

Benchmarking the past. Politico-legal connotations of tradition, custom and common practice in the diplomacy of the Eighty Years War

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Abstract: In the historiography of the Dutch Revolt and the Eighty Years War, scholars have focused principally on the growing differences between the Habsburg Netherlands and the Dutch Republic. In order to explain the eventual separation of the ‘two’ Netherlands, it has been established that the political culture of both countries increasingly grew apart and so prevented reunification. Still, this did not mean that the diplomatic vocabulary of these states no longer contained any similarities. Throughout the Eighty Years War both governments relied on analogous notions of tradition, custom and common practice to legitimize their point of view. Such notions, together with their negative counterpart of innovation, were enshrined in a juridical language that also offered a point of convergence. In turn, these shared claims to history provided a common repertoire that diplomats from both sides deployed in their arguments. As such, benchmarking the past offered a communal framework from which to start and maintain conversation between the separated Netherlands.

Keywords: Eighty Years War – Habsburg Netherlands – Dutch Republic – diplomacy – political culture – legal culture

When trying to explain the current-day separation between Belgium and the Netherlands, one can hardly understate the importance of the Dutch Revolt and the Eighty Years War (ca. 1568-1648). As the subject of continuous evaluation, analysis, and re-evaluation, historians have increasingly gained a better understanding of this period of tremendous upheaval. The studies of the last decades have provided us with a clearer view of the motives behind the initial uprising against King Philip II, its features as a civil and religious conflict, the character of the subsequent war between the Spanish-Habsburgs and the Dutch Estates-General, and the causes of the slow but steady separation of the ‘loyal’ Habsburg Netherlands and the ‘rebellious’ Dutch Republic.¹ Due to the fact that ultimately no initiative for reunification

(peaceful or otherwise) proved successful, scholars have strongly highlighted the differentiation in religious and political thinking between the two halves of the Netherlands, seeing them as causes for the waning unity of the former Seventeen Provinces.²

However, in focussing on the division which separated them, far fewer questions have been asked about any potential communalities that remained in the political cultures of these two early modern states. This article will therefore discuss one type of common ground that still existed between the Habsburg Netherlands and the Dutch Republic, namely the importance of a shared and idealized past.³ Notions of tradition, custom and common practice permeated the discussions between the belligerent parties of the Eighty Years War, placing their (perceived) history on a pedestal from which both sides claimed to be able to distinguish the just from the unjust, the legitimate from the illegitimate. Legal experts, whom often enough conducted the actual bilateral negotiations, further fused such arguments with their own juridical discourse, creating a shared vocabulary that was sufficiently familiar to both sides to allow the initiation of debate. The connotations attached to this juridicized past turned out to be a solid diplomatic ‘baseline’, which on the one hand could be exploited to undermine the opponent’s political claims but on the other shows that enough common ground remained to build some initial bridges.⁴

The present analysis will therefore focus on the arguments voiced by active political participants rather than rely on the political ideas enshrined in learned treatises or popular pamphlets.⁵ The text starts by highlighting how the historiographical attention to the differences between the Netherlands created the idea of two radically opposed political systems, even though both of these polities in fact still used the same model to describe their own style of government. Subsequently, the argument will be presented that this model functioned as a benchmark because it derived its legitimacy from a shared past, and that the use of such arguments was reinforced by the contending party’s reliance upon a legal language that also contained many shared features. Finally, and moving to a concrete example, the last part of the article will demonstrate how even after the end of the War this use of history still influenced the diplomatic deliberations about the Dutch taxation of villages near Antwerp.⁶

However, before starting these discussions a further remark about terminology needs to be made. It is important to note that this article takes a broad view on the notion of ‘the past’, bringing together categories that others might prefer to treat separately. Although specialized studies have distinguished between the exact meanings of tradition, custom and common practice, at their core all of these concepts rely on (the perception of) preceding

events. In order to avoid getting entangled in intricate conceptual discussions, this analysis consciously includes all sorts of references to such preceding events, be they of recent or more ancient nature. In this sense the goal is not so much to question existing categorizations about the use of the past, nor to link them with broader debates about memory, history and customary law, but rather to show how and why claims to time-honoured practices were used to support political debates related to the Eighty Years War.⁷

The general history of the Eighty Years War: a focus on difference

That the separation of the Dutch Republic and the Habsburg Netherlands has been a central topic in Low Countries historiography can be judged by the vast amount of writings on this topic. Difference and division have been keywords in much of this research. The nineteenth- and early twentieth-century historiography of both Belgium and the Netherlands highlighted the importance of the Revolt for the national development of their respective states. On the Dutch side historians such as Guillaume Groen van Prinsterer, Johannes van Vloten, and Robert Fruin saw the Revolt as a struggle for national freedom against the oppression of the Spanish King, with religious tolerance becoming increasingly identified with a key aspect of the Dutch national identity.⁸ In Belgium it were authors like Henri Moke, Theodore Juste, and Henri Pirenne who tried to give the Belgian nation a sound historical perspective, whereby the Eighty Years War was a deplorable episode during which the devastated ‘Belgian’ provinces continued to groan under a Spanish yoke.⁹ Despite growing criticism that modern-day Belgium and the Netherlands were not the inevitable outcome of the events of the sixteenth century, these national colourings of the separation remained dominant for a long time.

From the second half of the twentieth century the finalistic acceptance of the division of the Netherlands was however abandoned for a more flexible interpretation of the Eighty Years War. Consulting more sources from local and Spanish archives, historians transformed the black-and-white of oppression/extremism vs. liberty/toleration into a more appropriate grey.¹⁰ This research highlighted that the shared culture of the Low Countries had created a perception of unity between the different provinces, a sentiment which ensured that at least until 1600 serious calls for reunification were made.¹¹ The first decades of the Revolt were therefore increasingly described as a civil war, with an important role played by the so-called ‘middle-groups’ who tried to find a balance between the political and religious extremes as well as for noble elites that aimed at peace and reconciliation between all parties.¹² But despite nuancing the earlier writing on the Eighty Years War historians continued to focus on the

eventual separation and the resulting differences between both states. Even though they recognised that the independence of the Dutch Republic need not have been inevitable *sensu stricto*, the fact that the division in the long run proved insurmountable warranted the continued investigation into its nature.

As Henk van Nierop made clear in 1995, these inquiries developed along three distinct lines. The economic structure and social stratification of the Low Countries were identified as one specific cause for the Revolt, but so was the religious schism following the Reformation and the increasing state formation and centralization of the Habsburgs in a highly urbanized landscape.¹³ In reality these three motives all interacted, making it difficult to pinpoint one central catalyst for the separation. Still, the disputes that feature most prominently in historiography are those about the relationship between Protestantism and Catholicism and about the functioning of the government in the Netherlands.¹⁴ Their prominence is not without reason: even as late as 1631 Pieter Roose, Councilor of the *Consejo de Flandes* in Madrid, found it necessary to stress that religion and sovereignty were precisely the two principal reasons to continue the fight.¹⁵ As a native of the Low Countries Roose might have had less concern for the overall economic interests of the Spanish-Habsburg monarchy, but his statement nevertheless clarifies the central role that these problems assumed in the perdurance of the conflict.¹⁶

It is no coincidence that Roose mentioned religion and government in the same breath. In the minds of the key players both topics could hardly be separated, implying that from the very beginning of the Revolt faith and politics had become highly entwined. The way in which King Philip II used his royal authority to press for the severe persecution of the religiously reformed clashed with the more moderate, consensual policies preferred in the Netherlands. As neither the King nor the local elites were willing to back down, the tensions over the persecutions became fused with questions about how and by whom political power should be exercised. This in turn transformed the religious matter into a debate over the 'constitutional' rights of King and his subjects.¹⁷ Eventually the intractability of these problems provoked the Abjuration of Spanish-Habsburg rule by the States-General in 1581, demonstrating how deep the political rift between the crown and the opposition had become.¹⁸

The political history of the Eighty Years War: the divergence of *dominium*

At first sight these problems indeed suggest a radical divergence between the two contesting sides. In the gradually worsening debate about legitimate government, historians have

consequentially identified three opposed political systems. The first model, described by Helmut Koenigsberger with the phrase *dominium politicum et regale*, struck a balance between the other two systems, namely law-making through royal authority (*dominium regale*) and the necessary approval of such laws by the people (*dominium politicum*).¹⁹ This first constellation supposedly formed the default political situation Philip II inherited in the Netherlands, a view which in part rested on the contemporary interpretation of Charles V's rule as a golden age.²⁰ In practice, the presumed cooperation between ruler and subjects was principally characterized through the interaction between the Prince and the parliamentary bodies of the Estates (representing the clergy, nobility and urban patriciate).²¹ Even though the Habsburg overlord nominally possessed the highest authority in the Seventeen Provinces, the provincial Estates and the overarching Estates-general retained the power to grant taxes and expected to be consulted on crucial policy decisions. Unsurprisingly, they often acted as a serious restraint on the implementation of royal initiatives.²²

Although this system was never free from (violent) tension, it continued to function until the mid-sixteenth century.²³ However, once King Philip II started his reign over the Low Countries his style of government increasingly tended towards the *dominium regale*. Philip, who had been raised in Spain and continued to reside in the Iberian peninsula save for a brief stay in the Netherlands between 1555 and 1559, found it difficult to manage the intricate negotiations with the Estates. The first assembly of the Estates-General during his rule lasted from 1557 to 1559 and resulted in a more or less permanent royal veto against further convocations.²⁴ Backed by the theorists of the School of Salamanca the King saw his authority as absolute, upsetting the Estates and the nobility by deciding singlehandedly on key matters. This increasingly autocratic style of governing eventually became a major cause of the Dutch Revolt, provoking the lasting myth of 'Spanish oppression' in the Netherlands.²⁵

Conversely, in reaction to the King's strong-handed rule the processes of Revolt and War set the nascent Dutch Republic on a course towards the *dominium politicum*. From 1572 onwards the provincial Estates of Holland and Zeeland had become practically self-governing, a position from which they continued to press for greater toleration of the religiously Reformed and for more autonomy for the Estates-General. Granting these demands was out of the question for the King and his Governors-General in Brussels, but as the Habsburg's financial situation worsened the Monarchy's grip on events started to slip. In 1576 the Estates of Brabant (illegally) called for a convocation of the Estates-General, who without royal sanction concluded a peace with Holland and Zeeland (the Pacification of Ghent, 8 November 1576). Although this peace did not last, the Estates-General continued to

play a leading role in the conflict. On 26 July 1581 the Assembly renounced the King's rule and, following failed attempts to offer the highest authority to the Duke of Anjou, William of Orange and the Earl of Leicester, assumed leadership over the secessionist federation known as the Dutch Republic of the United Provinces.²⁶

As many historians have highlighted, these evolutions set the two Netherlands on a separate course, even though this was not explicitly recognized at the time. The system Koenigsberger identified as *dominium politicum* proved remarkably resilient in the Dutch Republic, as did strong royal rule in the remaining obedient provinces. At first sight these models were also diametrically opposed. According to the Dutch government the Habsburgs had completely oppressed the parliamentary institutions in the Netherlands, whereas Habsburg supporters accused the Republic of abandoning the traditional monarchical structures. Because neither the Estates-General nor the King were able to reconquer the whole of the Netherlands, the former Seventeen Provinces were *de facto*, and with the Treaty of Munster of 1648 *de jure*, divided into two different political structures..

The 'long' and powerful traditions of the Low Countries

The above arguments stress that the Eighty Years War created a radical political watershed between both parts of the Netherlands. One side supposedly loyal and royal, the other rebellious and republican, with no common ground remaining to start a meaningful conversation. But the question needs to be asked if there effectively remained no common features that could be exploited, and whether or not meaningful political debate was therefore truly impossible. Both during and after the conflict both sides continued to talk, and even though the failure of most of these conversations attest to the strength of the political and religious division, some form of shared vocabulary must have aided their initiation. To use a contemporary analogy, even North and South Korea from time to time manage to discuss their issues, meaning that both countries must have found a workable diplomatic discourse that goes beyond the mere shouting of 'communist' or 'capitalist' dogma's. More or less the same must have applied to the Eighty Years War, meaning that we can try to determine on which type of arguments such functional political discourses rested.

In this respect, exactly the growing tensions between strong royal rule and the power of the Estates provides a first clue to what supported the diplomacy between the Habsburgs and the Dutch Republic. Their growing apart did not preclude both governments from referencing the same political ideal, namely that which Koenigsberger dubbed *dominium*

politicum et regale. In accusing the enemy of violating this system, each side simultaneously contended that their own form of politics did correspond to the ideal of cooperation between Prince and subject. Despite their differences in interpretation, nominally both The Hague and Madrid/Brussels still referred to this style of government as the only acceptable type of rule, turning it into a clear yardstick during several rounds of negotiations.²⁷ So although the United Provinces and the Habsburg Netherlands in practice no longer shared the same political system, some ideals clearly retained their attraction for both.

The question then rises from where such standards derived their validity and how their use impacted upon the bilateral relations between both states. In the case of the *dominium politicum et regale*, it was not necessarily the model's specific content that permitted it to function as a political benchmark. Although the respective merits of monarchy, aristocracy, democracy and the *constitutio mixta* were certainly topics for debate, the practical political attraction of cooperation between King and Estates largely relied on the fact that it supposedly represented the situation before the Revolt; the way in which the government of the Netherlands presumably had been organised for centuries. Even though this might have been a myth as well, it was believed to be the traditional type of politics and therefore an ideal that could not easily be abandoned (which was of course exactly what each side accused the other of doing).

This line of reasoning was certainly not something exceptional. The early modern period was beset by debates about tradition and continuity. A recent project of Judith Pollmann highlighted the importance of history and memory for the formation of cultural identities and for the achievement of political aspirations, whereas Philippe Guignet demonstrated how the past retained this role well into the eighteenth century.²⁸ The impact of such a 'historicized' political language can easily be understood by referring to the well-known 'privileges' of the Low Countries. In essence these were different types of rights that derived their authority from a supposed origin in an older, similarly idealized politico-legal system. This 'ancient' origin granted the privileges such legitimacy that the political culture of the Netherlands was highly conditioned by the pride and belief bestowed upon such rights, which explains why some scholars have described them as an early form of constitution..²⁹ In fact, one argument used during the Dutch Revolt specifically related to the misuse of the privileges, as many of the Habsburg enemies used them to argue that the King's fiscal and religious policies had violated the rights of his subjects.³⁰ Following this accusation, and based on a similarly 'age-old' right to resist tyranny, the existence of the Dutch Republic was

increasingly legitimated by referring to the oppression of the Dutch privileges and the Habsburg oppression of the ‘old liberty’ of the provinces.³¹

As the United Provinces claimed legitimacy through tradition, at the same time respect for supposedly ancient rights was also no trivial matter in the Habsburg Netherlands. This is clarified by the earlier mentioned councilor Peter Roose, who in a long memorial addressed to the *Consejo de Estado* of Philip IV showed himself a fierce opponent of the provincial Estates and a supporter of strong royal authority. Still, even he advised the King not to act against the privileges:

*But his Majesty will also be served by considering the danger that rests in altering the Joyous Entries or the promises since time immemorial sworn by his predecessors at their inauguration, and even to speak himself or let the ministers speak about them, because it is important for princes to reign by such conditions, and to live by the example of those who possess a rented house, contenting themselves with the commodities it has.*³²

For Roose respect for the privileges of the Estates only served to help re-establish the power of the ruler.³³ In his view it was not only the King’s subjects who held such rights, because also the monarch could rely on powers that derived from the idealized and supposedly unchangeable political system of *dominium politicum et regale*. Reflecting the wider struggle of the Eighty Years War, within the Habsburg Netherlands two sorts of established rights thus vied for political dominance: the privileges of the subjects versus the sovereign rights of the King, both of which claimed legitimacy by adhering to perceived governmental tradition.

In this political framework, notions of tradition, custom and common practice were often explicitly connected to their direct opposite: innovation.³⁴ It is no coincidence that in the above statement Roose specifically mentions that the risk lay in *altering* the Joyous Entry. As was pointed out by René Vermeir, Philip IV’s subjects in the Low Countries were faithful to the dynasty but under no circumstances appreciated the introduction of so-called ‘novelties’.³⁵ New laws, taxes or any other sorts of innovation would only be consented to if they were proposed and executed in conformity to the privileges (or at least were perceived as such). In his memorial Roose applied the same reasoning. He again advised Philip IV to ‘religiously guard’ the exact contents of the Joyous Entries, as the sovereign should never allow their adaption or an interpretation that was prejudicial to His prerogatives. The ‘derecho comun’ should never be altered, either in support of the Estates or in favour of the King.³⁶

Legal culture and its jurists as a bridging agents

In both parts of the Netherlands the past was thus a crucial part of political reasoning. But as the last comment from Roose makes clear, connotations of tradition and innovation were also often framed in the context of ‘*derecho*’ or law. The Low Countries as a whole possessed a vibrant legal culture, which expressed itself in an active judicial system and a (relatively) widespread knowledge of legal jargon and procedure. The unification of the Seventeen Provinces under the Burgundian dynasty and Emperor Charles V had led to the establishment of several provincial courts and to increased centralization through the overarching Collateral Councils. In this densely institutionalized environment the legal system dealt with all types of disputes, rendering it a highly visible and (again relatively) accessible tool for different social groups.³⁷ It is no surprise then that law was another aspect of political life in the Netherlands that featured prominently during the Eighty Years War. For example, even during the earliest phases of its existence the young the Republic considered the maintenance of a functioning judicial system of primary importance.³⁸

Staying with the example of Peter Roose, such legal prominence was of direct consequence for actual policy. In 1632 the government in Madrid appointed Roose as president of both the Privy Council and the Council of State in Brussels, making him the actual right hand of the Governor-General there.³⁹ Being a jurist with a talent for justifying Habsburg rule, he possessed two crucial advantages over his competitors:⁴⁰ on the one hand he could assist the Governor-General in navigating the legal maze that formed part of daily governance in the Netherlands, on the other his above-cited memorials proved that he was well-acquainted with the discussions over privileges and sovereignty that formed such a big part of the Eighty Years War. This meant that he could also deploy his legal knowledge when navigating Habsburgs interests through the international arena, where legitimizing Habsburg rule vis-à-vis the newly created Dutch Republic was of crucial importance.⁴¹

Roose’s promotion to the highest realms of politics was no exception. As part of a trend dating back to earlier centuries, jurists increasingly became the primary servants of the state, both in the Habsburg Netherlands and the Dutch Republic.⁴² But they also left their mark as actors in the diplomacy of the Eighty Years War. During the negotiations for the Twelve Years Truce of 1609 the leading diplomats, Pierre Jeannin, Johan van Oldenbarnevelt and Jean Richardot, could all rely on a university training in Roman Law.⁴³ In 1632, the Habsburg delegation that was sent to Maastricht to conduct peace negotiations with the United Provinces consisted of two clergymen, three noblemen, and four specialized jurists.⁴⁴

At the 1648 Münster conference, both parties likewise relied on the presence of legal experts. One of the principal Habsburg representatives was Anthoine Brun, previously president of the Burgundian Parliament in Dôle, who was specifically tasked with exploiting the linguistic and cultural similarities that existed between the two Netherlands.⁴⁵ Similarly, the *de facto* head of the Dutch delegation was Leiden-trained jurist Adriaan Pauw.⁴⁶

The importance of legal expertise for bilateral debate was further underscored once the Treaty of Münster was concluded. Anthoine Brun was made ambassador in The Hague following the negotiations and as such became the first and foremost channel of communication between the Habsburgs and the Estates-General. Of even greater significance was the creation of a special court of arbitration in 1653, where sixteen jurists (eight from each side) would decide all unresolved problems related to the Peace. Even though this *Chambre Mi-Partie* was in essence an institution without precedent and thus an innovation, the practice of arbitration itself was well-established in the Netherlands. Moreover, the Court included some of the most experienced legal experts of the period and followed a procedure similar to that of the older legal councils in the Low Countries.⁴⁷ These aspects granted the *Chambre* sufficient authority to attract a lot of cases, even though its verdicts were often rebuked with – not surprisingly – arguments based on the ancient privileges of the litigants.⁴⁸ Despite this opposition, the fact that the *Chambre Mi-Partie* could operate across two political systems is a remarkable achievement, especially given the immense post-war tensions within which the Court functioned.

One reason why its deliberations managed to proceed had to do with the reliance of its judges upon a shared juridical language, one which had earlier aided the negotiations for the Twelve Years' Truce and the Treaty of Munster. The centralization policies of the Burgundian and Habsburg dynasties, including the founding of the university of Louvain in 1425, had implied that the top-ranking jurists of the Netherlands had for a long time been trained in the same legal mold and had served in the same legal institutions.⁴⁹ Even though the Dutch Revolt severed many direct linkages – e.g. by the creation of the Dutch university of Leiden in 1575, which allowed the Dutch Republic to recruit and train its own legal professionals – decades of comparable legal practice could not be erased on a whim.⁵⁰ Older, shared laws were simply maintained in the Dutch Republic, and sometimes new Habsburg regulations were quietly implemented in order to guarantee continuity. A clear example is the decision of the Estates-General to adopt the 1604 Habsburg *Albertine* (a piece of procedural legislation issued by Archdukes Albert and Isabella) into the regulations of their own Council of Brabant.⁵¹ Even though both states steadily developed a legal culture of their own, the

jurists involved in the diplomatic debates of the War could none the less rely upon ideas, concepts, and procedures that the past had made familiar to both sides.⁵²

Law, custom, and common practice at work: the Habsburg charges after 1648

The juridicized past thus possessed clear value as a political argument in the diplomacy of the Eighty Years War. In order to demonstrate how this worked in practice, the controversy over the Brabantine retorsions of 1649 serves as a good example. This dispute arose within one year of the signing of the Münster Treaty and was one of the first confrontations between the Habsburgs and the Dutch governments after 1648. The problems began around the 12th of February 1649, when the Brussels Council of State informed Governor-General Leopold-Wilhelm that in the previous few months Dutch officials had committed several infractions against the Peace. One of the most serious violations was the Dutch use of military means to collect so-called retorsionary money in towns along the border near Antwerp.⁵³ According to the Brussels councilors these actions

*not only shocked the sovereignty and jurisdiction of the King, who does not permit on his lands any execution or force of neighboring provinces, but they [the United Provinces] could also not be excused of a notorious infraction of the Peace Treaty.*⁵⁴

Although the Council of State advised the Governor-General to retaliate, Leopold-Wilhelm was under strict instructions from Madrid to maintain the Peace. Wishing to avoid an escalation, he eventually took the decision to have the renowned Louvain jurist Petrus Stockmans discuss the matter with the Dutch government in The Hague.⁵⁵ Stockmans, who was at the time temporary representative of the Governor-General in the United Provinces (waiting to be relieved by Ambassador Brun), would be assisted by pensionary Jacques Edelheer from the city of Antwerp.⁵⁶

Both these envoys perfectly correspond to the image of the domestically trained, politically weathered jurist involved in international diplomacy. Jacques Edelheer (1597-1655)⁵⁷ graduated in 1617 from the faculty of Law in Louvain and only seven years later became pensionary of Antwerp. Involved as he was in the administration of the most important border town of the Habsburg Netherlands, Edelheer was well-acquainted with the nature of cross-border politics with the Dutch Republic. Moreover, he had already acted as one of the Habsburg representatives during the failed peace negotiations of 1632.⁵⁸ Petrus

(Pieter) Stockmans (1608-1671) also studied in Louvain and became *doctor iuris* in 1631. Two years later he was appointed as *Regius* professor at the same university. In 1643 he abandoned this post in favour of a seat on the Council of Brabant, eventually becoming a member of the Privy Council in 1664. Like Roose, Stockmans' writings defended both royal authority and the privileges even though he was first and foremost a trusted servant of the Habsburg dynasty.⁵⁹ His *Tractatus de jure devolutionis* (1667) for example contained a strong defence of the Spanish-Habsburg rights against the French aspirations expressed during the 1667-1668 Devolution Crisis, attesting to his continuous attempts to create a legal framework for Habsburg rule.⁶⁰

Together, these two personalities presented the Estates-General with a highly juridical refutation of the Dutch retorsions near Antwerp. After stating the wish of the Habsburg subjects involved that the matter should be arranged according to righteousness and justice, Stockmans opened with the following argument:

*As it is nothing more than notorious that all realms, provinces and states are separated from each other by their limits and boundaries, outside which a particular state is not allowed to perform any act of high jurisdiction on the other state, [...] as being contrary to the law of nations and the fundamental laws of the foresaid peace.*⁶¹

Although it is in itself remarkable that Stockmans and Edelheer explicitly grounded their reasoning in International Law (hereafter referred to as *ius gentium*),⁶² it is even more significant that they saw this type of law as something which was well-known by all the parties involved. Key to their subsequent arguments were the customs and common practices shared by both sides during the preceding war. The Louvain-trained jurists pinpointed their reasoning on the fact that both sides had 'always' respected the idea that retorsions had been a specific type of violence, namely a reprisal for an earlier suffered wrongdoing. As the Treaty of Munster had put an end to all such wrongdoings the Dutch could not conduct retorsionary acts during peacetime, meaning that the recent collection of money could not be anything less than a breach of past practice and a clear act of hostility.

A letter from the Habsburg Council of State to the Estates-General proves that this was a well-planned strategy. The Brussels Council confirmed Stockmans' argument by stating that the use of retorsions in this case was 'directly contrary [...] to the law of nations and common practice of all nations'.⁶³ In making the connection between the supposedly common practices of the *ius gentium* and their own particular interpretation of what a lawful retorsion was, the

Habsburg side tried to set the tone for all future discussions about the recent violence. In an echo of the application of the ‘ancient’ *dominium politicum et regale*, the shared customs of the Law of Nations - as ancient, recent, or unilaterally constructed as these actually might have been – functioned as benchmarks against which the Dutch conduct could be judged. The Estates-General were thus not only faced with the charge that they had broken the clauses of the Munster Peace Treaty (another obvious point of reference), but also that they had also sinned against an established standard that was widely known and accepted.

The defence of United Provinces: Habsburg innovations as a precedent

Contrary to what might be expected from a state that thoroughly distrusted royal arguments, in their response of the 29th April 1649 the Estates-General chose to follow the frame of reasoning the Habsburgs had imposed. They tried to prove that the United Provinces had ‘in no part violated the sovereignty of the most highly thought lord King of Spain or are guilty of the least procedures contrary to the law of nations or also against the articles of the concluded peace’.⁶⁴ Despite their disadvantage in accepting the Habsburg frame of reference, the Dutch Republic successfully mounted a vigorous defence, appealing to precisely the same notions of international custom that Stockmans had used against them. The Estates-General refused to be pressed into a purely defensive position and with the very first point of their rebuttal turned the tables on the Habsburg negotiators. Ingeniously deploying the argument of innovation,⁶⁵ they claimed that the Habsburgs had themselves broken with customary practice by retaining sovereignty over the countryside surrounding the Brabantine city of ‘s-Hertogenbosch (called Meierij) after the Dutch had captured the city in 1629:

*The Spanish side in an outrageous way and with an unprecedented claim had most strongly objected to this [the transfer of sovereignty over the Meierij to the Republic], using as pretext that the sovereignty of the countryside remained with the King of Spain and did not follow the [capture] of the capital under which it resided, against the instance always used by both sides during the war at the capture of Antwerp and all other cities, and under this pretence and pretext maintain and kept extorting the Meierij of ‘s-Hertogenbosch.*⁶⁶

This action had intensely grieved the Estates-General because it indeed departed from what had been customary behaviour throughout the War.⁶⁷ As their representatives pointed out, in 1628 the then Governess-General, Archduchess Isabella, had herself issued a declaration in

which she confirmed that, following a successful city siege, the surrounding countryside must also switch sides.⁶⁸ So from the Dutch perspective it was the Habsburgs who in 1629 had introduced the first innovation, and in an especially hypocritical way.

Having placed Stockmans and Edelheer in an awkward position, the Estates-General subsequently argued that their own retorsionary actions were perfectly legal. According to them retorsions were always caused by a preceding extortion, and the same applied here. The continued Habsburg claims of sovereignty over the Meierij and the associated tax levies had been just such an extortion, implying that the extraction of money from the Antwerp countryside was an acceptable retorsion on the part of the United Provinces. The violence wrought by the Dutch collectors had been announced beforehand and was no more extreme than what had been customary during the War. While for the Estates-General the 1629 Habsburg extorsions/innovations in the Meierij represented the cause, the 1648-1649 retorsions/customary acts near Antwerp merely the lawful consequence. Straining this line of reasoning to the limit, the Estates-General declared that if the Habsburgs wished to respect the just continuation of affairs they should not complain about these perfectly customary actions, but instead ensure that their subjects paid the required sums to the Republic.⁶⁹

The above arguments clarify that despite the initial Habsburg framing of the problem the Dutch Republic had no problem in deploying arguments of custom and common practice of its own. Attesting to the sophistication such reasoning could achieve, there is even a less overt implication arising from the statements of the Estates-General. The Dutch defence contained an obscured but nevertheless clear warning for Stockmans and Edelheer. From the Dutch position, the Habsburg violation of the customary practices of war had created a precedent for the moderation of all sorts of international 'norms'. If in 1629 the Spanish monarch had faithfully observed the then-applicable traditions in respect of the transfer of sovereignty, no one would have doubted the validity of all other customary principles in 1649. But now, given the earlier Habsburg disregard for such customs, the Dutch could hardly be blamed if they themselves would no longer be held accountable to such principles. After all, it would hardly be fair if the United Provinces had to abide by the rules whilst the Habsburgs could initiate innovations at will.

This covert argument signalled to Stockmans and Edelheer that the Dutch were content not to rock the boat at this point, but that at any time the Estates-General might decide to abandon the framework of custom and common practice altogether. For now the Dutch Republic benefitted from employing this type of language, as it allowed them to uphold the image of a reliable state. However, if push came to shove the Estates-General could decide to

break with the arguments derived from the shared past. As the Habsburgs had been the first to do so, no one would blame them for doing the same. The Spanish-Habsburg negotiators were well aware such a move would open Pandora's Box, as many of their claims in other parallel disputes relied even more on respect for common, shared, or customary rules.⁷⁰ Although Stockmans and Edelheer in response again tried to convince the Estates-General of the illegitimacy of their retorsions, this time by using the past practices of the earlier Twelve Years Truce as a benchmark, the Habsburgs eventually backed down and no agreement was reached.⁷¹ In this instance, as in many other disputes during and after the Eighty Years War, the juridicized rhetoric of custom, common practice and tradition had allowed the initiation and continuation of debate, avoiding any further deterioration in the bilateral relations between the Habsburg Netherlands and the Dutch Republic.

Conclusion

The above few pages have shed light upon some functional arrangements of the diplomacy of the Eighty Years War. Even though the Eighty Years War had undoubtedly generated a deep ideological rift between the two Netherlands, one which eventually proved to be insurmountable, the divergence of both countries did not preclude all meaningful debate between them. The diplomacy between the two contending parties shows a clear baseline around which the otherwise strongly contrasting ideas of both governments could converge, a language that temporarily masked the growing differences and permitted the start of a real conversation. Notions of tradition, custom and common practice, all deriving their validity from the shared past of the Netherlands, provided arguments that were free of strong ideological contention and thus removed the risk of prematurely ending the deliberations. Aided by the presence of politically active jurists, who enveloped these connotations into a similarly shared legal jargon, ideas about the 'ancient' cooperation between king and Estates or the 'common' *ius gentium* proved to be a standard from which both countries could begin their negotiations. Being an acceptable starting point for discussion and containing concepts that were deemed important on both sides, benchmarking the juridicized past thus became crucial step for many attempts at pacification. And even though most of these debates in the end rendered no tangible result, the fact that certain (perceived) communalities made it possible to discuss rather than fight is an important addition to our understanding of why the peace between the Habsburg Netherlands and the Dutch Republic lasted.

Additionally, this observation also serves as a reminder that the Eighty Years War did not result in a radical divide on all fronts. As has sometimes been observed for other great ruptures in history, the divergence of two formerly united entities did not always entail their absolute separation in all domains.⁷² In no way this article wants to argue that the similarities between the Habsburg Netherlands and the Dutch Republic outweighed their differences or that the two governments had the same perception of their joined past.⁷³ But in many instances the separated parts of the Netherlands nevertheless found enough common ground to organize peaceful conversation, which in turn shows that there remained at least some features of similarity.⁷⁴ Accepting that the Dutch Republic had created a new governmental system for itself, one which in terms of content differed greatly from the political landscape of the Habsburg Netherlands, should not blind historians to the fact that both states continued to share some aspects of the same politic-legal culture and were able to find and exploit this common ground when needed.

¹ *The origins and development of the Dutch revolt*, ed. by Graham Darby (London, New York: Routledge, 2001); J.J. Woltjer, *Op weg naar tachtig jaar oorlog. Het verhaal van de eeuw waarin ons land ontstond. Over de voorgeschiedenis en de eerste fasen van de Nederlandse Opstand* (Amsterdam: Balans, 2011); Henk Van Nierop, *Het verraad van het Noorderkwartier. Oorlog, terreur en recht in de Nederlandse Opstand* (Amsterdam: Prometheus, 1999).

² L.J. Rogier, *Eenheid en scheiding. Geschiedenis der Nederlanden 1477-1813* (Utrecht, Antwerpen: Aula, 1952); J. Andriessen, *De Jezuïeten en het samenhorigheidsgevoel der Nederlanden, 1585-1609* (Antwerpen: 1957), vi; P. Avonds, 'Beschouwingen over het ontstaan en de evolutie van het samenhorigheidsbesef in de Nederlanden (14de-19de eeuw)', in *Cultuurgeschiedenis in de Nederlanden van de Renaissance naar de Romantiek. Liber amicorum J. Andriessen*, ed. by A. Keersmaekers and P. Lenders (Leuven, Amersfoort: Acco, 1986), 45-58; J. Demey, *De historische twee-eenheid der Nederlanden. Bestendige kloof in toenadering* (Nijmegen, Brugge: Gottmer, 1978); Hugo De Schepper, "*Belgium Nostrum*" 1500-1650. *Over Integratie en Desintegratie van het Nederland* (Antwerpen: De orde van den prince, 1987); Hugo De Schepper, "*Belgium dat is Nederlandt*". *Identiteiten en identiteitsbesef in de Lage Landen, 1200 – 1800* (Breda: Papieren Tijger, 2014).

³ A similar conclusion was already reached for the political theories in vogue during the French Wars of Religion: Kathleen A. Parrow, *From Defense to Resistance: Justification of Violence during the French Wars of Religion*, *Transactions of the American Philosophical Society* 83 (Philadelphia: American Philosophical Society, 1993), 1.

⁴ In relation to the impact of vocabulary on diplomacy, the present article agrees with Laura Manzano that the 'discourses used to debate the possible peace were expressions of widespread assumptions which actually conditioned the exercise of politics [emphasis added]'. See Laura Manzano Baena, *Conflicting Words. The Peace Treaty of Münster (1648) and the Political Culture of the Dutch Republic and the Spanish Monarchy*, *Avisos de Flandes* 13 (Leuven: Leuven University Press 2011), 12, 23-28.

⁵ Works that focus on these other types of sources are Vincent Van Zuilen, 'Bronnen van identiteit. Het algemeen Nederlands samenhorigheidsgevoel in enkele pamfletten over de Nederlandse Opstand', in *Het lange leven van het pamflet. Boekhistorische, iconografische, literaire en politieke aspecten van pamfletten 1600-1900*, ed. by J. De Kruif, M. Meijer Drees and J. Salman (Hilversum: Verloren, 2006), 71-82; Martin Van Gelderen, 'From Domingo de Soto to Hugo Grotius: Theories of Monarchy and Civil Power in Spanish and Dutch Political Thought', *Il Pensiero Politico*, 23 (1999), 186-206.

⁶ That an example from this period is chosen, has also to do with the fact that the political ideology of the Low Countries between 1600 and 1650 is generally provided with less attention in comparison to the periods before and after. Studies that focus on the political culture of the Dutch Revolt are Martin Van Gelderen, *The Political Thought of the Dutch Revolt 1555-1590* (Cambridge: Cambridge University Press, 1992) and M.E.H.N. Mout, 'Van arm vaderland tot eendrachtige republiek. De rol van politieke theorieën in de Nederlandse Opstand',

Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden, 101 (1986), 345-365, whereas E.H. Kossmann, *Politieke Theorie in het zeventiende-eeuwse Nederland*, Verhandelingen der Koninklijke Nederlandse Akademie van Wetenschappen, Afd. Letterkunde, nieuwe reeks 67.2 (Amsterdam: 1960) focusses on the years after 1650.

⁷ On the concept of social memory see J. Fentress and C. Wickham eds., *Social Memory (New Perspectives on the Past)* (Oxford: Wiley-Blackwell, 1992). For a discussion about custom see Emily Kadens, 'How Customary is Customary International Law', *William and Mary Law Review*, 54 (2012), 885-920; Emily Kadens, 'The Myth of the Customary Law Merchant', *Texas Law Review*, 90 (2011), 1153-1206. On the writing of history in the separated Low Countries, see Raingard Esser, *The politics of Memory. The Writing of Partition in the Seventeenth-Century Low Countries*, Brill studies in intellectual history 208 (Leiden: Brill, 2012).

⁸ Henk van Nierop, 'De troon van Alva. Over de interpretatie van de Nederlandse Opstand', *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden*, 110 (1995), 208.

⁹ Evert Peeters, *Het labyrint van het verleden. Natie, vrijheid en geweld in de Belgische geschiedschrijving 1787-1850* (Leuven: Universitaire Pers Leuven, 2003), 119-123.

¹⁰ Gustaaf Janssens, *Brabant in het verweer. Loyale oppositie tegen Spanje's bewind in de Nederlanden van Alva tot Farneses, 1567-1578*, Standen en Landen, 89 (Kortrijk-Heule: UGA, 1989), 20-21.

¹¹ Peter Arnade and Henk van Nierop, 'The Political Culture of the Dutch Revolt', *Journal of Early Modern History*, 11 (2007), 253-254; C.C. Hibben, *Gouda in Revolt. Particularism and Pacifism in the Revolt of the Netherlands 1572-1588* (Utrecht: HES Publishers, 1983), 217-249; Bram De Ridder, 'De Akte van Afstand als pacificatiestrategie tijdens de Nederlandse Opstand (1597-1600)', *Handelingen der Koninklijke Zuid-Nederlandse Maatschappij voor Taal- en Letterkunde en Geschiedenis*, 65 (2012), 209-221.

¹² J.J. Woltjer, 'De Vredemakers', *Tijdschrift voor Geschiedenis*, 89 (1976), 299-321; J.J. Woltjer, 'De middengroepen in de Opstand', *Spiegel Historiae*, 29 (1994), 468-473; Violet Soen, *Vredehandel. Adellijke en Habsburgse verzoeningspogingen tijdens de Nederlandse Opstand* (Amsterdam: Amsterdam University Press, 2012).

¹³ The literature related to these three causes is summarized in Henk van Nierop, 'De troon van Alva. Over de interpretatie van de Nederlandse Opstand', *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden*, 110 (1995), 205-223.

¹⁴ For example, in a general overview like *Geschiedenis van de Nederlanden*, ed. by J.C.H. Blom, and E. Lamberts (Baarn: HB Uitgevers, 1993), 105-113 only three paragraphs are dedicated to the economic background of the Revolt, whereas eight pages are devoted to the religious and political motives of the rebels.

¹⁵ 'dos causas y pretextos de la guarra de una parte y de otra, el uno es la Religion y el otro la soberania'. Memorial of Peter Roose to the Consejo de Estado, s.d. (1631). Archivo General de Simancas (hereafter AGS), *Consejo de Estado*, leg. 2045 nr. 77.

¹⁶ For a background on Roose, see René Vermeir, 'Les limites de la monarchie composée. Pierre Roose, factotum du comte-duc d'Olivares aux Pays-Bas espagnols', *Dix-septième siècle*, 3 (2008), 495-518.

¹⁷ van Nierop, 'De troon', 213-214. This evolution was also reflected in the arguments used in political pamphlets, see Mout, 'Van arm vaderland', 355.

¹⁸ Juliaan Woltjer, 'Political moderates and Religious Moderates in the Revolt of the Netherlands', in *Reformation, Revolt and Civil War in France and the Netherlands 1555-1585*, ed. by Philip Benedict e.a., (Amsterdam: Royal Netherlands Academy of Arts and Sciences, 1999), 193-194; Violet Soen, 'Despairing of all means of reconciliation. The Act of Abjuration and the peace negotiations during the Dutch Revolt', in *The Act of Abjuration. Inspired and Inspirational*, ed by Paul Brood and Raymond Kubben, (Den Haag: Nationaal Archief, 2011), 52-64.

¹⁹ The term 'dominium politicum et regale' was originally codified in *The Governance of England* written by Sir John Fortescue in the 1470's. In 1978 Helmut Koenigsberger applied the term as an analytical tool to coin evolutions in the relationship between rulers and parliamentary institutions. See Helmut G. Koenigsberger, 'Monarchies and Parliaments in Early Modern Europe. Dominium Regale or Dominium politicum et Regale?', *Theory and Society*, 5 (1978), 191-217; Helmut G. Koenigsberger, *Monarchies, States Generals and Parliaments. The Netherlands in the Fifteenth and Sixteenth Centuries* (Cambridge: Cambridge University Press, 2001), 25, 220-340.

²⁰ Van Gelderen, *The Political Thought*, p. 19; Soen, *Vredehandel*, pp. 101.

²¹ That this form of government was seen as traditional is also demonstrated by a letter of William of Orange from 1576, in which he stated that 'l'on conduira le gouvernail hors de son cours ancien et legitime, qui consiste en l'autorité libre des estatz conjointe en toute confiance et union avecq leur prince': cited in Mout 'Van arm vaderland', 345.

²² Marc Boone, 'In den beginne was het woord'. De vroege groei van 'parlementen' in de middeleeuwse vorstendommen der Nederlanden', *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden*, 120 (2005), 338-361; Hugo De Schepper, 'Staatsgezag en macht in de Nederlanden. Verworvenheden en

bepkeringen in het Bourgondisch-Habsburgse systeem', in *Staatsvorming onder Bourgondiërs en Habsburgers. Theorie en Praktijk. Handelingen van het 7de Colloquium van de Werkgroep "Internationale Verhoudingen, 1350-1800" gehouden aan de Katholieke Universiteit Nijmegen, 2 november 2001*, ed. by Jac Geurts and Hugo De Schepper (Shaker: Maastricht, 2006), 35-36; John Gilissen, 'Les États Généraux des pays de par deçà, 1464-1632', *Standen en Landen*, 33 (1965), 263-321.

²³ Even centuries before the ascent of the provincial Estates debates about the respective powers of the King and his People were also hotly debated in the Low Countries, see R.C. Van Caenegem, 'Galbert of Bruges on Serfdom, Prosecution of Crime, and Constitutionalism (1127-28)', in *Law, Custom, and the Social Fabric in Medieval Europe. Essays in Honor of Bryce Lyon*, ed. by Bernard S. Bachrach and David Nicholas (Kalamazoo: Western Michigan Univ Medieval, 1990), 89-112.

²⁴ Van Gelderen, *The Political Thought*, p. 31; Bram De Ridder and Violet Soen, 'The Act of Cession, the 1598 and 1600 States General in Brussels and the Peace Negotiations during the Dutch Revolt', in *The Twelve Years Truce (1609). Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century*, Studies in the History of International Law 5, ed. by Randall Lesaffer (Leiden, Boston: Brill/Nijhoff, 2014), 48-57.

²⁵ René Vermeir, 'How Spanish Were the Spanish Netherlands?', *Dutch Crossing: Journal of Low Countries Studies*, 36 (2012), 6-7, 13-14; J.Ph. de Monté ver Loren and J.E. Spruijt, *Hoofdlijnen uit de ontwikkeling der rechterlijke organisatie in de Noordelijke Nederlanden tot de Bataafse omwenteling* (Deventer: Kluwer, 2000), 249-262.

²⁶ Marjolein T'Hart, *The Dutch Wars of Independence. Warfare and Commerce in the Netherlands, 1570-1680*, (London, New York: Routledge 2014), 20; Van Gelderen, *The Political Thought*, 37-59.

²⁷ De Ridder and Soen, *The Act of Cession*, 48-68.

²⁸ Carolina Lenarduzzi and Judith Pollmann, 'Het vaderlands verleden in de zeventiende eeuw. Inleiding', *De Zeventiende Eeuw*, 29 (2013), 148; Judith Pollmann and Erika Kuijpers, 'Introduction. On the Early Modernity of Modern Memory', in *Memory before Modernity. Practices of Memory in Early Modern Europe*, ed. by Erika Kuijpers and others (Brill: Leiden, Boston, 2013), 6-7 Requests for new political measures were indeed often enough connected to the idea of a restoration of older rights and practices: Dave De Ruyscher, 'Lobbyen, vleien en herinneren: onderhandelen om privileges bij de Blijde Inkomst van Filips in Antwerpen (1549)', *Noordbrabants historisch jaarboek*, 29 (2012), 76. Philippe Guignet, 'Une administration dans l'esprit du gouvernement des Romains'. La résistance à la réforme laverdy ou défense et illustration de 'l'ordre ancien' et de l'esprit des institutions municipales des Pays-Bas Français', in *L'identité au pluriel. Jeux et enjeux des appartenances autour des anciens Pays-Bas, XIIe-XVIIIe siècle/Identity and Identities. Belonging at Stake in the Low Countries, 14th-18th Centuries*, Revue du Nord, Hors série. Collection Histoire N° 30, ed. by Violet Soen, Yves Junot and Florian Mariage (Lille: Université Chales-de-Gaulle-Lille 3, 2014), 290.

²⁹ Ideas about the constitutional nature of privileges like the Joyous Entries dates at least back to the nineteenth century and are still very common amongst legal historians: G. Van Dievoet, 'De Blijde Inkomst. De geschreven grondwet van Brabant', in *De gewestelijke en lokale overheidsinstellingen in Brabant en Mechelen tot 1795*, Studia 82 (Brussels: Algemeen Rijksarchief, 2000) 19-34. Yet, critics of this interpretation are B. Lyon, 'Fact and fiction in English and Belgian constitutional law', *Medievalia et humanistica*, 10 (1956), 82-101 and Wim Blockmans and Raymond Van Uytven, 'Constitutions and their Application in the Netherlands during the Middle Ages', *Revue belge de philologie et d'histoire*, 47 (1969), 399-424. Valerie Vrancken and Jelle Haemers of the University of Leuven currently work on a project that further studies the 'constitutional' aspects and usages of the Brabantine Joyous Entries.

³⁰ Hugo De Schepper, 'Las Provincias Unidas: un nuevo miembro en la familia Europea', in *350 años de la Paz de Westfalia. Del Antagonismo a la integración en Europa*, ed. by Fernando Villaverde (Madrid: Biblioteca Nacional de España, 1999), 131-133. Other rebellions against the Spanish Habsburgs throughout the 1630's and 1640's show that the violation of privileges was not only used as an argument during the revolt in the Low Countries: See Manzano Baena, *Conflicting Words*, 48-49; R.C. Van Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge: Cambridge University Press, 1995), 12-13, 24, 112.

³¹ Marc Boone, 'Rulers, Patricians and burghers: the Great and the Little Traditions of Urban Revolt in the Low Countries', in *A miracle mirrored. The Dutch Republic in European Perspective*, ed. by Karel Davids and Jan Lucassen (Cambridge: Cambridge University Press, 1995), 99-134; Van Gelderen, *The Political Thought*, 112-165; Mout, 'Van arm vaderland', 351-353. The Habsburg tendency to 'crush constitutions' eventually became a stock argument of the opponents of both branches of the dynasty: Manzano Baena, *Conflicting Words*, 86-92.

³² 'Pero su Magd se sirvira tambien de considerar el peligro que auria en alterar las alegras entradas o promessas juradas de todo tiempo por sus precedecessores a su inauguracion y aun de hablar o permitir que los ministros hablen dello Por que importa a los Principes de semejante condicion resignarse y vivir al exemplo de los que poseen una casa alquilada, contentendandose de las comodidades que hallan en ella, mas presto que comprar pesadumbres y perder su dinero en querer la mudar contra la voluntad del dueno'. Memorial of Peter Roose to the Consejo de Estado, s.d. (1631). AGS, *Consejo de Estado*, leg. 2045 nr. 77.

³³ An attitude reminiscent of the loyal opposition during earlier stages of the Revolt: Gustaaf Janssens, *Brabant in het verweer. Loyale oppositie tegen Spanje's bewind in de Nederlanden van Alva tot Farnese*, Standen en Landen LXXXIX (Kortrijk-Heule: UGA, 1989), 245-246.

³⁴ Jan Dumolyn, 'Privileges and novelties: the political discourse of the Flemish cities and rural districts in their negotiations with the dukes of Burgundy (1384–1506)', *Urban History*, 35 (2008), 7; Guignet, 'Une administration', 290.

³⁵ In the words of René Vermeir: 'Les sujets n'appréciaient aucunement les *novedades*, ils ne souffraient pas que le monarque introduise ne fût-ce qu'une modification minime sans concertation avec eux et sans leur accord. [...]; le roi d'Espagne n'avait pas d'autre choix que de respecter les anciennes structures et les procédures existantes', Vermeir, 'Les limites de la monarchie', 499. According to Laura Manzano Baena especially privileges carried such traditional weight that 'Altering them was generally thought to be beyond the power of individual men and rulers. No authority could openly defend a programme of violating the ancient rights of the country'. Manzano Baena, *Conflicting Words*, 48-49. The situation was even worse in sixteenth-century England, where novelties were feared to lead to the destruction of the entire society: Sara Warneke, 'A Taste for Newfangledness: The Destructive Potential of Novelty in Early Modern England', *The Sixteenth Century Journal*, 26 (1995), 881–896.

³⁶ 'Remitiendo por esto a la prudencia de su Magd el guardar religiosamente las dhas alegras entradas, sin todavia permitir alguna extencion dellas, ny interpretacion prejudicial; pero sobre todo y por exemplo, los puntos que en ellas se hallan conformes al derecho comun'. Memorial of Peter Roose to the Consejo de Estado, s.d. (1631). AGS, *Consejo de Estado*, leg. 2045 nr. 77.

³⁷ Robert Stein, *De hertog en zijn Staten. De eenwording van de Bourgondische Nederlanden, ca. 1380-1480* (Hilversum: Verloren, 2014), 168-191; Alfred Kohler, 'Zur Bedeutung der Juristen im Regierungssystem der 'Monarchia Universalis' Kaiser Karls V', in *Die Rolle der Juristen bei der Entstehung des modernen Staates*, ed. by Roman Schnur (Berlin: Duncker&Humblot, 1986), 649-674; Michiel van Groesen and Judith Pollmann, 'Inleiding. Het Gelijk van de Gouden Eeuw', in *Het Gelijk van de Gouden Eeuw. Recht, onrecht en reputatie in de vroegmoderne Nederlanden* ed. by Michiel van Groesen, Judith Pollmann and Hans Cools (Hilversum: Verloren, 2014), 7-8, 12; Jan Dumolyn, *Staatsvorming en vorstelijke ambtenaren in het graafschap Vlaanderen (1419-1477)* (Antwerpen, Apeldoorn: Garant, 2003), 10-15.

³⁸ van Nierop, *Het verraad*, 225-231.

³⁹ Vermeir, 'Les limites de la monarchie', 502-503.

⁴⁰ There were of course more reasons to appoint Roose, see Alicia Esteban Estríngana, 'La crise politique de 1629-1633 et le début de la prééminence institutionnelle de Pierre Roose dans le gouvernement général des Pays-Bas Catholiques', *Revue belge de philologie et d'histoire*, 78 (4), 1998, 963-971.

⁴¹ Already in the Burgundian era were jurists highly important for the conduct of diplomacy: Dumolyn, *Staatsvorming*, 29-31. Legal justification was furthermore not only important for diplomacy between the Netherlands, but also in the dealings between other states, Philip McClusky, 'From Regime Change to *Réunion*: Louis XIV's Quest for Legitimacy in Lorraine, 1670-1697', *English Historical Review*, 126 (2011), 1386-1407.

⁴² Dumolyn, *Staatsvorming*, 10-15, 217-218. Esteban Estríngana, 'La crise politique', 941-944.

⁴³ Randall Lesaffer and Erik-Jan Broers, 'Private property in the Dutch-Spanish Peace Treaty of Münster (30 January 1648)', in *Zeitschrift für Historische Forschung. Rechtsformen internationaler Politik: Theorie, Norm und Praxis vom 12. bis 18. Jahrhundert*, ed. by Michael Jucker, Martin Kintzinger, Rainer Christoph Schwinges (Berlin: Duncker & Humblot, 2014), 172.

⁴⁴ These nine delegates were the archbishop of Malines, the abbot of st. Vaast, the duke of Aarschot, gabriel chastelet, lord of Moulbaix and Ansermont, Gerard baron of schwartzenberg and hohlenlandsberg, Viglius van Marcke first councilor and pensionary of the Franc of Bruges, Jean de Ronnet jurist in the bailage of Namur and councilor of the city of Namur, Pierre de Broide esquire and pensionary of the city of Douay, Jacques Edelheer first councilor and pensionary of the city of Antwerp. Anonymous report of the 1632 peace negotiations, s.l., s.d.. Algemeen Rijksarchief van België (hereafter ARA), T098 *Papiers d'État et de l'Audience*, nr. 1188bis.

⁴⁵ Manzano Baena, *Conflicting Words*, 179.

⁴⁶ See Laura Manzano Baena, 'Negotiating Sovereignty: the Peace Treaty of Münster, 1648', *History of Political Thought*, 28 (2007), 617–640.

⁴⁷ F.J.K. Van Hoogstraten, *De Chambre Mi-Partie Van Het Munstersche Vredetractaat. Eene Bijdrage Tot De Geschiedenis Der Nederlandsche Diplomatie* (Utrecht: 1860)

⁴⁸ Letter of the Council of State to the Chambre Mi-Partie, (27/07/1656): ARA, (T086) *Jointe des Terres Contestées*, nr. 493.

⁴⁹ Stein, *De hertog en zijn Staten*, 168-191.

⁵⁰ Interesting to note is that in the early stages of the revolt Leiden shared much of its intellectual background with that of Louvain, exemplified by figures such as Justus Lipsius who was a professor in Leiden between 1578 and 1590 but subsequently assumed a post in Louvain. It would in fact take fifteen years before Leiden could

appoint professors it had trained itself, whilst in the meantime many of its scholars had received their education in Louvain. A. Schendel and others, *Leidse universiteit 400: stichting en eerste bloei 1575 - ca. 1650* (Amsterdam: Rijksmuseum, 1975), pp. 14-15, 45; James D. Tracy, 'Princely Auctoritas or the Freedom of Europe: Justus Lipsius on a Netherlands Political Dilemma', *Journal of Early Modern History*, 11 (2007), 320-329.

⁵¹ J.P.A. Coopmans, 'De reglementering van de Staatse Raad van Brabant', in *De Staatse Raad van Brabant en Landen van Overmaze in tweede termijn. Colloquium gehouden te Tilburg, 7 april 1988*, ed. by T.E.A. Bosman, J.P.A. Coopmans and Beatrix C.M. Jacobs (Assen, Maastricht: Van Gorcum, 1989), 1-4.

⁵² Frans van der Zype (Zypaeus), 1580-1650, was one of the figures who is often seen as a main contributor to this evolution. He became a licentiate in Law in 1605 and from there on deeply influenced the canon law of the Habsburg Netherlands, even though he never assumed a professorship. In his *Notitia iuris belgici* (1635) he furthermore tried to demonstrate that the loyal Netherlands had their own distinct law, strongly influenced by the *ius commune*. See Bernard Tilleman (ed.), *Geschiedenis van de Leuvense rechtsfaculteit*, Leuven, 2014, 104; L. Verbeek, 'François Zypaeus (1580-1650)', *The Legal History Review*, 36 (1968), 290-299. Probably the most famous work in this genre is however Hugo Grotius' *Inleydinge tot de Hollantsche rechtsgeleertheit* from 1631. See Karl Wellschmied, 'Zur Inleydinge Tot De Hollandsche Rechts-Geleerdheid Des Hugo Grotius', *The Legal History Review*, 20 (1939), 389-440.

⁵³ 'Retorsion' is defined by the *Oxford Dictionary of Law Enforcement* as 'a lawful means of retaliation by one state against another. It is usually provoked by an equally lawful, but discourteous, act of the other state, such as trade discrimination measures that single out foreign nationals or by hostile propaganda produced via government-controlled sources of information'. Although this definition does not entirely fit the early modern Dutch usage of the word 'retorsie', its core elements were none the less much the same.

⁵⁴ 'ne choquent pas seulement la souveraineté, & jurisdiction du Roy, ne permettant sur son Pays aulcune execution ou force des Provinces voisines, mais qu'ils ne peuvent aussi estre exusez d'infraction notoire du traité de Paix'. Consult of the Council of State, 09/12/1648. ARA, I112 *Archives du Conseil d'État*, nr. 236.

⁵⁵ Consult of the Council of State, 18/02/1649. ARA, I112 *Archives du Conseil d'État*, nr. 236; Consult of the Council of State, 23/02/1649. ARA, I112 *Archives du Conseil d'État*, nr. 236.

⁵⁶ Instructions for Petrus Stockmans, 03/05/1649. ARA, I112 *Archives du Conseil d'État*, nr. 236.

⁵⁷ Bernard Tilleman, *Geschiedenis van de Leuvense rechtsfaculteit* (Leuven: Die Keure, 2014), 104.

⁵⁸ Anonymous report of the 1632 peace negotiations, s.l., s.d.. ARA, T098 *Papiers d'État et de l'Audience*, nr. 1188bis.

⁵⁹ For example, Stockmans argued that Papal decisions required a royal exequatur before they became valid and that even Rome did not have the legitimacy to trial a Brabantine citizens beyond the borders of the Duchy. Tilleman, *Leuvense rechtsfaculteit*, 115.

⁶⁰ The arguments used by Stockmans were even commented upon well into the twentieth century, see M.A. Meyers, *Le droit de dévolution et le Traité de Pierre Stockmans* (Liège: Cour de Appel, 1925).

⁶¹ 'Als niet wesende yet meer notoir dan dat alle rycken provincien ende staeten van malcanderen zyn geschyden met hunne limiten en(de) paelen buyten dewelcke den eenen gebuerlijcken staet niet en vemach op den anderen staet te comen doen eenige acte van hooge jurisdictie [...] als strijdende sulcx tegens het recht der volckers ende tegens de fundamentale wtten van(de) v(er)z(ij)de vrede'. Memorial of Petrus Stockmans to the Estates-General, 1649. ARA, I112 *Archives du Conseil d'État*, nr. 236.

⁶² Although this is not the place for such an inquiry, it is interesting to note that Dutch pamphlets had earlier defended the abjuration of Philip II by referring to the *ius gentium*. A comparison between how both sides used international law in their political struggle might provide interesting clues about its actual value in early modern Europe. Manzano Baena, *Conflicting Words*, 88.

⁶³ 'represailles au retorsions sont directemen contraire [...] au droict des gens et commun usage de toutes peuples'. Letter of the Council of State to the Estates-General, 03/1649. ARA, I112 *Archives du Conseil d'État*, nr. 236.

⁶⁴ 'in eenigen deele soude hebben gevioleert de souverainiteyt vanden hoochstedachten heere coninck van hispaignien oft schuldich zyn aen eenige de minste proceduren strydich tegens t'recht der volckeren, oft oock tegens d'articulen van(de) gemaecten vrede'. Memorial of the Estates-General to councillor Petrus Stockmans, 29/04/1649. ARA, I112 *Archives du Conseil d'État*, nr. 236.

⁶⁵ The notion of innovation had already been used during earlier bilateral negotiations. For example, during the follow-up conferences of the Twelve Years Truce in 1610 the Habsburg negotiators stated that 'au regard des limites dont il ya question ne se face aulcune innovation, mais le tout demeure sur le pied et en la maniere co(mm)e il s'est trouvé au temps de la conclusion des tresves [the initial truce of 1607]'. Memorial of the Habsburg negotiators de Robiano, Verreycken and Masius, s.l., s.d.. ARA (T109) *Archives de l'Audience et des papiers d'Etat*, nr 1373/1.

⁶⁶ ‘spaensche zyde met een ongehoorde maniere ende te vooren noyt gesustineerde maximael daer tegen is gegaen, als pretense bedryvende dat de souverainiteyt van t’platte landt aenden coninck van Spaegnen was blijven(de), en niet en volgende aende hoofstadt, daer onder het selve was liggen(de), tegen de insantie gedueren(de) den oorlooghe soo ten tyde van t’overgaen van Antwerpen als alle andere steden ten wederzyden altyt gepleecht ende op die pretense sustinere en(de) dat pretext, blyven(de) extorqieren uuyt de meyerie vande Bosche’. Memorial of the Estates-General to councillor Petrus Stockmans, 29/04/1649. ARA, I112 *Archives du Conseil d’État*, nr. 236.

⁶⁷ See for more details Manzano Baena, *Conflicting Words*, 169-170

⁶⁸ Memorial of the Estates-General to councillor Petrus Stockmans, 29/04/1649. ARA, I112 *Archives du Conseil d’État*, nr. 236.

⁶⁹ Memorial of the Estates-General to councillor Petrus Stockmans, 29/04/1649. ARA, I112 *Archives du Conseil d’État*, nr. 236.

⁷⁰ J.A.K. Haas, *De verdeling van de landen van Overmaas 1644-1662. Territoriale desintegratie van een betwist grensgebied*, Maaslandse Monografieën 27 (Assen: Van Gorcum, 1978).

⁷¹ Memorial Jacques Edelheer to the Estates-General, 10/08/1649. ARA, I112 *Archives du Conseil d’État*, nr. 236.

⁷² For the example of the Reformation and the Council of Trent, see: Emidio Campi, ‘The Council of Trent and the Magisterial Reformers’, in *The Council of Trent: Reform and Controversy in Europe and Beyond (1545-1700)*, Violet Soen and Wim François eds., forthcoming; Cornelius J. Dyck, ‘The Place of Tradition in Dutch Anabaptism’, *Church History*, 43 (1974), 34-49.

⁷³ See Judith Pollmann, ‘Met grootvaders bloed bezegeld. Over religie en herinneringscultuur in de zeventiende-eeuwse Nederlanden’, *De Zeventiende Eeuw*, 29 (2013), 154-175; Esser, *The politics of Memory*, 3, 19, 321-323.

⁷⁴ Which lasted well into the eighteenth century even: Guignet, ‘Une administration’, 286-287.