Histoire de la Joyeuse-Entrée de Brabant et de ses origines*, Brussels, Hayez, 1863, p. 379. Pouillet (1839–1882) was a historian, professor at the Catholic University of Leuven and member of the Royal Academy for History.
- ⁴⁶ Ivi, p. 384.
- ⁴⁷ Bosch, *Des origines du droit*, cit., p. 301.
- ⁴⁸ Kupfferschlaeger, *Les origines nationales*, cit., p. 1530; Henaux, *Histoire du pays de Liège*, cit., p. 350.
- ⁴⁹ J. Stecher, *Onpartydige volkshistorie des Belgische grondwet*, Ghent, Bivort-Crowie, 1851, p. 31. Stecher (1820–1909) was a professor of the history of Flemish literature at the universities of Liège and Ghent.
- ⁵⁰ P.A.F. Gérard, *Etudes historiques et critiques sur la constitution belge*, Brussels, Rozet, 1869. Gérard satirised the expression «palladium of liberties», often used in traditionalist defences of the Joyous Entry, probably under the influence of American constitutional discourse.
- ⁵¹ A. Callier, *Discours sur l'origine de nos libertés*, Ghent, Annoot-Braeckman, 1883.
- ⁵² Ivi, p. 6.
- ⁵³ Liberal historians typically favoured medieval communalism and the Reformation over the seventeenth and eighteenth centuries, which they associated with despotism and popery. L. Wils, *Het beroep*, cit., p. 118.
- ⁵⁴ C. Vercamer, *L'histoire du peuple belge et de ses institutions*, Brussels, Decq, 1880. Vercamer was a headmaster, rhetoric teacher and moralist. Interestingly, he dedicated his book on Belgian history to the memory of Gustave Callier, a philosophy professor and liberal politician and the father of Albert Callier.
- ⁵⁵ C. Vercamer, *De l'origine de nos libertés, réponse au discours prononcé par le recteur M.A. Callier, à l'occasion de la réouverture des cours de l'université de Gand*, Brussels, Decq, s.d., p. 23.
- ⁵⁶ Beyen, 1830, cit; A. De Dijn, *A Pragmatic Conservatism. Montesquieu and the Framing of the Belgian Constitution (1830–1831)*, in «History of European Ideas», XXVIII, 2002, pp. 227–245; S. Marteel, *Van "oude constitutie" tot liberale grondwet. Het Belgische politieke natiebeseef tussen 1815 en 1830*, in P. Rietbergen, T. Verschaffel (bewerkt door), *De erfenis van 1830*, Leuven, Acco, 2006, pp. 35–52; E. Witte, *Het natiebegrif in het Zuidelijk krantendiscours aan de vooravond van de Belgische opstand (augustus 1829–juni 1830)*, in «Bijdragen en Mededelingen tot de Geschiedenis der Nederlanden», CXXI, n. 2, 2006, pp. 222–236.
- ⁵⁷ Gilissen, Magits, *Les déclarations de droits*, cit., 2.
- ⁵⁸ *A Son Excellence le Général Baron de Vincent, Gouverneur-Général de la Belgique*, Brussels, 1814.
- ⁵⁹ S. Marteel, *Inventing the Belgian Revolution. Politics and Political Thought in the United Kingdom of the Netherlands (1814–1830)*, unpublished doctoral dissertation, European University Institute Florence, 2009, pp. 39; 45.
- ⁶⁰ H. Van der Noot, *Observations historiques, politiques, critiques et impartiales, sur la brochure intitulée La réunion de la Belgique à la Hollande serait-elle avantageuse ou désavantageuse à la Belgique*, s.l., 1815. Around the same time, a reprint appeared of the 1791 pamphlet *L'ami du prince et de la nation, ou dissertation sur les points constitutionnels communs à toutes les Provinces de la Belgique*, Ghent, 1815, applauding Emperor Leopold II's intentions to restore the old constitutional order under Austrian rule after the failure of the Brabant Revolt.
- ⁶¹ J.J. Raepsaet, *Observations d'un belge sur le sort éventuel des Pays-Bas Autrichiens*, in *Œuvres complètes de J.J. Raepsaet*, vol. VI, Mons, Leroux, 1838, pp. 220–251; Id., *Recherches sur l'origine*, cit., 1814. Marteel, *Inventing the Belgian Revolution*, cit., p. 39; Peeters, *Het labrynt*, cit., p. 64.
- ⁶² Marteel, *Van "oude constitutie"*, cit., p. 41.
- ⁶³ I.J.H. Worst, *Koning Willem I. Het begin van "ons grondwettig volksbestaan"*, in C.A. Tamse, E. Witte (bewerkt door), *Staats- en na-*

- tievorming in Willem I's koninkrijk (1815-1830), Brussels, VUB Press, 1992, pp. 56-75; N. Van Sas, *Het politiek bestel onder koning Willem I*, in Id., *De metamorfose van Nederland: van oude orde naar moderniteit, 1750-1900*, Amsterdam, Amsterdam University Press, 2004, pp. 413-435.
- ⁶⁴ Peeters, *Het labyrint*, cit., p. 72.
- ⁶⁵ T. Juste, *Le Congrès national de Belgique: 1830-1831*, Brussels, Muquardt, 1880; R. Demoulin, *Le courant libéral à l'époque de royaume des Pays-Bas et dans la Révolution de 1830*, in A. Verhulst, H. Hasquin (eds.), *Le libéralisme en Belgique. Deux cents ans d'histoire*, Brussels, Delta, 1989, pp. 29-38; Marteel, *Inventing the Belgian Revolution*, cit., pp. 95-150.
- ⁶⁶ De Dijn, *A Pragmatic Conservatism*, cit.
- ⁶⁷ This did not prevent the old charters from being mentioned in debates when their symbolic value suited political needs. The later radical representative of the people Adelson Castiau referred to them when arguing in 1829 that the Fundamental Law stipulated the political responsibility of the ministers. A. Castiau, *De la responsabilité, de la mise en accusation et du jugement des ministres en Belgique*, Ghent, Vander Schelden, 1829, p. 11. Baron Goubau-d'Hovorst, speaking in defense of the government, refuted it by denying the relevance of the ancient constitutions for the Fundamental Law. *Discours du Baron Goubau-d'Hovorst prononcé à la Première Chambre des Etats-Généraux, le 16 mai 1829, dans la discussion sur l'adresse à Sa Majesté, relativement aux pétitions présentées à la Seconde Chambre*, Brussels, Brest Van Kempen, 1829, p. 26.
- ⁶⁸ J. Lebeau, *Observations sur le pouvoir royal ou examen de quelques questions relatives aux droits de la couronne dans les Pays Bas*, Liège, Lebeau-Ouwerx, 1830.
- ⁶⁹ P. Van Meenen, *Droit public. Art. III. Constitution*, in «L'Observateur politique, administratif, historique et littéraire de la Belgique», I, n. 15, 1815.
- ⁷⁰ Demoulin, *Le courant libéral*, cit.; Marteel, *Van "oude constitutie"*, cit., p. 46.
- ⁷¹ P. Harsin, *Essai sur l'opinion publique en Belgique de 1815 à 1830*, Charleroi, La terre wallonne, 1930; Marteel, *Van "oude constitutie"*, cit., p. 46.
- ⁷² J. Koch, *Le Roi décide seul/de Koning alleen besluit. Het "systeem Willem I"*, in Remieg Aerts, Gita Deneckere (bewerkt door), *Het (on)Verenigd Koninkrijk, 1815-1830 > 2015. Een politiek experiment in de Lange Landen*, Rekkem, Ons Erfdeel, 2015, pp. 49-58; S. Marteel, *Polemieken over natievorming in het Verenigd Koninkrijk der Nederlanden. Een blik op de intellectuele wortels van het Belgisch nationalisme*, in Rik Vosters, Janneke Weijermars (bewerkt door), *Taal, natievorming en cultuurbeleid onder Willem I*, Brussels, Koninklijke Vlaamse Academie van België voor Wetenschappen en Kunsten, 2012, pp. 35-60; P.L.G. Van Velzen, *De ongekennde ministeriële verantwoordelijkheid*, Nijmegen, Wolf Legal Publishers, 2005.
- ⁷³ B. Deseure, *National sovereignty in the Belgian Constitution of 1831. On the meaning(s) of article 25*, in U. Müßig (ed.), *National Sovereignty in Europe*, Berlin, Springer, 2016, forthcoming.
- ⁷⁴ *Manuel constitutionnel de la Belgique contenant le portrait, la vie et la nomination de M. le régent, la Constitution et la loi électorale de la Belgique, expliquées et conférées avec l'ancienne loi fondamentale*, Brussels, De Mat, 1831; J.A. Rogron, *Code constitutionnel de la Belgique expliqué par ses motifs et par ses exemples*, Brussels, Tarlier, 1836; J.B. Bivort, *Commentaire sur la Constitution belge*, Brussels, Deprez-Parent, 1840; A. Neut, *La Constitution belge expliquée par les Congrès National, les Chambres et la Cour de Cassation, ou compte-rendu des débats qui ont eu lieu sur cette loi suprême*, Ghent, Annoot-Braeckman, 1842.
- ⁷⁵ E. Huytens, *Discussions du Congrès National de Belgique, 1830-1831*, Brussels, Wahlen, 1844, vol. III, p. 622.
- ⁷⁶ Beyen, 1830, cit.; De Dijn, *A Pragmatic Conservatism*, cit.
- ⁷⁷ H. de Smaele, *Eclectisch en toch nieuw. De uitvinding van het Belgisch parlement*, in «Bijdragen en Mededelingen tot de Geschiedenis der Nederlanden», CXX, n. 3, 2005, p. 413; Gilissen, *Die belgische Verfassung*, cit., 59; Marteel, *Polemieken*, cit., p. 45.
- ⁷⁸ De Dijn, *A Pragmatic Conservatism*, cit., pp. 227-245.
- ⁷⁹ Gilissen, *Die belgische Verfassung*, cit., p. 60.
- ⁸⁰ L. Hymans, *Le Congrès national de 1830 et la Constitution de 1831*, Brussels, Lebègue, 1882; J.B. Nothomb, *Essai historique et politique sur la révolution belge*, Brussels, Merzbach et Falk, 1876.
- ⁸¹ W. Van den Steene, *De Belgische grondwetcommissie (oktober-november 1830): tekst van haar notulen en ontstaan van de Belgische grondwet*, Brussels, Koninklijke Vlaamse Academie voor Wetenschappen, Letteren en Schone Kunsten van België, 1963.
- ⁸² Gilissen, *Die belgische Verfassung*, cit., p. 60.
- ⁸³ L. de Lichtervelde, *Introduction*, in Vicomte Du Bus de Warneffe, C. Beyaert, *Le Congrès National. Biographies des membres du Congrès National et du Gouvernement Provisoire, 1830-1831*, Brussels, Librairie National d'Art et d'Histoire, 1930, p. 4; Magits, *De Volksraad*, cit., pp. 254-275.
- ⁸⁴ Marteel, *Inventing the Belgian Revolution*, cit., p. 180.
- ⁸⁵ R.C. Van Caenegem, *An Historical Introduction to Western Constitutional Law*, Cambridge, Cambridge University Press, 1995, p. 78.
- ⁸⁶ Huytens, *Discussions*, cit., vol. I, 1844, p. 394, 13 December 1830.
- ⁸⁷ Ivi, vol. II, 1844, pp. 67-68, 9 January 1831.
- ⁸⁸ Ivi, vol. II, 1844, p. 487, 7 February 1830.
- ⁸⁹ The inauguration ceremony de-

- scribed in the constitutional proposal published by the lawyer Victor Delecourt was most literally modelled after Old Regime custom. It contained both the monarch's oath on the Constitution and the reciprocal oath of fidelity by the people's representatives. Both oaths explicitly mentioned the people's right to disobedience in case the monarch violated the Constitution. Delecourt furthermore proposed to revive the historical names of functionaries and institutions as proof of Belgium's long and glorious history. For the head of state he proposed the humbler title of duke instead of king, the latter having been unknown in Belgium before 1815: « Revenons donc à nos anciens usages; appelons Duc le chef de notre état. N'étions-nous pas sous les ducs de Bourgogne, la première nation de l'Europe? ». V. De le Court, *Nouveau projet de constitution pour la Belgique*, Mons, Hoyois, 1830.
- ⁹⁰ Dubois, *L'invention*, cit., pp. 238-241; G.H. Dumont, *Le serment de 21 juillet 1831: aboutissement et point de départ*, in *Nous, Roi des Belges. 150 ans de monarchie constitutionnelle*, Brussels, Crédit Communal, 1981, pp. 25-34; De Lichtervelde, *Introduction*, cit., p. 13.
- ⁹¹ Huytens, *Discussions*, cit., vol. III, 1844, p. 615, 21/07/1831.
- ⁹² Proponents of a federative form of state typically referred to the national past and traditions, when each individual province been sovereign in its own right. E.g. Philippe Lesbroussart in the newspaper «Le Belge», n. 306, 4 November 1830.
- ⁹³ These results are based on an analysis of the following Belgian journals, between August 1830 and July 1831: «Le Belge», «Courrier de la Meuse», «Courrier des Pays-Bas», «Courrier de la Sambre», «L'Emancipation», «Journal des Flandres» and «Le Politique». E.g. «Journal des Flandres», n. 301, 31 October 1830: « Nous trouverons, n'en doutons point, dans les décombres de nos anciennes institutions assez de matériaux dignes de figurer dans l'édifice qu'on van construire ».
- ⁹⁴ Witte, *Het natiebegrip*, cit., p. 236.
- ⁹⁵ Leopold I to Queen Victoria, 1842. Cited in: J. Stengers, *L'action du Roi en Belgique*, Brussels, Racine, 2008, p. 26.
- ⁹⁶ Of the 46,099 citizens who had the right to vote (1.1% of the population), 28,766 participated in the elections for the Congress: Magits, *De Volksraad*, cit., p. 408; J. Gilissen, *Le régime représentatif en Belgique depuis 1790*, Brussels, La renaissance du livre, 1958, p. 84; Van den Steene, *De Belgische grondwetcommissie*, cit., p. 30.
- ⁹⁷ L. Bertrand, *Histoire de la démocratie et du socialisme en Belgique*, Brussels, Dechenne, 1906; C. De Mulder, *De republikeinse beweging in de periode 1830-1831, haar leiders, haar verenigingen*, unpublished master's thesis, Rijksuniversiteit Gent, 1970, p. 14.
- ⁹⁸ Van den Steene, *De Belgische grondwetcommissie*, cit., p. 35.
- ⁹⁹ E. Witte, *De Belgische radicalen: brugfiguren in de democratische beweging (1830-1850)*, in «Tijdschrift voor Geschiedenis», n. 1, 1979, pp. 13-16.
- ¹⁰⁰ Bertrand, *Histoire de la démocratie*, cit., pp. 88-170.
- ¹⁰¹ F. Toussaint, *Joyeuse Entrée des ducs de Brabant, publiée avec un discours préliminaire et des notes et dédiée au Congrès national*, Brussels, Tencé, 1830.
- ¹⁰² J. Geldhof, *Een orangistisch rivaal van Alexander Rodenbach. Joseph-Ferdinand Toussaint: Meulebeke 1806-Elsene 1885*, in *Album Joseph Debaere, Rumbeke, Herremann, 1968*, pp. 121-131; Bertrand, *Histoire de la démocratie*, cit., p. 127.
- ¹⁰³ F. Toussaint, *Discours sur le Sénat et le veto du chef de l'état, prononcé à la réunion patriotique de Bruxelles par J. Fr. Toussaint de Meulebeke*, Brussels, Ode et Wodon, 1830. J. Leconte, *La Réunion Centrale, club patriotique, révolutionnaire républi-*
- cain*, 1830, in *Miscellanea historica in honorem Leonis van der Essen*, vol. II, Brussels, Éditions universitaires, 1947, pp. 957-971. Later, Toussaint was among the founding members of the republican club *Association de l'Indépendance belge* led by Louis de Potter.
- ¹⁰⁴ «L'Emancipation», 15 November 1830.
- ¹⁰⁵ «Le Belge», n. 302, 29 October 1830, p. 3. In a petition against the establishment of the Senate, addressed to the National Congress in December 1830, Toussaint called upon the right of petition guaranteed by the ancient constitution. F. Toussaint, *Du Sénat. Moyen de concilier les opinions. Pétition présentée au Congrès National de la Belgique, dans la séance du 7 décembre 1830*, Brussels, 1830, Ghent University Library.
- ¹⁰⁶ Toussaint, *Joyeuse Entrée*, cit., p. 4.
- ¹⁰⁷ On Toussaint's involvement in the Flemish Movement: J. Huyghebaert, *De oproep "Aen de Vlaemsche jongelingen" van J.F. Toussaint (1832)*, in «Biekorf», LXXVI, n. 3-4, 1975, pp. 81-89; J. Kuypers, *De Vlaamse beweging. Een socialistisch standpunt*, Antwerp, Ontwikkeling, 1960, p. 46.
- ¹⁰⁸ Although Toussaint's case was quite unique, he was not the only radical who referred to the old charters. In his republican and profoundly democratic constitutional proposal, the lawyer Charles Moulan praised the customary law of the prince-bishopric of Liège for its «wise measures» concerning the inviolability of the home. C. Moulan, *Projet de constitution*, Liège, 1830.
- ¹⁰⁹ Magits, *De Volksraad*, cit., p. VII.