Early Modern Sovereignties

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Early Modern Sovereignties

Theory and Practice of a Burgeoning Concept in the Netherlands

Edited by

Erik De Bom, Randall Lesaffer, and Werner Thomas

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Contributors

Hans W. Blom
is Emeritus Professor of Social and Political Philosophy at Erasmus University Rotterdam (The Netherlands), and 2011–2013 DAAD Professor at the University of Potsdam (Germany). He has also taught at Cambridge University (United Kingdom), the University of Buenos Aires (Argentina), and the University of Wisconsin-Madison (USA). His edited works include *Property, Piracy and Punishment: Hugo Grotius on War and Booty in De iure praedae* (Brill, 2009); *Monarchisms in the Age of Enlightenment* (University of Toronto Press, 2007); *Grotius and the Stoa* (Van Gorcum, 2004); *Hobbes: The Amsterdam Debate* (Olms, 2001); and *Sidney: Court Maxims* (Cambridge University Press, 1996). He is an editor-in-chief of the journal *Grotiana.*

Erik De Bom
is an intellectual historian and political theorist. He is a Research Fellow at the Institute of Philosophy (KU Leuven, Belgium) and is also affiliated to LECTIO (Leuven Centre for the Study of the Transmission of Texts and Ideas in Antiquity, the Middle Ages and the Renaissance). He has published widely on early modern political thought and is the editor, together with Harald E. Braun, of *The Companion to the Spanish Scholastics*, forthcoming with Brill.

Bram De Ridder
is a postdoctoral researcher at the KU Leuven (Belgium). His work focusses on early modern peacemaking and border management, as well as on the methodological combination of history and international relations. After having finished a brief visiting scholarship at Harvard University (USA), he worked as a postdoctoral researcher for the European RETOPEA project. Currently, he coordinates the applied history project Corvus, focussing on the uses of history in contemporary border management.

Alicia Esteban Estríngana
is Professor of Early Modern History at the University of Alcalá (Madrid, Spain). Previously she was a member of the research staff of the Centre for Historical Studies of the Carlos de Amberes Foundation (Madrid, Spain). Her research focuses on the political and military government of the Spanish Habsburg monarchy, with special attention to the Southern Netherlands, during the sixteenth and seventeenth centuries. Recently, she has edited a collective book

on loyalty and disloyalty to the Spanish monarch: *Decidir la lealtad. Leales y desleales en contexto, siglos XVI y XVII* (Doce Calles, 2017).

Simon Groenveld
is Professor Emeritus of Early Modern Dutch History at the University of Leiden (The Netherlands). Recently he published a selection of his articles on the Eighty Years War: *Facetten van de Tachtigjarige Oorlog. Twaalf artikelen over de periode 1559–1652* (Verloren 2018).

Gustaaf Janssens
is Emeritus Professor of Archival Sciences at KU Leuven (Belgium). As a state archivist, he was the keeper of the Royal Archives at the Royal Palace in Brussels. He has focused his research on archives and human rights, on monarchy and politics in Belgium during the nineteenth and twentieth century, and on different aspects of the Revolt in the Netherlands during the reign of Philip II. He is a member of the Belgian Koninklijke Commissie voor Geschiedenis – Commission royale d'Histoire, and of the Academia Europea e Iberoamericana de Yuste (Spain).

Randall Lesaffer
is Professor of Legal History at Tilburg University (The Netherlands) and Professor of international and European legal history at KU Leuven (Belgium). From 2008 to 2012 he served as dean of Tilburg Law School. He is editor-in-chief of Oxford Historical Treaties (Oxford University Press) and of the Studies in the History of International Law (Brill/Nijhoff) and is an editor of the Global Law Series (Cambridge University Press) and the *Journal of the History of International Law.* He is president of the Grotiana Foundation.

Shavana Haythornthwaite
obtained her PhD at Tilburg University (The Netherlands) on a study of post-war reparations in early modern and modern international law. She is a lecturer in international law, security and human rights at the University of Manchester (United Kingdom) and a Fulbright Fellow in Cyber Security at the Carnegie Endowment for International Peace in Washington DC (USA). She is also founder of Ontogeny Global, a revolutionary risk management firm. Her main areas of expertise are governance, security law and policy, risk management and human rights. She has held visiting fellowships at the University of Cambridge (United Kingdom) and the European University Institute (Italy).

José Javier Ruiz Ibáñez
is a specialist in political history of early modern Europe and the Americas. Full Professor at the University of Murcia (Spain), he is also the general coordinator of Red Columnaria. His last book is *Hispanofilia. Los tiempos de la hegemonía hispánica*, to be published by Fondo de Cultura Económica-España in 2021.

Werner Thomas
is Professor of Spanish and Latin American History and senior researcher of the Early Modern History Research Group at KU Leuven (Belgium). He has focused his research on the Low Countries as a part of the Spanish monarchy, and has published on the history of the Spanish Inquisition, the repression of Protestantism in Spain, and the government of the archdukes Albert and Isabella Clara Eugenia in the Southern Netherlands.

Lies van Aelst
graduated in Early Modern Intellectual History at the Erasmus University Rotterdam. She currently works as a senior programme manager and researcher for the Wethoudersvereniging (Council of Aldermen), and conducts PhD research at the University of Utrecht (The Netherlands). She is also a member of the Provincial Council of South Holland.

Gustaaf van Nifterik
is assistant Professor of Legal History at the University of Amsterdam (The Netherlands). His research focusses on the development of constitutional law elements, such as sovereignty, democracy, and the rule of law, with some emphasis on the sixteenth and seventeenth century, in particular on Hugo Grotius. He is member of the Grotiana Foundation.

René Vermeir
is Professor of Early Modern History at Ghent University (Belgium). His research interest is in political and diplomatic history of the sixteenth and seventeenth centuries. He has published mainly on the place and role of the Low Countries within the context of the Spanish empire and is at the present preparing an edition of the ordinances of Philip IV in the Southern Netherlands (1621–1665).

Introduction

Werner Thomas

Sovereignty was undoubtedly one of the most powerful concepts that were developed by early modern political thinkers.[1] In combination with that other concept, the state, it transformed traditional, medieval power relations in Europe and beyond. Both came into being in a time when composite monarchies fully developed, challenging their rulers to find new ways of governing. Medieval princes administrated rather compact and controllable territories, which allowed their physical presence at all times. Even the first conglomerates of principalities did not really challenge the medieval form of government, although minor changes were made. Princes continued travelling around between their dominions, although distances increased, and sometimes new institutions were conceived in order to rationalize government. In the Netherlands, for example, where the dukes of Burgundy eventually succeeded to bring almost all principalities under one rule, a supreme court of justice, the Great Council of Malines, was created, as well as the Estates General, which consisted of representatives of the provincial estates of each territory and was aimed at replacing the complicated and time-consuming tax negotiations with

1 Although sovereignty is often dealt with in articles and books on early modern political thought, there is no comprehensive historical study of sovereignty in the sixteenth and seventeenth centuries, when the idea itself took shape. Most studies focus on particular (often recurring) authors, such as Jean Bodin and Thomas Hobbes, or peculiar aspects, such as the division of sovereignty. More general overviews are: Hent Kalmo and Quentin Skinner (eds.), *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge, 2010); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge, 1995); Oliver Beaud, *La puissance de l'état* (Paris, 1994); Hendrik Spruyt, *The Sovereign State and Its Competitors: An Analysis of System Change* (Princeton, 1996); Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton, 2001); Raia Prokhovnik, *Sovereignty: History and Theory* (Exeter/Charlottesville, VA, 2008); Dieter Grimm, *Souveränität. Herkunft und Zukumft eines Schlüsselbegriffs* (Berlin, 2009); Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, 2010); Martin Loughlin, *Foundations of Public Law* (Oxford, 2010); Michel Troper, 'Sovereignty', in Michel Rosenfeld and András Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* (Oxford, 2012), 350–69; Ulrike Müssig (ed.), *Reconsidering Constitutional Formation/National Sovereignty: A Comparative Analysis of Juridification by Constitution* (Cham, 2016). See also Helmut Quaritsch, *Staat und Souveränität. Die Grundlagen* (Frankfurt am Main, 1970); Dieter Willoweit, *Rechtsgrundlagen der Territorialgewalt* (Köln, 1975); Robert Oresko, G.C. Gibbs and H.M. Scott (eds.), *Royal and Republican Sovereignty in Early Modern Europe* (Cambridge, 1997).

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each province individually.[2] In France, the *Grand Conseil* reinforced the king's hold on the justice system in his dominions.[3] In Spain, the Catholic Kings adopted the system of viceroys in all of their kingdoms.[4]

Territorial concentration as a result of the dynastic policy of early modern European rulers soon challenged this system to the limit. Political entities increased in scale in a way they had never done before since Charlemagne. Equally important, demographic growth accelerated from 1500 onwards, resulting in higher population figures. Thus, princes did not only rule over a much larger territory than before, they also ruled over a much higher number of subjects. Spain is probably the best example of the problems rulers of composite monarchies were increasingly confronted with. While in 1460 the Iberian Peninsula, with a population of about seven million people, was governed by five different royal houses, fifty years later only two were left: the House of Avis in Portugal, and the House of Habsburg in Castile, Aragon, Granada, and Navarre. During those fifty years, the Iberian population had grown to almost nine million. At that time, the Spanish king also ruled over the Burgundian Netherlands, the Franche-Comté, the duchy of Milan, the kingdom of Naples, Sicily, Sardinia, the Habsburg territories in Central Europe, and, last but not least, the former Aztec and Inca empires in the Americas, while the total number of subjects he was responsible for increased to about seventy million, according to rather conservative estimations, which is ten times more than in 1460.[5]

Rulers thus started adapting their systems of government in order to cope with this increase in scale. In Castile, probably the most extreme example, the number of royal councils grew from one to ten between 1460 and 1525, while four more were set up before the end of the sixteenth century. At the same time, new institutions were created in the different parts of the empire, such

2 Robert Wellens, *Les États généraux des Pays-Bas des origines à la fin du règne de Philippe le Beau (1464–1506)* (Heule, 1974); Jan Van Rompaey, *De Grote Raad van de Hertogen van Boergondië en het Parlement van Mechelen* (Verhandelingen van de Koninklijke Academie voor Wetenschappen, Letteren en Schone Kunsten van België, Klasse der Letteren, 35; Brussels, 1973).

3 Bernard Barbiche, *Les institutions françaises de la monarchie française à l'époque moderne* (Paris, 1999), 279–312.

4 Manuel Rivero Rodríguez, *La edad de oro de los virreyes. El virreinato en la Monarquía Hispánica durante los siglos XVI y XVII* (Madrid, 2011); Joan Lluís Palos and Pedro Cardim, *El mundo de los virreyes en las monarquías de España y Portugal* (Frankfurt am Main, 2012).

5 Josiah C. Russell, 'Population in Europe', in Carlo M. Cipolla (ed.), *The Fontana Economic History of Europe*, 6 vols. (Glasgow, 1972), vol. 1, 25–71; Michael W. Flinn, *The European Demographic System, 1500–1820* (Baltimore, 1981); William Denevan (ed.), *The Native Population of the Americas in 1492* (2nd edn; Madison, 1992).

as the Collateral Councils in the Netherlands, or the viceroyal administrations in the Americas.[6] The model of the itinerant court, still cherished by Charles V, was abandoned, and power was physically concentrated in a few places that were located at great distance. Most European countries followed these tendencies, although on a smaller scale.[7]

As a result of this centralisation processes, people were increasingly governed by institutions established elsewhere, using a language they did not necessarily understand, and/or were confronted with 'foreigners' governing their own familiar world. In a way, these changes show parallels with the outcome of current globalisation processes altering the living environment of ordinary people: early modern commoners probably also felt disenfranchised as they saw that their country was governed by 'supranational' – mind the anachronism – institutions, and were confronted with new structures replacing the old familiar ones, and over which they felt they had lost control. Hence, popular resistance against the new forms of central government arose in several European countries from the sixteenth century onwards.[8]

At the top of all this, religious authority was also challenged. Protestantism confronted Catholicism, and both confessions struggled for power and the control over the individual conscience of the faithful. Rulers interfered, supporting one religion and, in most cases, combatting the other. While individual worshippers increasingly strived for religious tolerance and liberty of conscience, they began to impose a singular confession on their subjects, in part as a result of their own religious beliefs, but in many cases also as an attempt to maintain or increase authority in their lands.[9] From 1555 onwards, the principle of *cuius regio, illius religio*, established by the Peace of Augsburg in order to legitimize religious relations between Catholics and Lutherans in the Holy Roman Empire, and by which the ruler had the right to dictate the

6 Miguel Artola (ed.), *Enciclopedia de Historia de España*, 7 vols. (Madrid, 1988), vol. 2: *Instituciones Políticas. Imperio;* Michel Baelde, *De Collaterale Raden onder Karel V en Filips II (1531–1578). Bijdrage tot de geschiedenis van de centrale instellingen in de zestiende eeuw* (Brussels, 1965); Lillian Estelle Fisher, *Viceregal Administration in the Spanish American Colonies* (Berkeley, 1926); Daniel Aznar, Guillaume Hanotin and Niels F. May (eds.), *À la place du roi. Vice-rois, gouverneurs et ambassadeurs dans les monarchies française et espagnole (XVIe-XVIIIe siècles)* (Madrid, 2014).

7 Jeroen Duindam, *Dynasties: A Global History of Power* (Cambridge, 2013).

8 Yves Marie Bercé, *Revolt and Revolution in Early Modern Europe: An Essay on the History of Political Violence* (Manchester, 1987); Perez Zagorin, *Rebels and Rulers, 1500–1660*, 2 vols. (Cambridge, 1982); Charles Tilly, *European Revolutions, 1492–1992* (Oxford/Cambridge Mass., 1996).

9 Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton, NJ, 2003); Henry Kamen, *The Rise of Toleration* (London, 1967).

religion of his subjects, won ground in Europe until in 1648 it was generally accepted. Philip II, for instance, had no problem with negotiating religious freedom – under certain conditions – for the subjects of the queen of England or the German merchants of the Hanseatic league in Spain, but his own subjects, including the inhabitants of the Netherlands, were to remain Catholic at all times.[10] Thus, in most countries early modern state formation was accompanied by a confessionalization process.[11]

The sixteenth century thus witnessed the confrontation between rulers trying to cope with the changing circumstances that ruling their expanding dominions brought along on the one hand, and their subjects trying to resist these circumstances on the other. The authority of rulers was challenged by local elites who defended the privileges of their country or estate and thereby mobilized other sectors of society; it was challenged by the lower classes who resisted political and administrative centralization and increasing taxation, as well as by religious minorities who advocated liberty of conscience, or, quite frequently, by all at the same time. These conflicts caused political and religious turmoil during much of the sixteenth century, and in several countries, they even ended in civil war.[12]

The Wars of Religion in France are probable the most striking example of this social and political upheaval in Europe.[13] Starting in 1562, and characterized by

10 Werner Thomas, *La represión del protestantismo en España, 1517–1648* (Leuven, 2001), 271–6; Id., 'Alba and religion', in Maurits Ebben et al. (eds.), *Alba: General and Servant to the Crown* (Protagonists of History in International Perspective, 3; Rotterdam, 2013), 121–37.

11 Ernst Walter Zeeden, *Konfessionsbildung. Studien zur Reformation, Gegenreformation und katholischen Reform* (Stuttgart, 1985); Heinrich Richard Schmidt, *Konfessionalisierung im 16. Jahrhundert* (Enzyklopädie Deutscher Geschichte, 12; Munich, 1992); Kaspar von Greyerz, Manfred Jakubowski-Tiessen, Thomas Kaufmann and Hartmut Lehmann (eds.), *Interkonfessionalität – Transkonfessionalität – binnenkonfessionelle Pluralität. Neue Forschungen zur Konfessionalisierungsthese* (Schriften des Vereins für Reformationsgeschichte, 201; Gütersloh 2003); John M. Headley and Hans J. Hillerbrand (eds.), *Confessionalization in Europe, 1555–1700: Essays in Honor and Memory of Bodo Nischan* (Farnham, 2004).

12 David Armitage, *Civil Wars: A History in Ideas* (New Haven/London, 2017), 93–158; Jeremy Black, *Kings, Nobles and Commoners: States and Societies in Early Modern Europe* (London/New York, 2004); George F.A. Rudé, *Ideology and Popular Protest* (2nd edn; Chapel Hill, NC, 1995); Jack A. Gladstone, *Revolution and Rebellion in the Early Modern World: Population Change and State Breakdown in England, France, Turkey, and China, 1600–1850* (2nd edn; New York, 2016).

13 For the French Wars of Religion, see: Robert J. Knecht, *The French Wars of Religion, 1559–1598* (2nd edn; New York, 1996); Id., *The French Civil Wars: Modern Wars in Perspective* (New York, 2000); Mack P. Holt, *The French Wars of Religion, 1562–1629* (Cambridge, 2005); Arlette Jouanna et al., *Histoire et dictionnaire des Guerres de religion* (Paris, 1998); Denis Crouzet, *Dieu en ses royaumes. Une histoire des guerres de religion* (Seyssel, 2008). For a

massacres such as that of Vassy (1562) or St Bartholomew's Night (1572), they claimed about three million victims and only ended in 1598, when Henry IV proclaimed the Edict of Nantes allowing religious tolerance in France. Due to the young age or even minority of several kings, royal power was weakened, and Catholics and Huguenots even cast doubt on the legitimacy of the French monarchy. In the midst of this profound crisis, Jean Bodin published his *Six livres de la republique* (Paris, 1576) on the best form of government.[14] In his book, which was undeniably influenced by the events of his time, he offered a clear definition of sovereignty as a supreme power that was not subordinated to any other power in the state. In France, this power should be in the hands of a hereditary monarchy. Bodin thus offered the main ingredient of a strong centralized government that would be able to maintain peace, order, and harmony in French society.

Bodin's concept almost immediately appealed to political thinkers from all of Europe, in particular after the revised edition in Latin was published (*De republica libri sex*, Paris, 1586). Before the end of the century, translations into Italian, Spanish, and German were issued, followed by a translation into English in 1606.[15] Sovereignty and the accompanying concept of the state became the centre of political thought, and triggered discussions among scholars and politicians in the whole of Europe, especially in England, Italy, and the Holy Roman Empire.[16]

Although Bodin seemed to offer a crystal-clear model of royal authority, and how it could contribute to the stability of the state and the pacification of society, whenever sovereignty was constructed in practice, Bodin's ideas turned out to be less easily applicable. One of the countries where the different players on the political field reshaped the concept of sovereignty, as well as the actual form it took when it was implemented locally, were the Low Countries. In fact, in the second half of the sixteenth century, the Netherlands, as a result

historiographical overview, see Barbara Diefendorf, *The Reformation and Wars of Religion in France* (Oxford Bibliographies Online Research Guide; Oxford, 2010).

14 The best introduction to Jean Bodin is probably Howell A. Lloyd, *Jean Bodin, 'This Pre-eminent Man of France': An Intellectual Biography* (Oxford, 2017), esp. 66–89 and 115–58. Also see Julian Franklin, 'Sovereignty and the mixed constitution: Bodin and his critics', in J.H. Burns (ed.), *The Cambridge History of Political Thought* (Cambridge, 1991), 298–328.

15 *I sei libri della Republica* (transl. Lorenzo Conti; Genova, 1588); *Los seis libros de la republica* (transl. Gaspar de Añastro Ysunza; Torino, 1590); *Respublica, Das ist: Gründtliche und rechte Underweysung, oder eigentlicher Bericht* […] (transl. Johann Oswaldt; Mümpelgard, 1592); *The Six Bookes of a Commonweale* (transl. Richard Knolles; London, 1606).

16 On the reception of Bodin, see Howell A. Lloyd, *The Reception of Bodin* (Brill's Studies in Intellectual History, 223; Leiden, 2013).

of political changes during the Dutch Revolt, became a laboratory where rulers as well as local elites experimented with different types of sovereignty. These experiments occurred almost simultaneously with Bodin conceiving his theory, and clearly reflect the interplay between theoretical considerations and the political situation in the field.

Indeed, at the time Bodin first developed his concept of sovereignty, in his *Methodus ad facilem historiarum cognitionem* (Paris, 1566), the situation in the Netherlands slowly got out of hand. In August 1566, iconoclastic attacks starting in Hondschoote, in the French-speaking part of the county of Flanders, rapidly spread over the country.[17] At the end of the month they reached Amsterdam, but violence continued in the northern and eastern part of the country, as well as on the countryside, until well into October. Hundreds of churches, monasteries, convents, hospitals, and chapels were defaced and cleansed from religious images, statues, objects, and books. The destructions shocked the government in Brussels and the king in Madrid. Philip II decided to send the duke of Alba with an army of 10,000 soldiers to the north in order to restore royal authority and punish the culprits. Alba was unable to eliminate all opposition, while his fiscal, judicial and administrative reforms fuelled resistance of large parts of Flemish society, and dragged the country into a military conflict that would last for eighty years.[18]

Although the conflict in the Netherlands started as an uprising, not against the king of Spain, but against his representatives in Brussels, showing all the characteristics of a civil war, it soon developed into a conflict on sovereignty. From 1572 onwards, the Spanish government had lost authority over large parts of the country, and in 1576, the year Bodin published his *Six livres*, it was virtually excluded from further interference in local rule by the agreement, called the Pacification of Ghent, between the Estates of all provinces. Albeit Philip II's sovereignty was not at stake, the agreement did stipulate the right of the

17 On the Dutch Revolt, see: Geoffrey Parker, *The Dutch Revolt* (London, 1977); Alastair Duke, *Reformation and Revolt in the Low Countries* (London, 1990); Graham Darby (ed.), *The Origins and Development of the Dutch Revolt* (London, 2001); Henk van Nierop, *Treason in the Northern Quarter: War, Terror and the Rule of Law in the Dutch Revolt* (Princeton, NJ, 2009); Anton van der Lem, *Revolt in the Netherlands: The Eighty Years War, 1568–1648* (London, 2019). For an overview in English of the history of the early modern Low Countries, see: Paul Arblaster, *A History of the Low Countries* (Basingstoke, 2006), 96–166; Jonathan Israel, *The Dutch Republic: Its Rise, Greatness, and Fall, 1477–1806* (Oxford, 1995); Id., *The Dutch Republic and the Hispanic World, 1606–1661* (Oxford, 1982).

18 On Alba in the Netherlands: Gustaaf Janssens, 'The duke of Alba: governor of the Netherlands in times of war', in Ebben, *Alba*, 91–115, 391–8 (including a historiographical overview); Ferdinand Grapperhaus, *Alva en de Tiende Penning* (Deventer/Zutphen, 1982).

Estates General to assemble without the consent of the king, the restoration of local privileges, the reservation of government to native nobles only, and the departure of the Spanish army. Due to disagreement between the Catholic and Protestant provinces, as well as to the actions of the king's governor general Don Juan of Austria, the pacification did not hold long, and in 1581 the Estates General of the northern provinces finally abjured the king, and thereby marked another step towards the separation of the northern, rebellious from the southern, once again loyal, provinces.

The Republic of United Provinces thus came into being while the concept of sovereignty was in the full throes of development. The contending parties soon made use of it in order to endorse and justify their own actions. In this sense 'sovereignty' was, at least in the Netherlands, not only a burgeoning, but also a bargaining concept. Its significance was negotiated in the midst of unfolding political and military events that framed the debate. On the other hand, the Spanish king was not willing to surrender his sovereignty over the rebellious provinces, and developed strategies to regain it. At the same time, he needed to restore his authority in the southern provinces that had remained loyal to the crown, but where displeasure regarding the Spanish form of government did not fully disappear. As a consequence, the Low Countries provide us with a unique case of contested sovereignty from the perspective of the Northern Netherlands, and of delegated sovereignty from the perspective of the Southern Netherlands, both cases occurring concurrently and in relation to the same sovereign.

This book of collected essays provides case studies examining the development of concepts of sovereignty by Dutch and Flemish scholars during the Revolt of the Netherlands, how they were influenced by political and military events in the field, and how they were implemented in both the Dutch Republic and the Spanish Netherlands. Elaborated by legal historians, historians, and scholars of political theory alike, it combines three different perspectives: the political theoretical perspective, the legal, and the historical. By so doing, they shed light, not only on how the idea of sovereignty was developed theoretically by Netherlandish thinkers, but also on how their ideas operated in the political context of the early modern Netherlands during their uprising against the king of Spain.

The book is divided in three parts. The first part studies the theoretical construction of the concept of sovereignty in the rebellious provinces. The authors clearly show how political circumstances shaped the concept in the Netherlands, instead of treating the concept as foundational to the emerging political structures in the aftermath of the secession of the northern provinces. Sovereignty was manipulated in order to fit in, and justify, the existing political

situation, and not vice versa. Hans W. Blom's analysis of Hugo Grotius's ideas on sovereignty demonstrates the instrumentality with which they were developed. According to the actual purpose of Grotius's texts, in particular *De iure praedae* and *De iure belli ac pacis*, his interpretation of the concept changed significantly, depending on which actual political situation needed to be justified. Gustaaf van Nifterik traces the Iberian influences on Grotius's concept of sovereignty, especially Domingo de Soto and Francisco Vázquez de Menchaca, both members of the so-called School of Salamanca. Lies van Aelst discusses how Bodin's interpretation of sovereignty was deliberately ignored by the Estates General of the northern provinces when offering sovereignty to the duke of Anjou or the queen of England. Studying the formative period of Dutch independent rule, she furthermore analyses the debate that took place between 1578 and 1610 on the best form of government, sovereignty, and, subsequently, the legitimacy of the existing administration. Focussing on the work of Simon Stevin and François Vranck, she shows how both men defined sovereignty in a way it defended the legitimacy of the Estates of Holland's and Zeeland's authority.

The second part of the book focuses on how the concept of sovereignty was used in the process of adaption of both the royal and rebellious provinces to the new reality of a divided country, the outcome being the creation of two separate states and a new border that had never been there. Bram De Ridder stresses the importance of the possession of territory when discussing sovereignty. The rebellious provinces very soon realized that sovereignty – which the Estates of Holland and Zeeland de facto had in (parts of) their province from 1572 onwards – without territory was an empty shell. De Ridder demonstrates that the Estates General of the northern provinces was very much concerned about the defence and the expansion of a territory it could govern. Sovereignty was thus not the main objective in the struggle against the Spanish king, but a powerful argument in order to acquire and secure a territory. Only in the seventeenth century it became the central concept for obtaining territorial independence. Alicia Esteban Estríngana analyses Philip II's experiment to create a semi-independent state in the Southern Netherlands in order to free the Spanish king from the political, financial, and military consequences of the conflict with the Dutch provinces, which were legally speaking still considered to be acting in rebellion. This experiment included what the author refers to as 'separate sovereignty', which was in a way a form of shared sovereignty, something impossible or at least undesirable in Bodin's opinion. Shavana Haythornthwaite addresses the limits of princely sovereignty in the context of the Anglo-Dutch wars, in particular the previously unlimited right of the sovereign

to capture booty during a legal war while ravaging the enemy, thus affecting private property of his non-combatant subjects. Haythornthwaite concludes that during the seventeenth century, private property right thus set a limit to princely sovereignty.

The third part of this book studies how sovereigns, and sovereignty, operated in practice. Gustaaf Janssens describes how the duke of Alba restored royal sovereignty and authority in the Netherlands following the 1566 riots and the 1567 military attack, although his reform of the legal and tax systems would eventually trigger a new uprising that this time would be successful. José Javier Ruiz Ibáñez discusses the case of Cambrai, where in 1595 the inhabitants offered sovereignty to Philip II in the aftermath of a local uprising against a French warlord who had become sovereign prince of the city with the support of the French king Henry IV. He compares the case with similar propositions to the Spanish king occurring in France, Ireland, England, and Greece in the same period. The question was a tricky one, because it involved the right of the people to elect its sovereign and thus transfer sovereignty. Simon Groenveld focuses on the provincial Estates of the United Netherlands in which sovereignty was vested after it was decided, in April 1588, not to offer the government of the country to a foreign prince anymore. He shows how they put sovereignty in practice, that is, how they made their legislative and executive power operational, and how they related to the theoretically not sovereign, but in practice influential and powerful Estates General. Finally, René Vermeir demonstrates how one of the most important elements of sovereignty, the exclusive prerogative to pass laws and impose them on all subjects, functioned in practice. He argues that, although in the seventeenth-century Spanish Netherlands the provincial Estates participated in the legislative process, they did so in a relatively limited way. However, this did not mean that legislation was the result of princely initiative only. On the contrary, by mobilizing their networks at court and in the central government, characterized by strong family ties, local elites participating in the Estates were able to influence princely legislative initiatives long before they were submitted to the provincial assemblies.

The book, and some of the chapters in the book, combine the political theoretical, legal, and historical perspective on sovereignty with regard to the Low Countries during the Revolt of the Netherlands, much as its foremost writers – including Bodin and Grotius – would have done themselves. In this, they break through traditional, but largely artificial distinctions that dominate the study of sovereignty as a historical concept. This book thus hopes to contribute in a novel manner to the study of this burgeoning concept in early modern Europe.

Bibliography

Arblaster, Paul. *A History of the Low Countries*. Basingstoke, 2006.

Armitage, David. *Civil Wars: A History in Ideas*. New Haven/London, 2017.

Artola, Miguel (ed.). *Enciclopedia de Historia de España.* 7 vols. Madrid, 1988. Vol. 2: *Instituciones Políticas. Imperio*.

Aznar, Daniel, Guillaume Hanotin and Niels F. May (eds.). *À la place du roi. Vice-rois, gouverneurs et ambassadeurs dans les monarchies française et espagnole* (*XVIe-XVIIIe siècles*). Madrid, 2014.

Baelde, Michel. *De Collaterale Raden onder Karel V en Filips II* (*1531–1578*). *Bijdrage tot de geschiedenis van de centrale instellingen in de zestiende eeuw*. Brussels, 1965.

Barbiche, Bernard. *Les institutions françaises de la monarchie française à l'époque moderne*. Paris, 1999.

Bartelson, Jens. *A Genealogy of Sovereignty*. Cambridge, 1995.

Beaud, Oliver. *La puissance de l'état.* Paris, 1994.

Benton, Lauren. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. Cambridge, 2010.

Bercé, Yves Marie. *Revolt and Revolution in Early Modern Europe: An Essay on the History of Political Violence*. Manchester, 1987.

Black, Jeremy. *Kings, Nobles and Commoners: States and Societies in Early Modern Europe*. London/New York, 2004.

Crouzet, Denis. *Dieu en ses royaumes. Une histoire des guerres de religion*. Seyssel, 2008.

Darby, Graham (ed.). *The Origins and Development of the Dutch Revolt*. London, 2001.

Denevan, William (ed.). *The Native Population of the Americas in 1492*. 2nd edn. Madison, 1992.

Diefendorf, Barbara. *The Reformation and Wars of Religion in France*. Oxford Bibliographies Online Research Guide. Oxford, 2010.

Duindam, Jeroen. *Dynasties: A Global History of Power*. Cambridge, 2013.

Duke, Alastair. *Reformation and Revolt in the Low Countries*. London, 1990.

Fisher, Lillian Estelle. *Viceregal Administration in the Spanish American Colonies*. Berkeley, 1926.

Flinn, Michael W. *The European Demographic System, 1500–1820*. Baltimore, 1981.

Franklin, Julian. 'Sovereignty and the mixed constitution: Bodin and his critics'. In J.H. Burns (ed.), *The Cambridge History of Political Thought*, Cambridge, 1991, 298–328.

Gladstone, Jack A. *Revolution and Rebellion in the Early Modern World: Population Change and State Breakdown in England, France, Turkey, and China, 1600–1850*. 2nd edn. New York, 2016.

Grapperhaus, Ferdinand. *Alva en de Tiende Penning*. Deventer/Zutphen, 1982.

Grimm Dieter. *Souveränität. Herkunft und Zukumft eines Schlüsselbegriffs.* Berlin, 2009.

Headley, John M. and Hans J. Hillerbrand (eds.). *Confessionalization in Europe, 1555–1700: Essays in Honor and Memory of Bodo Nischan*. Farnham, 2004.

Holt, Mack P. *The French Wars of Religion, 1562–1629*. Cambridge, 2005.

Israel, Jonathan. *The Dutch Republic and the Hispanic World, 1606–1661*. Oxford, 1982.

Israel, Jonathan. *The Dutch Republic: Its Rise, Greatness, and Fall, 1477–1806*. Oxford, 1995.

Janssens, Gustaaf. 'The duke of Alba: governor of the Netherlands in times of war'. In Maurits Ebben et al. (eds.), *Alba: General and Servant to the Crown*, Protagonists of History in International Perspective, 3, Rotterdam, 2013, 91–115, 391–98.

Jouanna, Arlette et al. *Histoire et dictionnaire des Guerres de religion*. Paris, 1998.

Kalom, Hent and Quentin Skinner (eds.). *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept.* Cambridge, 2010.

Kamen, Henry. *The Rise of Toleration*. London, 1967.

Knecht, Robert J. *The French Wars of Religion, 1559–1598*. 2nd edn. New York, 1996.

Knecht, Robert J. *The French Civil Wars: Modern Wars in Perspective*. New York, 2000.

Lloyd, Howell A. *The Reception of Bodin*. Brill's Studies in Intellectual History, 223. Leiden, 2013.

Lloyd, Howell A. *Jean Bodin, 'This Pre-eminent Man of France': An Intellectual Biography*. Oxford, 2017.

Loughlin, Martin. *Foundations of Public Law*. Oxford, 2010.

Müssig, Ulrike (ed.). *Reconsidering Constitutional Formation/National Sovereignty: A Comparative Analysis of Juridification by Constitution*. Cham, 2016.

Oresko, Robert, G.C. Gibbs and H.M. Scott (eds.). *Royal and Republican Sovereignty in Early Modern Europe*. Cambridge, 1997.

Palos, Joan Lluís and Pedro Cardim. *El mundo de los virreyes en las monarquías de España y Portugal*. Frankfurt am Main, 2012.

Parker, Geoffrey. *The Dutch Revolt*. London, 1977.

Philpott, Daniel. *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations.* Princeton, 2001.

Prokhovnik, Raia. *Sovereignty: History and Theory.* Exeter/Charlottesville, VA, 2008.

Quaritsch, Helmut. *Staat und Souveränität. Die Grundlagen*. Frankfurt am Main, 1970.

Rivero Rodríguez, Manuel. *La edad de oro de los virreyes. El virreinato en la Monarquía Hispánica durante los siglos XVI y XVII*. Madrid, 2011.

Rudé, George F.A. *Ideology and Popular Protest*. 2nd edn. Chapel Hill, NC, 1995.

Russell, Josiah C. 'Population in Europe'. In Carlo M. Cipolla (ed.), *The Fontana Economic History of Europe*, 6 vols., Glasgow, 1972, vol. 1, 25–71.

Schmidt, Heinrich Richard. *Konfessionalisierung im 16. Jahrhundert*. Enzyklopädie Deutscher Geschichte, 12. Munich, 1992.

Spruyt, Hendrik. *The Sovereign State and Its Competitors: An Analysis of System Change.* Princeton, 1996.

Tilly, Charles. *European Revolutions, 1492–1992*. Oxford/Cambridge Mass., 1996.

Thomas, Werner. *La represión del protestantismo en España, 1517–1648*. Leuven, 2001.

Thomas, Werner. 'Alba and religion'. In Maurits Ebben et al. (eds.), *Alba: General and Servant to the Crown*, Protagonists of History in International Perspective, 3, Rotterdam, 2013, 121–37.

Troper, Michel. 'Sovereignty'. In Michel Rosenfeld and András Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, 2012, 350–69.

Van der Lem, Anton. *Revolt in the Netherlands: The Eighty Years War, 1568–1648*. London, 2019.

Van Nierop, Henk. *Treason in the Northern Quarter: War, Terror and the Rule of Law in the Dutch Revolt*. Princeton, NJ, 2009.

Van Rompaey, Jan. *De Grote Raad van de Hertogen van Boergondië en het Parlement van Mechelen*. Verhandelingen van de Koninklijke Academie voor Wetenschappen, Letteren en Schone Kunsten van België, Klasse der Letteren, 35. Brussel, 1973.

von Greyerz, Kaspar, Manfred Jakubowski-Tiessen, Thomas Kaufmann and Hartmut Lehmann (eds.). *Interkonfessionalität – Transkonfessionalität – binnenkonfessionelle Pluralität. Neue Forschungen zur Konfessionalisierungsthese.* Schriften des Vereins für Reformationsgeschichte, 201. Gütersloh 2003.

Wellens, Robert. *Les États généraux des Pays-Bas des origines à la fin du règne de Philippe le Beau (1464–1506)*. Heule, 1974.

Willoweit, Dieter. *Rechtsgrundlagen der Territorialgewalt*. Köln, 1975.

Zagorin, Perez. *Rebels and Rulers, 1500–1660*. 2 vols. Cambridge, 1982.

Zagorin, Perez. *How the Idea of Religious Toleration Came to the West*. Princeton, NJ, 2003.

Zeeden, Ernst Walter. *Konfessionsbildung. Studien zur Reformation, Gegenreformation und katholischen Reform*. Stuttgart, 1985.

PART 1

The Construction of Sovereignty

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CHAPTER 1

Sovereignty in Grotius

Hans W. Blom

1 Introduction

This chapter considers Grotius's theory of sovereignty from the perspective of his engagement with Dutch politics. The distinction between sovereignty as a concept and its actual realisation in particular states is explained; the opinion that Hugo Grotius (1583–1645) defended an absolutist interpretation of sovereignty is corrected. From the perspective of natural law, according to Grotius, states are instituted in order to serve purposes inherent to human nature, and sovereignty is a necessary corollary of the institution of a state. The ways in which actual institutions serve this purpose, however, is as varied as mankind. The first perspective provides us with a general theory of politics and describes the progress of society from a general perspective, from the Garden of Eden to the global world order. The second perspective describes actually existing constitutional arrangements, differentiating political functions and functionaries within particular states, driven by the various ways in which personal and civil liberty historically develop. Grotius seems to defend the position that any given institutionalized sovereignty is the actual institution that best serves the existing arrangement of liberty in a society, representing as it were two sides of the same coin, with free republics at one end of the spectrum and 'absolute', patrimonial monarchy at the other. The abstract opposition of principled individual freedom and irresistible political obligation vanishes in the face of actual political institutions, if it does not already do so in theory. As much as later generations of natural law thinkers have drawn conflicting conclusions from Grotius's theory of sovereignty, so much also recent commentators have disagreed. This chapter intends to contribute to the understanding of this contentious yet crucial position of the Dutch theorist.[1]

1 Disagreement on Grotius's concept of sovereignty starts arguably with Pufendorf, with further contributions by Rousseau, and others. The twentieth-century revival of Hobbes-studies provided a different prism to look at Grotian sovereignty. Among the recent commentators Richard Tuck, Annabel Brett and Knud Haakonssen reflect this prism, most recently in Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2015); see also: Annabel S. Brett, *Liberty, Right and Nature* (Cambridge, 1997); Knud Haakonssen,

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Hugo Grotius contributed greatly to the modern theory of sovereignty, although he never wrote a book *De iure maiestatis*, or even *De republica*, as Henning Arnisaeus, or *De la république,* as Jean Bodin did.[2] In his recent book, *The Sleeping Sovereign*, Richard Tuck discusses Bodin, Grotius, Hobbes and Pufendorf, and names Grotius 'the most influential theorist of the early seventeenth century'.[3] Yet we are a long way from understanding his influence, mainly because of the uneasy fit of Grotius's concept of sovereignty with the received tradition of historiography – reappreciation of Grotius since Richard Tuck's 1979 *Natural Law Theories* notwithstanding. Against the grain of contemporary foundationalist contractual theories of sovereignty, this chapter argues that we find a concept of sovereignty in Grotius that transforms the source of sovereignty into its living justification.

First of all, sovereignty for Grotius has a certain instrumentality, its introduction serves other purposes. In *De iure praedae* it serves to justify taking booty from Portuguese merchants; in *De iure belli ac pacis*, it serves to justify putting limits to certain rightful actions in warfare.[4] Secondly, the relationship to forms of government has remained underdeveloped, in the writings of Grotius himself as well as in the secondary literature, and is consequently a topic for neglect or speculation. Grotius has variously been described as a classical republican, an absolutist, someone who is ambiguously lost between the two forms of government, but also as someone who uses his concept of sovereignty to allow for a classification of forms of government with varying degrees of governmental power invested in the incumbent(s) of sovereignty. Thirdly, we must reckon with the possibility that Grotius changed his concept of sovereignty according to the instrumental purpose at hand, and that therefore the interdependence of concept and its performative meaning has to be acknowledged. This is made easier by the fact that indeed sovereignty appears in different argumentative moments in his writings, from the history of the conflict around the earl of Leicester as plenipotentiary of Queen Elisabeth in Dutch politics in his *Annales et historiae,* over the individual right to punish

'Grotius and the history of political thought', *Political Theory,* 13 (1985) 239–65; Annabel S. Brett, 'Natural right and civil community: the civil philosophy of Hugo Grotius', *The Historical Journal,* 45 (2002) 31–51.

2 A full list of Grotius's publications can be found in Henk Nellen, *Hugo Grotius: A Life-long Struggle for Peace in Church and State, 1583–1645* (Leiden, 2015). On the apparent exception to my above claim – the manuscript *De republica emendanda*, generally but not univocally ascribed to Grotius – see below.

3 Tuck, *The Sleeping Sovereign,* 68.

4 See Brad Hinshelwood, 'Punishment and sovereignty in *De Indis* and *De iure belli ac pacis*', *Grotiana*, 38 (2017) 71–105.

in *De iure praedae* to the necessity to discuss the issue of private war against the state with the related issue of political agency or the permissibility of humanitarian intervention in the setting of *De iure belli ac pacis*. Finally, Grotius distinguishes between a generic meaning of sovereignty – *potestas civilis*, or *ius summae potestatis* – and the incumbents of sovereignty – the *magistratus*, or the *summae potestates* – as well as between the *ius summae potestatis* and particular sovereign rights in execution – *actus summae potestatis.* The latter distinction facilitates the possibility of divided sovereignty and seems to be connected to a distinction between holding sovereign power and executing it in particular instances. The holder and the executor are not necessarily the same person under Grotius's notions of delegation and division.

Taking these caveats seriously, we will also reconstruct Grotius's ideas about the origin of government, and about the relationship between natural law, the law of nations and civil law, albeit in a shorthand manner.[5]

Especially since with later writers such as Hobbes, Locke and Pufendorf, the theory of sovereignty and the contractual origins of the state have been promoted to the first plan of constitutional debates, it might seem that Grotius did not really and satisfactorily deal with sovereignty. One of the underlying aims of my argument therefore is to bring to light the peculiar argumentative structure of Grotius on sovereignty, in its historical, polemical and contextual settings.

Hereto, I will basically limit myself in first instance to giving a 'just so story', a coherent and plausible description of the background to and the development of Grotius's argument on sovereignty. In the process, I will point out the presence of arguments from necessity in the Grotian justification of sovereign power and discuss their status within early modern natural law. We will see that although the natural law behind sovereignty explains its existence, it explains its practical effects and limitations only to a meagre extent. Ultimately, the legitimation of sovereign power is a procedural one.

2 First Determinations

Sovereignty in Grotius indicates the rightful possession of supreme power, which is first of all an attribute of an independent state, and which is held by

5 See more fully, e.g., Benjamin Straumann, *Roman Law in the State of Nature: The Classical Foundations of Hugo Grotius' Natural Law* (Cambridge, 2015), as well as Straumann's 'Reply to his Critics' in his 'Adam Smith's Unfinished Grotius Business: Grotius's Novel Turn to Ancient Law, and the Genealogical Fallacy', *Grotiana,* 38 (2017) 211–28.

some magistrate(s) on behalf of that state, in accordance with its constitution. It is executed by these magistrates, or by others appointed to do so within the spirit of the constitution. Constitution – *spiritus unus*[6] – captures the unity of a state, and is explained in *De iure praedae*[7] as resulting from the decisions of magistrates appointed by the people for the purpose of taking care of the public interest, and in *De iure belli ac pacis* as the outcome of the historical process of state formation, a process that is necessarily open towards the future.[8] Grotius certainly embraces the notion that sovereignty is a condition sine qua non for any state, but sees its actual *modus operandi* in any actual state as the outcome of its particular history,[9] and the approved legal formulation as a resource of the past: the stories we tell each other now about the state's foundation and stylized development make up the spirit and self-consciousness that pervades the state. 'Probatur autem hoc ius gentium pari modo quo ius non scriptum civile, usu continuo et testimonio peritorum'.[10] Of course these stories are truncated, their abstract schemata turned realistic by endless reapplication. Unless we successfully explain, reinterpret and defend this *spiritus* in public debates, it will be short-lived, as Grotius himself experienced when

6 In the phrase of Paulus, L. 23 § 5 D. VI, 1.

7 I will be referring to the writings of Grotius as follows: IBP: *De iure belli ac pacis* (1625); IPC: *De iure praedae commentarius* (written 1604–1605; published 1868); Imp: *De imperio summarum potestatum circa sacra* (written 1614–1615; published 1647); *Apologeticus* (1622); *Parallelon rerumpublicarum* (written 1602; published 1801-1803).

8 IPC II.9.3.1: 'that states are immortal; that is, they can continue to exist because a people belongs to the class of bodies that are made up of separate members, but are comprehended under a single name, for the reason that they have 'a single essential character', as Plutarch says, or a single spirit, as Paul the jurist says. Now that spirit or essential character in a people is the full and perfect union of civic life, the first product of which is sovereign power; that is the bond which binds the state together, that is the breath of life which so many thousands breathe, as Seneca says' ('civitates esse immortales, id est esse posse, quia scilicet populus est ex eo corporum genere quod ex distantibus constat, unique nomini subiectum est, quod habet ἕξιν μίἀν, ut Plutarchus; spiritum unum, ut Paulus Iurisconsultus loquitur. Is autem spiritus sive ἕξις in populo est vitae civilis consociatio plena atque perfecta, cuius prima productio est summum imperium, vinculum per quod respublica cohaeret, spiritus vitalis quem tot millia trahunt, ut Seneca loquitur').

9 The identification of *spiritus* with *hexis* underlines the continuity between nature and history, in the Aristotelian understanding of *hexis-habitus* as second nature. See also Brett, 'Natural right', 34. In the background is Grotius's discussion of Concordia – and its contrary civil war – in the early *Parallelon* (1602), and its emphasis on the complexity of shared goals in a society, based on *fides*, trustworthiness and trust. See my 'Hugo Grotius on trust, its causes and effects', in Laszlo Kontler and Mark Somos (eds.), *Trust and Happiness in the History of European Political Thought* (Studies in the History of Political Thought, 11; Leiden, 2018), 76–98.

10 IPC I.1.14.2.

his appeal to the principle of provincial juridical autonomy as formulated in the Union of Utrecht during his trial in 1618–1619 so tragically failed.

Grotius defends a form of state sovereignty: the right of supreme power is an attribute of the state, not of a ruler or group of rulers. It serves the state, and is kept alive by the state, and can go lost for or with the state. Only in very special situations can rulers terminate a state, or rule against the popular opinion. It is therefore naive or wishful thinking to say that the sovereign ruler is *legibus solutus*. Although a state is autonomous and 'makes its own laws', it does so according to its own rules. Only the patrimonial monarch, who holds the right to rule – *ius imperantis* – as a full property right can do whatever (s)he pleases; on the other extremity, a pure democracy would be like anarchy. Sovereignty is thus a politico-juridical concept, that on the one hand expresses the state as a self-sufficient organism – *civitas*, or in the (Aristotelian) terms of *De iure praedae: res publica perfecta* –, and on the other defines the relationships between rulers and subjects, governing bodies and citizens, the 'people' and their government.[11]

The discovery of the Americas had brought about the legalist turn, raising the question of the criteria for sovereign statehood. Grotius, who started his career writing in defence of the Dutch Revolt during the negotiations with the archdukes Albert and Isabel, years after the abjuration of Philip II in 1581 as formulated in the *Plakkaat van verlatinghe* (1581). This document, produced after almost twenty years of turmoil and warfare, factually amounted to a Dutch declaration of independence, which, however, the Spanish king failed to recognize. In writing his defence, Grotius mobilized the main ideologue of the Indian rights, Francisco de Vitoria, as his crown witness in articulating the characteristics of a sovereign state in *De iure praedae*. Thereby he set the basis for his later reformulations of the concept, in *De imperio* and *De iure belli ac pacis*. Of course this latter work would have the greatest impact.

3 History, Natural Law, Religion: a Humanist in Politics

The first political involvement of Grotius was his participation in the diplomatic mission of the Estates General to the French king Henry IV in 1598, who was at that time moving towards a peace treaty with Spain, much to the distress of the Dutch regents. Being still 'rebels' from the Spanish perspective, without

11 To reduce the issue of sovereignty to a relationship between citizens and rulers overlooks the formative power of the (identity of the) *civitas* in pre-structuring this relationship. This is a point that Grotius has in common with Francisco Suárez: see his *De legibus*, III.2.

the tutelage of a royal head of state, the United Provinces were fending for their status within the European state system.[12] Church politics had been one reason for tensions between Holland and Leicester; the government style of the English statesman, insensitive to the political and commercial demands of the Holland cities as he proved to be, another. During the French trip, Grotius had first-hand experience of the limited recognition Dutch diplomats enjoyed. It strengthened his adherence to the axioms of the Batavian myth that proudly heralded an original Batavian freedom reinforced by the acceptance of the Batavian nation as an ally of the Roman republic and later empire on an equal footing. Defendants of this view of Dutch history understood its ideological significance on a European level; they consequently argued that the Batavian nation never lost its original freedom, even if later on the several provinces appointed counts as their leaders. But had not the Germanic nations – according to Tacitus – also appointed kings to be their leaders, without thereby surrendering their freedom?[13]

The *Joyous Entry* of the Brabant dukes testifies to this right to contract with the ruler, by a ceremony of reassertion of the conditions of rule on the accession of each new ruler. What had been counts and dukes of the different provinces of the Low Countries eventually became the king of Spain, until he was found breaking the terms of the contract, and the rule of these Low Countries devolved to their original incumbents, the Estates of the provinces. In *Liber de antiquitate reipublicae Batavicae* (Leiden, 1610), written in the early years of the seventeenth century when Grotius was historiographer to the Estates of Holland, he would present the so-called Great Privilege (*Groot Privilegie*) of 1477 of Mary of Burgundy as a further confirmation of this original freedom. The question how to define the sovereignty of the Seven Provinces in the light of this historical development is a valid one.

In *Parallelon rerumpublicarum liber tertius: De moribus ingenioque populorum Atheniensium, Romanorum, Batavorum*, a manuscript written before 1602 and first published in 1801–1803, Grotius argued that the Hollanders are a

12 After 1583 the Dutch had with no result attempted to make the prince of Anjou accept the rule of seven provinces united under the Union of Utrecht (1579). Then Queen Elisabeth accepted to take the United Provinces under her wing and sent Robert Dudley, first earl of Leicester as her stadtholder (1585–1587), a mission that ended in a clamorous exchange of pamphlets about sovereignty in the Low Countries. Grotius described these events in his *Annales et historiae*, VI.

13 The issue of diplomatic precedence would continue to hound Grotius, when he got into conflict with the British ambassador to France, when as a Swedish ambassador he claimed to represent a much more ancient kingdom, as he defended in his *Historia Gotthorum* (1655).

nation that has always formed a *civitas*, a self-contained and autarchic political body, a *respublica perfecta*. Moreover, the Hollanders exemplified dignified *mores* and spirit, worthy of an independent and free nation, emulating even the great classical republics.[14]

But freedom does not automatically equate sovereignty. A group of people can be free and self-sufficient, and yet – through the mediation of their ruler – belong to some other, larger political unit, as the Low Countries did under the rule of the kings of Spain. And did not Bodin say that only that political unit is autonomous which is ruled by a sovereign, more precisely a ruler *legibus solutus*? So, one of the core issues in the Batavian myth-conception of sovereignty was to define in more detail what the ruler of a state was. Such a move seems to fall back on the possibility of locating sovereignty with the people, as in the theory of popular sovereignty, and on a connected reading of the theory of *legibus solutus*: any law accepted by the people-ruler is per se a valid law, and any law, it seems can be abrogated by a decision of the people-ruler. Yet, that is so in appearance only, since it is evident from the republican literature, as from Machiavelli's *Discorsi*, that popular rule presupposes intricate institutional safeguards without which popular rule would quickly be lost. Thus, not even popular rule can be *legibus solutus*. Interestingly, as Grotius argued in 1625 in *De iure belli ac pacis*, only when an absolute monarch has been instituted – after a conquest of a previously independent nation, or after such a nation unconditionally gave up its freedom – would there be a ruler *legibus solutus*.[15] Thus, internal order (*spiritus unus,* ἕξις μια, *id est forma*)[16] indicates the ways in which sovereignty is executed by political dignitaries – magistrates – by performing *actus imperii*.[17] Sovereignty is an attribute of a true *civitas*, and is executed by the magistrates of the *civitas*.

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14 *Hugonis Grotii Batavi, Parallelon rerumpublicarum liber tertius: De moribus ingenioque populorum Atheniensium, Romanorum, Batavorum* (ed. Johan Meerman; Haarlem, 1801–1803).

15 In the formulation of both *De imperio* and *De iure belli ac pacis*: 'imperatorem non esse subiectum legibus suis' (Imp VI.14; IBP II.20.24).

16 IBP II.9.3.1; index, 914. This passage, and the reference in the index bring together three different traditions to identify what the eighteenth-century English translator called the 'constitution', and the modern (Carnegie) translation more adequately described in the following terms: 'comprehended under a single name, for the reason that they have "a single essential character", as Plutarch says, or a single spirit, as Paul the jurist says. Now that spirit or "essential character" in a people is the full and perfect union of civic life, the first product of which is sovereign power; that is the bond which binds the state together, that is the breath of life which so many thousands breathe, as Seneca says'.

17 IBP I.4.15.1.

This Batavian myth-conception of sovereignty was going to be put to test – and to use – in the first legal opinion written by Grotius. It had important implications for later political thought: the defence of the capture by Dutch merchants of the Portuguese carrack Santa Catarina in 1603. The case offered a good opportunity for Grotius to show his qualities as a forensic rhetorician. How should he define the capture of the carrack? As a lawful prize, based on a privateering commission, a letter of marque? However, there was no such commission.[18] As a restitution for previously inflicted damage? But although Portuguese marines had previously harassed and killed Dutch merchant-sailors, this particular carrack and its crew had not been among the perpetrators. So how to develop the argument? Grotius decided to classify the capture as an act of retrieval and recompense for damages suffered by Dutch citizens from Portuguese warfare against the Dutch nation. Here there were two difficulties, however. First of all, how to justify an attack on a merchant ship? Secondly, how to justify an attack by a merchant ship? In most analyses of the text that Grotius wrote on this case – *De iure praedae*, sometimes referred to as *De Indis*[19] – the emphasis is on the second question, from an urgent desire to show how Grotius introduced his individualism in natural law. Of course, introducing an individual's right to wage war was the important innovation in *De iure praedae* in the field of just war theory. The first question holds, however, also relevance, and here in particular, since its answer depends crucially on Grotius's theory of sovereignty. It was there that his previously developed ideas about the people as the principal kind of ruler – truly absolute monarchs are only to be found in non-European states like the Ottoman empire – came in handy.[20] Indeed, if the execution of sovereignty is similar to actions of an agent for a principal, the principal is ultimately responsible for the actions of the agent. Of course, the theory of popular sovereignty had a long-standing respectability, as the medieval constitutional theory of the state,[21] and as such it was reflected in Vitoria and other writers who had wanted to qualify heathen states as political, in order to correct the ferocious colonial politics of the Spanish empire. Grotius without any hesitation appealed to Vitoria and other Spanish writers

18 Cf. Michael Kempe, 'Beyond the law: the image of piracy in the legal writings of Hugo Grotius', in Hans W. Blom (ed.), *Property, Piracy and Punishment: Hugo Grotius on War and Booty in* De iure praedae. *Concepts and Contexts* (*Leiden, 2009*), *379–95*.

19 Cf. Richard Tuck, *Philosophy and Government, 1572–1651* (Cambridge, 1993), 170.

20 An agent who acts within the scope of authority conferred by his or her principal binds the principal in the obligations he or she creates against third parties. Cf. Law of Agency in commercial law.

21 Cf. Howell A. Lloyd, 'Constitutionalism', in James H. Burns (ed.), *The Cambridge History of Political Thought 1450–1700* (Cambridge, 1992), 254–97.

for the defence of his principal-agent interpretation, which in reality he had taken from the Batavian myth-defence of the Dutch Revolt. Are not the best arguments always those found in the pronouncements of your adversary?

We have declared that the primary and supreme power to make war resides within the state, and that any perfect community is (so to speak) a true state.[22] Thus the Portuguese, as part of the Spanish empire, are (co-)responsible as a people for the warlike actions performed by the Spanish empire as a state, and since any member of that nation is equally part of the principal, each of them, let alone a merchant acting under the nation's flag is liable for harm done. To redress harm done by force, is a legitimate act of war. Thus the action of admiral Jacob van Heemskerck should be constructed as an act of war. That implies that Grotius had to make his legal opinion part of a legal discourse that is 'de iure belli ac pacis'. To this conclusion the second chapter of *De iure praedae*, which he called the theoretical chapter (Prolegomena), was leading: 'In the present work, the terms "seizure of prize", "seizure of booty", are used to refer to the acquisition of enemy property through war'.[23]

There was, however, one minor but essential problem with this *divisio*: the standard theory of just war, epitomized in Aquinas, understood war as an act of a sovereign, dutifully declared and authoritatively executed. Moreover, war among Christian states was greatly advised against. Could Grotius have expected to be able to redefine the insurrection of the Dutch against their rightful ruler – as the Spanish side defined it – as a standard just war? He did not even start trying this. Instead, he chose to redefine war as 'armed execution against an armed adversary'. By analogy to peaceful conflict resolution in legal procedure, 'just war' then becomes the pursuit of justified claims by violent means where peaceful means are not available. Since justified claims can exist between Christians as much as with pagans, violent interaction among Christians is not immoral. Of course, Grotius is aware that the just war tradition of Aquinas up to Vitoria and Gentili stipulated that war be formally declared, by lawful sovereigns. Thus, Grotius explained that war between sovereigns acquired a further characteristic by its formal declaration: it became just from both sides. One might say that whereas warfare in the absence of peaceful means is undertaken out of a *ius necessitatis*,[24] the formal war of sovereigns is justified on the ground that it follows from an explicated and well-articulated decision of a state and *thus* involves the nation as a whole. The nation as the

22 IPC XIII (268/283): 'Primam supremamque belli movendi potestatem penes rempublicam esse diximus. Esse autem justam rempublicam, perfectam quamdam communitatem'.

23 IPC II (30).

24 IBP I.4.7.2; II.2.6.2.

principal of the sovereign has taken responsibility for the declaration of war, actively or passively, and is thus liable for the consequences. More well-known is Grotius's application of this right of necessity to property, allowing needy persons to take from the rich when their survival is at risk. In warfare we have a different concept of *ius necessitatis*, since the unavoidability of interstate war follows not from the care for self-preservation, but from the fact that states have originated upon the face of the earth because mankind in its more advanced development required institutions and means for their defence.[25]

The full argument of *De iure praedae* has been relayed more often,[26] yet the important role of Grotius's reformulation and re-foundation of the medieval constitutional understanding of sovereignty has generally been overlooked, maybe because most would consider constitutionalism and individualist foundation of sovereignty incompatible. In the present analysis, such is not the case.[27] The individualist element in the theory of just war is Grotius's justification for private just war, via the right of self-defence. The constitutionalist element is there to allocate responsibility and liability with the nation instead of with the person of the sovereign. Grotius speaks here about the *potestas civilis*, or the *summa potestas civilis*, and considers this to be an attribute of the *respublica*, in particular of a *respublica perfecta*, that is, 'una sibi sufficiens'.

Now a state must be conceived of as something *autarkies*, 'self-sufficient', which in itself constitutes a whole entity: something αὐτόνομος, αὐτοδικος, αὐτοτελής, as Thucydides would express it, that is to say, possessed of its own laws, courts, revenue, and magistrates, something endowed with its own council and its own authority, as is explained by Cajetan, and also by Victoria in the passage where the latter lays down the doctrine that there is nothing to prevent several sovereign and perfect states from being subject to one prince, or otherwise very closely bound together, by treaty. But if a given state lacked power to wage war, it would not be self-sufficient for purposes of defence.[28]

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25 Cf. Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford, 1999); IBP II.2.6.2.

26 Cf. Blom, *Property, Piracy and Punishment*.

27 But see now Hinshelwood, 'Punishment and sovereignty', 71 ff.

28 IPC VI (63): 'Respubliea autem intelligi debet, quae est *autarkes, sufficiens sibi et totum aliquod per se:* quae est *autonomos, autodikos, autotelos,* ut Thucydides diceret, hoc est, *quae suas leges, sua judicia, sua tributa suosque magistratus habet:* cui proprium consilium propriaque est auctoritas, ut explicuit Cajetanus et Victoria, ubi docet nihil obstare quominus plures principales perfectaeque respublicae sub uno sint Principe, aut alioquin arctissimo inter se foedere colligatae. Nisi autem unaquaeque respublica belli gerendi haberet potestatem, non esset ad sui defensionem sufficiens'.

Thus Grotius develops a notion of state sovereignty. Any self-sufficient republic *ipso facto* is able to defend itself, to wage (just) war, and otherwise *ex hypothesi* is able to provide for its needs. In order to effectively execute its will, a republic can appoint magistrates who are charged with the duties that the state wants them to execute, a function that they forfeit the moment they transgress their mandate. When that happens, the state resumes its self-management as it had before, and might consider appointing other magistrates.

> Now, both by natural and by divine law (according to the thoroughly sound conclusion which we borrow from the afore-mentioned Victoria), all civil power resides in the state [*respublica*], which is by its very nature competent to govern itself, administer its own affairs and order all faculties for the common good. Princes, on the other hand, are invested with no just power that has not been derived from the power of the state through election either of individual rulers or dynasties, so that the right to undertake a war pertains to the prince only in the sense that he is acting for the state and has received a mandate from it.[29]

Actually, these are the principles of what the United Provinces, and more importantly as *pars pro toto* the province of Holland, had been doing when in 1581 they abjured their prince, the king of Spain. Actually, when the highest magistrate fails in his duty, then lower magistrates should step in and act.

> Therefore, the greater and prior power to declare war lies within the state itself, which is regarded as having set up the prince as its substitute for those purposes which the state could not conveniently realize by its own direct action. Thus the power of the state remains intact even after the establishment of a principate; so truly intact, indeed, that the Spanish theologian above cited proves that the state may change one prince for another or transfer the principate from one dynasty to another. In this connexion, Victoria mentions as an example [the disposition of Childeric by] the Franks. In the light of these arguments, it is clear that the state of Holland, even if it was subject to a prince, did not lack authority to

29 IPC XIII (268/283): 'Jure autem naturali et divino, ut ipsius Victoriae verissimam exprimamus sententiam, potestas tota civilis in republica residet, cui de se competit gubernare se ipsam et administrare et omnes potestates suas in commune bonum dirigere. Principum vero potestas nulla justa est, nisi quatenus a reipublicae potestate derivata est per electionem sive in personam, sive in familiam: unde et jus belli suscipiendi ad Principem pertinet, duntaxat qua vices reipublicae gerit et ab ea mandatum accepit'.

> undertake a public war independently from that ruler; for otherwise the said state would not have been self-sufficient.[30]

Thus, the rebellion against the Spanish crown to Grotius was a just war declared by the state against its prince. In underlining the agency of the state/*respublica* itself, Grotius diverted from the theory that only one magistrate, the prince, has agency for the state. In the Monarchomach tradition, the state's agency over and against the tyrannical prince is executed by the lesser magistrates, but not for Grotius. He recognizes these magistrates but does not give them a special role in this type of conflict.

Yet the more important aspect of this notion of the *potestas civilis* is the ways in which it operates in the arguments to justify the taking by Dutch merchant ships of a Portuguese carrack in the Strait of Malacca: Portuguese citizens can be made liable for Dutch losses in the latter's rightful war.

4 Problems in Holland

One of the collective concerns in any state is the prosecution and condemnation of criminals. Grotius was considered guilty of lèse majesté, crimen laesae majestatis, and subsequently put on trial and condemned by a special tribunal instituted by the Estates General upon the instigation of Prince Maurice. Together with Grotius, several other politicians were put to trial, most importantly the architect of decades of Holland's commercial warfare Johan van Oldenbarnevelt. In the *Apology* (1621), Grotius singled out one important shortcoming in this (political) trial, and that was the lack of legality of the special court.[31] As politicians and burghers of Holland, Grotius claimed, they could not be judged by a court of the Estates General, because under the Union of Utrecht (1579) the seven provinces had reserved jurisdiction to themselves, and

30 *Ibid.*: 'Prior igitur majorque potestas belli indicendi penes ipsam rempublicam est, quae Principem censetur in his sibi substituisse, quae ipsa per se commode efficere non possit. Manet ergo etiam constituto Principatu integra potestas reipublicae adeo quidem ut idem ille theologus Hispanus posse a Republica mutari Principes et Principatum de genere in genus transferri Gallorum exemplo probet. Hinc constat Hollandorum rempublicam etiam cum Principem haberet jure tamen belli suscipiendi non caruisse. Nam alioqui non fuisset sibi sufficiens'. See on the right of resistance also Chapter 2 by Guus van Nifterik in this volume.

31 *Verantwoordingh van de wettelijcke regieringh van Hollandt ende West-Vrieslandt* [...] (Hoorn, 1622), translated by the author himself as: *Apologeticus eorum qui Hollandiae VVestfrisiaeque et vicinis quibusdam nationibus ex legibus praefuerunt* [...] (Paris, 1622).

allowed the Union only for co-ordination of military organisation and taxation. The nature of the Union's constitution was one of governmental co-operation, rather than supranational unity. Seeking help from the formulations in the Great Privilege (1477), Grotius thus appealed to one level of sovereign rights to denounce claims from a pretended higher level, still within the perspective of the autonomy of the civitas.

The approach to power changed dramatically in *De imperio summarum potestatum circa sacra* (written in 1614–1616, posthumously published 1647), a precise and important political theory of church government. Grotius wrote this book because of the negative reception of his *Ordinum Hollandiae ac Westfrisiae pietas* (1613), which was considered to be impaired by its ad hominum attacks on Sybrandus Lubbertus. *De imperio* is considered by its modern editor Harm-Jan van Dam to be a theoretically consistent elaboration of *Ordinum pietas*. The context was the attempt of the Oldenbarnevelt administration to placate the unrest around predestination and the conflict between orthodox Calvinists and latitudinarian Remonstrants. The innovative starting point of *De imperio* is clear to those who have read Grotius's earlier publications:

> I understand the 'supreme power' to mean a person or a body having authority over the people, and subject only to the authority of God Himself. This means that in using the expression 'supreme power', we do not refer to the exercise of authority, as it is sometimes used, but to the person exercising authority, which is the usual meaning in Latin and Greek. This is the sense in which the apostle Paul used the term *the governing authorities,* whom further on he calls *rulers* and *servants of God,* so that it is evident that persons, not an office, are being referred to. Peter attributes this same word *governing* to the king, in order to distinguish him clearly from minor authorities. The common man calls this person of whom we are speaking 'supreme magistrate', against normal Latin usage. For 'magistrate' is a word which the Romans use only for inferior authorities.[32]

32 Imp 1.1: 'Summam potestatem intellego personam aut coetum cui imperium sit in populo solius Dei imperio subditum, Vocem ergo "summae potestatis" non pro iure sumimus, ut sumi interdum solet, sed pro ius habente, quomodo et Latinis mos est loqui et Graecis, Neque alio sensu apostolus Paulus dixit *hyperechousas exousias*, quos *archontas* infra vocat et *Dei ministros,* ut manifestissimum sit personas, non officium designari. Illud ipsum hyperegein regi Petrus attribuit at notandum discrimen ab inferioribus potestatibus. Vulgus "summum magistratum" vocat hunc de quo agimus, contra Latinae vocis usum. Nam Romanis 'magistratus' minorum potestatum nomen est'.

First of all, Grotius rescinds his position from *De iure praedae* where he spoke of sovereignty as an attribute of the state, executed by magistrates appointed for the purpose.[33] Secondly, he defends this position with reference to Paul's Letter to the Romans that all authority is from God. Of course, this does not preclude that sovereignty may be shared as in the case when a group of people hold sovereignty, provided this group forms a single institution (*unum instituto*):

> I said 'a person or a body' in order to make clear that not only those properly called kings – whom most authors call 'absolute kings' – are understood by this designation, but also, in an oligarchy, the aristocrats or the senators or the states, or whatever they are called. For though the body that wields the supreme power must be one, it does not have to be one person; it is sufficient for it to be one institution.[34]

Thus Grotius changes perspective from *De iure praedae*, in several ways: 1. from principal-agent to governing authority under God; 2. from sovereignty as relationship vis-à-vis other states to sovereignty as the relation between ruler and ruled; 3. from self-sufficiency as basis for sovereignty to sovereignty as basis for self-sufficiency. In one phrase, maybe, the change is from sovereignty as a concept in international affairs to sovereignty as a concept of rule.

No longer does the perspective of God as the creator of human nature and thereby of human agency from *De iure praedae* dominate his reasoning; now the perspective becomes that of God as the superior being to whom the rulers of human societies are subjected. Or put differently, from a bottom-up perspective we move to a top-down approach. This God as the *gubernator mundi*

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33 It might appear that Grotius profits from the duality in the Roman concept of imperium, as described in William Smith, William Wayte and G.E. Marindin (eds.), *A Dictionary of Greek and Roman Antiquities* (London, 1890), s.v. Imperator: 'Imperium is the name of the power attaching to the higher magistrate of the Roman People, as soon as he has been fully installed in office by the passing of a Lex Curiata. It is qualified by the nature of the office to which it appertains (Mommsen, *Staatsr.* ii.3 p. 845): we have a kingly imperium, a consular imperium, a praetorian imperium, and a dictatorial imperium. In all cases it includes the capacity for both civil and military command. The praetor, for instance, is equally qualified to take command of an army and to administer justice between the citizens; he does both by virtue of the imperium of his office'.

34 *Ibid.*: 'Personam' dixi "aut coetum", ut ostenderem non reges tantum proprie dictos, quos "absolutos" plerique appellant, hoc nomine venire, sed et in aristocratica republica optimates, sive illi senatus sive ordines seu quocumque alio vocabulo nominantur. Debet quidem id quod summo imperio imperet esse unum, sed non necessario unum natura: sufficit enim si unum sit instituto'.

regains important in *De satisfactione Christi*, published in 1617. Here Grotius adheres to the Calvinist argument for Erastianism, combining Christ's 'my kingdom is not of this world', with Paulus's 'all government is from God', echoing Calvin's saying that rulers are like representatives of God.

> Authority we take in its broader significance, not as opposed to jurisdiction, but including it, encompassing the right to command, to permit and to forbid. We have said that this authority is subject only to that of God, because the reason why it is called 'supreme power', is that, among men, it has none above it.[35]

With this Leviathan *avant la lettre*, consequently, in *De imperio* there is little space for the *respublica* as counterbalance. In a spirited discussion of the relative duties of the sovereign in matters of (Christian) religion, Grotius aims to show that all aspects of religion that are to be regulated by the civil authorities can be competently regulated by the sovereign itself and its decisions have to be accepted and obeyed; and if they are not obeyed when running against divine or natural law, at least they must be endured.

As indicated, the manuscript which was only printed in 1647, circulated i.a. in England, and ending on a Hobbesian note, was very much appreciated among English latitudinarians. Obviously, the purpose of the book was to provide a justification for the states's interference with religious discord in the Reformed churches, attempting to enforce a practice of mutual toleration between Calvinists and Arminians. Trying to make the most of the Pauline notion of the godly origin of authority in Romans 13, the upshot of the argument was to defend Erastianism and reject the idea of any collaterality of church and state.[36]

Interestingly, the language of necessity appears in this text in a different way from *De iure praedae* where necessity is mainly, though not exclusively, connected to self-defence.[37] In *De imperio* we find reference to the necessity of

35 *Ibid.*: '"Imperium" latiore significatu sumimus, non qua iurisdictioni opponitur, sed qua eam includit, quo ambitu comprehenditur iubendi, permittendi prohibendique ius. Solius Dei imperio subdi hoc imperium diximus: ideo enim "summa potestas" dicitur quia superiorem inter homines non habet'.

36 See for the English background to *De imperio* as well as its influence across the Channel, Marco Barducci, *Hugo Grotius and the Century of Revolution 1613–1718: Transnational Reception in English Political Thought* (Oxford, 2017), esp. 89 ff.

37 Standard case: IPC IV (95) 'ex necessitate and to protect rights much is permitted that otherwise is not' (128/130); 'privata necessitate'. Other uses: IPC II (16): the necessity of inflicting evil in punishment; *ibid.* (24) state necessarily judge in its own case. Necessary for Grotius is what follows from human nature, the laws of nature, or the logic of the

passivity;[38] while there is another kind of necessity involved in belief (internal matters cannot be forced or commanded), but as soon as they are combined with external matters these matters are under the authority of the supreme powers.

> Yet we must make a careful distinction between an act of authority, which induces a subject to do something, and force which is used as a threat against someone to this effect, which imposes on the subject the necessity of passivity [*patiendi aliquid necessitatem*]. For even if an act of authority is without its effect, without obligation that is, the compelling force which is used has a certain effect, physical as well as moral, not on the active party but on the passive one, namely that it is not lawful to repel that force by force. For forcefully defending oneself against an equal is lawful, but doing so against a superior is not.[39]

This does, of course, not imply that the sovereign is free to do whatever he likes. God's commands prevail: 'through nature God forbids the killing of the innocent'. Nonetheless, God's laws should not be imposed upon the sovereign by the church authorities.

> And here I wish to admonish against the fallacy of people who put presbyteries and synods in the place of Christ *the King of kings and Lord of lords,* and who transfer what belongs to Christ alone, *to rule over kings,* to those councils which the necessity of order and the authority of divine right have subordinated to rulers.[40]

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situation. In its most pregnant form it appears in the formula: 'non nisi necessitate ultima', IPC XIII (289/306).

38 Imp III.6: 'Subdito patiendi aliquid necessitatem imponit'.

39 Imp III.6: 'Distinguendum tamen diligenter inter imperii actum qui subditum ad agendum movet et inter vim quae eo nomine alicui intentatur quaeque subdito patiendi aliquid necessitatem imponit. Nam etiam cum imperii actus effectu suo, hoc est obligatione, caret, vis tamen eo nomine illata effectum quendam habet, non tantum physicum sed et moralem, non ex parte agentis sed ex parte patientis, hunc scilicet ut eam vim vi repellere non liceat. Defensio enim violenta cum adversus parem sit licita, adversus superiorem illicita est'.

40 Imp IV.5: 'Hic autem monendi sunt *paralogistai* ne pro Christo *rege regum et domino dominantium* presbyteria nobis et synodos supponant et quod Christi unius est proprium, *archein toon basileoon* id ad eos transferant coetus quos et ordinis necessitas et divini iuris auctoritas regibus subicit'.

Moreover, *temporum necessitate* people were forced to invoke the judgement of authorities that did not have the true faith.[41] Hence the opposite is true: 'So it is not absolutely necessary to call a synod in order to acquire sufficient counsel'.[42] 'Thus we know that the choice of religion has been granted to certain subjects, whether rulers or communities, when circumstances necessitated this [*exigente temporum necessitate*]'.[43]

In *De imperio* Grotius thus changes his definition of sovereignty. Firstly, he locates sovereignty in the ruler(s), and no longer in the *civitas*. Secondly, he presents his (Calvinist, and English royal) readers with a hierarchy of authority, from free individual, via sovereign ruler to God the lawgiver.

To sum up the position of *De imperio*, the force of necessity has changed location, moving from the necessity that allows the individual to break the law, i.e. to use violence in self-defence, to the necessity imposed by the sovereign powers upon the individual to accept or endure the sovereign's decisions: 'the necessity of order and the authority of divine right', building on the idea that there is no power greater than this among men, 'quia superiorem inter homines non habet'. The suggestion of *De iure praedae*'s principal-agent model that magistrates are appointed by the people has gone; the notion that the citizens are liable for punishment and for debts incurred by their magistrates, because they are co-responsible for the magistrates's actions, has gone as well. The decisions of the sovereign powers, i.e. the highest authorities, have to be obeyed as that is the basic principle of social life. For the occasion, i.e. with a view to the intended audience of ministers and magistrates, Grotius gives a full (Biblical) history of civil government, starting from Cain, the laws of Noah, and of Moses. In *De iure belli ac pacis*, he will complement that with exempla from Roman history.

Here we see the change of a distinction between private and public from *De iure praedae*, where private individuals acted on behalf of themselves and on behalf of the state against their enemies, driven by the necessities of self-defence, the recuperation of losses, and the punishment due among men. Ten years later the private-public distinction has to accommodate an Erastian view

41 Imp V.12.

42 Imp VII.6.

43 Imp XII.2. *Necessitate temporum* also in IBP I.4.7.5 (in the case of the necessary acceptance of an unconstitutional ruler): 'Nam quod lex vetat alienigenam populo praefici, de voluntaria electione intelligendum est, non de eo quod temporum necessitate adductus populus facere cogebatur' ('For the rule of law forbidding that a foreigner should be set over the people must be understood as relating to voluntary choice; it has no bearing on that which the people were forced to do when constrained by the necessity of the times').

on church-state relations, with a decisive state to prevent religious turmoil, allowing only passive disobedience. The great distance between the VOC captains in East India and the Estates in The Hague had allowed a harmonious presentation of private and public actors, with the citizens acting in the absence of the rulers. Such an idyllic picture of harmony no longer holds during the religious conflicts between Arminians and Calvinists that developed when Grotius wrote his *De imperio*. This move is based, however, on a continuous use of the language of necessity, even if support is also found in Scripture for fighting off Catholic and Protestant collateral views on the church-state relationship and theocratic claims. There is no reason to belief that Grotius all of a sudden developed a biblical vision of politics, as we will see in his further elaborations in *De iure belli ac pacis*.

5 Self-Defence and Social Order: the Challenge of *De Iure Belli ac Pacis*

An even fuller analysis of sovereignty is available in *De iure belli ac pacis*, and on the basis of the analysis so far, it will not be difficult to recognize the basic conceptual structures.

The political context of *De iure belli ac pacis* of course is also more complex. Grotius was still very much involved in fighting his war against the coalition of Calvinists and Orangists that had compelled him into exile, at the same time consolidating his position as a respected international scholar and diplomat. A large part of the project of *De iure belli ac pacis* was no doubt dictated by his ambition to show the Hollanders what great an intellect they had expelled. The intended audience was more international than with his previous publications, as Grotius was at the time involved with the *libertins érudits* in Paris, especially the circle of Peiresc and the Académie Dupuy. This was the same Paris that would see mature Hobbes as a philosopher for many years since 1629. But both the strong notion of sovereignty implied in the Erastian position on church affairs and Grotius's self-justification in the face of the trial by the Estates General – which he denied were his lawful sovereign – required a position that might come dangerously close to contradicting the individualist, natural law justification of self-defence that was the basis of the Dutch Revolt, and plunder on the high seas. Yet it is important to see that both are genuine elements of Grotian thought, and that we might want to search *De iure belli ac pacis* for attempts to escape the apparent contradiction. The most important move, we will see, is to distinguish between the principles of human autonomy, and of sovereignty, on the one hand, and their respective historical

manifestations on the other. Man is born free, yet always lives under some sort of authority, be it paternal authority and/or that of the state. Sovereignty by its nature is an irresistible power, yet in actual practice its regulation can take many different forms. Of course, the interaction of free individuals and their irresistible sovereign in history can take on many faces, and surely does evolve through time. From the families populating the state of nature to modern states, changes have been taking place all the time, and one of the most important questions for a theory of sovereignty is to understand how history and justification hang together. The freedom in which man is born is that of free will and moral responsibility, under God's command ('But of the tree of the knowledge of good and evil, thou shalt not eat of it', Gen. 2:17) and of the laws of nature. Government is born from necessity for order, i.e. either from consent or conquest, as the history of Joseph in Egypt exemplifies.[44] The two come together in the stories that people tell each other about their past and their future, while they are adapting themselves to the changing circumstances. We must now recapitulate the important parts of *De iure belli ac pacis* on sovereignty.

The *divisio* of the sovereignty discussion in *De iure belli ac pacis* is as follows. Grotius distinguishes private from public wars, 'for I do not exclude private war, since in fact it is more ancient than public war and has, uncontestably, the same nature as public war'.[45] Consequently, the private-public distinction plays a special role in *De iure belli ac pacis*, and the relations between private actors and public authorities, that is, between individuals and sovereigns are specifically highlighted. In a fourfold classification, Grotius distinguishes wars among privates, among states, between privates and their own sovereign, and lastly, between privates and a foreign sovereign.

Since sovereignty is the rightful exercise of power, it is itself a right, the *ius imperii summae potestatis*. There are other kinds of imperium, as there are other kinds of *potestas*, whether supreme or not. In the first chapter of the first book of *De iure belli ac pacis*, Grotius takes great trouble to explain what rights are, where he expounds on the meaning of *ius* in the concept of just war. Next, he applies a Roman law distinction that he also developed in the *Hollandse rechtsgeleerdheid* (1619): that between persons, things and actions. The two distinctions come together when he describes what different kind of rights exist.

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44 Hugo Grotius, *Sophompaneas* (1625). 'Joseph, a leader of the people, – the Character of a Prince'. Epistle dedicatory to Gerardus Vossius in *Grotius his Sophompaneas, or Ioseph a Tragedy* (ed. and trans. Francis Goldsmith; London, 1652).

45 IBP I.2.1.

Sovereignty, it turns out, is a right of a superior over an inferior person in the special case of *potestas civilis*.

Given this delineation of sovereignty vis-à-vis other rights, it becomes important to describe the contents of the rights in detail, since collusion of rights is where legal contention starts. In *De iure praedae*, Grotius had first addressed this issue, in Chapter II, Lex XIII: 'In cases where [the laws] can be observed simultaneously, let them [all] be observed; when this is impossible, the law of superior rank shall prevail'. And he explained:

> Now, this very point as to which law is of superior rank, may be determined on the dual basis of the origin and the purpose of the precepts involved. For, from the standpoint of origin, the divine law is superior to the human law, and the latter to civil law. From the standpoint of purpose, that which concerns one's own good is preferred to that which concerns another's good; the greater good, to the lesser, and the removal of a major evil, to the promotion of a minor good.[46]

This categorisation of laws is peculiar in that it does not mention natural law, because Grotius in this paragraph follows Franciscus Junius in calling the law of human nature 'human law'.[47] Moreover, the relative position of the individual in relation to the state is hidden in the notion that the greater good has precedence over the lesser.

When we look at the categorisation in *De iure belli ac pacis*, these distinctions reappear in the division of rights:

> A legal right [*facultas*] is called by the jurists the right to one's own [*suum*]; after this we shall call it a legal right properly or strictly so called. Under it are included power, now over oneself which is called freedom, now over others, as that of the father [*patria potestas*] and that of the master over slaves; ownership, either absolute, or less than absolute, as usufruct and the right of pledge; and contractual rights, to which on the opposite side contractual obligations correspond.[48]

46 IPC II (29): 'Ut ubi (leges) simul observari possunt observentur: Ubi id fieri non potest, tum potior sit quae est dignior. Hoc ipsum vero, quae dignior sit, tum ex origine, tum ex fine intelligi potest. Ex origine enim jus divinum juri humano, jus humanum juri civili praestat. Ex fine id, quod ad bonum cuique suum pertinet, ei quod ad alienum praefertur, et bonum majus minori et mali majoris remotio minori bono'.

47 Franciscus Junius, *De politiae Mosis* (Leiden, 1593), Prefatio.

48 IBP I.1.5–6.

Legal rights, again, are of two kinds: private [*vulgaris*], which are concerned with the interest of individuals, and public [*Eminens*] which are superior to private rights, since they are exercised by the community over its members, and the property of its members, for the sake of the common good.

Thus the power of the king has under it both the power of the father and that of the master; thus, again, for the common good the king has a right of property over the possessions of individuals greater than that of the individual owners; thus each citizen is under a greater pecuniary obligation to the state, for the meeting of public needs, than to a private creditor.[49]

There are thus four fundamental concepts which intertwine: power, property, obligation and public versus private. Sovereignty is the *ius summae potestatis*, a power, a claim to property, and to obligation.

The notion of sovereignty has different functions in the theory of war and peace. In the first place it is required in order to articulate the basic Grotian idea that a war by private persons can be a just war. But at the same time, he has to show that not all private wars are just, in particular wars of private persons against their own sovereign. This is also a pressing demand, because in the second book, in its first chapter, Grotius defends that just wars are undertaken for the sake of self-defence and property, that is to defend rights against injury. If provisions would be insufficient for this purpose, the citizen whose property is taken in taxation, or confiscated for the sake of the defence of the country, could have a ground for resistance, and that would jeopardize the peace and order of society, as well as the legitimacy and collection of taxes. Of course, the predominant position in Grotius's times was that the duty of the citizen was to obey and that of the supreme powers to command. Grotius had no intention to uproot that view. He did, contrarily, provide a rationale for it that differed from the standard one. We will discuss the ways in which sovereignty is developed in *De iure belli ac pacis* within this structure of rights concepts, first by pointing out the importance of necessity, then by looking at the connections to forms of government, to finally look again at the most contentious part of his book, the refusal of a right of resistance against one's government.

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49 'Facultatem Iurisconsulti nomine Sui appellant: nos posthac ius proprie aut stricte dictum appellabimus: sub quo continentur Potestas, tum in se, quae libertas dicitur, tum in alios, ut patria, dominica: Dominium, plenum sive minus pleno, ut ususfructus, ius pignoris: et creditum cui ex adverso respondet debitum. VI. Sed haec facultas rursum duplex est: Vulgaris scilicet quae usus particularis causa comparata est, et Eminens quae superior est iure vulgari, utpote communitati competens in partes et res partium boni communis causa. Sic regia potestas sub se habet et patriam et dominicam potestatem: sic in res singulorum maius est dominium regis ad bonum commune quam dominorum singularium: sic reipublicae quisque ad usus publicos magis obligatur quam creditori'.

6 Ius Necessitatis

The law carries with it its own principle of exception, the right of necessity.[50] Its most iconic manifestation is in the justification of the have-nots taking from the haves, in order to survive situations of extreme necessity: 'if a man under stress of such necessity takes from the property of another what is necessary to preserve his own life, he does not commit a theft'.[51] Grotius appeals to the principle that became the hallmark of reason of state arguments: *necessitas frangit omnem legem*. In this case, the *ius necessitatis* claims a particular proviso inherent in the natural law foundation of property, that the human institution of property should not completely take away original common property.[52] But the argument from necessity is not limited to this case. Necessity also takes an important place in the theory of sovereignty, as we already noticed in *De iure praedae*, where on page 24 Grotius claims that a state necessarily is judge over its own matters. And similarly in *De imperio*, Grotius explains that necessity causes exceptions in civil law, but also in divine law. The whole point of Grotius's exposition on war and peace, moreover, is the exception that an existential threat to our own life, liberty and estate brings on the natural law principle that one must abstain from harming others. It seems as if (extreme) necessity, by producing an exception to the law, creates a permissive right (to take some else's property, to kill an aggressor, to rebel against a tyrant, to rule a free people).

The precise extent of the necessity should be judged against intersubjective standards: we want to know the difference between proletarian shopping and shoplifting, between self-defence and seeking a fight, between civil disobedience and terrorism. The judge is there to help us find the differences by carefully considering the facts and their meaning in social intercourse. Grotius is, I believe, a moral realist in that he considers humans-in-interaction capable of recognising mine and thine and the nature of moral obligation. Of course, this recognition is wound up with language, and the acknowledgment on the part of individuals that shared meaning and morals are produced by social

50 Dennis Klimchuk, 'Grotius on property and the right of necessity', *Journal of the History of Philosophy*, 56 (2018) 239–60.

51 IBP II.2.6.4: 'in tali necessitate, si quis quod ad vitam suam necessarium est sumat alicunde, eum furtum non committere'.

52 See on this Brian Tierney, *Liberty and Law: The Idea of Permissive Natural Law, 1100–1800* (Washington, DC, 2014); Dennis Klimchuk, 'Property and necessity', in James Penner and Henry Smith (eds.), *The Philosophical Foundations of the Law of Property* (Oxford, 2013), 47–67.

language.[53] The *ius necessitatis*, thus, is not an actual right, but rather a potential right that can arise in specific, properly interpreted circumstances. Both the sovereignty/obedience complex and its contrary, the right of resistance are introduced by way of necessity, according to Grotius, basically, it seems, from *De iure praedae* onwards,[54] but of course most fully in *De iure belli ac pacis*.

In the latter work, Grotius operates the argument from necessity first of all to justify sovereignty and the necessity of political obedience. As Grotius formulates it:

> Indeed, all men have naturally a right to secure themselves from injuries by resistance, as we said before. But civil society being instituted for the preservation of peace, there immediately arises a superior right in the state over us and ours, so far as is necessary for that end. Therefore the state has the power to prohibit the unlimited use of that right towards every other person, for maintaining public peace and good order, which doubtless it does, since otherwise it cannot obtain the end proposed; for if that promiscuous right of resistance should be allowed, there would no longer be a state but a multitude without union. […] if a magistrate strikes, he shall not be hit in return.[55]

This necessity that allows rulers to appropriate the rights of their citizens is a reason of state. So we encounter the flipside to the notion from *De iure praedae* that the perfect commonwealth has sovereignty: now sovereignty is a precondition for the existence of the commonwealth. In this way, Grotius introduces the notion of constitution: while one might claim that the act of constituting a state is a democratic decision by the people, after its establishment the rules of the constitution determine the mutual rights of government and citizens. So political obedience is not an unspecified obligation of total submission, but a specific obligation flowing from the stipulations of the constitution. Of course, the statement of *De iure praedae* that the government interprets the extent of

53 IPC II.11 passim.

54 IPC II, 24, e.g.

55 IBP I.4.2.1: 'Et naturaliter quidem omnes ad arcendam a se iniuriam ius habent resistendi, ut supra diximus. Sed civili societate ad tuendam tranquillitatem instituta, statim civitati ius quoddam maius in nos et nostra nascitur, quatenus ad finem illum id necessarium est. Potest igitur civitas ius illud resistendi promiscuum publicae pacis et ordinis causa prohibere: Et quin voluerit, dubitandum non est, cum aliter non posset finem suum consequi. Nam si maneat promiscuum illud resistendi ius, non iam civitas erit, sed dissociata multitudo […] si magistratum gerens aliquem verberavit, ipse reverberandus non est'.

this obligation remains true.[56] But it is also true that interpretation is a social activity that depends on the language game of shared meanings.[57]

This does not signify that Grotius questions the right of self-defence:

> The right to fend off force by force, *the vim vi repellere*, says Cicero, reason has taught the intelligent, necessity the Barbarians, custom the nations, and nature herself the wild beasts, at all times to repel, by any means whatsoever, all force (or violence) offered to our bodies, our members, or our lives.[58]

Moreover, he defends a strong sense of agency:

> This is allowed by all good men, that if the civil powers command anything contrary to the law of nature, or the commands of God, they are not to be obeyed. For the apostles, when they alleged, that we must obey God rather than man, did but appeal to a principle of reason, engraved in the minds of men. […] But if for this, or any other cause, any injury be done us by the will of our sovereign, we ought rather to bear it patiently, than to resist by force.[59]

We will now look into the balance of these two necessities, by first dwelling on the point of the factual variations in constitutions, and then on the judging of claims from necessity by the individual vis-à-vis the state.

7 Republics and Monarchies

When a person is injured, it does not matter much whether this was brought about by an absolute monarch's or a popular government's sovereign action.

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56 IPC II, 24.

57 IPC II.11.1.

58 'Hoc et ratio doctis, et necessitas barbaris, et mos gentibus, et feris natura ipsa praescripsit, ut omnem semper vim, quacumque ope possent a corpore, a capite, a vita sua propulsarent' (IPC I.2.3, quoting from Pro Milone).

59 I.4.1.3: 'Illud quidem apud omnes bonos extra controversiam est; si quid imperent naturali iuri aut divinis praeceptis contrarium, non esse faciendum quod iubent. Nam Apostoli cum dixerunt Deo magis quam hominibus obediendum, ad certissimam provocarunt regulam, omnium inscriptam mentibus, quam totidem ferme verbis expressam apud Platonem reperias: at siqua ex tali causa, aut alioqui quia summum imperium habenti ita libet, iniuria nobis inferatur, ea toleranda est potius quam vi resistendum'.

Yet, Grotius repeats again and again that there is a difference between sovereignty itself and the manner of holding it. I can refer here i.a. to *De iure belli ac pacis,* I.3.14; I.3.11; I.3.16.4; I.4.10; I.3.11: 'Aliud esse de re quaerere, aliud de modo habendi', 'nam rerum moralium natura ex operationibus cognoscitur'; *De iure praedae*, I.3.23.3: 'aliud enim est res, ut saepe diximus, aliud rem habendi modus; I.4.10: 'Aliud est enim, ut diximus, imperium; aliud habendi modus'. There are endless variations in the way in which sovereignty can be institutionalized, and one should not confound *maiestas* with *dignitas*, i.e. the 'supreme-ness' of imperium with its dignity.

There are free peoples and those living under a monarch:

> Against what I have said before, that some governments are held in full right of property, that is, by way of patrimony, some learned men make this objection, that free-men are not to be barter'd away. But as there is a difference between regal power, and that of a master over his slave; so likewise there is a difference between civil liberty, and that which is personal. The liberty of a private person is one thing, and that of the whole body of the people another. [...] As then personal liberty excludes the dominion of a master, so does civil liberty exclude royalty, and all manner of sovereignty properly so called. [...] The question does not relate to personal but to civil liberty. But properly, when a people is alienated, it is not the men themselves, but the perpetual right of governing them, as they are a people.[60]

Grotius proceeds by way of tabular distinctions, according to Ramist logic: there is a difference between the right of property and the right of ruling. An absolute monarch holds the state as a property, but that does not make the right of ruling a property right; to own someone is a matter of *dominium*, to rule someone is a matter of sovereignty; therefore, subjection is not based on property but on the constitution. There are two ideal types of constitutions, that of civil liberty (i.e. republics) and that of autocratic rule (monarchies).

60 I.3.12: 'XII. [1] Quod autem dixi, quaedam imperia esse in pleno iure proprietatis, id est in patrimonio imperantis; quidam viri eruditi hoc argumento oppugnant, quod liberi homines in commercio non sint. At sicut alia est potestas dominica, alia regia; ita et alia est libertas personalis, alia civilis, alia singulorum, alia universorum. [...] Sicut ergo libertas personalis dominum excludit, ita libertas civilis regnum atque aliam quamvis proprie dictam ditionem. [...] Hic ergo non de hominum singulorum, sed de populi libertate quaeritur. Quin et sicut ob privatam, ita ob hanc publicam subiectionem, aliqui dicuntur esse non sui iuris, non suae potestatis. [...] [2] Proprie tamen cum populus alienatur, non ipsi homines alienantur, sed ius perpetuum eos regendi, qua populus sunt'.

One can barter away one's freedom and become a slave, just as a community can agree to one form of government or another. This is the same procedure we know from *Mare liberum*: separating the three fundamental rights: liberty, dominium and rule, and formulate their principles. Liberty can go lost, as when a person loses his freedom of choice to a master; property can be alienated by transfer; rule can change hands when those responsible for appointing the ruler decide so. In the case of hereditary monarchy, it is the heir who succeeds, in other regimes transfer of power can occur by election or by appointment.

At some point in history a constitution was established. Grotius compares submission to a king to entering a marriage. Once that is done 'postea vero effectam habet necessitatis'.[61] But not all peoples living under a monarch are completely at the mercy of the monarch. 'But as to kingdoms which were originally established by the full and free consent of the people, I confess it cannot be presumed that it was ever their design to allow the king to alienate the sovereignty'.[62] Therefore, only in case the *ius* is held absolutely, it is held as property. When this is not the case, it cannot be transferred (but marquisates and earldoms are held absolutely and are transferred). Even when a king promises to rule in accordance with the laws, or even if he promises to surrender his kingship if he violates his promise, the *ius* remains the same, but not the duration.

Grotius is clearly seeking a balance between the principal-agent perspective of *De iure praedae* and the Romans 13 absolutism of *De imperio*. This balance is found by reducing each position to the underlying *ius necessitatis* and thereby allowing for a judicial equilibration.

While sovereignty is one, it can be divided (e.g. according to partitioning of the state). Against such a state of divided sovereignty – having as it were two heads – numerous objections have been forwarded by many. 'But in the matter of civil government, it is impossible to provide against all inconveniencies; and we must judge of a right, not by the ideas that such or such a person may form of what is best, but by the will of him, that conferred that right; as we have already observed'.[63] Grotius gives an example from Plato's *The Laws*, III.5, describing the establishment of the Heraclides's rule of the Peloponnesus.

Another issue pertinent to his main concern in *De iure belli ac pacis* is to what extent the *ius imperii* is limited or lost through unequal alliances, feudal

61 IPC I.3.8.

62 I.3.13: 'At in regnis quae populi voluntate delata sunt, concedo non esse praesumendum eam fuisse populi voluntatem, ut alienatio imperii sui Regi permitteretur'.

63 IPC I.3.17.2.

relations and the like. Here Grotius applies the full force of his distinctions: *civitas*, free decisions, the distinction between lawful command and assistance by treaty, in order to show that states with less *majestas* or prestige than others still have their own *ius summae potestatis*.

The relationship between the members of the *civitas* and the incumbents of the *ius summae potestatis* was already touched upon in this chapter, where Grotius discussed the question whether sovereignty rests always/ultimately with the people. There, he already applied a distinction that will occupy him in more detail in Book II of *De iure belli ac pacis*, that is, how time and alienation affect rights. Rights that are not claimed, are no rights.

Richard Tuck commented on Grotius's concept of sovereignty contrasting it to both Bodin (of the *Methodus*) and Hobbes (of *De Cive*), in that it misses – on purpose? – the democratic turn of Bodin who distinguished sovereignty from government, and located sovereignty in the part of society deciding on whom to entrust with government.[64] Consequently, this can be a sleeping sovereign for most of the time when the government is entrusted to magistrates. Grotius, however, having formulated a somewhat similar idea in *De iure praedae*, where a principal-agent relationship existed between the people making up the *civitas* and the magistrates that govern, in *De iure belli ac pacis* searches for the actual wielding of sovereignty in day-to-day political practice. The justification of the government's superior power over its citizens is what sovereignty is about. It concerns less the act of constitution than the actual contents of the constitution. There are various concepts that present-day political scientists use to describe the issue. Basically, we are talking about a theory of legitimacy, i.e. the legitimate exercise of political power.[65] Such legitimate exercise of power is also called authority, and hence we talk about the authorities (what Grotius called the magistrates). Grotius has a strong penchant for procedural legitimacy, and seems less confident that existing authorities are better justified by pointing out the alleged authors of their authority, especially since on Grotius's understanding these founding fathers are part of history. If not, then their actual presence would be a challenge to the authorities.

64 Tuck, *The sleeping sovereign*.

65 An obvious reference is to Max Weber, *Politik als Beruf* (1918). Recent influential literature includes Robert A. Dahl, *A Preface to Democratic Theory* (Chicago, 1956); Leslie Green, *The Authority of the State* (Oxford, 1988); Arthur Ripstein, 'Authority and coercion', *Philosophy and Public Affairs,* 32 (2004) 2–35.

8 Sovereignty and the Individual

In Chapter 4 of Book I, Grotius enters into the contentious topic: can subjects wage war against their superiors? He first counters the simple idea that since men have a natural right of warding off injury, they therefore would have a right to resist their superiors in case of harm. Such a right of resistance would only create anarchy and chaos. That would, in the words of Chrysostom, be 'a life more wild than the life of wild beasts, not only biting one another, but devouring one another'.[66] Thus Grotius explains: 'Therefore everywhere the majesty, that is the dignity either of the people or of the single person who exercises the supreme power, is defended by laws as well as by punishments'.[67] Not all laws are perfect, not all governments are perfect, but it is always worse to do without.

The *civitas* is there to promote a peaceful life, in which the common interest is served, which is the good of the subjects. The *summa potestas* is there to rule the *civitas*, with its *potestas civilis* based on the *ius imperii*. So the presumption is that in general it is worthwhile for citizens to obey the government. The government has been instituted for this purpose, and therefore has good reasons to limit the natural right of resistance.

We have already seen what happens in case of tyranny, what should be done in order to promote the legitimacy of the government, and on what conditions can a group of people, a part of the country segregate from the state. Yet, Grotius takes exception to the Protestant theory of resistance. Here Grotius has an interest in proving this theory to be wrong, just as he wanted to show that the Christian doctrine is to give Caesar what belongs to Caesar. And those who want to influence the government should take inspiration from the way in which Julian the Apostate was held back by the 'tears of Christians'. According to Grotius, it does not make a difference whether it is the sovereign or the lower magistrates that we would resist. An endless series of quotations from the church fathers proves the point that forbearance and peaceful disobedience is the way to go in case of government's wrongdoing.[68]

66 Chrysostom, *Homilie VI de statuis*.

67 IBP 1.4.4.1: 'Hinc ubique maiestas, id est dignitas, sive populi, sive unius qui summo fungitur imperio, tot legibus, tot poenis defenditur'.

68 IPC 1.4.7.9: 'Thus the early Christians, fresh from the teachings of the Apostles and of Apostolic men, both understood the Christian rules of conduct better, and lived up to them more fully, than did the men of later times'.

9 Rightful Resistance

Of course, there are exceptions, as Grotius formulates it: there are 'certain points which we now ought to bring to the reader's attention, in order that he may not consider those guilty of disobeying this law [of non-resistance] who in reality are not guilty'.[69] Then follows a list of seven exceptions that show how legal arrangements around the *ius summae potestatis* can allow for armed resistance and even killing. Moreover, a ruler who destroys the state acts so much against the purpose of his function that armed resistance is the only correct reaction. Grotius then quotes the famous saying of Tertullian that will reappear in Algernon Sidney and John Locke: 'Against men guilty of treason and against public enemies, every man is a soldier'.[70]

In this way, Grotius developed a coherent theory of sovereignty and citizenship, united by his concept of subjective right, revolving around the possible collisions between the *ius imperii* and the private rights of the citizens, regulated by constitutions and natural law.

10 Sovereignty in the Colonies

The other continuity is the colonial connection. Both the issue of appropriating territories in foreign countries, as the issue of unequal treaties reflect that element in *De iure belli ac pacis*.

In the post-colonial literature on the natural law tradition, Grotius is reduced to an ideologue of colonialism. In the words of Fitzmaurice: 'The theory of occupation as a right of property driven by self-preservation and creating a path out of the state of nature drove the development of the European powers's territorial empires in the Americas and their commercial interests in the East. Their concerns [...] embraced both the seizure of sovereignty and the appropriation of property'.[71] Thus, Grotius is an 'imperialist thinker [...]' providing 'an ideology for aggressive Dutch commercial expansion in the East'. Moreover, 'his claim that the laws of nature, and in particular his understanding of property and sovereignty, provided a universal standard by which relations between all peoples could be judged. The imposition of Grotian values in

69 1.4.7.15.

70 *Apologia*, 11.

71 Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (Cambridge, 2014), 86–7; yet on 97 it says that Grotius defended the existence of sovereignty over uncultivated lands.

the law of nations could well be said to have contributed to the imposition of European cultural and political hegemony upon much of the non-European world'.[72]

Against this view, I have argued that sovereignty does not provide such a universal standard, not even for justifying the Westphalian system. If we want to look at Grotius's colonial views, we should look first of all at the discussion of unequal treaties, i.e. of treaties that are concluded between two allies of unequal power and standing, as had been the treaty that Jacob van Heemskerck had concluded with the king of Johor. The relationship is asymmetrical in that the stronger one provides protection and the weaker one repays by reverence and signs of respect. But things can easily deteriorate as they did in the Achaean League 'that they had nothing left but the bare shadow, and the empty name of liberty'.[73] 'When things go in that manner, and usurpation is changed at last into right, by the tacit consent of those who suffer it, […] then those who had been allies become subjects, or at least there is made a partition of the sovereignty, which as I said before, may happen sometimes'.[74]

11 Conclusion

Even while it would not be wrong to consider Grotius a contract theoretician of sovereignty, and even while he is known as a proponent of *pacta sunt servanda*, nonetheless Grotius's exposé on sovereignty is emphasising the historical contingency of actual arrangements of supreme power and the living nature of any actual constitution.

It certainly is correct to label Grotius's sovereignty as that of a natural law thinker; yet, his natural law offers the conceptual foundations for his civil philosophy and gives full reign to human practice in actually establishing regimes of sovereign order.

Grotius's expositions of sovereignty may well emphasize that the duty to obey the rightful supreme power in a state is not something for citizens to

72 *Ibid*., 99.

73 IBP I.3.21: 'Sic Aetoli vanam speciem et inane nomen libertatis: Achaei postea foedus specie iam esse precariam servitutem. Sic apud Tacitum Civilis Batavus de eisdem Romanis conqueritur; neque enim societatem, ut olim, sed tanquam mancipia haberi: et alibi, Miseram servitutem falso pacem vocari'.

74 'Haec cum fiunt, et ita fiunt ut patientia in ius transeat, qua de re alibi erit disputandi locus, tunc aut qui socii fuerant fiunt subditi, aut certe partitio fit summi imperii, qualem accidere posse supra diximus'.

decide on. Nothing is perfect in politics, and some rulers are worse than others. To correct them by 'Christian tears', by remonstrance and argumentation is the way to go. In the end, after all, it is the raison d'être of a sovereign to take decisions for society. Yet, sovereign rule is grounded in a constitution, as an expression of the society, and embodying its concordia. The citizens' rights have to be taken into account, even when eminent domain is claimed.

As the manner of its realization varies, many states have structured sovereignty in a way that institutionalizes self-control, making for better politics. That is what parliaments, ephores, senators, and tribunes are for. But exactly by performing such a role, they must be reckoned not as a force representing society vis-à-vis the sovereign, but as part of sovereignty itself.[75] The authoritative allocation of decision for a society, as David Easton described what politics is about, is just another way of pointing to this sovereignty. The processes that go into this allocation indeed can be highly varied.

Do they change over time? Of course they do, and Grotius admits as much, even though he subscribes to the foundational myth, claiming that societies should stick to their original constitution. That means that for Grotius, the ultimate legitimisation of actual political institutions is a historical one. And it is under that cover that contingent factors creep in. Former arrangements prove insufficient, contingency forces change, the original principles are better served in novel ways. All these different factors appear in Grotius's historical cases. 'Probatur autem hoc ius gentium pari modo quo ius non scriptum civile, usu continuo et testimonio peritorum. Est enim hoc ius, ut recte notat Dio Chrysostomus εὕρημα βίου καὶ χρόνου, repertum temporis et usus'. Only what is living history counts.[76]

Bibliography

Barducci, Marco. *Hugo Grotius and the Century of Revolution 1613–1718: Transnational Reception in English Political Thought*. Oxford, 2017.

Blom, Hans W. (ed.). *Property, Piracy and Punishment: Hugo Grotius on War and Booty in* De iure praedae. *Concepts and Contexts*. Leiden, 2009.

75 Remember in this respect John Dunn's felicitous phrase: 'civil society is the state liked', John Dunn, 'The contemporary political significance of John Locke's conception of civil society', in Sudipta Kaviraj and Sunil Khilnani (eds.), *Civil Society: History and Possibilities* (Cambridge, 2001), 39–57, 56.

76 IBP I.1.14.2.

Blom, Hans W. 'Hugo Grotius on trust, its causes and effects'. In Laszlo Kontler and Mark Somos (eds.), *Trust and Happiness in the History of European Political Thought*, Studies in the History of Political Thought, 11, Leiden, 2018, 76–98.

Brett, Annabel S. *Liberty, Right and Nature*. Cambridge, 1997.

Brett, Annabel S. 'Natural right and *civil* community: the *civil philosophy* of Hugo Grotius'. *The Historical Journal.* 45 (2002) 31–51.

Dahl, Robert A. *A Preface to Democratic Theory*. Chicago, 1956.

Dunn, John. 'The contemporary political significance of John Locke's conception of civil society'. In Sudipta Kaviraj and Sunil Khilnani (eds.), *Civil Society: History and Possibilities*, Cambridge, 2001, 39–57.

Fitzmaurice, Andrew. *Sovereignty, Property and Empire, 1500–2000*. Cambridge, 2014.

Green, Leslie. *The Authority of the State*. Oxford, 1988.

Grotius, Hugo. *Hugonis Grotii Batavi, Parallelon rerumpublicarum liber tertius: De moribus ingenioque populorum Atheniensium, Romanorum, Batavorum*. Ed. Johan Meerman. Haarlem, 1801–1803.

Haakonssen, Knud. 'Grotius and the history of political thought'. *Political Theory*. 13 (1985) 239–65.

Hinshelwood, Brad. 'Punishment and sovereignty in *De Indis* and *De iure belli ac pacis*'. *Grotiana*. 38 (2017) 71–105.

Kempe, Michael. 'Beyond the law: the image of piracy in the legal writings of Hugo Grotius'. In Hans W. Blom (ed.), *Property, Piracy and Punishment: Hugo Grotius on War and Booty in* De iure praedae. *Concepts and Contexts*, Leiden, 2009, 379–95.

Klimchuk, Dennis. 'Property and necessity'. In James Penner and Henry Smith (eds.), *The Philosophical Foundations of the Law of Property*, Oxford, 2013, 47–67.

Klimchuk, Dennis. 'Grotius on property and the right of necessity'. *Journal of the History of Philosophy*. 56 (2018) 239–60.

Lloyd, Howell A. 'Constitutionalism'. In James H. Burns (ed.), *The Cambridge History of Political Thought 1450–1700*, Cambridge, 1992, 254–97.

Nellen, Henk. *Hugo Grotius: A Life-long Struggle for Peace in Church and State, 1583–1645*. Leiden, 2015.

Ripstein, Arthur. 'Authority and coercion'. *Philosophy and Public Affairs*. 32 (2004) 2–35.

Smith, William, William Wayte and G.E. Marindin (eds.). *A Dictionary of Greek and Roman Antiquities*. London, 1890.

Straumann, Benjamin. *Roman Law in the State of Nature: The Classical Foundations of Hugo Grotius' Natural Law*. Cambridge, 2015.

Straumann, Benjamin. 'Adam Smith's Unfinished Grotius Business: Grotius's Novel Turn to Ancient Law, and the Genealogical Fallacy'. *Grotiana*. 38 (2017) 211–28.

Tierney, Brian. *Liberty and Law: The Idea of Permissive Natural Law, 1100–1800*. Washington, DC, 2014.

Tuck, Richard. *Philosophy and Government, 1572–1651*. Cambridge, 1993.

Tuck, Richard. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*. Oxford, 1999.

Tuck, Richard. *The Sleeping Sovereign: The Invention of Modern Democracy*. Cambridge, 2015.

Weber, Max. *Politik als Beruf*. Munich, 1918.

CHAPTER 2

Ideas on Sovereignty

Soto, Vázquez and Grotius

Gustaaf van Nifterik

1 Introduction

Theories on sovereignty of course have their political and socio-economic dimensions. In the Spanish sixteenth century they had a strong theological dimension as well. Presumably they still have many other dimensions. As state power and sovereignty also deal with legal questions, theories on state power and sovereignty certainly and necessarily also have a legal dimension. However, dominant literature on sovereignty often does not study this dimension in depth. For instance, the brilliant 1978 study of Quentin Skinner on the foundations of modern political thought contains an excellent chapter on Spanish late-scholastic thought ('the Thomists'). One gets all the answers there, and one question in addition: is there any legal coherence in their solutions and answers to the specific topics and questions discussed; is there a common legal ground?[1]

This chapter tries to elucidate the main legal frameworks behind the ideas of Domingo de Soto (1494–1560), Fernando Vázquez (1512–1569), and (especially) Hugo Grotius (1583–1645) on state power and its origin. What follows is a concise discussion of their most basic and general legal ideas or paradigms that support their views on specific political, economic, theological, legal (etc.) topics and questions.

In the light of the volume's subject the focus could well have been on other authors, such as Vitoria, Althusius, and Suárez, to list only the most obvious candidates. Let me put forward the following in defence of my choice for Soto, Vázquez and Grotius. I started with Grotius, and I still think his theory on state power in *De iure belli ac pacis* is the one most in need of clarification, since indeed all too often modern scholars run off with his texts

1 Quentin Skinner, *The Foundation of Modern Political Thought*, 2 vols (Cambridge, 1978), vol. 2, chapter 5 (The Age of Reformation).

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without a sound understanding of the main (legal) structure of his political theory. Therefore, in this chapter his theory gets most of the attention. To give his story more of a contextual constitutional background, and given the volume's subject, several of the Spanish late-scholastics came to the fore. However, as for the legal dimension of their constitutional ideas it turns out that on the most basic level the Spanish scholastics, from Vitoria in the early sixteenth century to Suárez in the early seventeenth century, are on the same wavelength, that their constitutional ideas are built upon the same fundament.[2] The notorious and in his days influential exception is Fernando Vázquez, 'decus illud Hispaniae', as he was labelled by Grotius, who often quoted him in his early work *De iure praedae* (written around 1604) and in his magnum opus *De iure belli ac pacis* (1625).[3] Therefore Vázquez is included in this chapter. The main discussion partner for Vázquez when he is taking position vis a vis his contemporary countrymen, and a leading figure in his days, is Soto.

Again, the aim is to shed some light on the basic legal structure of the theories on state power and sovereignty of Soto, Vázquez, and Grotius. Doing so reveals both basic differences and similar outcomes. There is in fact a line to be drawn from Soto via Vázquez to Grotius, a seemingly logical sequence where Grotius's theory contains important elements of the other two. This is not to say, however, that the development of the ideas indeed went along that line, although, as indicated above, it is obvious that Vázquez knew the works of Soto well, and that Grotius was familiar with the works of both Soto and Vázquez when he wrote his *De iure belli ac pacis*. I will conclude that there are similarities in the ideas on sovereignty of these three scholars, but that their ideas do not converge on a deeper level. They so to say stick to different paradigms concerning sovereignty. Indeed, as we will see below, Vázquez's basic principles can be said to lack the very idea of sovereignty all together.

2 The same can be distracted from the study of Bernice Hamilton, *Political Thought in Sixteenth-Century Spain. A Study of the Political Ideas of Vitoria, De Soto, Suárez, and Molina* (Oxford, 1963), which is, I think, still a valuable study, precisely because the common ground of these scholars is clearly brought to the fore. On 7: 'Whatever theological differences there may have been, we can find in the field of political ideas no great difference between Jesuit and Dominican ways of thinking. Vitoria and Suárez are extremely close to one another; the differences are those of personality'.

3 Hugo Grotius, *De iure praedae commentarius* (1604), chapter 13. See also *De iure belli ac pacis* (Paris, 1625), Prolegomena 55.

2 Domingo de Soto, *De Iustitia et Iure* (1553)

The fundament, or basic presumption of all Soto's 'constitutional' ideas, as of those of his teacher Vitoria and most of the other Spanish late-scholastics, is the idea of the community as a body, as a being, an entity existing in and for itself, as a creation of God.[4] The community is natural, indeed, and indispensable, given the vulnerable nature of man who is unable to survive on his own, and who therefore is dependent on cooperation with other humans. Since God created men as social beings human communities are necessarily part of God's natural design.

Had all men been good, a simple community of men living and working together peacefully would probably have been enough for humanity to flourish. But men are not just good, at least not all men are. Consequently men need coercive power to hold them together peacefully. Without such power the community would fall apart and men would not be able to live socially according to God's design. Absence of coercive power would hamper humanity to flourish.

As both human sociability and the human tendencies to dispute and fight are natural, so too must be the means to preserve the community. Consequently men did not have to create something out of nothing when they tried organize their political community in order to achieve their peaceful goal. The moment that human selfishness becomes a threat to the community, men only have to effectuate the community's right of self-preservation in order to keep it together. From a legal point of view one could argue that the community being itself a God-created, natural entity, a 'body' indeed as these scholars often say, is just as every other body furnished with a natural, God-given right to defend itself in its being and to resist forces that work to the contrary.

The pivotal point in the 'constitutional' theories of the Spanish School of Salamanca from Vitoria to Suárez, is that state power is in its essence this community's natural right to preserve the entity, or 'body', and to protect it against dangers, both internal and external. State power is not created by men, not even by the community of men; it is inherent in the community as such. Neither is it transferred by the community to the ruler(s); these theorists would argue that it could only possibly be 'transferred' to a compatible body, that is, to another community, making two bodies one. Since a community as a whole

4 See Domingo de Soto, *De iustitia et iure* (revised edition; Salamanca, 1556), IV.4.1. I have used the edition Lyon (Lugduni) 1582. The same basic ideas can for instance be found in the work of his teacher, Francisco de Vitoria, especially in his *De potestate civili* (1528). I have used the English translation in Francisco de Vitoria, *Political Writings* (eds. Anthony Pagden and Jeremy Lawrance; Cambridge, 1991).

cannot itself wield this power, it authorizes one, or a few, or many persons to use this natural right of self-preservation vested in the body-community. The ruler(s) receive(s) the *auctoritas* to use the God-given *potestas* of the community. Evidently this *potestas* is not to be used in just any way the ruler(s) would like. It is a power created by God for the sake of the community, a power that is created to preserve the community, to protect this natural body. The ruler, then, is the community's defender, its guardian or *custos*. The ruler himself, as man, is of course still a member of the community of men; as its ruler, he is the community's head (Soto, *De iustitia et iure*, I.6.7).

Soto in his *De iustitia et iure* approaches all constitutional questions and topics – such as: 'Is the ruler and are the subjects bound to the laws?' (I.6.7); 'Can costume derogate law?' (I.7.2); 'Can a ruler use the property of the subjects?' (IV.4.1); 'Does the ruler have *dominium* in the life of the subjects?' (IV.2.3); 'Can a ruler be resisted, removed or even killed?' (V.1.3); 'Can an innocent be killed (in order to preserve the community)?' (V.1.7) – by asking the same question: does it or does it not (presumably) help to preserve the community, can an affirmative answer to any of the questions mentioned above be founded upon the ruler's role as defender of the community? In other words: is the *bonum commune* (presumably) promoted by it?

If the answer to this key-question is in the affirmative, then often a subsequent question awaits answering, i.e. in situations that the infringement of the rights of some other natural entity is to be expected, as an infringement on the rights of a human being, or of another state (being a politically organized body, an entity), or of the Christian community as a whole. If this is the case, an additional and specific title is needed to legitimately impede on this other entity's right. Harm done to the community can function as the fundament of such an additional title, or some other culpable offence against the community, its head or (one of) its members.

Indeed, as Annabel Brett has shown, according to Soto, more unambiguously so than to Vitoria, every individual member of the community is still also to be treated as an entity in itself ('propter seipsum existens', V.1.7).[5] It follows that the rights of an innocent individual may not just be infringed, not even in order to gain some obvious public good; a specific title is needed to make use of the state-competence to infringe on anybody's rights. Of course the same goes in situations that the rights of other states are at stake, or of individuals

5 Annabel S. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Ideas in Context; Cambridge, 1997), 159. Brett adds that '(f)or Soto, this is the whole problem of the political'.

who are not subjected to the ruler. They too are entities in themselves, not to be used or prejudiced for the well-being of any other entity without a cause.

As for the most interesting and instructive question of the people's right to resist an otherwise legitimate ruler who has started to behave tyrannically, Soto is in fact rather reserved, more so than his own principles and basic ideas would have us expect. A publicly appointed executor could carry out a public verdict against a ruler who seriously misbehaved and who therefore must be taken for, and be treated as a tyrant. But, Soto adds, it is better for the people to turn to a ruler of higher rank, or else, ultimately, to God (v.1.3). Given Soto's own point of departure, one could well imagine the idea of a full revival of the community's right to resist and preserve itself as soon as the (otherwise legitimate) ruler begins to threaten to the community in its existence. And this is indeed what Vitoria had in mind, arguing that 'even if the commonwealth has given away its authority it keeps its natural right to defend itself'.[6] Soto is very cautious on this point, probably for good reasons, but maybe too much so in the light of his own theory.

To summarize Soto's basic legal constitutional ideas: state power is natural and God-given, it is entrusted to the ruler by an act of the community, it is only to be used to preserve the community and to promote the *bonum commune*, the ruler is still a member of the community, the citizens are obliged to obedience – ultimately, because God says so. 'Qui resistit potestati, Dei ordinationi resistit'.[7] Disobedience threatens the community.

All that is mentioned above makes clear that there is always a 'test', so to say, to determine whether the ruler uses the state power entrusted to him in a proper, legitimate way: is the *bonum commune* promoted by the ruler's acting? The question can also be framed by asking whether or not the use of power ultimately contributes to the community's defence. A weak spot in Soto's theory is that there is hardly a juridical remedy in case a ruler fails the test.

3 Fernando Vázquez de Menchaca, *Controversiae Illustres* (1564)

The main and profound deviation from this general outline of the thoughts of the late-scholastics in sixteenth-century Spain is Fernando Vázquez, who in his *Controversiae illustres* attacks the theory in its fundament by explicitly denying the community the status of an independent, natural entity created

6 Vitoria, *On Law* (this treatise can be found in the same volume edited by Pagden and Lawrance mentioned above), para. 137 (ed. 200).

7 Romans 13:2.

by God.[8] In his theory the community lacks the status of a natural body and, consequently, the community is denied a natural right to defend itself against external and internal dangers. On the contrary, as Brett remarked on Vázquez's core idea of his legal-political theory: 'for Vázquez, the society of private citizens is all there is'.[9] Men live together in a man-created and contracted society of good faith (*societas bonae fidei*, as in *Controversiae illustres* I.13.2). They do so contract because by nature men are social beings. Yet it is a human contract that functions as society's fundament. Therefore, indeed, state power can never and by no means be taken for the exercise of a natural or God-given right.

As the society lacks the status of a natural being but is man-made, political power too must have been created by men. And it is invented and created for a specific goal; that is to enable men to live an agreeable and genuine social life in peace. Founding and creating a *societas bonae fidei* not necessarily entails setting up a political community, a community with coercive power, because *sub principe vivere* is not in itself precisely necessary for men to enable social life ('non est necessitas praecise', praef. 125, text and 'summa'). As Brett has said on Vazquez's ideas: 'men are fully men in civil society, without being subject to any power'.[10] Still, political power is all around; so obviously it is something to deal with intellectually.

For Vázquez, political or state power in whatever form is unnatural in the sense of being man-made. The intellectual challenge, then, is to solve the contradiction that putting the very idea of political power into practice entails a deviation from the natural equal freedom between men; it even creates something similar to slavery (I.41.37 and elsewhere; see I.50.3 for legislation creating a type of slavery). Given the natural equality of men, it is beyond doubt that no man can ever be subjected to any other human being other than by voluntary subjection (I.20.24 and 25). Men are only willing to do so out of enlightened self-interest, that is to prevent the weak from being oppressed by the strong (praef. 124: 'ne eorum imbecilliores a fortioribus opprimerentur'). But they never give up their free and equal nature entirely, they only voluntarily set certain limits to the use of their own natural freedom. Men in a political society indeed retain the right to defend themselves, even against the ruler of the state (I.18), notwithstanding the fact that, generally speaking, they must and will

8 Vázquez does so most explicitly (and with reference to and extensively quoting from Soto, *De iustitia et iure,* IV.4.1) in chapter I.21 of his *Controversiae illustres* (1564). See also I.13.2 and 16 and I.47.8. I have used the bilingual (Latin–Spanish, translation by Fidel Rodríguez Alcalde) edition of the work (Valladolid, 1931–1934).

9 Brett, *Liberty, Right and Nature*, 202.

10 Brett, *Liberty, Right and Nature*, 173.

be aware that the well-being of the state might well serve their own interests (1.18.10, also 1.16.13).

Key notion of Vázquez's constitutional theory is that whatever the form of political power in a specific society, it is invented and created by men, for the public sake of the citizens, not for the sake of the rulers of whatever rang or dignity.[11] On this basis, Vázquez's response to all sorts of constitutional controversies is to ask: can the ruler point out that he is indeed *explicitly* entitled to do whatever he is up to, that the competence is *nominatim* attributed to him; if not so, can he then prove that the people abdicated and transferred to him full political power ('omne imperium et potestatem'), as had been the case with the Roman emperors in Antiquity (thus in 1.2.19 concerning a ruler's competence to change or abrogate the law without the people's approval). Next, if a specific power is not *nominatim*, or if general power is not in full attributed to the ruler, Vázquez would ask whether maybe the claimed competence can reasonably be *assumed* to be given to the ruler (the example given in 1.2.19 is the competence to legislate in cases of little interest).

It is all together clear that the power and the competences of a specific ruler always depend on the commission and concession to him by the people: 'an princeps id possit, pendet a commissione et concessione sibi a populo facta' (1.2.18, a section on the competence to change the laws), whereas a complete transfer of (absolute) power is theoretically feasible and historically confirmed, but generally speaking not very likely, since it results in uncontrollable power. It can therefore by no means be assumed.

Moreover, the question whether or not a particular ruler has a certain competence is not to be answered in the affirmative too promptly, since Vázquez's point of departure is the natural and equal freedom of all men. Alleged restrictions of this natural freedom always call for legitimation. Without further proof, the ruler must be taken for a custodian, minister and executor of the law and for nothing more ('non legum Imperator sed custos, minister et executor', 1.2.19). The idea of an absolute, sovereign ruler is an anomaly in Vázquez's theory, for, unless proven otherwise, the ruler is in fact no more than a mandatory; moreover, the people could probably at will revoke the mandate (1.47.12, concerning the right to legislate).[12]

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11 Fernando Vázquez, *Controversiae illustres*, 1.1.10: '[…] omnes omnino principatus, regna, imperia, potentatus, legitimos legum et hominum ob publicam ipsorum civium utilitatem, non etiam ob regentium commoda, inventos, creatos, receptos admissosque fuisse […] non secus quam reliquos etiam magistratus'.

12 Vázquez is very cautious on this point, not taking position openly, for a reason, as he says, he has to keep silent about at the moment: 'quia modo neutram partem adfirmo ob causam nunc reticendam'.

For Vázquez power of one human being over another can only exist if it is beneficial to the ruled, as it is not meant to be beneficial to the ruler: 'Regnum non est propter regem, sed rex propter regnum'. His litmus test is always: is there proof that a specific competence is given to the ruler or that the ruler has been given unrestricted power; if neither of the two can be proven, one can ask whether the ruler may reasonably be assumed to act with the (general) approval of the ruled. Ultimately the last question comes to the point of asking whether the individual citizens do benefit from it (in the long run). There is in fact not much of sovereign power in his theory: the ruler is a mandatory, whereas the people is little more than a collection of individuals tight together contractually in a *societas bonae fidei*.

4 Hugo Grotius, De Iure Belli ac Pacis (1625)

As said above, I believe the theory of Hugo Grotius in his *De iure belli ac pacis* (1625) is the one most in need of clarification; it will therefore be discussed in greater detail than the theories of Soto and Vázquez.[13] On another occasion I replied explicitly to some interpretations of his ideas that are in my view inaccurate.[14] In this chapter, the basic legal structure of Grotius's constitutional ideas will be set out, notwithstanding the contention by some that such exertion would rather obscure than elucidate, a contention presumably based on the view that Grotius's book itself lacks 'intellectual coherence'.[15] I disagree on the last statement. There may be incoherence between Grotius's early and his later works,[16] his *De iure belli ac pacis* itself appears coherent enough to me. It is however true that Grotius in his magnum opus did not work out a full 'constitutional theory', as his focus was on the law of war and peace. Constitutional questions are preliminary dealt with since wars are waged by and against sovereign powers, so that in a more or less civilized world we will often, if not

13 For the English text I make use of Francis W. Kelsey's translation published in the series Classics of International Law (Oxford/London, 1925). For the Latin text one can best turn to the edition by Robert Feenstra and Caroline E. Persenaire (Aalen, 1993).

14 Gustaaf van Nifterik, 'A reply to Grotius's Critics. On Constitutional Law', *Grotiana,* 39 (2018) 77-95 (available at https://doi.org/10.1163/18760759-03900004).

15 Peter Borschberg, 'Grotius, the Social Contract and Political Resistance. A Study of the Unpublished *Thesis LVI*', *IILJ Working Paper 2006/7. History and Theory of International Law Series*, especially 28 and 40 (available at SSRN: https://ssrn.com/abstract=969250 or http://dx.doi.org/10.2139/ssrn.969250).

16 Which would, if I am right, refute the suggestion of Borschberg (see the footnote above) to look in Grotius's earlier works to get grip on his theory as set out in *De iure belli ac pacis*.

most of the time, be dealing with a state (or state officials) waging war against another state.[17]

In search for some grip, one has to turn to various questions on various matters. The most important question for my subject is the one of whether the subjects can rightfully make war against their legitimate ruler (chapter 1.4). I turn to that question first.

As a general rule Grotius lays down that rebellion is not permitted by the law of nature and he quotes the Roman historian Sallust to substantiate his claim in one of the most absolutistic formulations possible: 'To do whatever you wish with impunity, that is to be a king' (1.4.2). Neither is rebellion permissible, Grotius continues, by Hebraic law or the Gospel (1.4.3–5). Only the 'law of necessity' (1.4.7) might cast some doubts. Grotius is not sure, as it ultimately depends on the will of the very first persons who had associated themselves and had decided to institute a civil society, a *civitas*; I will return to this below. After having said that in any case the person of the king himself must be spared, Grotius comes to the general conclusion that resistance cannot rightfully be made against him who holds sovereign power (1.4.7, at the end of a long paragraph).

The key notion is here, as it was for Vázquez, the will of the persons who originally instituted the civil society. These persons created a *ius imperandi* or *regendi* (both terms are applied, seemingly as synonyms, in 1.3.8 and elsewhere), a power that falls to the *civitas*. In fact, sovereign power is the very first 'product' of the *civitas* ('cuius prima productio est summum imperium'), the element that binds the individual members together into one artificial body, the power that establishes 'the full and perfect union in civic life' (11.9.3.1). In 1.3.12.2 we read 'ius regendi, qua populus sunt', and obviously the phrase 'qua populus sunt' is hard to translate, i.e. to interpret, as the translations range from 'in their totality as a people',[18] via 'as they are a people',[19] to 'by which they are a people'.[20] Should the last interpretation be correct – and I do in fact think it is – the act of creation of political power is two-sided: the creation of

17 I discus the same subject in more detail in my contribution 'Sovereignty' to Randall Lesaffer and Janne E. Nijman (eds.), *The Cambridge Companion to Hugo Grotius* (Cambridge, expected March/April 2021). Both texts are written in approximately the same period.

18 Kelsey in his translation of *De iure belli ac pacis*.

19 Thus the translation in the Liberty Fund edition, edited by Richard Tuck (Indianapolis, 2005).

20 Jan Frans Lindemans in his Dutch translation *Het recht van oorlog en vrede. Prolegomena & Boek I* (Baarn, 1993). In Dutch it reads: 'waardoor zij juist een volk zijn'.

the *ius regendi* by the gathered persons is in itself the act whereby also the people-as-a-whole is created; state power and state people are two sides of the same coin.

Two questions arise. How should we understand this right to govern? And how should we understand sovereign power being a 'product', something that is created or produced? I start with the first question; answering this question will also bring the solution to the second question to the fore.

Although Grotius in I.3.6 describes the moral faculty to govern, that is the *potestas civilis*, his exposé is not altogether satisfactory to answer the question of how to understand the right to govern. In I.3.6 Grotius defines the main competences and powers of the highest ruler (i.e. legislation; the making of peace, war and treatises; the right to levy taxes, and so on; and the branch called the judicial), and the ways to carry these out. We, however, want to move up to a more abstract level. We do not ask what civil power consists off, but what it essentially is. I think that in fact the *ius imperandi* or *regendi* is a composition of two main, interrelated faculties.

First, it is the right to make (public) war on behalf of the society, both external and internal, on all of the four natural titles (or *causae*) of war (see II.1.2: defence, the obtaining of that which belongs to us, or is our due, and the inflicting of punishments), a right that the individuals have in the state of nature. By instituting a civic society the members, i.e. the individuals, renounce their liberty (or 'right' in the first sense of the term *ius*: that what is not unjust) to make (private) wars to protect or reclaim their own or somebody else's natural rights (in the second sense of the word *ius*: subjective right).[21] Once the civic society is instituted, disputes about rights are to be settled by the artificial body called *civitas*. I do not believe that Grotius meant to say that the persons when they institute a *civitas* renounce their natural rights (*ius*, as subjective right).[22] Again, what the members of a society renounce is their liberty (*ius*, as what is not unjust) to make (private) wars to protect or reclaim their subjective rights, both natural and human or civil. In society the members have agreed to make use of society's judicial settlements and stately lawsuits to protect and reclaim their rights.

The second essential element of the *ius imperandi* is a (subjective) superior right (that is a *ius* – or *facultas* – *eminens*) over the persons over whom the *ius imperandi* is wielded and their property, an eminent *potestas* and *dominium*

21 See I.1.3–9 on the various meanings of the word *ius*.

22 Compare Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1978), esp. 77 ff.

(I.3.6.2 and I.4.2.1).[23] Probably two lines could here be drawn backwards between Grotius and the Spanish authors as discussed above, one line between Grotius on the one hand and (Vitoria and) Soto on the other, the other between Grotius and Vázquez. The society is a body, a *corpus morale* (I.3.7), a *corpus artificiale* (II.9.3.1). If my contention that Grotius is here on a par with the Spanish authors as Vitoria and Soto is correct, this body as such is the bearer of natural rights, including, being an overarching body, an overriding right over its members and their goods. Indeed, Grotius too holds that civil power is ordained by God, as we read in Romans 13 (I.2.7.3; I.4.4.1: 'quare potestates publicae [...] quasi ab ipso Deo essent constitutae'), or at least that God approved the institution (I.4.7.3: 'quia hominum salubre institutum Deus probavit'). On the other hand (here we come to the answer on the second question mentioned above): Grotius also holds that public tribunals are the creation not of nature (God), but of man (I.3.1.2). Moreover, as concerns the scope of this *ius eminens*, Grotius in I.4.7.2 (on the question of resistance) looks at what the persons who had originally instituted the society presumably had consented to. Here Grotius is essentially on a par with Vázquez and his idea of society being man-made and its powers thus depending on what men originally wished to create for themselves.

To conclude: the civic society as a body is ordained by the approval of God's will (as we read in I.2.7.3)[24] and, as an entity in itself, a body, it has the faculty to defend its rights; which rights of the society there are to be defended ultimately depends on what the persons originally setting up the society had decided. The very idea of a *ius eminens* of society is in fact an indication that society's members indeed do not lose their (natural) rights when they enter (institute) society; society is just equipped with a greater right. How far-reaching this *ius eminens* is, depends on the type of society the original founders had consented to and the rights they wanted to equip society with.

The next step in Grotius's constitutional theory is that society's right to govern is entrusted to a ruler, be it a king, the senate or the people (hence the *tres gubernandi formas* in I.3.8.9, referring to Seneca). In most cases the ruler holds the *ius imperandi* as a usufructuary right; if the ruler is a king, as he often was in Grotius's days, he sometimes holds it in full right of ownership (I.3.11.1). The difference lies not in content, but in the transferability of the *ius*: only if the *summa potestas* is held *plene*, that is: with full proprietary right, that is in

23 Grotius, *De iure belli ac pacis,* I.4.2.1: 'But as civil society was instituted in order to maintain public tranquility, the state forthwith acquires over us and our possessions a greater right, to the extent necessary to accomplish this end'.

24 In Grotius's words (*De iure belli ac pacis,* I.2.7.3): 'Sequitur ergo ut ordinata haec potestas voluntate Dei approbante intelligatur'.

patrimony, can the king transfer this power to somebody else (I.3.12 and II.6.3). Indeed, according to both Roman law[25] and the law of Holland (in Grotius's own account of it),[26] a usufructuary right, or *ususfructus* ('lijftocht' in seventeenth-century Dutch) cannot be transferred (although the right to take some of the fruits or profits can). There is a third possible form of holding the *ius imperandi*, one that rests on sufferance (*ius precarium*), which is – as Grotius himself says – altogether different (I.3.11.3). In fact the holder of such a precarious right, revocable at any moment, cannot be said to bear sovereignty – only he or they who conferred the right on him, probably the people, can.

It will be clear by now that there is no lasting contractual relationship between the ruler and the people he rules over. The sovereign acquires a right over society's *ius imperandi*: he either holds this *ius* as a proprietary right, or as a usufructuary right. The right is transferred to him, evidently, indeed, on the basis of a contract, and conditions might be included in the contract. Said differently, the right of the ruler might well be conditional, the alienation might well have been a conditional one (Grotius in fact uses the words 'conditional alienation' – 'nam haec est conditionalis alienatio' – in II.6.9).

I return to the question of the people's right of resistance. Most likely the first persons to institute society had wanted the *civitas* to prohibit the unregulated (promiscuous, *promiscuum*, as Grotius says) right of resistance, as this prohibition of resistance was, presumably, the only way to effectively achieve public peace and order (I.4.2.1). And so, presumably, there is no right of resistance against a legitimate sovereign. Yet this conclusion is not without some important exceptions, exceptions indeed of significance in Grotius's days. For the people (or society) transferring the right to govern to the ruler they have chosen, can indeed by contract limit the right that is to be transferred, so that some 'natural freedom' resides in the people (I.4.14, whether Grotius thinks of society as a whole or its members is not all together clear); or the transference of the right to the ruler can be restricted by a condition, such as that he would lose his kingship should he violate his pledge (for instance his pledge to uphold the laws of the land, I.4.12). In other words, although there is no persistent contractual relationship between the ruler and the people, the right that is transferred to the ruler is not necessarily unlimited, not *per se* without restrictions or conditions.

Even if nothing of the sort has been established and the ruler is truly sovereign and in full possession (not necessarily ownership) of the *ius imperandi*,

25 Barry Nicholas, *An Introduction to Roman Law* (Clarendon Law Series; Oxford, 1975), 144.

26 Grotius, *Inleidinge tot de Hollandsche rechts-geleerdheid* (1631), II.39.4: 'Een lijftochter mag den lijftocht niemand overdoen, maer wel mag hy iemand gunnen eenige vruchten te trekken'.

there is the general exemption to the law of non-resistance, that is in case the ruler turns out to be an enemy of the whole people by showing an hostile intent (1.4.11). Grotius adds that he thinks this can hardly occur, unless maybe a king would rule over several peoples.[27] Grotius's justification to resist and make war on the ruler who is the enemy of his people is that the will to govern a people cannot logically coexist with the will to destroy it. And so, a king who turns against his people renounces his kingdom – he is therefore no longer considered a king. It is important to point out with some emphasis that in cases as this it is not the infringement by the ruler of the subjects's (natural) rights as such that gives rise to a right of resistance; neither is it a breach of contract or any of the sort. Although Grotius expressly says that the ruler is bound to observe the laws of nature, of nations and of God, and that orders contrary to these laws should not be carried out, an active right of resistance against a ruler, that is: rebellion, cannot be concluded from these sayings. Against a king-enemy of the people resistance is legitimate only because being a king simply cannot coexist with the wish to destroy the community. The king-enemy is no longer king and thus by nature equal to any of the persons he attacks. In such a situation the attacked may use his natural right to defend himself against an attacker, against him who threatens his very existence.

To sum up, firstly, Grotius's litmus test is the (presumed) will of the persons who originally had instituted the civil society and thereby produced the power deemed necessary to uphold this society; for it is this society's right, the *ius imperandi* or *regendi*, that is transferred to the king (or to another sovereign power). Without evidence to the contrary, the first persons to institute society presumably had wanted to produce all that is needed to sustain a well-ordered civil society, that is, to Grotius's mind: absolute rule without a right of resistance of the ruled, with some restrictions in case of extreme necessity only.

Secondly, the ruler in most cases holds his right to govern in usufruct, sometimes in full ownership; if he holds only a precarious right subject to revocation, the ruler is not sovereign while those who conferred this right upon him are. Next is to be considered whether or not the right, the *ius imperandi*, is transferred to the ruler in its totality, and whether or not this was done under certain conditions. These questions are not to be answered in general, since it all depends on the specific situation in a specific state.

The conclusion must therefore be that in Grotius's theory state-power is presumably absolute (although not necessarily so), while the power of the ruler

27 He might indeed have had the king of Spain and lord of the Netherlands Philip II in mind, as is often said.

often is not (although this is not excluded). The first depends on the persons who had originally instituted society, the second on the terms under which the society's right is transferred to the ruler. In any case, state-power can never legitimately be used with the evil intend to destroy the society.

5 Conclusion

Soto looks upon state power as something created by God. It is the community's right to defend itself as an independent entity against attacks and dangers both from the inside and from the outside. State power, God-given, is limited to what is necessary for effective protection of the community. Not so for Vázquez and Grotius: however much inspired by God and by nature, the persons who originally instituted a specific state (*civitas*, civil society) also decided on the scope of the state's powers.

An important and far reaching difference between Vázquez and Grotius is the burden of proof: whereas Vázquez would ask the ruler to prove that he is entitled to whatever specific competence he would want to make use of, Grotius takes state power for absolute and all-inclusive unless proven otherwise. Grotius here in fact comes close to Soto: absolute power is deemed necessary to ensure stabile tranquillity. In fact it turns out to be a lot more than just a shift in the burden of proof between Vázquez and Grotius: it is a different view on human beings and their capability or incapability to live communally in peace. It is also a different view on society, which is, according to Grotius (as to Soto), a body, an entity in itself, whereas it is little more than a conglomeration of individuals (a *societas bonae fidei*) for Vázquez.

Grotius's ruler may be resisted when he threatens the existence of the society as a whole, or – in case he holds a limited or conditional right to govern – when he transgresses the limit or the condition is met. For a clear picture of Grotius's constitutional theory it is essential to keep in mind that the power of the state, the power with which the first persons instituted their civil society (i.e. state), is presumably absolute, but that the *ius imperandi* or *regendi* of an actual ruler, be it the people, a king or the senate, often is not.

Bibliography

Borschberg, Peter. 'Grotius, the Social Contract and Political Resistance. A Study of the Unpublished *Thesis LVI*', *IILJ Working Paper 2006/7. History and Theory of International Law Series*. http://dx.doi.org/10.2139/ssrn.969250.

Brett, Annabel S. *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought.* Ideas in Context. Cambridge, 1997.

Grotius, Hugo. *Het recht van oorlog en vrede. Prolegomena & Boek I*. Transl. Jan Frans Lindemans. Baarn, 1993.

Hamilton, Bernice. *Political Thought in Sixteenth-Century Spain. A Study of the Political Ideas of Vitoria, De Soto, Suárez, and Molina*. Oxford, 1963.

Nicholas, Barry. *An Introduction to Roman Law*. Clarendon Law Series. Oxford, 1975.

Skinner, Quentin. *The Foundation of Modern Political Thought*. 2 vols. Cambridge, 1978.

Tuck, Richard. *Natural Rights Theories: Their Origin and Development*. Cambridge, 1978.

Van Nifterik, Gustaaf. 'A reply to Grotius's Critics. On Constitutional Law'. *Grotiana*. 39 (2018) 77–95. https://doi.org/10.1163/18760759-03900004.

Van Nifterik, Gustaaf. 'Sovereignty'. In Randall Lesaffer and Janne E. Nijman (eds.), *The Cambridge Companion to Hugo Grotius*, Cambridge, 2021 [forthcoming].

CHAPTER 3

Conform to the Government and Acknowledge the Sovereignty

Simon Stevin and François Vranck, a Practical Approach to Contested Sovereignty

Lies van Aelst

1 Introduction

When researching the early modern period, reliance on the term 'sovereignty' is often problematic, especially in the context of the Dutch Revolt. This caveat, however, does not discourage a considerable number of authors from using this word in articles and books on this subject. When the actual Dutch Revolt was taking place, contemporary writers referred to 'sovereignty' together with other terms such as 'government', and it could have different meanings in different (con)texts.[1] Modern historians working on this period use 'sovereignty' to refer to the power possessed by the Estates (the Estates General as well as the provincial Estates). Yet, the same term is also employed to refer to the power of the king of Spain, or the power offered to William of Orange (1534–1584), the duke of Anjou (1555–1584), and Queen Elisabeth (1533–1603). In texts written during the Revolt, 'sovereignty' appears in accounts on all these different cases, and as already noted above, the term does not always carry the same meaning. Taking into account these observations and the obvious existence of a terminological and conceptual sticking point, it may come as no surprise that so far no attempts have been made to produce a comprehensive study of the use of the term 'sovereignty' during the (early) Dutch Revolt. So, when considering these different instances and circumstances, is it justifiable to speak of one and the same concept? In order to answer this question and gain a better

1 Many examples of the use of the word *souverayniteyt* and *souverain* can be found in the works of Pieter Bor and Emmanuel van Meteren. Just a few of these examples are: Pieter Christiaenszoon Bor, *Oorsprongk, begin, en vervolgh der Nederlandsche oorlogen, beroerten, en borgerlyke oneenigheden, beginnende met de koomste van Alexander Farnese, Prince van Parma, en Eyndigende omtrent het laetste van Junius des Jaers 1587*, 37 vols (Leiden/Amsterdam, 1621–1634), vol. 16, 7–9; vol. 17, 13; and vol. 20, 60, 64.

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understanding of 'sovereignty' in this period, the following concise historical survey is indispensable.

Before Jean Bodin's (1530–1596) *Six livres de la republique* (1576) began circulating in the Netherlands, 'sovereignty' was mainly used to refer to the sovereign's role of safeguarding the realm's privileges and laws. According to this orthodox interpretation, the sovereign was a judge, not a legislator.[2] With Bodin's writings however, the definition of sovereignty changed radically. When his work caught on, different interpretations of sovereignty began to be employed in parallel. In the *Six livres* sovereignty is described as 'that absolute and perpetual power vested in a commonwealth'. Bodin subsequently distinguishes five different characteristics of sovereignty; 1. Legislative power, 2. The right of war and peace, 3. Appointing officials, 4. Supreme appellate jurisdiction, and 5. The right to pardon.[3] As will become clear below, the Estates General in the Northern Netherlands did not wish to transfer most of these five areas of governance when offering sovereignty to (foreign) rulers 'onder goede en billijke conditien' ('under good and equitable conditions').[4]

When most modern historians write about the sovereignty of the Estates (the Estates General as well as the provincial Estates) and the year in which it was gained, they seem to leave aside the 'pre-Bodin' interpretation and instead refer to sovereignty as described by Bodin. The Estates General however, did not wish to transfer this power to another ruler, as can be seen in the negotiations with the duke of Anjou. According to Ernst Kossmann, the Estates General apparently realized that the understanding of sovereignty in the circles around the duke was different from that used in the Netherlands, so they denied having any knowledge of this term. With the Treaty of Bordeaux of 1581, Anjou became 'prince et seigneur' instead of 'prince et seigneur souverain', as he had requested.[5] Martin van Gelderen explains that this title was given 'to

2 Ernst H. Kossmann, 'Volkssouvereiniteit aan het begin van het Nederlandse ancien régime', in Id., *Politieke theorie en geschiedenis. Verspreide opstellen en voordrachten* (Amsterdam, 1987), 59–92, 68–9.

3 Jean Bodin, *Six livres de la republique* (Paris, 1576), book 1, 221, 228, 231, 236.

4 This phrasing was used in most documents produced by the Estates when they negotiated the transfer of sovereignty with foreign rulers. See, for example, the *Poincten van de capitulatie tot de handelinge met haare Koninglijke Majesteit van Engeland*, presented to the Estates of Holland on 11 May 1585, published in *Register van Holland en Westvriesland, van den jaare 1585* ([The Hague], s.d.), 283–285 (285).

5 Hugo Grotius, *Kroniek van de opstand. De Opstand 1559–1588* (transl. Jan Waszink; Nijmegen, 2014), 137.

avoid confrontation with Bodin's concept of sovereignty'.[6] In negotiations in 1584 with the French king and subsequently with the queen of England, 'sovereignty' was mentioned again, but it did certainly not refer to absolute power in these contexts. Kossmann also states that by the time the Estates General claimed sovereignty for themselves, their understanding of this concept came close to Bodin's interpretation.[7]

Even before their understanding of 'sovereignty' began to correspond more closely to that of Bodin, the Estates already exercised the powers described by him, notwithstanding their initial reluctance to admit this to the outside world. It is therefore important to establish when they began wielding these powers. In this regard, one element is instantly clear, namely that the Estates did not exercise Bodinian sovereignty or powers prior to the Revolt.[8] For example, when examining the transfer of authority to William of Orange, it is possible to determine which of the five characteristics of Bodinian sovereignty were actually entrusted to him. While serving as the leader of the Revolt, Orange was only to *protect* the welfare, freedoms and laws of the rebel provinces (as opposed to Bodin's first characteristic of legislative power). Administration of justice stayed with the Provincial Court and Council, which were to abide by the existing rules and privileges. Appeals were partly under Orange's jurisdiction and partly under the jurisdiction of the Provincial Council (Bodinian characteristics 4 and 5). Orange could appoint officials, but not without advice from the Estates (characteristic 3).[9] The Estates were responsible for approving decisions on war and peace and no changes in the sovereignty or high government could be made without their acceptance (characteristic 2).[10] The preceding examination thus demonstrates that instead of transferring their Bodinian powers to Orange, the Estates retained most of them, but without actually referring to them with the term 'sovereignty'.

This account of sovereignty is important because it relates to the work of Simon Stevin (1548–1620) and François Vranck (1555–1617), two writers who

6 Martin van Gelderen, 'Het gemenebest. Staat en Republiek in de politieke theorie van het Duitse Rijk en de Noordelijke Nederlanden', in Henk de Smaele and Jo Tollebeek (eds.), *Politieke representatie* (Leuven, 2002), 39.

7 Ernst H. Kossmann, 'Soevereiniteit in de Zeven Verenigde Provinciën', *Theoretische geschiedenis: kritiek, samenvattingen, aanwinsten instituutsbibliotheek, bibliografie van tijdschriftartikelen,* 18.3 (1991) 417–9.

8 Robert Fruin, *Geschiedenis der Staatsinstellingen in Nederland tot den val der Republiek* (ed. Herman T. Colenbrander; The Hague, 1980), 35–8, 59–61.

9 Bor, *Oorspronck, begin ende vervolgh,* vol. 15, 204–205; http://www.dutchrevolt.leiden.edu/dutch/bronnen/Pages/1581%2007%2005%20ned.aspx (last visited on 25/10/2020).

10 Bor, *Oorspronck, begin ende vervolgh,* vol. 15, 7–9.

have been the subject of my research during the last couple of years. They both wrote in a period of power contestations (1590 and 1587 respectively), during which it remained unclear where supreme power was located. Most modern historians who write about Vranck maintain that he produced his *Corte Vertoninghe* (1587) in the context of a discussion on the best form of government.[11] But if the Estates of Holland and Zeeland (and later the Estates General) had the highest power or were sovereign within their own provinces in the years preceding the publication of his work, it could not have been concerned with a discussion about the best form of government. On the contrary, in Vranck's eyes there had been an assault on the rightful government, and his text was therefore a defensive response. The same can be held for Simon Stevin's defence of the government, as he argued that it had been de facto legitimate from its inception.

Stevin's defence of a de facto legitimate government is part of his theory on the citizen's obligation of obedience. Stevin wrote his *Het burgherlick leven* (1590) three years after there had been a hostile discussion between Sir Thomas Wilkes (1545–1598), a follower of the earl of Leicester, and Vranck. After a fierce attack by Wilkes, the latter had been commissioned by the Estates of Holland to defend the legitimacy of their rule and sovereignty, and that of the Estates of Zeeland and West-Friesland. Both antagonists fell back on historical arguments to support their respective views on the legitimacy of government and sovereignty. Vranck thereby created a historical myth that would play an important role in Dutch history. Stevin, in turn, explicitly stated that the study of history showed that any one dynasty or government did obtain power illegitimately at some point, with the result that it could not be legitimate. For Stevin therefore, studying the past like Wilkes and Vranck was pointless, as the ruling government was the de facto legitimate government.

In the rest of this chapter, I will look at the motives behind Stevin's and Vranck's works and discuss which audiences they addressed. I will argue that the case of Stevin is not as unusual as several modern historians have claimed. It seems reasonable to place him in the underexposed discussion on the legitimacy of the Dutch government, to which Vranck also contributed. One dimension of this discussion which has received scant attention in recent research is the political debate on the legitimacy of the sovereignty of the Estates General and Provincial. Moreover, most present-day historians agree with the

11 *Corte Vertoninghe van het recht by den ridderschap, edelen ende steden van Hollandt ende Westvrieslant van allen ouden tyde in den voorschreven lande gebruyckt, tot behoudenisse vande vryheden, gherechticheden, privilegien ende loffelieke ghebruyken vanden selven landen* (1587).

proposition that Stevin's book is a 'handbook' for citizens (*burgers*), educating them on how to become a good citizen in troubled days (comparable to the mirror-for-princes literature, but then for citizens). A closer look at the work's structure, intellectual context and intended audience does however suggest that it should also be read and understood as advancing a position in the Dutch religious and political debate of the late 1580s, during the aftermath of the earl of Leicester's return to England. Equally important to keep in mind is that *Het burgherlick leven* addressed political and religious leaders who, in Stevin's view, threatened the unity of the country.

2 Zeitgeist

During the early Revolt, consensus was often lacking among the Dutch leadership. Because of this, William of Orange kept urging for unity.[12] In 1581, the Estates of the Northern Netherlands officially severed their ties with King Philip II (1527–1598) by means of the Act of Abjuration. The gap left by this Act was until 1588 filled by the duke of Anjou and the earl of Leicester, who served as a sort of 'heads of state', but without being acknowledged as sovereigns. In my opinion, sovereignty or governing power was exercised by the Estates of Holland and Zeeland from 1572 onwards. Even before this date, although the Dutch provinces had been ruled by the Habsburgs since the late fifteenth century, the Estates had quite a lot of autonomy and power in their own provinces.

When Leicester left for England in 1588, no new 'head of state' was sought. After his departure, the government of the Northern Netherlands was said to be in a deplorable and unstable state of division and confusion.[13] Even Queen Elisabeth of England confronted the Estates General about the existence of such harmful discord.[14] Those who could not see eye to eye included Spanish loyalists, men still devoted to Leicester (a pro English group), disgruntled Catholics and even radical Calvinists returning from exile.

Developments in the province of Utrecht are indicative of this strong factionalism and friction. In 1588, both supporters and opponents of Leicester

12 Sybrandus J. Fockema Andreae and Herman Hardenberg (eds.), *500 jaren Staten-Generaal in de Nederlanden* (Assen, 1964), 50.

13 Robert Fruin, *Tien jaren uit den Tachtigjarigen Oorlog. 1588–1598* (The Hague, 1899), 25, 27; P.H.J.M. Geurts, *Overzicht van de Nederlandsche politieke geschriften tot in de eerste helft der 17e eeuw* (Maastricht, 1942), 108; Simon Groenveld, 'Trouw en verraad tijdens de Nederlandse Opstand', *Zeeuws Tijdschrift,* 37.1 (1987) 2–12, 9–10.

14 Jan den Tex, *Oldenbarnevelt*, 5 vols (Haarlem, 1962), vol. 2, 282–3.

and Catholics with their pro-Spanish allies confronted each other in this province.[15] The lack of unity and consensus was not only apparent among different factions and individuals, but similarly among the distinct provinces. During Leicester's time in the Netherlands, there arose already a fair amount of contention between the provinces of Utrecht and Holland concerning sovereignty, which had partly manifested itself by means of pamphlets. To make matters even more adversarial and disorderly, religious dissidents who had fled prosecution started to return and the prospects for the continuing war against Spain were far from promising.

3 Periods

The new government in the Northern Netherlands was shaped between 1578 and 1610. During this period, the new role and power of the Estates was established, and the country got its physical form. This crucial period is nevertheless often overlooked by historians or described quite briefly in terms of military events. So far, most research on the Dutch Revolt has focused on its legitimation up to 1581 and the years immediately preceding the Twelve Years Truce (1609–1621). This does not do justice to the important timespan in-between. The time frame under consideration here, especially from the 1580s onwards, is the period in which the form of government of the Dutch Republic developed that would endure until the French ascendancy in the 1790s.

To facilitate a better understanding of the writings of Stevin and Vranck, and the issue of Dutch sovereignty, three phases are distinguished in the development of political thinking up to the Twelve Years Truce. It should be noted that depending on a particular writer's research interests (military, economic, social, …), he or she might choose a different periodization. Also, there is partial overlap between the first and second, and the second and third period.

1. The first phase from 1566 to 1581 is the best-known and most thoroughly researched. This is the period of the legitimation of the Dutch Revolt.
2. Between 1578 and 1588 there was a discussion on the best form of government for the Northern Netherlands. This period is identified by Van Gelderen as separate and distinct when considering the larger time frame.[16]
3. The third phase covers the years from 1588 to 1610 and is characterized by debate on the newly established Dutch government. Contributors to

15 Fruin, *Tien jaren uit den Tachtigjarigen Oorlog,* 9.

16 Martin van Gelderen, *The Political Thought of the Dutch Revolt, 1555–1590* (Cambridge, 2002), 207–8.

this discussion did not only argue about the best form of government, but also raised questions on the latter's legitimacy. As this questioning at least partly aimed to attack the fledgling Dutch government, it should not just be seen as part of a discourse on the most adequate style of governance. The *terminus ante quem* of the third phase is determined by Grotius's *Tractaet vande oudtheyt vande Batavische nu Hollandsche republique* (1610).

As already pointed out above, due to specific circumstances surrounding the Dutch struggle for independence, there is a certain degree of overlap between the three phases. Pamphlets defending the Revolt did not cease to appear after 1581. Hugo Grotius, for example, even wrote his vindication of the uprising as late as 1610. Likewise, the content of a 1601 publication indicates that the debate on the best form of government did not completely stop when Leicester left the Northern Netherlands in 1587.[17] Furthermore, by stating that the discussion on sovereignty and the most desirable form of government and state lasted for the entire period up to 1610, Nicolette Mout and Martin van Gelderen confirm the view that the debate in question continued in the period running up to and during the Twelve Years Truce.[18] Works exploring the materialisation of the provincial Estates' sovereignty also continued to be published during the Truce.[19] However, despite the previous examples of overlap, it appears that the main discussion of one period petered out with the beginning of the next period, and also served a different purpose.

While Vranck's writings are best classified as belonging to both phases two (1578–1588) and three (1588–1610), Stevin's *Het burgherlick leven* exclusively belongs to the third phase (1588–1610). The latter work first appears in 1590, at a time when internal resistance and rebellion were deemed to have come to an end, as by then the Dutch Revolt was being perceived as an external war fought against a foreign ruler.[20] Along these lines, Stevin argued that, despite a lack of consent among the nobles, citizens and cities of the Northern Netherlands

17 The discussion on the best form of government had begun long before the start of the Revolt in the Netherlands. Geurts, *Overzicht van de Nederlandsche politieke geschriften,* 100.

18 Gert Van de Klashorst, Hans W. Blom, and Eco O.G. Haitsma Mulier, *Bibliography of Dutch Seventeenth Century Political Thought: An Annotated Inventory, 1581–1710* (Amsterdam/Maarssen, 1986), 10–5; Van Gelderen, *The Political Thought of the Dutch Revolt*, 266; 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) 345–65, 359–60.

19 Van de Klashorst, Blom, and Haitsma Mulier, *Bibliography,* 20.

20 Petros Samara, 'De politieke filosofie van Simon Stevin', *Geschiedenis van de wijsbegeerte in Nederland: documentatieblad van de Werkgroep "Sassen"*, 11.1–2 (2000) 21–49, 34.

in the 1590s, a new government had been established and nobody should undermine it by rebellion.[21] In the third and last phase, writers like Stevin thus defended the *wettelicke regierders* (legal rulers) and claimed that the power of the Estates was legitimate.[22] When reflecting on the debate in this final period, three factors ought to be distinguished, namely, peace, welfare, and the rule of law. Of these three, peace, and more specifically, the maintenance of both external and internal peace, was judged to be the most significant. This factor's preponderance arose from statements made by influential writers such as Stevin and Grotius, who maintained that discord within society created the greatest threat to peace. Societal unity and harmony could only be reached when the interests of the individual were made secondary to the common cause.[23] Stevin was not the only author who emphasized the need for unity. Grotius, to name just one other example, refers to 'the enemy from outside and dissension within society', and seems to find both equally harmful.[24]

4 Sovereignty in Bodin

With the Treaty of Bordeaux of 1581, the duke of Anjou came to be known as 'prince et seigneur' instead of 'prince et seigneur souverain', as he had requested.[25] The agreement with the duke set out in this treaty can be summarized as follows: Anjou would enforce the privileges, the Estates could meet as often as they desired, the system of taxes in return for privileges remained intact, and the Estates would decide on appointments to official positions, for which only Dutchmen could be nominated. Also, there would be no religious persecutions.[26] The Provinces and provincial Estates of Holland and Zeeland furthermore emphasized that they did not understand and apply the term 'sovereign' in the same way as the duke and Jean Bodin, his counsellor. Notwithstanding this statement, like several other contemporary writers, Holland and Zeeland did not refrain from frequently using this term, as for example in the following fragment of a 1581 conceptual treaty:

21 Fruin, *Tien jaren uit den Tachtigjarigen Oorlog*, 94; Den Tex, *Oldenbarnevelt,* vol. 2, 211, 264.
22 Simon Stevin, *Het burgherlick leven* (Leiden 1590), 19.
23 Van Gelderen, *The Political Thought of the Dutch Revolt*, 207–8.
24 Grotius, *Kroniek van de Nederlandse Oorlog*, 109, 121–2.
25 Grotius, *Kroniek van de Nederlandse Oorlog*, 137.
26 J.J. Grolle, *Weg met de koning. 's Konings zegel gebroken: Het ontstaan van de Nederlandse Staat in 1581* (The Hague, 1981), 69.

> [...] dat Zijn Excellentie, solange de voorschreven landen sullen sijn in oorloge of wapenen, volkomen autoriteit en macht hebben en gebruiken sal, als souverain en overhooft te gebieden en verbieden alles wes [sic] tot conservatie en bescherminge derselver landen dienlijk of schadelijk sal mogen wesen [...].[27]

So, did Dutch understanding of sovereignty change following the circulation of *Six livres de la republique*? Bodin's definition of sovereignty as 'that absolute and perpetual power vested in a commonwealth' and his five characteristics of sovereignty have already been discussed in the introduction. Even though the duke of Anjou was not meant to be the actual sovereign,[28] the contemporary historian Emmanuel van Meteren (1535–1612) writes in the eleventh book of his *Historie van de oorlogen en geschiedenissen der Nederlanderen* that this was the period (1582–1584) in which the duke and the prince of Parma 'had the government', the latter in the Southern Netherlands, the former in the Northern provinces.[29] In the introduction to the eleventh book, the Estates are not mentioned as part of the Northern Netherlandish government, contrary to what is the case in several other books part of the *Historie*. Van Meteren was not the only early modern Dutch historian who acknowledged Anjou's power. In his *Kroniek van de Nederlandse Oorlog*, Grotius mentions that the duke exercises abundant power, and he even refers to this power as 'aankomend vorstengezag' ('future sovereign authority'), or a 'reeds beklonken troon' ('already having the throne').[30] These remarks draw attention to the ambiguous nature of Anjou's position and the ambivalent interpretation given to his power and sovereignty during the Dutch Revolt.

According to Jos Coopmans, the 1581 agreement with the duke of Anjou was an important step in the development of a constitutional understanding in the Northern Netherlands. The position of the Estates General in the administration of the country is well documented and can be summarized in a few

27 '[...] that His Excellency, as long as the aforementioned provinces are at war, will have and will use full authority and power, as sovereign and overlord, to command and forbid all that might be beneficial or harmful to the conservation and protection of the same provinces', in 'Opdracht der hooge overheid van Holland aan Willem I, 1581', published in Anne S. de Blécourt and Nicolaas Japikse (eds.), *Klein plakkaatboek van Nederland. Verzameling van ordonnantiën en plakkaten betreffende regeeringsvorm, kerk en rechtspraak* (*14e eeuw tot 1749*) (Groningen/The Hague, 1919), 137.

28 Den Tex, *Oldenbarnevelt,* vol. 1, 169–70.

29 Emmanuel van Meteren, *Historie van de oorlogen en geschiedenissen der Nederlanderen, en derzelver Naburen,* 10 vols (Gorinchem, 1751), vol. 4, 2.

30 Grotius, *Kroniek van de Nederlandse Oorlog*, 136–7, 195.

points. Anjou had to swear an oath to all the provinces separately, as well as to the Estates General. In case he did not keep it, the Estates were in turn released from upholding their own oath. This swearing and reneging of oaths is reminiscent of the Brabant Joyous Entry (1356). The Estates could also choose any government as they saw fit.[31] This summary indicates that the Estates held their own rights and power to be unique and original, but certain elements here are nevertheless still unclear. For example, when exactly during the Revolt did the Estates become 'sovereign' rulers? Or, when did they obtain de facto, and, de jure power respectively? Finally, when did the Estates ultimately admit to having this power?

This paragraph will look in more detail at the relation between Bodin's thinking and the Dutch understanding of sovereignty. Ernst Kossmann points out that in Dutch texts several different terms were used to refer to sovereignty, and that the exact meaning of these terms is not always clear. However, what is clear though, is that the Dutch and Spanish clung to different interpretations of power and sovereignty, which were mutually incompatible.[32] For Bodin, as already noted, sovereignty was absolute, the sovereign possessed all power.[33] According to Kossmann, the Bodinian definition of sovereignty stood in direct opposition to the Dutch idea of *volkssoevereiniteit* ('people's sovereignty').[34] The Dutch rose up against Spanish rule because they wanted to protect their old privileges against intrusions justified by exactly such Bodinian interpretation of strong and absolute sovereignty. In Dutch eyes, the sovereign was responsible for protecting their privileges, and had to act as a safeguard and protector of existing laws and liberties. On the contrary, Bodin's sovereign himself had legislative powers and possessed absolute authority.[35]

When considering the claim that the Dutch did not know the term 'sovereign', Kossman states this is only partly true. It is clear that the Dutch did know 'sovereign' and 'sovereignty' as words. To illustrate this, he relies on the 1581 quote mentioned earlier in this article and a text from 1584.[36] According to Kossman however, the Dutch interpretation of these terms does not match Bodin's definition. In his view, the Estates General realised that the understanding

31 J.P.A. Coopmans, 'De huldigingsvoorwaarden voor Willem van Oranje van 1583. Een nieuw type gezagsovereenkomst', in Hugo Soly and René Vermeir (eds.), *Beleid en bestuur in de oude Nederlanden. Liber amicorum prof. dr. M. Baelde* (Ghent, 1993), 49–64, 55–6.

32 Kossmann, 'Volkssouvereiniteit', 63–5.

33 Kossmann, 'Volkssouvereiniteit', 67.

34 Kossmann, 'Volkssouvereiniteit', 68.

35 Kossmann, 'Volkssouvereiniteit', 69.

36 Kossmann, 'Volkssouvereiniteit', 72.

of sovereignty in the duke of Anjou's circles was different from that in the Netherlands, so they denied that the term was known to the Dutch people.

In the period following the death of William of Orange, the situation was so bad according to Grotius 'that they wanted to be incorporated in a kingdom, but found all doors shut'. The obedience of the Dutch people collapsed after the death of Orange and support from a foreign power was needed to restore it. This explains why the queen of England was offered supremacy over the Northern Netherlands after Anjou's premature death in 1584.[37] The next year, a delegation departed from the Netherlands to England carrying three different sets of instructions. The most desirable and radical option was to offer full sovereignty to Elisabeth. If she accepted, she would own the country and provincial sovereignty would end.[38] This way of reasoning suggests that the Dutch did know Bodin's type of sovereignty after all.

5 The Estates as Sovereign

Much like early modern Dutch thinkers, historians today disagree on when exactly the Estates became sovereign in the Northern Netherlands. Not all writers refer to a specific year for the transfer of sovereignty, because some argue this was a gradual process. Different events and years are singled out as important steps or milestones in the process, but none of these conclusively mark when the Estates obtained their sovereign power. These milestones usually more or less correspond with the years contemporary writers considered to be of crucial importance.

Quite a few authors identify 1572 as the year in which the Estates of Holland and Zeeland became sovereign within their own provinces. According to Grotius, the Estates regained the power they had lost during the reign of former princes after their first meeting.[39] Van Meteren also emphasizes the importance of this first assembly.[40] When writing about the period around 1572, the latter spoke of the rule of Alba and Orange.[41] Until 1572 there was

37 Grotius, *Kroniek van de Nederlandse Oorlog*, 164–5; Van Meteren, *Oorlogen en geschiedenissen,* vol. 4, 227–8, 274, 276.

38 Ernst H. Kossmann and Albert F. Mellink (eds.), *Texts Concerning the Revolt of the Netherlands* (Cambridge, 1974), 43–4.

39 Hugo Grotius, *The Antiquity of the Batavian Republic. With the notes by Petrus Scriverius* (ed. and transl. Jan Waszink et alii; Assen, 2000), 103–5.

40 Van Meteren, *Oorlogen en geschiedenissen,* vol. 2, 72–3.

41 Van Meteren, *Oorlogen en geschiedenissen,* vol. 2, 3.

military resistance but in that year a 'political and institutional foundation' was added. Olaf Mörke in turn states that from this year onwards, the power of the Spanish king remained limited to paper only in the Northern Netherlands.[42] Martin van Gelderen makes an even stronger statement by saying that by becoming autonomous, the Estates of Holland regained control over the government in 1572.[43] The Estates began exerting powers which they previously did not have.[44] According to Geert Janssen, this year marked a change in legitimate regimes. His hypothesis is based on the fact that Protestants who had previously been living in exile began to return to Holland and Zeeland.[45] By comparing resolutions of 1557 and 1575, Enno van Gelder proves that the Estates of Holland and Zeeland held the powers of government by 1572. In 1575, the relevant authority was clearly exercised by the Estates and stadtholder.[46] Holland and Zeeland were moving faster and further ahead in the process of becoming autonomous and cutting ties with the Spanish king than the other provinces and the Estates General.[47]

Other authors refer to the union of Holland and Zeeland in 1575/1576 as another milestone. Due to this union, William of Orange's authority for the duration of the war was more or less absolute,[48] but he did acknowledge having received it from the Estates.[49] Van Meteren describes Orange's power as 'great'.[50] In 1576, Holland and Zeeland also sought the support of England and France in return for power. Yet, the 1576/1577 edicts of the Council of State were still promulgated in the king's name, even though they (as in 1576) were actually targeting that same king.[51] It therefore appears that the Estates had and exercised de facto power, but did not openly admit this to the outside world. Moreover, when Archduke Matthias came to the Netherlands in 1577, he had to swear an oath to the king and the Estates (who did not swear an oath back

42 Olaf Mörke, *Willem van Oranje* (*1533–1584*). *Vorst en 'vader' van de Republiek* (Amsterdam/Antwerp, 2010), 163–4, 171.

43 Van Gelderen, *The Political Thought of the Dutch Revolt*, 43.

44 Fockema Andreae and Hardenberg, *500 jaren Staten-Generaal,* 43.

45 Geert H. Janssen, 'Exiles and the politics of reintegration in the Dutch Revolt', *History,* 94 (2009) 36–42, 49.

46 Hendrik A. Enno van Gelder, *Nederlandse Staten en het Engelse Parlement in verzet tegen vorstenmacht en gevestigde kerk* (Brussels, 1960), 4–5, 20–1, 28; Van Gelderen, *The Political Thought of the Dutch Revolt*, 53; Van Meteren, *Oorlogen en geschiedenissen,* vol. 2, 327.

47 *Plakkaat van verlatinge* (ed. and transl. M.E.H.N. Mout; Groningen, 2006), 39.

48 Kossmann and Mellink, *Texts Concerning the Revolt of the Netherlands*, 38.

49 Helmut G. Koenigsberger, 'Why did the States General of the Netherlands become revolutionary in the sixteenth century', *Parliaments, Estates and Representation*, 2 (1982) 106–11.

50 Van Meteren, *Oorlogen en geschiedenissen,* vol. 2, 177.

51 Van Meteren, *Oorlogen en geschiedenissen,* vol. 2, 348.

to Matthias). By imposing this requirement, the Estates yet again conveyed a mixed message.[52] The years 1581 and 1587/1588 have similarly been recognized as milestones in the context of the Estates' rise to sovereignty. With the 1581 Act of Abjuration the formal character of the Revolt changed from an armed uprising against one's own ruler to an external war against another state.[53] The Act did not mention where sovereignty would reside from then on, but it did restore formal legality.[54]

In an instruction dated 13 January 1598 to a diplomatic delegation heading for England, the Estates describe how, since the abjuration of Philip II, they continuously acted as an independent body and as such had entered into commitments with foreign powers. With this statement, they outwardly backdated the transfer of sovereignty to the year 1581.[55] It is important to note here that they 'acted independently'. Whether or not they actually had the competence to do so was of less importance. Use of Philip II's titles and insignia was likewise ended in 1581. It took another year for a supreme court for Holland and Zeeland to be set up at The Hague and for Holland to abrogate the appellate authority of the High Council in Mechelen.

Until 1586, the Estates did not claim to be sovereign.[56] And even when they began doing so, there was no agreement on sovereignty between the different provinces. Tellingly, the transfer of government from Leicester to the Estates of Holland in 1587 was thwarted by a coalition of the provinces of Utrecht, Gelderland, Overijssel, Friesland, and the Calvinist church. Together, and without the knowledge of the Estates of Holland and Zeeland, they sent a mission to Elisabeth to offer her the unconditional Dutch sovereignty.[57]

In conclusion, from 1572 onwards Holland exercised de facto power and did not accept Philip II's or any other ruler's de jure or real power and sovereignty. Accepting and acknowledging this to the outside world would take until 1586. There was a difference between exercising power, admitting to

52 Coopmans, 'De huldigingsvoorwaarden voor Willem van Oranje', 54–5.

53 Grolle, *Weg met de koning,* 77. Several writers emphasized this, for example: Adrianus J.C. de Vranckrijker, *De Staatsleer van Hugo de Groot en zijn Nederlandse tijdgenoten* (Nijmegen/Utrecht, 1937), 5.

54 Robert von Friedeburg, 'The legality of government's legitimacy', in Paul Brood and Raymond Kubben (eds.), *The Act of Abjuration: Inspired and Inspirational* (The Hague, 2011), 40.

55 Fruin, *Tien jaren uit den Tachtigjarigen Oorlog*, 309.

56 Jan A.F. de Jongste, 'De Republiek der Verenigde Nederlanden', *Leidschrift*, 9.3 (1993) 101–16, 106.

57 Den Tex, *Oldenbarnevelt,* vol. 1, 314; Geurts, *Overzicht van de Nederlandsche politieke geschriften,* 107.

having power, and being accepted as being in power. The other provinces followed behind Holland and Zeeland. Kossmann provides a rather critical summary of the situation by stating that the Dutch state was a state born in denial.[58] After 1588, the ambiguity of the previous years did not immediately come to an end either. Rather, uncertainty about the allocation of Dutch sovereignty continued to exist until well into the first half of the seventeenth century. On the face of it, the Estates General acted as sovereign, but within the country the different provinces held on to their respective sovereignty.[59] To further study the concept of sovereignty in the context of the Northern Netherlands, this chapter's final sections will examine the cases of François Vranck and Simon Stevin.

6 François Vranck (1555–1617)

The emergence of the new Dutch regime coincided with the period in which Stevin and Vranck were writing their works. During these years, legal powers previously vested in one person began to be exercised by the Estates as the sovereign body. This state of affairs, viewed as a novelty by the outside world, became the subject of the debate engaged in by Vranck and Stevin.

Vranck was pensionary of Gouda when he wrote *Corte Vertoninghe* (1587), the work under discussion here. He had held this position since 1583. Gouda opposed the transfer of sovereignty to a foreign prince and enlisted Vranck in 1584 to defend its stance.[60] When called upon to perform this task, Vranck already expressed the position he would continue to defend in 1587. After the publication of *Corte Vertoninghe*, he remained involved in the main political debates in the Northern Netherlands and was appointed to various important posts.[61] Vranck's political standpoint did change in the course of his career. After having been a long time a defender of the sovereignty of the Estates, he would eventually commit himself to the cause of Maurice of Nassau.[62]

58 Ernst H. Kossmann, *Politieke theorie in het zeventiende-eeuwse Nederland* (Verhandelingen der Koninklijke Nederlandse Akademie van Wetenschappen, Afdeling Letterkunde, Nieuwe Reeks 67; Amsterdam, 1960), 7.

59 Kossmann, 'Soevereiniteit in de Zeven Verenigde Provinciën', 418.

60 Geurts, *Overzicht van de Nederlandsche politieke geschriften,* 106.

61 Geurts, *Overzicht van de Nederlandsche politieke geschriften,* 109; Den Tex, *Oldenbarnevelt,* vol. 2, 529.

62 Fruin, *Tien jaren uit den Tachtigjarigen Oorlog*, 59.

In his 1587 remonstrance, Thomas Wilkes asserts that sovereignty lies with the people in the Northern Netherlands.[63] The earl of Leicester only served as keeper of this sovereignty until being rejected by the king or the Dutch people. Wilkes considers sovereignty to be unlimited and quotes Bodin when stating that it cannot be restricted in either power or time.[64] According to Wilkes, in the absence of a sovereign prince, the Dutch people, and not the Estates, are sovereign. As an instrument of the people, the Estates merely serve the Dutch public. With the latter's best interests in mind, the Estates found it desirable and fitting to transfer sovereignty to the earl of Leicester after Philip II's departure.[65] The earl only represented and managed the sovereignty until the return of the king, or until the Dutch people reclaimed it.[66] Therefore, the Estates had no right to contest Leicester's power.[67]

Commissioned by the Estates of Holland and writing from their perspective, François Vranck opposes Wilkes and aims to defend the legitimacy of the government and sovereignty of the Estates of Holland and Zeeland. It is consequently not surprising that the *Corte Vertoninghe* has mainly been discussed in the context of the exchange with Wilkes on the best form of government. This chapter, however, will place it in the context of the legitimacy of government, by showing that Wilkes attacked Vranck's writings and that the latter's work set out to defend the legitimacy of government. With the *Corte Vertoninghe,* he attempts to formulate a legally solid and justifiable answer to the question of how sovereignty should be allocated after Philip II's abjuration by examining and describing the historical and constitutional foundations of the princes who had governed the country in the past.[68]

According to Vranck, it is common knowledge that Holland, West-Friesland and Zeeland for the past 800 years had been governed by dukes and duchesses who legally got their power from knights, noblemen, and cities who, in turn,

63 Leonard Leeb, *The Ideological Origins of the Batavian Revolution: History and Politics in the Dutch Republic, 1747–1800* (The Hague, 1973), 23.

64 Rosa Groen, 'Strijd over soevereiniteit: Engelse betrokkenheid bij de Nederlandse Opstand', *Skript: Historisch tijdschrift,* 25.4 (2003) 31–44, 39, 41; Ernst H. Kossmann, 'Bodin, Althusius en Parker, of: over de moderniteit van de Nederlandse opstand', in Id., *Politieke theorie en geschiedenis*, 93–110, 98.

65 Fockema Andreae and Hardenberg, *500 jaren Staten-Generaal,* 56; Martin van Gelderen, *The Dutch Revolt* (Cambridge, 1993), xxvii.

66 Van Gelderen, *The Dutch Revolt*, xxviii.

67 De Jongste, 'De Republiek der Verenigde Nederlanden', 106.

68 Theo J. Veen, 'Van Vranck tot Kluit. Theorieën over de legitimatie van de soevereiniteit der Staten Provinciaal (1587–1795)', in Philippus H. Breuker and Michaël Zeeman (eds.), *Freonen om ds. J.J. Kalma hinne* (Leeuwarden, 1982), 302–24, 303.

represented the inhabitants of the country. These dukes and duchesses did not make important decisions on war, peace or financial questions without hearing the opinion and having secured the consent of these same knights, noblemen, and cities. Advice was not only listened to, it was genuinely taken into account and followed.[69] The *Corte Vertoninghe* describes this form of multi-level cooperation as a perfectly legitimate system.[70] As can be gleaned from history according to Vranck, the Estates could legitimately take over sovereignty in the absence of another rightful and recognized authority.[71]

The work then continues by emphasizing that the individual members of the Estates are not sovereign. The Estates as a whole hold the sovereignty because it is delegated to them by the nobles, cities, and knights.[72] It is also underlined that in the past, princes received their power from the inhabitants.

Speaking through Vranck, the Estates contend that it can be proved with irrefutable evidence that their authority constitutes a cornerstone of society, which ought to be maintained. In other words, the power of the Estates cannot not be compromised or undermined without bringing the state to ruin. With Vranck as their mouthpiece, the Estates pronounce themselves as the sovereigns of the country, a situation which had not changed since the time of the princes.[73] Accordingly, they can thus not be dispensed with, as they play an important role in protecting the general interest and are the foundation of the country.[74] This account demonstrates that a factually correct historical representation mattered less to Vranck than producing convincing political arguments, as it was confirmed by Groenveld and Leeuwenberg.[75]

The *Corte Vertoninghe* also aimed to create unity among the Dutch people. Vranck, and Grotius after him, sought to generate cohesion by inventing a historical myth as the basis of a shared history. Against the bigger picture of sixteenth century upheaval in the Netherlands, their endeavours are understandable, as there was indeed a clear need for Dutch unity in this period. In 1588 the Estates even struck a coin with a message urging unity.[76] It read: 'Trahite Æquo Jugo / Frangimur Si Collidimur' ('draws under an equal load-bearing yoke / we

69 Kossmann and Mellink, *Texts Concerning the Revolt of the Netherlands*, 274–5.
70 Kossmann and Mellink, *Texts Concerning the Revolt of the Netherlands*, 275.
71 Kossmann and Mellink, *Texts Concerning the Revolt of the Netherlands*, 275–6.
72 Kossmann and Mellink, *Texts Concerning the Revolt of the Netherlands*, 276–7.
73 Kossmann and Mellink, *Texts Concerning the Revolt of the Netherlands*, 281.
74 Van Gelderen, *The Dutch Revolt*, xxxiii.
75 Simon Groenveld and Huib Leeuwenberg, *De Tachtigjarige Oorlog. Opstand en consolidatie in de Nederlanden* (*ca. 1560–1650*) (Zutphen, 2008), 127.
76 Van Meteren, *Oorlogen en geschiedenissen,* vol. 5, 156–7.

will break when we collide').[77] One side of the coin shows two oxen pulling a plough, one together with a rose symbolizing England, the other together with a lion symbolizing Holland. The other side displays two floating jugs.[78]

As already mentioned above, I support an interpretation of Vranck's work, which is different from that of most other relevant historians. It has become clear how important it is to determine when the Estates became the highest power in the Northern Netherlands. The pinpointing of this moment is even more critical when seeking to interpret Vranck's writings, seeing that many historians mistakenly believe that he participated in a debate on the best form of government. But given that the Estates of Holland and Zeeland had already been exercising the highest power since 1572, Vranck does not actually participate in a discussion on the best form of government for the future, but instead strives to counter an attack on the existing government. It is clear that the Estates similarly believed that they were the target of criticism and censure, including that uttered by Wilkes, from the instructions they gave Vranck while he was writing the *Corte Vertoninghe*.

7 Simon Stevin (1548–1620)

Simon Stevin was born in the Southern Netherlands and later migrated to the Northern provinces. He then enrolled to study at the University of Leiden, where he met Maurice of Nassau. From 1590 onwards, Stevin mainly worked in the service of and produced writings for the stadtholder. Most of his publications written after this year discuss subjects of importance to Maurice or the country. *Het burgherlick leven* (*The Civic Life*) (1590) is one of his works conceived 'in the interest of the country'. Its goal was to contribute to the creation of order and consensus.[79] Stevin also acted as a counsellor to Maurice on many different subjects, including mathematics, the army, engineering[80] and

77 Jacobus Scheltema, *De uitrusting en ondergang der onoverwinnelijke vloot van Philips den tweeden, koning van Spanje, in 1588* (Haarlem, 1825), 94; Gerard van Loon, *Beschryving der Nederlandsche Historiepenningen: Of beknopt Verhaal van 't geene sedert de overdracht der heerschappye van Keyzer Karel den Vyfden op Koning Philips zynen zoon, Tot het sluyten van den Uytrechtschen Vreede, In de zeventien Nederlandsche Gewesten is voorgevallen*, 4 vols (The Hague, 1723–1731), vol. 1, 385.

78 William Camden, *Remains Concerning Britain* (London, 1870), 384.

79 Jozef T. Devreese and Guido Vanden Berghe, 'Simon Stevin (1548–1630). Vlaamse leermeester van een Nederlandse prins', *Vlaanderen*, 51 (2002) 18–20, 20.

80 Henk Nellen, *Hugo de Groot, een leven in strijd om de vrede 1583–1645* (Amsterdam, 2007), 28. De Smet argues that already in 1584 Stevin was probably Maurice's teacher. He founds his opinion on a letter of Maurice. Cf. Rudolf de Smet, 'Simon Stevin en de paradox van

politics.[81] As an author, he committed himself to building and improving the Dutch state.

Existing publications on Simon Stevin focus mainly on his achievements as a scientist. His *Burgherlick leven* has also been the subject of some research. Yet so far, very little attention has been devoted to his other barely known political works, which were published posthumously by his son under the title *Burgherlicke stoffen* (1649). Stevin is therefore generally perceived as a scientist who wrote one political work that fits in oddly with the rest of his oeuvre.[82] It is however submitted that a thorough reassessment of this oeuvre, mainly of the works in *Burgherlicke stoffen*, will prove that Stevin was a scientist who nevertheless became a serious political thinker and influential policy advisor to Prince Maurice.[83]

As already mentioned, Stevin wrote several political works, including *Onderscheyt van de verdrucking*, *onderscheyt van der raden oirden*, *vande amptlienkiesing en ghemeene anclevingen der ambten*, apparently aiming to provide advice to Maurice and change and improve the Dutch state. Even though a detailed examination of these texts would go well beyond the limits of this chapter, they do merit a brief reference. A reading of these texts demonstrates that Stevin paid a lot of attention to, and expressed great concern about corruption and nepotism, two problems which current researchers have not recognized as prominent or topical in the early seventeenth-century Dutch Republic. As in all other respects, Stevin authored his political works in reaction to pressing issues and topical events, this raises the question whether the Republic did indeed suffer from serious corruption and nepotism in the first decade of the seventeenth century. If not, why then was Stevin so concerned about these matters? In the works brought together in *Burgherlicke stoffen*, Stevin no longer focuses on the legitimacy of government, but rather on the improvement of the state, combatting corruption and nepotism, and installing several supervisory councils. Here, he thus no longer concentrates on the issues encountered by a

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het gefragmenteerde Humanisme', in Hossam Elkhadem and Wouter Bracke (eds.), *Simon Stevin (1548–1620). De geboorte van de nieuwe wetenschap* (Turnhout, 2004), 27–34.

81 Catherine Secretan, 'Simon Stevin's 'Vita politica. Het burgherlick leven' (1590): A practical guide for civic life in the Netherlands at the end of the sixteenth century', *De zeventiende eeuw: Cultuur in de Nederlanden in interdisciplinair perspectief. Tijdschrift van de Werkgroep Zeventiende Eeuw*, 28.1 (2012) 2–20, 18.

82 Samara is an important exception to this. Samara, 'De politieke filosofie van Simon Stevin'.

83 Hendrik Stevin (ed.), *Materiae politicae, Burgherlicke stoffen. Vervanghende ghedachtenissen der oeffeninghen des Doorluchtigsten Hoogstghebooren Vorst en Heere Maurits bij Gods genade Prince van Orangie etc.* […]. *Beschreven deur Simon Stevin van Brugge* (Leiden, 1649).

newly established regime, but instead focuses on the problems experienced by an already existing state. Moreover, in the texts in *Burgherlicke stoffen*, he does also give guidelines for diplomats and for the use of reprisal.[84]

In his own words, Stevin wrote *Het burgherlick leven* due to the existence of several factors such as the appearance of significant changes in the government of the Northern Netherlands, the continued societal friction and lack of consensus, the fact that not all the Northern Netherlands' inhabitants obeyed the same ruler, and a more general confusion among the Dutch people on how to act as good citizens. Members of the government also qualified as citizens.

All people who act within the scope of the laws (divine, natural and local) that bring peace and wellbeing to society are called *burger* ('burgher', 'citizen').[85] Stevin claims that doubts sometimes arise in relation to the question on who holds the legitimate government. If a law conforms to one's inner feelings, obeying it is self-evident and can be achieved without external assistance. In this case, conscience is sufficient to ensure adherence to the law. However, problems arise when laws contradict each other or contradict the dictates of conscience. The adoption of such an approach avoids questioning whether a government is legitimate or not.

Stevin, in turn, aims to assist Dutch citizens by explaining whether or not a government is legitimate. For this purpose, he formulates a general civic rule, namely, 'a man should always consider as legitimate the government which at that point in time actually rules his homeland'. He should choose a land as his home, without worrying whether the government's predecessors gained power legitimately or illegitimately'. In any country, there will always be some changes in government that were made illegitimately. If one retraces those lines of thought, no government is legitimate in the end. Each former regime could argue to be legitimate, which would result in societal disagreement and conflict in relation to which government should be obeyed.

To circumvent such circular reasoning, Stevin asserts that the ruling government has de facto legitimacy. In the case of the Northern Netherlands this would mean that the Estates are the legitimate government, no matter how

84 In a recent new interpretation of Hugo Grotius's *De iure praedae*, currently being written by Hans Blom, a similar concern for the incorruptibility of the highest institutions in the state can be recognized, that is in Grotius's development of the concept of *Fides* in society. *De iure praedae* was written in precisely the same period as the texts in Stevin's *Burgherlicke stoffen*, which suggests that these concerns were indeed topical and urgent to circles in which Stevin and Grotius lived.

85 Simon Stevin, *Het burgherlick leven en Anhangh/Vita politica* (ed. Pim den Boer, transl. Anneke C.G. Fleurkens; Utrecht, 2001), 35–7.

they gained power in the first place and who their predecessors were, and irrespective of the duration of their reign.

When one moves to France, Stevin expounds, it is no more than reasonable to accept the current government there. The same reasoning applies to every other country. By consequence, every citizen should conform to the form of government fate has dealt his homeland. If one chooses to remain loyal to a former lord or ruler, then one should leave and support this lord 'with proper means' from where the latter is based to help him reconquer the country. In other words, according to Stevin, a citizen has the choice to conform or leave after a regime change. Staying, feigning obedience, and secretly supporting another lord is deemed unacceptable and amounts to treason. Citizens should be obedient and loyal.[86]

When applying this way of thinking, a problem can arise when several parties are engaged in a power struggle. Stevin tackles this potential issue by explaining that once the rightful party has been installed, people should resist those who (going against their oaths) want to change, undo or remove good laws, freedoms and government officials. People should help those officials who protect such laws and freedoms, as otherwise troubles and difficulties will emerge.[87]

Another one of Stevin's general civic rules states that a man should conform to the laws of the place where he resides. Here too, questionable laws can complicate the situation, but Stevin again offers guidelines about which laws to obey. Laws should be made by those who have the right to do so, and when they contradict each other, the highest one prevails. It is equally important to act according to the spirit of the law, and not just its letter, but only if this does not harm society in any way.[88]

Stevin concludes *Het burgherlick leven* with another general civic rule which states that 'Out of all the different societies on earth, every man should choose a society with a current state of affairs to which one is willing to conform'. If this willingness is absent, there will be continuous strife, discord, uprising and disorder, and society will no longer constitute a community. Society should be compared to a boarding house. Once you have picked one to stay in, you must obey its rules. If you refuse to comply, you have to leave.

Simon Stevin defends the Dutch *regieringhe* ('government') and its legitimacy in *Het Burgherlick leven*. The government in power should be obeyed and the Dutch people should conform to its laws and practices, irrespective of the

86 Stevin, *Het burgherlick leven,* 37–47.
87 Stevin, *Het burgherlick leven,* 49–61.
88 Stevin, *Het burgherlick leven,* 83–97.

short duration of its rule. According to most contemporary writers *Het Burgherlick leven* is a 'handbook' for citizens. Nevertheless, a closer examination of its structure, intellectual context, and intended audience reveals that it should also be read as an attempt to take a stance in the Dutch political debate of the late 1580s, in the aftermath of Leicester's return to England. In my opinion, it is thus also a political pamphlet that should be viewed and studied within the context of a broad political discussion. Its text does indeed make a plea for obedience, but this appeal does not only apply to the relationship between the 'commoner' and the government. Its targeted audience is made up of administrators and religious leaders who had been disobeying the government and were busy undermining the central authority. According to Stevin, they too had to conform or leave.

In *Het burgherlick leven* the legitimacy of 'deghene die teghenwoordelick metterdaet regieren' ('those who actually rule in this present time') is confirmed.[89] So, as already described above, Stevin defends the necessity of conforming to and obeying the present government. Dissidents had a choice. They could either conform to the current situation and government or leave. A revolt could never be legitimate.

Lastly, in his work Stevin also looks at several aspects of a good civic life in troubled times, including religion, good governance, legitimate government, and obedience to the law in a context of domestic strife. His discussion of these different subjects is aimed at reaffirming the ruling government's power and returning Dutch society to a state of obedience and tranquillity.

8 Conclusion

The distribution of power within the Northern Netherlands was left unsettled in 1588. This is evidenced by the way Van Meteren describes the government in the ensuing years. He relates how between about 1588 and 1593, the princes Maurice and William Louis of Nassau form the government.[90] For the years 1593 to 1595, the government still appears to have been in the hands of these princes. The Estates are again not mentioned in the account for 1595 and 1596. Van Meteren's description hence clearly demonstrates that there was a lack of clarity in the division of power. Yet, according to Fruin, Fockema and Hardenberg, the years from 1588 onwards should be seen as a 'formative' period in the

89 Stevin, *Het burgherlick leven*, 11.

90 Van Meteren, *Oorlogen en geschiedenissen,* vol. 5, 171, 313.

history of the Northern Netherlands, during which the independence of the country is confirmed and the Dutch Republic takes on its definitive shape.[91]

With this chapter, the author hopes to have established that in late sixteenth- and early seventeenth-century Dutch writings, the meaning of 'sovereignty' does not always equate to the Bodinian interpretation. The word was used together with other words like *regieringh*, and it only gradually developed into a clearly defined concept. In the Northern Netherlands, government or sovereignty given to or temporarily bestowed on a head of state was by no means absolute, and thus differed from Bodin's understanding. Restrictions were always imposed on whoever held the highest executive power and the Estates (especially Holland) exercised tight control. While on occasions it was debated to give one or another head of state more powers in times of need, this never actually happened.

The question of when the Estates became sovereign cannot be answered in the same way for all the different provinces. For example, Holland and Zeeland already established their de facto rule from 1572 onwards, when they did no longer accept any effective higher authority. Without admitting to the outside world that they were exercising the actual power, the Estates of Holland and Zeeland henceforth governed their own provinces and acted as 'sovereign rulers'. Other provinces would only later adopt similar strategies. Only in 1586 would the Estates publicly and officially declare themselves to be the sovereign rulers within their own provinces. The potentially negative effects of such an announcement on ties and relationships with allies and trading partners may have contributed to their prolonged reluctance in doing so. Between 1572 and 1586, and even in later years, the Estates gradually secured more power and acceptance by way of several successive steps. They only acquired de jure sovereignty at the end of the Eighty Years War (1648).

Vranck and Stevin, who were two active participants in discussions on power and sovereignty, each played an important part in supporting the establishment of the government of the Dutch Republic. And while each preferring to adopt a different approach, they both resolved to protect the rulers of their respective provinces. As discussed above, Vranck referred to a historical myth when defending the Estates of Holland, whereas Stevin favoured relying on practical arguments and rules for the same purpose.

In closing, it is nevertheless also important to mention that not all provinces and cities were happy with the new political and legal regime that emerged

91 Fruin, *Tien jaar uit de Tachtigjarige oorlog*; Fockema Andreae and Hardenberg, *500 jaren Staten-Generaal,* 63–4, 69.

from the Revolt. It would take quite some time before all the political entities and actors involved were willing to accept the new governing reality and stopped looking for other options or reconciliation with Spain.

Bibliography

Camden, William. *Remains Concerning Britain*. London, 1870.

Coopmans, J.P.A. 'De huldigingsvoorwaarden voor Willem van Oranje van 1583. Een nieuw type gezagsovereenkomst'. In Hugo Soly and René Vermeir (eds.), *Beleid en bestuur in de oude Nederlanden. Liber amicorum prof. dr. M. Baelde*, Ghent, 1993, 49–64.

De Blécourt, Anne S. and Nicolaas Japikse (eds.). *Klein plakkaatboek van Nederland. Verzameling van ordonnantiën en plakkaten betreffende regeeringsvorm, kerk en rechtspraak* (*14e eeuw tot 1749*). Groningen/The Hague, 1919.

De Jongste, Jan A.F. 'De Republiek der Verenigde Nederlanden'. *Leidschrift*. 9.3 (1993) 101–16.

Den Tex, Jan. *Oldenbarnevelt*. 5 vols. Haarlem, 1962.

De Smet, Rudolf. 'Simon Stevin en de paradox van het gefragmenteerde Humanisme'. In Hossam Elkhadem and Wouter Bracke (eds.), *Simon Stevin* (*1548–1620*). *De geboorte van de nieuwe wetenschap*, Turnhout, 2004, 27–34.

De Vranckrijker, Adrianus J.C. *De Staatsleer van Hugo de Groot en zijn Nederlandse tijdgenoten*. Nijmegen/Utrecht, 1937.

Devreese, Jozef T. and Guido Vanden Berghe. 'Simon Stevin (1548–1630). Vlaamse leermeester van een Nederlandse prins'. *Vlaanderen*. 51 (2002) 18–20.

Enno van Gelder, Hendrik A. *Nederlandse Staten en het Engelse Parlement in verzet tegen vorstenmacht en gevestigde kerk*. Brussels, 1960.

Fockema Andreae, Sybrandus J. and Herman Hardenberg (eds.). *500 jaren Staten-Generaal in de Nederlanden*. Assen, 1964.

Fruin, Robert. *Geschiedenis der Staatsinstellingen in Nederland tot den val der Republiek*. Ed. Herman T. Colenbrander. The Hague, 1980.

Fruin, Robert. *Tien jaren uit den Tachtigjarigen Oorlog. 1588–1598*. The Hague, 1899.

Geurts, P.H.J.M. *Overzicht van de Nederlandsche politieke geschriften tot in de eerste helft der 17e eeuw*. Maastricht, 1942.

Groen, Rosa. 'Strijd over soevereiniteit: Engelse betrokkenheid bij de Nederlandse Opstand'. *Skript: Historisch tijdschrift*. 25.4 (2003) 31–44.

Groenveld, Simon. 'Trouw en verraad tijdens de Nederlandse Opstand'. *Zeeuws Tijdschrift*. 37.1 (1987) 2–12.

Groenveld, Simon and Huib Leeuwenberg. *De Tachtigjarige Oorlog. Opstand en consolidatie in de Nederlanden* (*ca. 1560–1650*). Zutphen, 2008.

Grolle, J.J. *Weg met de koning. 's Konings zegel gebroken: Het ontstaan van de Nederlandse Staat in 1581*. The Hague, 1981.

Janssen, Geert H. 'Exiles and the politics of reintegration in the Dutch Revolt'. *History*. 94 (2009) 36–42.

Koenigsberger, Helmut G. 'Why did the States General of the Netherlands become revolutionary in the sixteenth century'. *Parliaments, Estates and Representation*. 2 (1982) 106–11.

Kossmann, Ernst H. *Politieke theorie in het zeventiende-eeuwse Nederland*. Verhandelingen der Koninklijke Nederlandse Akademie van Wetenschappen, Afdeling Letterkunde, Nieuwe Reeks 67. Amsterdam, 1960.

Kossmann, Ernst H. *Politieke theorie en geschiedenis. Verspreide opstellen en voordrachten*. Amsterdam, 1987.

Kossmann, Ernst H. 'Soevereiniteit in de Zeven Verenigde Provinciën'. *Theoretische geschiedenis: kritiek, samenvattingen, aanwinsten instituutsbibliotheek, bibliografie van tijdschriftartikelen*. 18.3 (1991) 417–9.

Kossmann, Ernst H. and Albert F. Mellink (eds.). *Texts Concerning the Revolt of the Netherlands*. Cambridge, 1974.

Leeb, Leonard. *The Ideological Origins of the Batavian Revolution: History and Politics in the Dutch Republic, 1747–1800*. The Hague, 1973.

Mörke, Olaf. *Willem van Oranje (1533–1584). Vorst en 'vader' van de Republiek*. Amsterdam/Antwerp, 2010.

Mout, M.E.H.N. '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) 345–65.

Nellen, Henk. *Hugo de Groot, een leven in strijd om de vrede 1583–1645*. Amsterdam, 2007.

Samara, Petros. 'De politieke filosofie van Simon Stevin'. *Geschiedenis van de wijsbegeerte in Nederland: documentatieblad van de Werkgroep "Sassen"*. 11.1–2 (2000) 21–49.

Scheltema, Jacobus. *De uitrusting en ondergang der onoverwinnelijke vloot van Philips den tweeden, koning van Spanje, in 1588*. Haarlem, 1825.

Secretan, Catherine. 'Simon Stevin's 'Vita politica. Het burgherlick leven' (1590): A practical guide for civic life in the Netherlands at the end of the sixteenth century'. *De zeventiende eeuw: Cultuur in de Nederlanden in interdisciplinair perspectief. Tijdschrift van de Werkgroep Zeventiende Eeuw*. 28.1 (2012) 2–20.

Van de Klashorst, Gert, Hans W. Blom, and Eco O.G. Haitsma Mulier. *Bibliography of Dutch Seventeenth Century Political Thought: An Annotated Inventory, 1581–1710*. Amsterdam/Maarssen, 1986.

Van Gelderen, Martin. *The Political Thought of the Dutch Revolt, 1555–1590*. Cambridge, 2002.

Van Gelderen, Martin. 'Het gemenebest. Staat en Republiek in de politieke theorie van het Duitse Rijk en de Noordelijke Nederlanden'. In Henk de Smaele and Jo Tollebeek (eds.), *Politieke representatie*, Leuven, 2002.

Veen, Theo J. 'Van Vranck tot Kluit. Theorieën over de legitimatie van de soevereiniteit der Staten Provinciaal (1587–1795)'. In Philippus H. Breuker and Michaël Zeeman (eds.), *Freonen om ds. J.J. Kalma hinne*, Leeuwarden, 1982, 302–24.

von Friedeburg, Robert. 'The legality of government's legitimacy'. In Paul Brood and Raymond Kubben (eds.), *The Act of Abjuration: Inspired and Inspirational*, The Hague, 2011.

PART 2

The Use and Limits of Sovereignty

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CHAPTER 4

Sovereignty as Argument

The Habsburg-Dutch Struggle for Territory before and after Westphalia, 1576–1664

Bram De Ridder

1 Introduction

Regarding the history of sovereignty, the attention generated by the year 1648 can hardly be overstated. That year the Westphalian Peace Conference ended the Thirty Years War in the Holy Roman Empire, an event which numerous scholars interpreted as the definitive breakthrough of sovereignty in international practice.[1] Especially in the view of specialists of International Relations and International Law, diplomats from all over Europe accepted with the Treaties of Munster and Osnabruck (24 October 1648) that the international system comprised 'a society of states based on the principle of territorial sovereignty'.[2] Supposedly implementing a concept that had been developed in the sixteenth and seventeenth century, this 'Westphalian sovereignty' entailed that states no longer needed to fear intervention from higher powers, notably the pope and the Holy Roman Emperor. Sovereigns were considered to hold supreme authority within their own borders, a quality that made them equal to each other and thus inaugurated a horizontal international system.[3]

1 Meinhard Schröder, 'Der Westfälische Friede – eine Epochgrenze in der Völkerrechtsentwicklung?', in Id. (ed.), *350 Jahre Westfälischer Friede. Verfassungsgeschichte, Staatskirchenrecht, Völkerrechtsgeschichte* (Berlin, 1999), 119–32; Sasson Sofer, 'The prominence of historical demarcations: Westphalia and the new world order', *Diplomacy & Statecraft*, 20 (2009) 1–19, 2, 6–10.

2 Graham Evans and Jeffrey Newnham, *The Penguin Dictionary of International Relations* (London, 1998), 572–3.

3 Randall Lesaffer, 'The Westphalia peace treaties and the development of the tradition of great European peace treaties prior to 1648', *Grotiana*, 17 (1997) 71–95; Id., 'The international dimension of the Westphalia peace treaties: a juridical approach', in *350 años de la Paz de Westfalia. Del antagonismo a la integración en Europa* (Madrid, 1999), 292–310; Derek Croxton, 'The Peace of Westphalia of 1648 and the origins of sovereignty', *The International History Review*, 21 (1999) 569–91 (569–72).

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As sovereignty is still deemed to be the highest achievable goal for international powers, many historians have likewise set out to study its nature and historical evolution.[4] However, this focus on the notion of sovereignty has obscured the role played by other political concepts. In particular, and despite the spatial turn of the last decades, historians know very little about how early modern actors structured, weighed, and explained their control over territory. Because the Westphalian system by default assumes that a sovereign has his/her own territory, few authors have questioned how the relation between power and land was spelled out.[5] The meaning of early modern territory is therefore often deemed to be self-evident, simply because it is believed that if one understands sovereignty one also knows the core mechanism behind territorial authority.

This chapter aims to reverse this order of attention. As Stuart Elden recently noted, if Westphalian sovereignty really required a bordered territory over which one could be supreme, it can no longer be assumed that the latter mattered less than the former.[6] Historians such as Marjolein 't Hart indeed contended that early modern warfare 'served above all the territorial aspirations of European rulers', and Elden himself demonstrated that territoriality was discussed long before Jean Bodin and Thomas Hobbes developed their arguments about sovereign rights.[7] So rather than asking how territory mattered for the recognition of sovereignty, this text ponders about how sovereignty mattered for the possession of land. Posing the question this way not only makes it possible to reveal the historical shift from 'territorial sovereignty' to 'sovereign

4 Besides the titles cited further on, examples include Stéphane Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Leiden/Boston, 2004); Ulrich Scheuner, 'Die grossen Friedensschlüsse als Grundlage der europäischen Staatenordnung zwischen 1648 und 1815', in Konrad Repgen et al. (eds.), *Spiegel der Geschichte. Festgabe für Max Braubach zum 10. April 1964* (Munster, 1964), 220–50; Walter Ullmann, 'Zur Entwicklung des Souveränitätsbegriffes im Spätmittelalter', in Louis Carlen and Fritz Steinegger (eds.), *Festschrift Nikolaus Grass zum 60. Geburtstag dargebracht von Fachgenossen, Freunden, und Schulern* (Munich, 1974), 9–27; Robert Holtzmann, 'Der Weltherrschaftsgedanke des Mittelalterlichen Kaisertums und die Souveränität der Europäischen Staaten', *Historische Zeitschrift*, 159 (1938) 251–64.

5 The few exceptions include Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees* (Berkeley/Oxford, 1989); Daniel Nordman, *Frontières de France. De l'Espace au territoire, xvie-xixe siècle* (s.l., 1998); Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, 2010); Tamar Herzog, *Frontiers of Possession: Spain and Portugal in Europe and the Americas* (Cambridge/London, 2015).

6 Stuart Elden, *The Birth of Territory* (Chicago/London, 2013), 313.

7 Marjolein 't Hart, *The Dutch Wars of Independence: Warfare and Commerce in the Netherlands, 1570–1680* (London/New York, 2014), 2, 6.

territoriality', but also allows us to reframe the concept of sovereignty as a dependent political argument *for* government rather than as an independent supreme quality *of* government.[8]

As source material serve the diplomatic treaties related to Eighty Years War. This conflict constituted one of the most famous early modern wars of secession, establishing the independence of the nascent Dutch Republic of United Provinces from the mighty Spanish-Habsburg empire. As such, the focus on the Dutch 'fight for sovereignty' often trumps the observation that this war also involved a vicious 'fight for territory'. Starting with the Dutch Revolt in the 1560s and gradually transforming from a civil war to an all-out international battle, its outcome heralded the division of the formerly united Seventeen Provinces of the Netherlands between a Habsburg and a Dutch part. The many treaties that established this cleaving thus contained a strong relation to territoriality, including references to numerous boundary issues. Moreover, and although often ignored in the debates about 'Westphalian sovereignty',[9] the Eighty Years War also ended at the famous 1648 Peace Congress, when King Philip IV of Spain formally accepted the independence of the United Provinces in another Peace of Munster (30 January 1648). Using this and other treaties, the present chapter will demonstrate how the argument of sovereignty underpinned the territorial ambitions of the Spanish-Habsburg monarchy and the Dutch Republic, revealing the evolution of its usage across four distinct phases.

2 Reversing the Relation between Sovereignty and Territoriality

Studying sovereignty and territory from a constructivist perspective implies that both concepts come with their own set of assumptions, both today and in the past. So before delving into the Eighty Years War, it is necessary to highlight a couple of the presuppositions with which this chapter is confronted. In the first place, historians need to be aware that many of the discussions

8 See in this respect Hent Kalmo and Quentin Skinner, 'Introduction: a concept in fragments', in Ids. (eds.), *Sovereignty in Fragments. The Past, Present and Future of a Contested Concept* (Cambridge, 2010), 7–9; Wouter G. Werner and Jaap H. de Wilde, 'The endurance of sovereignty', *European Journal of International Relations,* 7.3 (2001) 283–313, 286.

9 Cornelis G. Roelofsen, 'Völkerrechtliche Aspekte des Westfälischen Friedens in niederländischer sicht', *Rechtstheorie,* 29 (1998) 175–188, 188. Andreas Osiander for example stated that the Habsburg-Dutch treaty should not be considered when discussing Westphalian sovereignty because it 'is not part of the Peace of Westphalia (of October 1648) proper'. See Andreas Osiander, 'Sovereignty, international relations, and the Westphalian myth', *International Organization,* 55 (2001) 251–87, 268.

over sovereignty still happen within the context of the so-called 'Westphalian myth'. In short, this myth stands for a strong yet simplified interpretation of the Westphalian Peace whereby it is asserted that the conference was of groundbreaking importance for the whole international order, inasmuch that even our current-day states system supposedly still reflects the settlement of 1648.[10] Despite criticism, notably by Stephen Krasner, Andreas Osiander and Benno Teschke, this view has proven to be extremely resilient.[11] Many academic handbooks still include it, as do the publications of widely-read authors such as Henry Kissinger and Robert Kaplan.[12] It is also frequently mentioned in the public statements of high-level politicians. For example, in November 1998 then Secretary-General of NATO Javier Solana stated that 'for us, on whom falls the responsibility of organising security for a new century, the Westphalian Peace remains a strong inspiration'.[13] Likewise, Kofi Annan declared in 2009 that 'the traditional concept of sovereignty, which goes back to the Treaty of Westphalia some 360 years ago, is not, of course, dead'.[14]

Given the vigorousness with which public and political discourse maintain the Westphalian origins of modern sovereignty, it comes as no surprise that even historians have found it difficult to detach themselves from this

10 The origins of this myth are usually associated with an article published in 1948 by Leo Gross: Leo Gross 'The Peace of Westphalia, 1648–1948', *The American Journal of International Law*, 42 (1948) 20–41. See Osiander, 'Sovereignty, international relations', 264–5; Peter M.R. Stirk, 'The Westphalian model and sovereign equality', *Review of International Studies*, 38 (2012) 641–3.

11 Stephen D. Krasner, 'Compromising Westphalia', *International Security*, 20 (1995–1996) 115–51; Osiander, 'Sovereignty, international relations', 251–86; Benno Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations* (London/New York, 2003). For a critique from the historian's point of view, see Heinz Duchhardt, '"Westphalian System". Zur Problematik einer Denkfigur', *Historische Zeitschrift*, 269 (1999) 305–15.

12 Anthony McGrew, 'Globalization and global politics', in John Baylis et al. (eds.), *The Globalization of World Politics: An Introduction to International Relations* (4th edn, New York, 2008), 23; Henry Kissinger, *World Order: Reflections on the Character of Nations and the Course of History* (London, 2014), 23–32; Robert D. Kaplan, *The Revenge of Geography: What the Map Tells Us about Coming Conflicts and the Battle Against Fate* (s.l., 2012).

13 Speech by NATO Secretary-General Javier Solana at the 'Symposium on the Political Relevance of the 1648 Peace of Westphalia' in Munster, 12 November 1998. http://www.nato.int/docu/speech/1998/s981112a.htm (last visited on 15/08/2015).

14 Speech by Kofi Annan to the Swedish Parliamentary Ombudsman at the Conference 'Sovereignty – The State and the Individual' in Stockholm, June 2009: http://kofiannanfoundation.org/newsroom/speeches/2009/06/speech-to-swedish-parliamentary-ombudsman-conference-sovereignty-state-and (last visited on 15/08/2015). See also Kofi Annan, *Interventions: A Life in War and Peace* (London, 2012).

framework. Especially when describing early modern political practice many publications continue to apply the word sovereignty without much contextualization, leaving the exact meaning of the notion unspecified.[15] Moreover, even scholars who are aware of the gap between the historical and the modern conception of sovereignty often prefer to conflate the two. Derek Croxton for example asserted that historians should study the idea and the practice of (modern) sovereignty, not the conscious use of the word. As such he contended that a sovereign states system certainly existed in 1648, but that it took Europeans a few more decades to actually recognize it as such.[16] In effect, the sovereignty of early modern kings, states, and governments generally remains associated with the highest political authority over a bounded area, regardless of whether or not rulers truly considered this right to be territorial.

Another reason why this 'Westphalian' view of sovereignty is so dominant is the fact that the word represented anything but a straightforward concept.[17] The seventeenth-century term still contained a lot of lexicological opacity, something which immediately becomes clear if we consider the actual Westphalian Treaties.[18] As is shown in annex 1, in the Treaty of Munster of 24 October between Holy Roman Emperor Ferdinand II and King Louis XIII of France

15 Beatrix C.M. Jacobs. 'The United Provinces: 'free' or 'free and sovereign?'', in Randall Lesaffer (ed.), *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; Leiden/Boston, 2014), 182–3. Examples are Lucien Bely, 'Être souverain au XVIIe siècle', in *1648 La paix de Westphalie. Vers l'Europe Moderne* (Paris, 1998), 30; Jean Picq, *Une histoire de l'état en Europe. Pouvoir, justice et droit du Moyen Âge à nos jours* (Paris, 2009); Christopher Chekuri, 'A 'share' in the 'world empire': Nayamkara as sovereignty in practice at Vijayanagara, 1480–1580', *Social Scientist*, 40 (2012) 41–67; Stephen C. Neff, *Justice amongst Nations: A History of International Law* (Cambridge, 2014), 23–4, 53–4.

16 Croxton, 'The Peace of Westphalia', 570–1. See also Robert S. Sturges, 'Introduction: laws and sovereignties in the Middle Ages and the Renaissance', in Id. (ed.), *Law and Sovereignty in the Middle Ages and the Renaissance* (Turnhout, 2011), xiii-xv; Gustaaf Pieter van Nifterik, *Vorst tussen volk en wet. Over volkssoevereiniteit en rechtsstatelijkheid in het werk van Fernando Vázquez de Menchaca (1512–1569)* (Rotterdam, 1999), 210, 217; Raoul C. Van Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge, 1995), 12–3; Pärtel Piirimäe, 'The Westphalian myth and the idea of external sovereignty', in Kalmo and Skinner, *Sovereignty in Fragments*, 64–80.

17 For an overview of the evolving meaning of sovereignty, see Helmut Quaritsch, *Souveränität. Entstehung und Entwicklung des Begriffs in Frankreich und Deutschland vom 13. Jh. Bis 1806* (Berlin, 1986).

18 See in this respect especially the work of Ed Beemon, as he specifically looks at the varying use of the word 'sovereignty' during the Dutch Revolt: F.E. Beemon, 'We have no such word: the concept of sovereignty and the rise of the Dutch States General, 1578–1587', *Contributions to the History of Concepts,* 3 (2007) 181–204.

the word 'sovereignty' primarily appears in the French translation (column 2). In the Latin original and the German translation (columns 1 and 3) *souveraineté* inconsistently equates with a number of other terms, including *summa imperii*, *superioritas*, *sublimus*, or *supremum dominium*, and *höchsten*, *superiorität*, or *Oberherrschafft*. There is no apparent rule by which one term was translated into another, making it difficult to say which exact rights and qualities were linked to the notion of sovereignty. Additionally, later editions of the Munster Treaty simply brushed over the linguistic ambiguity of the 1648 documents and post-factum affirmed that sovereignty must have been the key term of the Westphalian conference. The English version of 1720 for example, which is still the primary version used by Anglophone scholars (column 5), took the French translation as a base and transplanted its strong focus on the word sovereignty. Even more revealing, the 1984 German edition (column 4) consistently replaced the early modern expressions with either *Landeshoheit* or *Obereigentum*, making it the only text that equated the phrase *ius territoriale* with sovereignty.[19]

Secondly, the above issues also apply to the notion of 'territory'. As Stuart Elden pointed out in *The Birth of Territory*, many scholars likewise use this concept in a self-explanatory way and place our contemporary spatial reading of the world (i.e. 'Westphalian sovereignty') over historical expressions of territoriality.[20] Elden stressed that historians and political scientists alike so far paid little attention to how power over land was theorized, something which is demonstrated by the fact important intellectual works such as Andreas Knichen's *De sublimi et regio territorii iure* (1600) so far remain without a modern edition and are barely mentioned in the available literature. Elden himself could therefore only start exploring early modern territoriality and did not mean to go beyond some preliminary conclusions. Nevertheless, he did put forward that before the seventeenth century authors rarely used the word territory, and, as concept, not necessarily related it to political rule. In his opinion early modern scholars continued to attach very different connotations to the idea of territory, ranging from rule over jurisdiction to land ownership; no clear equation between sovereignty and territory had yet been established.[21]

19 Stuart Elden briefly discusses the many interpretations of the notion of *ius territoriale* and its relation to sovereignty: Elden, *The Birth*, 312–3. For more interpretations of the different terms mentioned here, see Stirk, 'The Westphalian model', 573–6.

20 Elden, *The Birth*, 2–10. For the argument that territoriality is similarly overlooked in International Relations, see John Gerard Ruggie, 'Territoriality and beyond: problematizing modernity in international relations', *International Organization*, 47.1 (1993) 139–174, 174.

21 Elden, *The Birth*, 286–7, 279–308.

It is therefore all the more important to clarify how this contribution interprets and operationalizes the notion of territory. In what is still the most influential monograph on the topic, Robert Sack explained territoriality as the spatial expression of power:[22]

> Territoriality in humans is best understood as a spatial strategy to affect, influence, or control resources and people, by controlling an area. […] It is a primary geographical expression of social power. […] Unlike many ordinary places, territories require constant effort to establish and maintain.[23]

Importantly, this broad definition does not contain any pre-set assumptions about the relation between space and power. It simply affirms that the creation of territory primarily involves human agency and that it represents a social construction open to historical evolution. Sack thereby goes beyond the obvious focus on the modern Westphalian state, leaving room for all sorts of power-land constellations that might have existed in the past.[24] In this respect his modern definition is well-suited for this study. Aspects of property, jurisdiction, and rule can all be considered as 'geographical expressions of social power', without there being a need to define territory as a constituent of sovereignty. Rather, it implies that space can be connected to all sorts of claims about the authority of the Habsburg and Dutch government, without the necessity to immediately reframe such connections as sovereign rights.

As a result, sovereignty will here be studied as a potential territorial argument and not merely as a clear political goal. By way of example, a modern case can demonstrate how even today sovereignty is not just a concept but also a flexible political tool to legitimize territorial power. In 2004, Tony Blair gave the following justification for the Iraq War:

> So, for me, before September 11th, I was already reaching for a different philosophy in international relations from a traditional one that has held sway since the treaty of Westphalia in 1648; namely that a country's internal affairs are for it and you don't interfere unless it threatens you, or breaches a treaty, or triggers an obligation of alliance. I did not consider

22 A perspective Sack shares with Nordman, *Frontières de France*, 516–7.

23 Robert David Sack, *Human Territoriality: Its Theory and History* (Cambridge, 1986), 1, 5, 19.

24 'Sovereignty, property, and jurisdiction are too restricted to be suitable alternatives': Sack, *Human territoriality*, 2.

> Iraq fitted into this philosophy, though I could see the horrible injustice done to its people by Saddam.[25]

At first sight Blair's statement relates to a change in the nature of sovereignty: the denial of sovereignty to the state of Iraq seems to confirm the gradual rise of a 'post-Westphalian' world system, a global order in which multinationals and transnational terrorist groups form serious competitors to the sovereign authority of states.[26] However, such fine-grained discussions about the evolution of sovereignty actually distract from a more fundamental truth. Blair's primary aim was not to discuss the concept of sovereignty, but to adapt the Westphalian framework so that he could use it to legitimate a military invasion. In this sense the nature of sovereignty anno 2003 did not initiate the Iraq War, but served as a cover for invading foreign territory.[27] It is not the aim of this chapter to comment on whether or not Blair's claims ultimately proved to be sound, but the on-going discussions about their validity should not distract us from the basic fact that, in this case, sovereignty indeed represented just that: a clear *argument* supporting the temporary occupation of another state's territory.[28] On the following pages the same point of view will be applied to the treaties of the Eighty Years War, revealing if, how, and when the Spanish Habsburgs and the Dutch Republic deployed sovereignty to support their territorial control of the Netherlands.

The advantage of focussing on diplomatic texts is that they provide instances of clarity in an otherwise chaotic conflict. Being the documents that

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25 'Speech given by the British prime minister Tony Blair' in Sedgefield, 5 March 2004. http://www.theguardian.com/politics/2004/mar/05/iraq.iraq (last visited on 15/08/2015). Blair's statements about the Iraq War also feed into the debate about the Responsibility to Protect (R2P) principle. See Jeremy Moses, Babak Bahador and Tessa Wright, 'The Iraq War and the responsibility to protect: uses, abuses and consequences for the future of humanitarian intervention', *Journal of Intervention and Statebuilding*, 5 (2011) 347–67.

26 See for example Gene M. Lyons and Michael Mastanduno (eds.), *Beyond Westphalia?* (Baltimore, 1995); Stephen D. Krasner (ed.), *Problematic Sovereignty: Contested Rules and Political Possibilities* (New York, 2001); Wendy Brown, *Walled States, Waning Sovereignty* (New York, 2014).

27 For a commentary on the relation between the Iraq invasion and territorial sovereignty, see Stuart Elden, *Terror and Territory. The Spatial Extent of Sovereignty* (Minneapolis/London, 2009).

28 Benno Teschke indeed highlighted that the Westphalian states-system often serves as a 'benchmark for measuring the present-day structure of world politics': Teschke, *The Myth of 1648*, 1. For a clear early modern example of rulers seeking legal legitimization of territorial conquests, see Philip McCluskey, 'From regime change to réunion: Louis XIV's quest for legitimacy in Lorraine, 1670–97', *English Historical Review*, 126 (2011) 1386–407.

solidified the political landscape, every word in them was carefully considered. Just as in the above example of the Munster Treaty of October, it mattered if they contained the word sovereignty and it mattered equally if they did not. For the period between 25 April 1576, when the seditious provinces of Holland and Zeeland concluded the Union of Delft, and 20 September 1664, when the final delimitation of the county of Flanders was agreed upon, a total of thirty-six diplomatic documents have been selected for this study based upon their expression of territorial powers over the Netherlands (see annex 2). All of these texts either codified the growing territorial division or aimed at rearranging the land-power structure in and between the Netherlands, and were therefore included. As such, references to both territoriality and sovereignty can be found in their content. The list includes all of the well-known 'constitutional' documents related to the war, as well as some lesser-known intermediary treaties, the latter of which are rarely included in long-term analyses. This chapter uses the most recent critical editions, or the versions available in Jean Dumont's *Corps universel du droit des gens*.[29] In certain cases, original copies derived from the Belgian and Dutch archives provided a cross-check of the text. Given the above-mentioned importance of exact phrasing, citations are provided in the original Dutch or French language, although an English translation is provided as well.

3 The Pacification of Ghent, the General Union, and the Unions-within-the-Union

The territorial conflict in the Netherlands originally stemmed from the Dutch Revolt of the 1560s and 1570s, a conflict during which the combatants gradually started to discuss territorial rule. In these years, and although at the time no one expected that their actions prefigured the final division of these territories, a growing group of people in the Low Countries protested and revolted against the rule of the Spanish king Philip II. As this uprising threatened royal authority and the religious monopoly of the Catholic church, it provoked quick measures from the Habsburg government.[30] However, residing in faraway Spain

29 For a short appraisal of the *Corps universel* and other treaty compilations, see Randall Lesaffer, *Europa: een zoektocht naar vrede? 1453–1763 en 1945–1997* (Leuven, 1999), xvii-xxix.

30 Henk van Nierop, 'Alva's throne – Making sense of the Revolt of the Netherlands', in Graham Darby (ed.), *The Origins and Development of the Dutch Revolt* (London/New York, 2001), 29–47. For a recent overview of the extensive literature on the Dutch Revolt, see Judith Pollmann, 'Internationalisering en de Nederlandse Opstand', *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden*, 124 (2009) 515–35.

and distracted by numerous other strategic concerns, the king found it difficult to respond appropriately to these challenges and often aggravated rather than soothed the situation.[31] As neither King Philip nor the opposition could or would compromise on the most pressing issues, notably religious toleration for Protestant minorities and the extent of royal power, the Low Countries eventually plunged into civil war. Only after years of political and military chaos, the formation of the 'loyalist' Union of Arras and the 'rebellious' Union of Utrecht ensured that the political and spatial boundaries of the conflict became more apparent. Through these alliances both the Spanish Habsburgs and the opposition came to possess a more or less defined core territory from which they could operate, an evolution which can also be noted in the different treaties from this period. But although this story about the separation of the Netherlands is well-known by most historians, the related treaties are rarely studied from a territorial perspective.

The process of division started with the 1576 Pacification of Ghent, a compromise negotiated by the parliamentary assembly of Estates General. However, two problems prevented the Pacification from ending the war. First and foremost, Philip II did not consider himself bound by the agreement because he had not given his (required) permission for the convocation of the Estates General.[32] The Habsburgs had no intention of abiding by the whims of an assembly they deemed to be illegal, although royal governor general Don Juan eventually promised to accept the Pacification through the Perpetual Edict of 12 February 1577. Secondly, and even more crucial, the Estates General were not able to maintain a united front. Opposition leader Prince William of Orange and the Counties of Holland and Zeeland refused to accept Don Juan's Edict, whereas renewed Calvinist activity exacerbated the controversies between the Catholic and Protestant members of the Estates General.[33]

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31 Geoffrey Parker, 'Why did the Dutch Revolt last eighty years', *Transactions of the Royal Historical Society*, 26 (1976) 53–72, 58–59, 66–67; John H. Elliott, *Imperial Spain 1469–1716* (Harmondsworth, 1963), 254–5, 285–90; Paul Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000*, (London, 1988), 45–50; Geoffrey Parker, *The Grand Strategy of Philip II* (New Haven/London, 1998), 281–2; Jonathan I. Israel, *Conflicts of Empires: Spain, the Low Countries and the Struggle for World Supremacy, 1585–1713* (s.l., 1997), xiv; John Lynch, *The Hispanic World in Crisis and Change, 1598–1700* (Oxford, 1992), 53.

32 Geoffrey Parker, *Van Beeldenstorm tot Bestand* (Haarlem, 1978), 172–3.

33 Parker, *Beeldenstorm tot Bestand*, 173–5, 182–3, 186; Gustaaf Janssens, 'Van de komst van Alva tot de Unies (1567–1579)', in *Algemene Geschiedenis der Nederlanden*, 15 vols (Haarlem, 1977–1983), vol. 6, 215–43; Violet Soen, *Vredehandel. Adellijke en Habsburgse verzoeningspogingen tijdens de Nederlandse Opstand* (Amsterdam, 2012), 110–5, 120.

In fact, the Pacification of Ghent itself remained ambiguous about the unity of the Low Countries.[34] For sure, its second article stated that the Netherlands shared an unbreakable friendship and would assist each other with 'raedt ende daet, goet ende bloet' ('council and action, property and blood'). Moreover, the primary aim of this friendship was to ensure that all Spanish and other 'foreign' soldiers would leave the Low Countries, suggestion that there existed a common interest in freeing their territories from these troops. Other clauses reinforced the territorial aspects of this General Union, for example by prefiguring the disappearance of all military frontiers between the Low Countries through the resumption of all traffic, trade, and commerce.[35] But then again, certain articles clearly hinted at the continuing existence of two opposed blocs. Article 1 for example ensured that the agreement resembled more a genuine peace treaty than the founding document of a renewed union. The Pacification was agreed upon by the provinces of Brabant, Flanders, Artois, Hainaut, Valenciennes, Lille, Douai, Orchies, Namur, Tournai, Utrecht, and Malines on the one hand, and the Prince of Orange and the Estates of Holland and Zeeland on the other. Both sides declared all reciprocal crimes and injustices to be forgotten and forgiven, a standard clause in the bilateral peace treaties of the period.[36] Furthermore, Articles 7 and 21 revealed that the signatories had certainly not removed all boundaries. The former clause clarified that the provinces could not 'dismember' each other by luring individual cities to their cause, attesting to the lasting fear of suffering territorial losses at the hands of an 'internal' enemy. The latter decreed that Catholic institutions could only regain lost properties situated outside Holland and Zeeland, in effect granting these provinces a special territorial regime where religion was concerned.[37]

Other documents confirmed the ambiguity about the renewed union and especially the creation of several 'closer unions' established new boundaries between the Netherlands. Already in April 1576, a few months before the Pacification came into play, Holland and Zeeland signed the Union of Delft. Building on earlier agreements between the two provinces, this defensive alliance pledged to resist 'de moetwillige regieringe der Spaenscher ende Uytheemscher Natie' ('the malevolent government of the Spanish and foreign nation'). Through eighteen articles, including military, fiscal, and juridical provisions,

34 Jonathan I. Israel, *The Dutch Republic: Its Rise, Greatness, and Fall 1477–1806* (Oxford, 1995), 186–8, 196. For more detailed information on the Pacification, see *Opstand en Pacificatie in de Lage Landen. Bijdrage tot de studie van de Pacificatie van Gent* (Ghent, 1976).

35 Pacification of Ghent: *Opstand en Pacificatie*, 351–5.

36 Pacification of Ghent: *Opstand en Pacificatie*, 353–4; Lesaffer, *Europa*, 470–2.

37 Pacification of Ghent: *Opstand en Pacificatie*, 356, 358.

Holland and Zeeland streamlined their mutual war effort in order to better resist the Habsburgs. Still, the Delft agreement did not prefigure a territorial union and only allowed for a minimal reconfiguration of the traditional land/power constellation between the two provinces. Articles 6, 7 and 8 confirmed that Holland and Zeeland would always act 'in alle goede correspondentie, vruntschap en nae-ghebuyrschap' ('in all good correspondence, friendship and neighbourhoodliness') and would assist each other in administering justice, but also confirmed that they both retained their customary judicial authority over their domains. The only clause that suggested a minor territorial rearrangement was Article 10, which clarified that Holland and Zeeland would pay for the defence of the lands and cities possessed by William of Orange 'als of de voorszijde Landen en steden onder de Republijcque van eender stede mochten werden gereeckent ende begrepen' ('as if the foresaid lands and cities could be counted and comprised under the republic of one of their towns').[38]

The detailed fiscal and military provisions of the Union of Delft contrasted with the lay-out of the next alliance to be founded, the Union of Arras. Following the failure of the First and Second Union of Brussels, of which the membership simply mimicked that of the General Union,[39] the Estates of Artois, the Estates of Hainaut, and the city of Douai concluded on 6 January 1579 a first union-within-the-union.[40] Although they confirmed their loyalty to the Ghent agreement and aimed at its better implementation, the three signatories nevertheless found it necessary to provide further support to each other. They were primarily worried by renewed Protestant militancy across the country and feared that the Estates General would ignore these violations (as they saw them) of the Pacification. Artois, Hainaut, and Douai therefore decreed that they would better coordinate their actions to defend the Catholic faith and the authority of the king, which they believed to be central to the Ghent agreement.[41] However, the text of the Arras Union did not expand on how this coordination should materialize. The signatories only agreed to decide on an *ad-hoc* basis if the levy of money and/or troops was required. So rather than being the onset of an elaborate territorial union, the Arras alliance was much more a declaration of (loyal) Catholic intent on the part of the Walloon provinces.

38 Union of Delft: Jean Dumont (ed.), *Corps universel diplomatique du droit des gens; contenant un recueil des traitez d'alliance, de paix, de treve,* [...]*, depuis le regne de l'Empereur Charlemagne jusques à present*, 8 vols (The Hague/Amsterdam, 1726–1731), vol. 5.1, 258–9.

39 First Union of Brussels: Dumont, *Corps universel*, vol. 5.1, 285.

40 Soen, *Vredehandel*, 132–5.

41 Union of Arras: Louis-Prosper Gachard, *Actes des États-Généraux 1576–1580*, 2 vols (Brussels, 1861–1866), vol. 2, 454–60.

Again in contrast, the Union of Utrecht did prefigure such an inclusive and more detailed arrangement. Signed seventeen days after the Union of Arras and often being considered the 'constitution' of the later Dutch Republic, this text built on the Union of Delft in order to construct a wider defensive alliance.[42] Also founded as a union-within-the-union, the initial signatories – the duchy of Guelders, the counties of Holland and Zeeland, Utrecht and the Ommelanden – explicitly stated that they did not want to destroy the General Union. Rather they aimed to strengthen it and combat the further dismemberment of the Netherlands by the Spanish Habsburgs.[43] In order to achieve this goal they united themselves 'als off zyluyden maer een provincie waeren' ('as if they were only one province'), adding that they would never separate or be separated from the others. As in the Union of Delft this commitment included respect for the particular privileges, rights, and freedoms of each province, but also entailed increased military and fiscal burden-sharing. Crucially, the members explicitly promised to pool their military assets in order to secure the entire territory of the Closer Union. Article 4 decreed that the security of the common frontier would be paid for by the generality of all members, and not only by those provinces in which the actual fighting was situated. In return those frontier provinces could not refuse the military directions given by the generality, including the allocation of garrisons.[44] As such the Union of Utrecht founded *de iure* a new territorial unit in the Netherlands, creating a clear fiscal-military boundary between its members and the other Netherlands.

4 The Fracturing of Authority

These different alliances seriously transformed the political playing field in the Low Countries, creating opportunities to use the argument of sovereignty. As the territory of the Netherlands gradually split between the newly founded Utrecht and Arras Unions, it became increasingly unclear who had the authority to decide on key territorial matters. Crucially, the ambiguity of the

42 For more details on the creation and reception of the Union of Utrecht, see Simon Groenveld and Huib P. Leeuwenberg (eds.), *De Unie van Utrecht. Wording en werking van een verbond en een verbondsacte* (The Hague, 1979). For the position of the Union of Utrecht, the Treaty of Antwerp, and the Peace of Munster as *leges fundamentales* of the Republic see Simon Groenveld, *Unie-Bestand-Vrede. Drie fundamentele wetten van de Republiek der Verenigde Nederlanden* (Hilversum, 2009), 9–12.

43 Union of Utrecht: Groenveld, *Unie-Bestand-Vrede*, 60.

44 Union of Utrecht: Groenveld, *Unie-Bestand-Vrede*, 62.

above documents meant that the door was opened for the formation of new land/power constellations. In the south the Union of Arras reconciled with Philip II on 17 May 1579, establishing royal predominance and providing the Habsburg forces with a much needed staging ground.[45] However, in the rest of the Netherlands the authority of the king was gradually hollowed out by the Estates General, the prince of Orange and the French duke of Anjou, who all assumed some form of rule over the Netherlands, technically still in the name of Philip II.[46] However, none of these contenders really adapted to the on-going territorial reconfiguration of the Netherlands. Despite the increasing division, the fight remained to be perceived as a domestic struggle. As a consequence there grew a serious discrepancy between the nature of the conflict, which increasingly pitted the territorial unions-within-the-union against each other, and the still civil war-orientated arguments of the main contenders.

In the first place the idea of a renewed General Union invigorated the idea that the Dutch Revolt focussed on the internal power structure of the entire Low Countries.[47] From this perspective, the king and the Estates General remained the primary candidates for power. The latter nominally still respected King Philip's primacy, but nevertheless appropriated ever more rights and responsibilities.[48] Despite the fact that the Pacification of Ghent did not express itself on the extent of royal authority, the Estates already adopted some territorial powers through this document. Besides demanding the expulsion of foreign troops, the Estates General also claimed a stake in the defence of the common territory by stating that the next Estates General would deal with the restitution of royal fortifications.[49] By 1578 the assembly even became confident enough to conclude a full-blown territorial agreement. That year the Estates asked military support from the French duke of Anjou, granting him military authority over the cities of Le Quesnoy, Landrecies, and Bavay. Moreover,

45 Violet Soen, *Vredehandel*, 136–9.

46 Parker, *Beeldenstorm tot Bestand*, 195; Israel, *The Dutch Republic*, 187.

47 As examples of this language of unity serve the First and Second Union of Brussels, and the Perpetual Edict. Both Unions speak of the 'commune patrie' ('common fatherland') for which the Estates General acted, whereas the Edict stated that the Catholic faith should be re-installed 'par tout' ('everywhere'), effectively negating the religious boundary in Holland and Zeeland that the Pacification had accepted. Perpetual Edict: Dumont, *Corps universel,* vol. 5.1, 287; First Union of Brussels: Dumont, *Corps universel*, vol. 5.1, 285; Second Union of Brussels: *Dutch Revolt* (http:// www.dutchrevolt.leiden.edu/dutch/bronnen/Pages/1577%2012%2010%20fra.aspx). See also Anton van der Lem, *De Opstand in de Nederlanden 1568–1648. De Tachtigjarige Oorlog in woord en beeld* (Nijmegen, 2014), 108.

48 Parker, *Beeldenstorm tot Bestand*, 171–2.

49 Pacification of Ghent: *Opstand en Pacificatie*, 358.

they allowed Anjou to retain the cities he conquered – or at least those that were situated across the river Meuse and had not joined the Pacification of Ghent – as private patrimony for him and his heirs.[50] On 19 September 1580 the Estates General took another step and 'elected' the duke as 'Prince et Seigneur' ('prince and lord') of the Netherlands. However, in the Treaty of Plessis-lès-Tours the assembly made sure to retain some key territorial powers. Anjou had to accept that the Netherlands could not be separated from one another or integrated in the kingdom of France,[51] and he even saw some of his earlier powers revoked: he could no longer claim conquered cities as private property but had to coordinate their future with the Estates General.[52]

But if the Estates General and Anjou gradually asserted their power over the entire territory of the Netherlands, so did others with regard to the newly-founded smaller unions. Although William of Orange was certainly interested in extending his authority over all of the Netherlands, he made most progress in Holland and Zeeland.[53] In an addendum to the 1576 Union of Delft, both provinces recognized William of Orange as 'Hooft ende hooghste Overigheyt' ('head and supreme ruler') and conferred to him 'volkomen authoriteyt ende macht als souverain ende Overhooft' ('absolute authority and power as sovereign and supreme head'). Still, none of these titles implied that the prince really possessed supreme (territorial) powers, as these still resided with Philip. William was only appointed to coordinate the defence of the two provinces and would lose these powers once the conflict had ended. Moreover, the document explicitly confirmed Orange's position as royal stadtholder.[54] In 1580, a

50 Alliance between the duke of Anjou and the Estates General: Dumont, *Corps universel,* vol. 5.1, 321.

51 These statements reflected the measures taken by Emperor Charles V to maintain the Netherlands as one territorial unit, detached from French influence. See Wim Blockmans, *Karel V. Keizer van een wereldrijk, 1500–1558* (Kampen, 2012), 76–83.

52 Alliance between the duke of Anjou and the Estates General: Dumont, *Corps universel,* vol. 5.1, 321.

53 Already in October 1576 had William secured an appointment as temporary 'ruwaard' of Brabant, attesting to his active search for official titles and positions. Parker, *Beeldenstorm tot Bestand*, 178–9. For the motivation of Orange to revolt, see Koenraad W. Swart, 'Wat bewoog Willem van Oranje de strijd tegen de Spaanse overheersing aan te binden?', *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden*, 99 (1984) 554–72; Helmut G. Koenigsberger, 'Orange, Granvelle and Philip II', *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden,* 99 (1984) 573–95.

54 Union of Delft: Dumont, *Corps universel,* vol. 5.1, 261–2. Article 6 of the Pacification of Ghent also repeated Orange's role as royal stadtholder, although the Estates General added that they (and not the king) would decide whether or not he would retain this position. Pacification of Ghent: *Opstand en Pacificatie*, 356.

few months before the Estates General named Anjou 'Prince et Seigneur', the Estates of Holland and Zeeland offered William their 'Hoge overigheid en regeringe' ('supreme rule and government') a second time. Although the powers of the prince again remained limited in time and content,[55] this time he was not named as stadtholder: Philip II had recently banished Orange for 'blasphemien tegens God en ons haren oversten en souverainen heere, en natuerlijken prince' ('blasphemia against God and us his supreme and sovereign lord, and natural prince').[56]

As can be judged from the above, in this struggle the expression of 'being sovereign' was only one of many concepts that underpinned the acquisition of (territorial) power. Terms like 'Hoge overigheid', 'Overhooft' and 'natuerlijken Prince' were no less frequently deployed to suggest the right to rule. By 1580, official documents associated four parties with some form of supreme authority: Philip II, who had not yet been abjured; William of Orange, who could take measures for the defence of Holland and Zeeland; the newly 'elected' duke of Anjou; and the technically loyal but increasingly self-conscious Estates General. Still, only two of those were literally identified as sovereign. King Philip named himself 'souverainen heere' in Orange's banishment and William himself was appointed sovereign of Holland and Zeeland. In contrast, in none of the above texts the Estates General declared themselves sovereign, although by 1578 they had official documents state that they were entirely responsible for the government of the country.[57] Neither was the duke of Anjou associated with the term, as he was simply named 'Prince et Seigneur'.

Especially this last case is revealing, as the Estates General consciously avoided using the word 'sovereign' when dealing with Anjou:

> le mot souverain estoit ambigu, pour ce que, estant prins pour suprême, auquel sens nous disons: opperste heere il ne signifioit aultre chose que le premier, et, estant prins pour ung mot significant puissance absolute, les pays, qui se gouvernoient par leur loix, coustumes et priviléges, ne le

55 Acceptance of the High Governance over Holland and Zeeland: Dumont, *Corps universel,* vol. 5.1, 377–80.

56 Royal banishment of William of Orange: Pieter Christiaensz. Bor, *Oorsprongk, begin, en vervolgh der Nederlandsche oorlogen, beroerten, en borgerlyke oneenigheden*, 4 vols (Amsterdam, 1679–1684), vol. 2, 198–203.

57 Alliance between the duke of Anjou and the Estates General: Dumont, *Corps universel,* vol. 5.1, 321.

pouvoient tenir sinon pour suspect, et que nous nous tenions asseurez, qu'ilz ne le voudroient passer'.[58]

The concept of sovereignty was both ambiguous and a potential political risk, something which is often overlooked. The contenders for supreme power did not use it lightly, but carefully weighed which of the available terms best served their interests. So beyond the simple observation that during this stage of the war other titles and rights supported the claims of would-be rulers just as well, it also needs to be recognized that the notion of 'being sovereign' was primarily deployed according to political circumstances. In contrast to the idea that sovereignty by default formed the highest ambition of every ruler, none of the above treaties considered the concept as an absolute prerequisite for practical power and neither did the people who drafted them. Rather, the availability of alternatives like 'Overhooft' and 'natuerlijken Prince' implied that the title of sovereign constituted only one possible argument through with authority over the Netherlands could be claimed.

5 From Act of Abjuration (1581) to Act of Cession (1598)

The document which simultaneously confirmed and changed this situation was the Act of Abjuration. On 19 April 1581 the Estates General – by then dominated by the Union of Utrecht, and more in particular the Estates of Holland – decided to ban the name of the king from all official documents.[59] On 26 July they officially declared to abandon the king of Spain and deny him his authority over the Netherlands. Nowhere in the Act was it explicitly mentioned that Philip II lost his title of 'sovereign of the Netherlands', confirming that the concept did not form the most important governmental right. Rather, the text asserted that the Habsburg king lost his 'Heerschappye, Gherechtiicheydt, ende erfenisse' ('Lordship, jurisdiction, and heritage') and would no longer be recognized as 'Overhooft'(see annex 3, column 1).[60] Officers were relieved of

58 'The word sovereign is ambiguous because, if interpreted as supreme, in the manner by which we say supreme lord, it does not mean anything other than this first word, and, if interpreted as a word signifying absolute power, the lands, as they are governed by their own laws, costumes, and privileges, can only be suspicious about it, and we are certain that they will not pass it'. Cited in Johan Ph. de Monté ver Loren and Jop E. Spruit, *Hoofdlijnen uit de ontwikkeling der rechterlijke organisatie in de Noordelijke Nederlanden tot de Bataafse omwenteling* (Deventer, 2000), 251–2.

59 Ordonnance by the Estates General: Dumont, *Corps universel,* vol. 5.1, 406.

60 Act of Abjuration: Dumont, *Corps universel,* vol. 5.1, 413–21.

their oath to their 'Heer' ('lord') Philip II and it was repeated that the larger part of the Union accepted the 'heerschappye ende Gouvernemente' ('lordship and government') of the duke of Anjou. In a similar vein, the struggle for power within the now secessionist provinces did not centre on becoming 'sovereign'. In July 1582 the Ommelanden, a territory situated in the north of the Low Countries, offered the duke of Anjou a position as 'Prince en Over-heere' ('prince and overlord').[61] A month later William of Orange also increased his standing in the Low Countries, this time assuming the titles of 'Grave en Heere' ('count and lord') of the counties of Holland and Zeeland.[62] Both transfers of power happened without mentioning that either ruler had become the sovereign of these territories.

At the same time the Abjuration of Philip II did imply a major change. The signing of the Act – a drastic measure foreclosing a quick diplomatic solution – highlighted the inside-outside dimension of the conflict and lifted the earlier discrepancy between the *de facto* division of the Netherlands and the still civil war-orientated strategies of many actors.[63] On the one hand, King Philip no longer aimed at quenching an internal uprising but at reconquering all the lands that had expulsed him. Operating from the remaining loyal territories, governor general Alexander Farnese embarked on an impressive campaign and reconquered significant parts of the Netherlands.[64] Farnese managed to capture the key cities of Antwerp and Brussels in 1585; the former reconciled with Philip II as their 'Souverain Seigneur et Prince Naturel' ('sovereign lord and natural prince'), the latter with their 'natuerlijcken Prince […] als Hertoge van Brabant ende Marckgrave des Heylichs Rijckx' ('natural prince as duke of Brabant and margrave of the Holy Empire').[65] On the other hand, the Estates General, Orange, and Anjou wanted to prevent the king from reaching this goal. They tried to counter the Habsburg encroachment and stepped up the defence of the ramshackle General Union. However, in practice they only secured the borders of the Union of Utrecht. The province of Holland, by then

61 Treaty between the duke of Anjou and the Ommelanden: Dumont, *Corps universel,* vol. 5.1, 426–8.

62 Acceptance of the title of count of Holland and Zeeland by William of Orange: Dumont, *Corps universel,* vol. 5.1, 431–3.

63 Israel, *The Dutch Republic*, 210–1.

64 Ronald de Graaf, *Oorlog, mijn arme schapen. Een andere kijk op de Tachtigjarige Oorlog 1565–1648* (Franeker, 2004), 191–9; Violet Soen, 'Reconquista and reconciliation in the Dutch Revolt: the campaign of governor-general Alexander Farnese (1578–1592)', *Journal of Early Modern History,* 16 (2012) 1–22.

65 Capitulation of Brussels: Dumont, *Corps universel*, vol. 5.1, 444–6; Capitulation of Antwerp: Dumont, *Corps universel*, vol. 5.1, 446–53.

the dominant voice in the Estates General, only cared about its own defences and impeded operations outside the territory of the Utrecht alliance.[66]

The fact that the secessionist Netherlands further succumbed to internal chaos greatly facilitated the Habsburg advance. Throughout the early 1580s the competition between the Estates General, the prince of Orange, and the duke of Anjou continued, again including on-and-off uses of the argument of sovereignty. Least successful of these was the latter: frustrated by the limitation of his powers and confronted with Holland's preference for Orange, the duke tried a military coup in January 1583. This strategy quickly backfired, forcing him to leave the Netherlands in June. Pressed by the Habsburg advancement the Estates General reconciled with the duke in 1584, but Anjou died before he could re-join the fight. A month later Orange was shot in Delft, leaving the Estates General as the sole centre of power.[67] Fearing that they could not carry the burden of the war alone, the assembly quickly declared they were prepared to accept another 'prince' and asked Elisabeth I of England for her 'protection et deffence' ('protection and defence').[68] The queen declined to what is nowadays generally interpreted as an offer of sovereignty, but did agree to provide military aid to the Estates General.[69] On 6 February 1586 Robert Dudley, earl of Leicester, was appointed governor general of the Netherlands and assumed command of the Dutch war effort.[70] Only slightly over a year later he too resented the restrictions on his powers, attempted a coup, and left the country.[71]

This time the Estates General firmly maintained government in their own hands, transforming the secessionist provinces into the Dutch Republic of United Provinces and continuing the war on their own terms. The military battle for territory dragged on, and it was only seventeen years after the Act of Abjuration that a significant diplomatic initiative again materialized.[72] Meanwhile little had changed with regard to the use of sovereignty. On 6 May 1598 the dying Philip II ceded the entire Low Countries, including his standing claims to the United Provinces, as a dowry to his daughter Isabella. She and her

66 James D. Tracy, *The Founding of the Dutch Republic: War, Finance, and Politics in Holland, 1572–1588* (Oxford/New York, 2008), 150–1, 163.

67 Parker, *Beeldenstorm tot Bestand*, 198; Israel, *The Dutch Republic*, 212–6.

68 Commission to the diplomats of the Estates General, 6 June 1585: Dumont, *Corps universel,* vol. 5.1, 446.

69 Charles Wilson, *Queen Elizabeth and the Revolt of the Netherlands* (The Hague, 1979), 86; Hugh Dunthorne, *Britain and the Dutch Revolt 1560–1700* (Cambridge, 2013), 82.

70 Treaty of Nonsuch, 10 August 1585: Dumont, *Corps universel,* vol. 5.1, 454–5; Appointment of the earl of Leicester as governor general: Dumont, *Corps universel,* vol. 5.1, 456–7.

71 Israel, *The Dutch Republic*, 223–30.

72 For the few initiatives in between, see Soen, *Vredehandel*, 157–68.

cousin Archduke Albert of Austria, who at the time served as Philip's governor general in Brussels, were to marry and rule independently from Brussels. By bypassing his son, the future Philip III, the king hoped that the transfer of power from one branch of his dynasty to another would circumvent the Abjuration and reconcile the Dutch provinces.[73] This Act of Cession is nowadays generally described as another transfer of sovereignty, famous for the condition that the Netherlands would return to Philip III or his heirs if Albert and Isabella died childless – which eventually happened.[74] However, the document itself did not centre on the concept of sovereignty. On the contrary, the text only mentioned that Philip III would retain his position as 'chief et souverain de nostre ordre de la thoison d'or' ('head and sovereign of our Order of the Golden Fleece'). Other than that, the Act ceded a great number of individual rights over the Netherlands, without encapsulating them within an overall concept:

> donnons, cédons, délaissons, transférons et renoncons et accordons en dot, en fief et arrière fief et par quelconcque meilleure voye, manière et forme que de droict faire se puist et doibve valoir, […], tous noz pays d'embas et chacune province d'iceulx, […], et les duchez, principaultez, marquisats, contez, baronnies, seigneuries, villes, châteaux et fortz qui sont en nosdicts pays d'embas et de Bourgoigne, ensemble touttes régales, fiefz, hommages, droicts, libertez, franchises, droictz de patronnaiges, rentes et revenuz, domeine, aydes, confiscations et fourfaictures avecq tous et quelzconcques droictz et actions que pourrons et pourrions prétendre à cause d'iceulx pays […], ensemble touttes prééminences, prérogatives, privileges, exemptions, gardiennetez, advoueries, jurisdictions, haulteurs, ressorts et aultres superioritez quelzconcques comme et en quelle sorte elles soyent.[75]

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73 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) 209–21; Alicia Esteban Estríngana, 'Preparing the ground: the cession of the Netherland's sovereignty in 1598 and the failure of its peace-making objective, 1607–1609', in Lesaffer, *The Twelve Years Truce*, 15–47.

74 Georges Martyn, 'How 'sovereign' were the Southern Netherlands under the Archdukes?', in Lesaffer, *The Twelve Years Truce*, 196–209. For a wider interpretation of perceived 'Spanish dominance' in the Low Countries, see René Vermeir, 'How Spanish were the Spanish Netherlands?', *Dutch Crossing: Journal of Low Countries Studies*, 36 (2012) 3–18.

75 '[…] donate, cede, untie, transfer, and renounce and grant as dowry, fief, and secondary fief and by any better way, manner and form that can and must be done by law, […], all our Low Countries and each province thereof […], and the duchies, principalities, marquisettes, counties, baronnies, lordships, towns, castles and fortresses that are in our Low Countries and in Burgundy, together with all regalia, fiefs, hommages, rights,

Unfortunately for the Habsburgs, the Act of Cession also proved to no avail. The attempted reconciliation failed and in the process the antagonistic feelings between the two Netherlands multiplied.[76]

The period between 1581 and 1598 represented a phase of transition. The Act of Abjuration and the Act of Cession made the conflict undeniably territorial, ending the struggle for domestic control as the archdukes and the Estates General cemented their hold on the Habsburg Netherlands and the Dutch Republic respectively. In this process sovereignty remained only one of the many available arguments. As the civil war in the Low Countries proved to be insoluble, the conflict transformed itself into regular inter-state war.[77] Both parties turned their attention to the (re-)conquest of cities, castles, villages, and strongholds, hoping to reunite the Netherlands by bringing the opponent *manu militari* to their knees. This strategy left little room for diplomatic manoeuvres. So although all involved parties were now well aware that they were engaged in fight over territory, the absence of serious bilateral initiatives prevented them from deploying the argument of sovereignty in the diplomatic arena.

6 The Twelve Years Truce: Liberty, Sovereignty, or Territory?

However, once it became clear that the conflict would not be decided by arms alone, the sovereignty soon rose to the top of the diplomatic toolbox. After 1598 the battle for territory continued with shifting fortunes, but by the mid-1600s it became increasingly apparent that the war grinded to a standstill. With Philip III's finances – which still funded the Army of Flanders – in a dire state, Albert and Isabella signed a Truce for eight months in 1607 and aimed for a general peace.[78] However, the foundations on which this future peace would come to

liberties, freedoms, rights of patronage, rents and revenues, domains, taxes, confiscations and deeds including all and whatever rights and actions that are are and can be pretended because of these lands [...], together with all preminences, prerogatives, priviliges, exemptions, guardianships, confessorships, juridictions, highnesses, ressorts, and other superiorities whatever how and which they are'. Act of Cession: Victor Brants (ed.), *Règne d'Albert et Isabelle. 1597–1621. Tome Premier contenant les actes du 10 septembre 1597 au 30 avril 1609* (Recueil des Ordonnances des Pays-Bas, 2nd series (1506–1700), 9; Brussel, 1909), 4–5.

76 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 Lesaffer, *The Twelve Years Truce*, 48–68.

77 De Graaf, *Oorlog, mijn arme schapen*, 306.

78 De Graaf, *Oorlog, mijn arme schapen*, 318–51; Luc Duerloo, *Dynasty and Piety: Archduke Albert (1598–1621) and Habsburg Political Culture in an Age of Religious Wars* (Farnham,

rest were highly contested. Contrary to the previous decades, the Dutch Estates General explicitly pushed for the recognition of their sovereignty. Yet, even during the preliminary negotiations this proved a difficult task. The Habsburgs agreed to recognize the independence of the Dutch Republic but nevertheless sought a way to keep their claims to the entire Low Countries alive. As a solution, the archducal negotiator Jan Neyen proposed that the Habsburgs would recognize the United Provinces as 'liber ende vry' ('independent and free') for the time the Truce would last, leaving aside the word 'souverein'.[79] Framing the agreement as such granted the Dutch their independence, but also implied that the Habsburgs could maintain that they had not granted sovereignty *in se*.[80]

Although both sides agreed to Neyen's proposal, sovereignty also mattered to the negotiations in other respects. Despite the omission of the exact word, the Estates General and their diplomats systematically equated freedom with sovereignty, as their following resolution shows:[81]

> daerop den vredehandel metten vyant is bewillicht, volgende de resolutie, van de provinciën met eenparige stemmen daerop genomen, te weeten den religie ende den vrydom ofte souvereineté van den landen, sonder iets toe te laeten dat daertegen soude moegen strijden […] omme te mainteneren den souvereineté ende liberteyt van den landen.[82]

Generally this strategy is believed to have endorsed the Dutch claim to *de iure* sovereignty.[83] But this equation also allowed the United Provinces to use sovereignty as an argument in support of other interests. For example, one of the more contentious issues during the negotiations was Philip's demand that

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2012), 188–207; Paul C. Allen, *Philip III and the Pax Hispanica, 1598–1621: The Failure of Grand Strategy* (New Haven/London, 2000), 166–7, 191.

79 Simon Groenveld, *Het Twaalfjarig Bestand, 1609–1621. De jongelingsjaren van de Republiek der Verenigde Nederlanden* (Den Haag, 2009), 34–8.

80 Groenveld, *Het Twaalfjarig Bestand*, 40–1. The archdukes also refused to give up their dynastic titles as dukes of Gelre, counts of Holland etc.: Duerloo, *Dynasty and Piety*, 214.

81 Groenveld, *Het Twaalfjarig Bestand*, 41, 46–7; Van der Lem, *De Opstand*, 160–1.

82 '[A]fter which has been agreed to the peace talks with the enemy, following the unanimous resolution taken by the provinces, regarding the religion and freedom or sovereignty of the lands, without allowing anything that might be in opposition thereof […] to maintain the sovereignty and liberty of the lands'. Secret resolution Estates General, 14/11/1608: Nicolaas Japikse (ed.), *Resolutiën der Staten Generaal van 1576 tot 1609, elfde deel 1600–1601* (Rijks Geschiedskundige Publicatiën, 85; The Hague, 1970), 458.

83 For an interpretation see Jacobs 'The United Provinces', 188–9.

Dutch Catholics would be granted freedom of religion. The Estates General, dominated by the Protestant regent-class of Holland, were not inclined to give way on this point – not only for religious reasons, but also because they feared the creation of a fifth column and the secession of Catholic territories. Therefore, Dutch negotiators rebuked the Habsburg demands by stating that the possession of sovereignty also entailed the right to decide in matters of faith. If, as the Estates General maintained, the archdukes and Philip III were about to cede freedom – *ergo* full sovereignty – to the United Provinces, the Habsburgs would also have to accept that they had no longer a say over Dutch religious affairs.[84]

So besides being a goal for the Dutch Republic, sovereignty also became a powerful tool to exploit regarding other topics. The acquisition of sovereignty *in se* might have mattered, but mainly because this quality allowed the Estates General to get their way in a number of core disputes. And although the United Provinces were the first to deploy the argument of sovereignty this consciously, the Habsburgs quickly learned the lesson as well. During one of the 1608 discussions their negotiators rebuked rumours that Philip III would withdraw his recognition of Dutch sovereignty, stating that

> de geruchten, dier geloopen hebben, van dat den Coninck van Spangen de souverainiteyt van dese landen niet en soude overgeven noch quicteren, onwarachtig zijn, overmits zij ter contrariën gelast zijn deselve souveraineté d'heeren staten volcomen vrij ende vranck te laten, hetwelck een sulcken perle ende costelijck juweel is, dat noyt prince van voer hem van gelijcken gequicteert heeft.[85]

Through this statement the Habsburg diplomats tried to heighten the price for their cooperation. By reminding the Estates General that the king had accepted the cession of the 'precious pearl' of sovereignty, the Habsburgs wanted to convince their opponents that they could not give up more. So whereas the Dutch wielded sovereignty as a weapon to ensure that the Habsburgs conceded all of their territorial prerogatives, the archdukes and Philip III conveniently used it as a shield to yield less. Being far removed from questions about the

84 Groenveld, *Het Twaalfjarig Bestand*, 41, 46–7; Duerloo, *Dynasty and Piety*, 218–9.

85 '[T]he rumours that the king of Spain would not surrender nor abandon the sovereignty of these lands, are not true, because they are on the contrary instructed to leave the sovereignty of the lords Estates entirely free and unobstructed, something which is such a pearl and expensive jewel that never before him a prince has abandoned it'. Secret resolution Estates General, 21/08/1608: Japikse, *Resolutiën*, 442.

theoretical nature of sovereignty, actual diplomacy thus preferred to construe the concept according to *ad-hoc* strategic purposes.

After protracted negotiations, the Habsburgs and the Estates General eventually procured a truce for twelve years – not a peace – on 9 April 1609.[86] This Treaty of Antwerp recognized the freedom – sovereignty in the eyes of the Estates General – of the United Provinces by stating that the archdukes treated with them 'in qualiteyt, ende als d'selve houdende voor vrije Staten, Provintien, ende Landen, opte welcke syluyden niet en pretendeerden' ('in quality, and considering them as free Estates, provinces, and lands, on which they have no pretences') (see annex 3, column 2).[87] But as Beatrix Jacobs noted, this phrasing still leaves one wondering if the Dutch had become 'free' or 'free and sovereign'.[88] However, this question was only of secondary importance to the United Provinces themselves. Marjolein 't Hart rightly stated that the Dutch independence – political, religious, and economic – would have meant very little without a decent territory, making the possession of land the real priority of the Treaty, not the abstract naming of such power as sovereign.[89]

Indeed, it should be remembered that the Treaty of Antwerp still featured in the context of a territorial conflict, meaning that it was the recognition of an independent territory that really mattered, regardless of whether it was named 'free' or 'sovereign'. The dominance of territory becomes fully apparent when the actual clauses of the Treaty are considered. Many articles dealt with territory-related issues, primarily the restitution of confiscated property and cross-border trade. Moreover, the final text obscures that the possession of land was actually one of the main points of contention during the negotiations. Although often framed as smaller issues compared to religion and colonial trade, the Habsburg and Dutch diplomats held fierce debates about the drawing of new borders, the return of confiscated goods, and the on-going blockade of the river Scheldt.[90] The delimitation of the limits of both countries even threatened to stall the entire peace process, explaining why the signatories eventually chose to simply freeze the existing military frontier; the treaty declared that 'een yegelijck sal behouden, ende datelijck gebruycken die

86 For the most recent research on the context and content of the Twelve Years Truce, see Lesaffer, *The Twelve Years Truce*. Still valuable is W.J.M. van Eysinga, *De wording van het Twaalfjarig Bestand van 9 april 1609* (Amsterdam, 1959).

87 Truce for eight months: Dumont, *Corps universel*, vol. 5.2, 83–4; Treaty of Antwerp: Groenveld, *Unie-Bestand-Vrede*, 115.

88 Jacobs, 'The United Provinces', 188–9, 195.

89 't Hart, *The Dutch Wars*, 2.

90 Groenveld, *Het Twaalfjarig Bestand*, 47, 64.

Landtschappen, Steden, Plaetsen, Landen, ende Heerlijckheyden die hy jegenwoordich houdt ende besidt' ('each will keep and immediately use the terrains, cities, places, lands, and lordships that he currently keeps and possesses').[91]

Being an incredibly vague formulation, numerous boundary issues persisted after 1609. Already on 9 April 1609 the archdukes and the Estates General drafted an additional clause, arranging the status of certain villages in Brabant. Moreover, the possession of territories in Brabant, Flanders, and Overijssel continued to occupy the Habsburg and Dutch governments, leading to the conclusion of another treaty on 10 January 1610. Still not being able to reach a comprehensive agreement through this document, the two sides even required a third meeting. In June 1610 a final agreement was signed, settling the inning of tolls, the lasting blockade of the Scheldt, and the possession of the lands of Twente and the city of Oldenzaal.[92] As these treaties demonstrate, territory had clearly risen to the top of the diplomatic agenda. If the United Provinces were to become ánd remain fully independent, they needed a clear domain which they could tax, legislate, and rule. In this sense the abstract notion of sovereignty might have been put on the table by the Dutch government, but did not represent the ultimate goal. Rather, the concept provided a convenient argument to underpin the connection between their political power and the lands which they intended to govern.

7 Westphalia and the Proliferation of Sovereignty

The importance of the particular argument of sovereignty only continued to grow in the following decades. The war resumed after the Twelve Years Truce expired in 1621, leading to renewed fluctuations of the frontier.[93] Simultaneously, and depending on the military fortunes of both sides, preliminary peace proposals were being sent back and forth.[94] During these talks the issues of

91 Treaty of Antwerp: Groenveld, *Unie-Bestand-Vrede*, 118.

92 First Treaty of The Hague: Dumont, *Corps universel,* vol. 5.2, 119–20; Second Treaty of The Hague: Dumont, *Corps universel,* vol. 5.2, 141–3. Groenveld, *Het Twaalfjarig Bestand*, 60–2; René Vermeir and Tomas Roggeman, 'Implementing the Truce: negotiations between the Republic and the archducal Netherlands, 1609–10', *European Review of History/Revue europeenne d'histoire*, 17 (2010) 819–26.

93 Davide Maffi, *En defensa del Imperio. Los ejércitos de Felipe IV y la guerra por la hegemonía europea (1635–1659)* (Madrid, 2014), 21–98.

94 René Vermeir, 'Oorloghsvloeck en Vredens Zegen. Madrid, Brussel en de Zuid-Nederlandse Staten over oorlog en vrede met de Republiek, 1621–1648', *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden*, 115 (2000) 1–32.

sovereignty and territory remained on the table. For example, after the fall of 's-Hertogenbosch, a major city in Brabant, the Habsburg government refused to give up the surrounding countryside and pressed to maintain its authority there. The Estates General of course protested, and in the ensuing debates claims based on sovereignty came to play a major role.[95] Effectively, after the negotiations for the Twelve Years Truce had demonstrated the utility of the argument of sovereignty, it would only be applied more and more in discussions about territory, including those during and after the Westphalian Peace Congress.[96]

In part this simply explicated what had remained implicit in 1609. As Randall Lesaffer, Erik-Jan Broers, and Johanna Waelkens highlighted, the influence of the Twelve Years Truce on the 1648 Treaty of Munster was significant. Once the negotiations started in 1646, both parties quickly agreed to a summary of the Treaty of Antwerp and the two 1610 treaties.[97] This is important in two respects. Firstly, the independence of the Dutch Republic was again confirmed. But whereas there had been some doubt about the meaning of the 1609 clause,[98] this time the Habsburg king granted the United Provinces the status of 'vrije ende *Souveraine* Staten, Provincien en Landen, opde welcke, noch op haer geassocieerde Landschappen, Steden en Landen voors hij heer Coninck niet en pretendeert' ('free and sovereign Estates, provinces, and lands, on which, nor on the with them associated terrains, cities, and lands, the said lord has pretences').[99] Secondly, the overlap between the Truce and the Peace meant that territory remained an important topic. Numerous clauses again dealt with the restitution of private property, trade, and the levying of contributions across the border.[100] Moreover, the frontier was again frozen, using the same

95 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, 2011), 167–70.

96 For the onset to the Peace Congress, see Manzano Baena, *Conflicting Words*, 57–65. For the talks themselves, see Jan J. Poelhekke, *De Vrede van Munster* (The Hague, 1948); Simon Groenveld, *T'is Ghenoegh, Oorloghsmannen. De vrede van Münster: de Afsluiting van de Tachtigjarige Oorlog* (The Hague, 1997).

97 Randall Lesaffer et al., 'From Antwerp to Munster (1609/1648): truce and peace under the law of nations', in Lesaffer, *The Twelve Years Truce*, 235–6. See also Laura Manzano Baena, 'El largo camino hacia la paz. Cambios y semejanzas entre la Tregua de Amberes de 1609 y la Paz de Münster de 1648', *Pedralbes. Revista d'història moderna*, 29 (2009) 159–94.

98 Manzano Baena, *Conflicting Words*, 165.

99 Treaty of Munster: Groenveld, *Unie-Bestand-Vrede*, 160.

100 Lesaffer et al., 'From Antwerp to Munster', 247–8. For a general overview of the Peace of Munster, see Jacques Dante (ed.), *1648 Vrede van Munster – feit en verbeelding* (Zwolle, 1998).

provision as before. The only adaptations were that the 1648 clause contained a small list of disputed territories – the Habsburgs for example ceded the countryside of 's-Hertogenbosch – and that the right to full sovereignty was explicitly mentioned (see annex 3, column 3).[101]

Still, being only slightly more elaborate than the 1609 Truce, the clauses of the Peace of Munster again foreshadowed further struggle over territory. For example, on 12 February 1649 the Brussels Council of State informed governor general Leopold-Wilhelm that Dutch tax officials had committed several violent actions near Antwerp. According to the Brussels councillors these actions 'choquent [...] la souveraineté, & jurisdiction du Roy, ne permettant sur son Pays aulcune execution ou force des Provinces voisines' ('shocked the sovereignty and jurisdiction of the king, as these do not permit any executions or use of force by neighbouring provinces on his lands').[102] Effectively, the Habsburg government prepared itself to rebuke Dutch aspirations with the argument of royal sovereignty. Two experienced jurists, Jacques Edelheer and Petrus Stockmans, were sent to The Hague in order to deal with the situation.[103] Following the strategy set out by the Council of State, these diplomats presented the violation of the king's territory as an infraction against his sovereignty, countering the opinion of the Estates General that this was an issue of lesser legal standing:

> Welke lichtinge op wat naem die mochte genomen worden niet medebrengende eenige de minste beswaernisse van[de] inwoonders van desen staet, maer veroorsaeckte alleenlijck eene dispute tusschen zyne ma[iestei]t en[de] desen staet, eenichlijck raeckende de souverainiteyt sonder mengelinge van eenige beswaernisse vande ondersaeten van deser zyde.[104]

101 Treaty of Munster: Groenveld, *Unie-Bestand-Vrede*, 161.

102 Consult of the Council of State, 09/12/1648. Brussels, Archives générales du Royaume [henceforth AGR], Archives du Conseil d'État (inventory I112), no. 236.

103 Jacques Edelheer (1597–1655) graduated in 1617 from the University of Leuven and later became pensionary of Antwerp. Edelheer was well-acquainted with the nature of cross-border politics with the Dutch Republic, and had already acted as one of the Habsburg representatives during the failed peace negotiations of 1632. Petrus (Pieter) Stockmans (1608–1671) also studied in Leuven 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 for a seat on the Council of Brabant, eventually becoming a member of the Privy Council in 1664.

104 'Which levying of taxes, under whatever pretext these might have been taken, does not bring the least burden for the inhabitants of this state, but only causes a dispute between his majesty and this state, only touching upon the matter of sovereignty without

The tensions about this matter eventually subsided, but other issues continued to cause political headaches. Especially the fate of the so-called Three Lands of Overmaze worried both governments. These territories were strategically located near the Dutch-held city of Maastricht, but because neither army had been able to conquer them completely before 1648 both the Habsburgs and the Estates General remained convinced of their rights to them.[105] In contrast to 1610, when further diplomacy had been the primary means to settle such disputes, the Peace of Munster opted for arbitration. Article 21 of the Treaty stipulated that 'daer sullen ten wederzijden eenige rechters in gelijck getal worden gecommitteert bij forme van Chambre mi partie' ('there will be commissioned an equal number of judges by both sides in the form of a Chambre mi partie'), a chamber of justice which would determine when and where the Treaty of Munster had been violated. Its judges would moderate and arbitrate the many disputes stemming from the official division, as these discussions potentially endangered the newly established peace. Moreover, the chamber was explicitly granted the authority to decide who would come to possess the Lands of Overmaze.[106]

The Chambre Mi-Partie officially started working in December 1653 and dealt with over sixty cases in the first two years of its operation. It is not necessary to explain all of these disputes, but some of them reveal an interesting side-effect of the choice for arbitration. Both in 1609 and 1648, the argument of sovereignty was primarily used by diplomats in the service of the Spanish Habsburgs and the Estates General. But through the Chambre Mi-Partie, other groups in the Low Countries expressed its increasing value. For example, around 1657 the royal Council of Brabant complained to the Brussels government on behalf of the city of Antwerp. The Dutch had namely claimed possession of the village of Lillo, to the detriment of the nearby town:

> le village de Lillo a de toute ancieneté et sans aucune controverse jusques a aujourdhuy esté membre du district et quartier d'Anvers, et du ressort de v[ot]re ma[ies]te en son Conseil de Brabant, nonobstant la fortresse

intermingling any burdens on the subjects of this side'. Memorial of Petrus Stockmans to the Estates General, 1649: AGR, Archives du Conseil d'État, no. 236.

105 See Jozef A.K. Haas, *De verdeling van de Landen Van Overmaas 1644–1662. Territoriale desintegratie van een betwist grensgebied* (Maaslandse Monografieën, 27; Assen, 1978).

106 Treaty of Munster: Groenveld, *Unie-Bestand-Vrede,* 162, 166–7; Bram De Ridder, 'Sustaining the Munster Peace: the Chambre Mi-Partie as an experiment in transnational border arbitration (1648–1675)', *Journal of Modern European History*, 14 (2016) 35–53. See also François J.K. Van Hoogstraten, *De Chambre Mi-Partie van het Munstersche vredestractaat. Eene bijdrage tot de geschiedenis der Nederlandsche diplomatie* (Utrecht, 1860).

> illecq possedée par les estats des provinces unies, laquelle ne les peut donner aucune souverainité sur ledit village, quoy nonobstant, il est venu a la cognoissance des suppliants que lesdits Estats auroient prins resolution en leur assemblée, et mesmes en escrit au receveur des terres cy devant inondées, nommées les poldres de Lillo, qu'ils entendent que ledit village seroit a tenir de leur souverainité, ce qui les supl[ian]ts ont creu d'estre de leur obligation de remonstrer a v[ot]re ma[ies]te. Affin qu'il luy plaise d'y pourveoir pour le maintien de son autorité souveraine, soit par la chambre de my partie ou par son Ambassadeur resident a la Haye, ou autrement.[107]

Importantly, in this letter the argument of sovereignty served both external and internal purposes. In order to keep the village of Lillo under their control, Antwerp and the Council of Brabant rebutted the Dutch claim with their own interpretation of sovereignty. But at the same time the suppliants also used sovereignty to urge the central government into action: if the king did not intervene, his sovereign rights would be seriously damaged, a shameful situation for such a mighty ruler. The idea of sovereignty clearly no longer only served to support the grand territorial claims of the king and the Estates General, but also the smaller interests of actors at a lower political level.

Ultimately, the Chambre Mi-Partie arbitrated in only a few cases. The legal settlement of most controversial issues was blocked due to a lack of political cooperation, meaning that diplomacy would again decide on matters of territory. The possession of the Three Lands of Overmaze was eventually arranged through three consecutive treaties, of which the last (26 December 1661) established a complicated division of these domains.[108] Almost three years later, on 20 September 1664, another treaty determined the location of the border

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107 'The village of Lillo has until now always and without any controversies been a part of the district and quarter of Antwerp, and of the ressort of Your Majesty in his Council of Brabant, regardless of the fortress there possessed by the Estates of the United Provinces, which cannot grant them any sovereignty over this village, but it has none the less come to the attention of the petitioners that said Estates have taken a resolution in their assembly, even writing to the receiver of the inundated lands before the village called the polder of Lillo, that they understand the said village belongs to their sovereignty, something which the petitioners believed to be their duty to report to your majesty. This way it might please him to take measures to maintain his sovereign authority, be it through the Chambre Mi-Partie or by his ambassador in The Hague, or by another way'. Letter of the royal Council of Brabant, ca. 1657: AGR, Archives du Conseil d'État, no. 269.

108 First division of Overmaze 25–27/05/1658: Dumont, *Corps universel,* vol. 5.2, 212; Second division of Overmaze 13/12/1659: Dumont, *Corps universel,* vol. 5.2, 295; Third division of Overmaze 26/12/1661: Haas, *De Verdeling*, 294–314.

between the Habsburg and the Dutch parts of the county of Flanders. Attesting to the increased importance of sovereignty for the possession of territory, these documents abounded with references to the concept (see annex 4). The Habsburg king and the Estates General were clearly identified as sovereign, and their titles to land derived to a large extent from their right of sovereignty.

This evolution signified a final step in the development of sovereignty as a territorial argument: around 1609 the concept was not required for the expression of power over land, but gradually its use became ever more abundant. In this respect it is remarkable that most scholars who have argued about the Westphalian origins of sovereignty, both pro and contra, have rarely included the Habsburg-Dutch Treaty of Munster in their analyses. As Derek Croxton notes, in the other Westphalian treaties sovereignty was only one of the many rights that was being discussed, ceded, and transferred. As he states it, 'no single concept of "sovereignty" could stand in place of all of the others'.[109] In this sense the two other Westphalian treaties actually reflect the pre-1609 situation in the Netherlands, where numerous terms and rights were in vogue. But by the period 1648–1664 this had already distinctly changed in the Low Countries. Although the Dutch Republic and the Spanish monarchy still had their separate theories about what sovereignty entailed, in practice diplomats from both sides used the concept in a similar way: to claim and contend territory.[110] As such, the Treaty of Munster of 30 January tells us a lot more about the 'Westphalian' development of sovereignty than the treaties of Munster and Osnabruck of 24 October, simply because the Habsburg-Dutch treaty undoubtedly confirmed the link between sovereignty and territory.

8 Conclusion

This chapter studied sovereignty from the perspective of territorial competition, stressing its use as an argument for the expression of power over land. From 1576 onwards, the Eighty Years War between the Spanish monarchy and the Dutch Republic of United Provinces turned into a struggle for the possession of territory, articulated through a number of treaties. As the Netherlands became divided, both sides aimed for the defence and expansion of their proper domain. One of the arguments that could help achieve these territorial ambitions was the right to sovereignty, which not necessarily represented the

109 Croxton, 'The Peace of Westphalia' 577–81.

110 Manzano Baena, *Conflicting Words*, 168; Van Nifterik, *Vorst tussen volk en wet*, 210.

ultimate political goal but was constructed according to strategic needs. Rulers increasingly used the concept to support their claims, an evolution that went through four distinct phases.

Between 1576 and 1581 the Eighty Years War was still perceived as a civil war, whereby the primary contenders did not act upon the growing division initiated by the Unions of Arras and Utrecht. King Philip II, the Estates General, William of Orange, and the duke of Anjou all tried to exert their authority over the entire Low Countries, vying for all sorts of titles and prerogatives that demonstrated their right to rule. Although sovereignty was only one of many such arguments, actors nevertheless deployed it with care and according to the best strategical options available. After the Act of Abjuration of 1581 sovereignty continued to be used in a similar vein, even though this document confirmed the territorial character of the war beyond all doubt. The Estates General, Orange, and Anjou now struggled for power over the secessionist Netherlands, whereas the Habsburg king started a campaign of re-conquest from the remaining loyal provinces. All the while the expression of 'being sovereign' did not become crucial for claiming legitimate government, something which is demonstrated by the fact that the 1598 Act of Cession listed a whole range of political rights to be transferred to the Archdukes Albert and Isabella – a list that did not include sovereignty.

The negotiations for the Twelve Years Truce rather differed in this respect. This time the Estates General – whom emerged victorious out of the struggle for domestic control of the secessionist provinces – explicitly demanded that the Habsburgs would recognize the sovereignty of the young Dutch Republic. Although the Treaty of Antwerp only mentioned that the United Provinces were recognized as free, the Dutch negotiators were keen to equate this with sovereignty anyway. This strategy served a double purpose: on the one hand the concept of sovereignty could be used to express the much desired goal of territorial independence, on the other it formed a flexible diplomatic tool that served to achieve other aims as well. But if the United Provinces deployed the notion to gain more, the Habsburgs quickly learned to use it to yield less. Finally, during and after the Westphalian Peace Congress this strategic use of sovereignty proliferated. Not only did the Peace of Munster mention that the United Provinces were granted freedom and sovereignty, the manifold territorial treaties that were concluded in its wake all referred several times to concept. Moreover, actors on lower political levels tapped into this discourse, deploying the argument of sovereignty to their own territorial advancement. Effectively, between 1576 and 1664 the notion of being sovereign transformed from one of the many possible ways to claims supreme rule over the Netherlands into an absolute necessity for the expression of territorial interests.

Bibliography

Allen, Paul C. *Philip III and the Pax Hispanica, 1598–1621: The Failure of Grand Strategy*. New Haven/London, 2000.

Annan, Kofi. *Interventions: A Life in War and Peace*. London, 2012.

Beaulac, Stéphane. *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia*. Leiden/Boston, 2004.

Beemon, F.E. 'We have no such word: the concept of sovereignty and the rise of the Dutch States General, 1578–1587'. *Contributions to the History of Concepts*. 3 (2007) 181–204.

Bely, Lucien. 'Être souverain au xviie siècle'. In *1648 La paix de Westphalie. Vers l'Europe Moderne*, Paris, 1998, 30–36.

Benton, Lauren. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. Cambridge, 2010.

Brants, Victor (ed.). *Règne d'Albert et Isabelle. 1597–1621. Tome Premier contenant les actes du 10 septembre 1597 au 30 avril 1609*. Recueil des Ordonnances des Pays-Bas, 2nd series (1506–1700), 9. Brussel, 1909.

Brown, Wendy. *Walled States, Waning Sovereignty*. New York, 2014.

Chekuri, Christopher. 'A 'share' in the 'world empire': Nayamkara as sovereignty in practice at Vijayanagara, 1480–1580'. *Social Scientist*. 40 (2012) 41–67.

Croxton, Derek. 'The Peace of Westphalia of 1648 and the origins of sovereignty'. *The International History Review*. 21 (1999) 569–91.

Dante, Jacques (ed.). *1648 Vrede van Munster – feit en verbeelding*. Zwolle, 1998.

De Graaf, Ronald. *Oorlog, mijn arme schapen. Een andere kijk op de Tachtigjarige Oorlog 1565–1648*. Franeker, 2004.

De Monté ver Loren, Johan Ph., and Jop E. Spruit. *Hoofdlijnen uit de ontwikkeling der rechterlijke organisatie in de Noordelijke Nederlanden tot de Bataafse omwenteling*. Deventer, 2000.

De Ridder, Bram. '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) 209–21.

De Ridder, Bram. 'Sustaining the Munster Peace: the Chambre Mi-Partie as an experiment in transnational border arbitration (1648–1675)'. *Journal of Modern European History*. 14 (2016) 35–53.

De Ridder, Bram, and Violet Soen. 'The Act of Cession, the 1598 and 1600 States General in Brussels and the peace negotiations during the Dutch Revolt'. In Randall Lesaffer (ed.), *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, Leiden/Boston, 2014, 48–68.

Duchhardt, Heinz. '"Westphalian System". Zur Problematik einer Denkfigur'. *Historische Zeitschrift*. 269 (1999) 305–15.

Duerloo, Luc. *Dynasty and Piety: Archduke Albert (1598–1621) and Habsburg Political Culture in an Age of Religious Wars*. Farnham, 2012.

Dunthorne, Hugh. *Britain and the Dutch Revolt 1560–1700*. Cambridge, 2013.

Elden, Stuart. *Terror and Territory. The Spatial Extent of Sovereignty*. Minneapolis/London, 2009.

Elden, Stuart.*The Birth of Territory*. Chicago/London, 2013.

Elliott, John H. *Imperial Spain 1469–1716*. Harmondsworth, 1963.

Esteban Estríngana, Alicia. 'Preparing the ground: the cession of the Netherland's sovereignty in 1598 and the failure of its peace-making objective, 1607–1609'. In Randall Lesaffer (ed.), *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, Leiden/Boston, 2014, 15–47.

Evans, Graham, and Jeffrey Newnham. *The Penguin Dictionary of International Relations*. London, 1998.

Gachard, Louis-Prosper. *Actes des États-Généraux 1576–1580*. 2 vols. Brussels, 1861–1866.

Groenveld, Simon. *T'is Ghenoegh, Oorloghsmannen. De vrede van Münster. De Afsluiting van de Tachtigjarige Oorlog*. The Hague, 1997.

Groenveld, Simon. *Het Twaalfjarig Bestand, 1609–1621. De jongelingsjaren van de Republiek der Verenigde Nederlanden*. Den Haag, 2009.

Groenveld, Simon. *Unie-Bestand-Vrede. Drie fundamentele wetten van de Republiek der Verenigde Nederlanden*. Hilversum, 2009.

Groenveld, Simon, and Huib P. Leeuwenberg (eds.). *De Unie van Utrecht. Wording en werking van een verbond en een verbondsacte*. The Hague, 1979.

Gross, Leo. 'The Peace of Westphalia, 1648–1948'. *The American Journal of International Law*. 42 (1948) 20–41.

Haas, Jozef A.K. *De verdeling van de Landen Van Overmaas 1644–1662. Territoriale desintegratie van een betwist grensgebied*. Maaslandse Monografieën, 27. Assen, 1978.

Herzog, Tamar. *Frontiers of Possession: Spain and Portugal in Europe and the Americas*. Cambridge/London, 2015.

Holtzmann, Robert. 'Der Weltherrschaftsgedanke des Mittelalterlichen Kaisertums und die Souveränität der Europäischen Staaten'. *Historische Zeitschrift*. 159 (1938) 251–64.

Israel, Jonathan I. *The Dutch Republic: Its Rise, Greatness, and Fall 1477–1806*. Oxford, 1995.

Israel, Jonathan I. *Conflicts of Empires: Spain, the Low Countries and the Struggle for World Supremacy, 1585–1713*. S.l., 1997.

Jacobs. Beatrix C.M. 'The United Provinces: 'free' or 'free and sovereign?''. In Randall Lesaffer (ed.), *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, Leiden/Boston, 2014, 181–95.

Japikse, Nicolaas (ed.). *Resolutiën der Staten Generaal van 1576 tot 1609, elfde deel 1600–1601*, (Rijks Geschiedskundige Publicatiën, 85, The Hague, 1970.

Janssens, Gustaaf. 'Van de komst van Alva tot de Unies (1567–1579)'. In *Algemene Geschiedenis der Nederlanden*, 15 vols, Haarlem, 1977–1983, vol. 6, 215–43.

Kalmo, Hent, and Quentin Skinner. 'Introduction: a concept in fragments'. In Ids. (eds.), *Sovereignty in Fragments. The Past, Present and Future of a Contested Concept*, Cambridge, 2010, 7–9.

Kaplan, Robert D. *The Revenge of Geography: What the Map Tells Us About Coming Conflicts and the Battle Against Fate*. S.l., 2012.

Kennedy, Paul. *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000*. London, 1988.

Kissinger, Henry. *World Order: Reflections on the Character of Nations and the Course of History*. London, 2014.

Koenigsberger, Helmut G. 'Orange, Granvelle and Philip II'. *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden*. 99 (1984) 573–95.

Krasner, Stephen D. 'Compromising Westphalia'. *International Security*. 20 (1995–1996) 115–51.

Krasner, Stephen D. (ed.). *Problematic Sovereignty: Contested Rules and Political Possibilities*. New York, 2001.

Lesaffer, RandalI. 'The Westphalia peace treaties and the development of the tradition of great European peace treaties prior to 1648'. *Grotiana*. 17 (1997) 71–95.

Lesaffer, Randall. *Europa: een zoektocht naar vrede? 1453–1763 en 1945–1997*. Leuven, 1999.

Lesaffer, RandalI. 'The international dimension of the Westphalia peace treaties: a juridical approach'. In *350 años de la Paz de Westfalia. Del antagonismo a la integración en Europa*, Madrid, 1999, 292–310.

Lesaffer, RandalI, Erik Jan Broers, and Johanna Waelkens. 'From Antwerp to Munster (1609/1648): truce and peace under the law of nations'. In Randall Lesaffer (ed.), *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, Leiden/Boston, 2014, 233–55.

Lynch, John. *The Hispanic World in Crisis and Change, 1598–1700*. Oxford, 1992.

Lyons, Gene M., and Michael Mastanduno (eds.). *Beyond Westphalia?* Baltimore, 1995.

Maffi, Davide. *En defensa del Imperio. Los ejércitos de Felipe IV y la guerra por la hegemonía europea (1635–1659)*. Madrid, 2014.

Manzano Baena, Laura. 'El largo camino hacia la paz. Cambios y semejanzas entre la Tregua de Amberes de 1609 y la Paz de Münster de 1648'. *Pedralbes. Revista d'història moderna*. 29 (2009) 159–94.

Manzano Baena, Laura. *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, 2011.

Martyn, Georges. 'How 'sovereign' were the Southern Netherlands under the Archdukes?'. In Randall Lesaffer (ed.), *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, Leiden/Boston, 2014, 196–209.

McCluskey, Philip. 'From regime change to réunion: Louis XIV's quest for legitimacy in Lorraine, 1670–97'. *English Historical Review*. 126 (2011) 1386–407.

McGrew, Anthony. 'Globalization and global politics'. In John Baylis et al. (eds.), *The Globalization of World Politics: An Introduction to International Relations*, 4th edn, New York, 2008, 19–34.

Moses, Jeremy, Babak Bahador, and Tessa Wright. 'The Iraq War and the responsibility to protect: uses, abuses and consequences for the future of humanitarian intervention'. *Journal of Intervention and Statebuilding*. 5 (2011) 347–67.

Neff, Stephen C. *Justice amongst Nations: A History of International Law*. Cambridge, 2014.

Nordman, Daniel. *Frontières de France. De l'Espace au territoire, XVIe-XIXe siècle*. S.l., 1998.

Opstand en Pacificatie in de Lage Landen. Bijdrage tot de studie van de Pacificatie van Gent. Ghent, 1976.

Osiander, Andreas. 'Sovereignty, international relations, and the Westphalian myth'. *International Organization*. 55 (2001) 251–87.

Parker, Geoffrey. 'Why did the Dutch Revolt last eighty years'. *Transactions of the Royal Historical Society*. 26 (1976) 53–72.

Parker, Geoffrey. *Van Beeldenstorm tot Bestand*. Haarlem, 1978.

Parker, Geoffrey. *The Grand Strategy of Philip II*. New Haven/London, 1998.

Picq, Jean. *Une histoire de l'état en Europe. Pouvoir, justice et droit du Moyen Âge à nos jours*. Paris, 2009.

Piirimäe, Pärtel. 'The Westphalian myth and the idea of external sovereignty'. In Hent Kalmo and Quentin Skinner (eds.), *Sovereignty in Fragments. The Past, Present and Future of a Contested Concept*, Cambridge, 2010, 64–80.

Poelhekke, Jan J. *De Vrede van Munster*. The Hague, 1948.

Pollmann, Judith. 'Internationalisering en de Nederlandse Opstand'. *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden*. 124 (2009) 515–35.

Quaritsch, Helmut. *Souveränität. Entstehung und Entwicklung des Begriffs in Frankreich und Deutschland vom 13. Jh. Bis 1806*. Berlin, 1986.

Roelofsen, Cornelis G. 'Völkerrechtliche Aspekte des Westfälischen Friedens in niederländischer sicht'. *Rechtstheorie*. 29 (1998) 175–88.

Ruggie, John Gerard. 'Territoriality and beyond: problematizing modernity in international relations'. *International Organization*. 47.1 (1993) 139–74.

Sack, Robert David. *Human Territoriality: Its Theory and History*. Cambridge, 1986.

Sahlins, Peter. *Boundaries: The Making of France and Spain in the Pyrenees*. Berkeley/Oxford, 1989.

Scheuner, Ulrich. 'Die grossen Friedensschlüsse als Grundlage der europäischen Staatenordnung zwischen 1648 und 1815'. In Konrad Repgen et al. (eds.), *Spiegel der Geschichte. Festgabe für Max Braubach zum 10. April 1964*, Munster, 1964, 220–50.

Schröder, Meinhard. 'Der Westfälische Friede – eine Epochgrenze in der Völkerrechtsentwicklung?'. In Id. (ed.), *350 Jahre Westfälischer Friede. Verfassungsgeschichte, Staatskirchenrecht, Völkerrechtsgeschichte*, Berlin, 1999, 119–32.

Soen, Violet. *Vredehandel. Adellijke en Habsburgse verzoeningspogingen tijdens de Nederlandse Opstand*. Amsterdam, 2012.

Soen, Violet. 'Reconquista and reconciliation in the Dutch Revolt: the campaign of governor-general Alexander Farnese (1578–1592)'. *Journal of Early Modern History*. 16 (2012) 1–22.

Sofer, Sasson. 'The prominence of historical demarcations: Westphalia and the new world order'. *Diplomacy & Statecraft*. 20 (2009) 1–19.

Stirk, Peter M.R. 'The Westphalian model and sovereign equality'. *Review of International Studies*. 38 (2012) 641–60.

Sturges, Robert S. 'Introduction: laws and sovereignties in the Middle Ages and the Renaissance'. In Id. (ed.), *Law and Sovereignty in the Middle Ages and the Renaissance*, Turnhout, 2011, xi–xviii.

Swart, Koenraad W. 'Wat bewoog Willem van Oranje de strijd tegen de Spaanse overheersing aan te binden?'. *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden*. 99 (1984) 554–72.

't Hart, Marjolein. *The Dutch Wars of Independence: Warfare and Commerce in the Netherlands, 1570–1680*. London/New York, 2014.

Teschke, Benno. *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations*. London/New York, 2003.

Tracy, James D. *The Founding of the Dutch Republic: War, Finance, and Politics in Holland, 1572–1588*. Oxford/New York, 2008.

Ullmann, Walter. 'Zur Entwicklung des Souveränitätsbegriffes im Spätmittelalter'. In Louis Carlen and Fritz Steinegger (eds.), *Festschrift Nikolaus Grass zum 60. Geburtstag dargebracht von Fachgenossen, Freunden, und Schulern*, Munich, 1974, 9–27.

Van Caenegem, Raoul C. *An Historical Introduction to Western Constitutional Law*. Cambridge, 1995.

Van der Lem, Anton. *De Opstand in de Nederlanden 1568–1648. De Tachtigjarige Oorlog in woord en beeld*. Nijmegen, 2014.

Van Eysinga, W.J.M. *De wording van het Twaalfjarig Bestand van 9 april 1609*. Amsterdam, 1959.

Van Hoogstraten, François J.K. *De Chambre Mi-Partie van het Munstersche vredestractaat. Eene bijdrage tot de geschiedenis der Nederlandsche diplomatie*. Utrecht, 1860.

Van Nierop, Henk. 'Alva's throne – Making sense of the Revolt of the Netherlands'. In Graham Darby (ed.), *The Origins and Development of the Dutch Revolt*, London/New York, 2001, 29–47.

Van Nifterik, Gustaaf Pieter. *Vorst tussen volk en wet. Over volkssoevereiniteit en rechtsstatelijkheid in het werk van Fernando Vázquez de Menchaca (1512–1569)*. Rotterdam, 1999.

Vermeir, René. 'Oorloghsvloeck en Vredens Zegen. Madrid, Brussel en de Zuid-Nederlandse Staten over oorlog en vrede met de Republiek, 1621–1648'. *Bijdragen en mededelingen betreffende de geschiedenis der Nederlanden*. 115 (2000) 1–32.

Vermeir, René. 'How Spanish were the Spanish Netherlands?'. *Dutch Crossing: Journal of Low Countries Studies*. 36 (2012) 3–18.

Vermeir, René, and Tomas Roggeman. 'Implementing the Truce: negotiations between the Republic and the archducal Netherlands, 1609–10'. *European Review of History/Revue europeenne d'histoire*. 17 (2010) 819–26.

Werner, Wouter G., and Jaap H. de Wilde. 'The endurance of sovereignty'. *European Journal of International Relations*. 7.3 (2001) 283–313.

Wilson, Charles. *Queen Elizabeth and the Revolt of the Netherlands*. The Hague, 1979.

Annex 1:

Acta Pacis Westphalicae (APW)[a]
Die Westfälischen Friedensverträge vom 24. Oktober 1648
Texte und Übersetzungen (IPM) (*1648 and 1651*)

Art.	*Quote*		
-	'princeps et *supremus* comes de Neuchastel'	'*Souverain* Comte de Neufchastel'	‚Fürst und *Ober*Graff zu NewCastell'
50	'Ius *directi* et utilis dominii in praefecturas'	'le Droit de Seigneurie *directe* sur les Iurisdictions & Bailliages'	'Soll das Jus Dominii *directi* & utilis über die Aempter'
53	'Iura autem *superioritatis* et iurisdictio tam ecclesiastica quam secularis et reditus nominatarum arcis et civitatum domino archiepiscopo Coloniensi sint salva'	'Les droits de *Superiorité* & la Iurisdiction, tant Ecclesiastique que seculiere, & les revenus dudit Chasteau & desdites Villes demeureront au Seigneur Archevesque de Cologne'	'Aber die Jura der *Superiorität*/ und beides Kirch= und Weltl. Jurisdiction/ auch deren Reditus gemeldter Plätze/ sollen besagtem Hrn[.] Ertz=Bischof von Cöln in salvo verbleiben'
55	'de reliquo *iure territoriali* domino proprietatis interea semper salvo'	'sans autre dommage du *droit* du Seigneur proprietaire du *territoire*'	'Im übrigen soll das J*us territoriale* dem EigenthumbsHerrn allezeit in salvo verbleiben'
62	'libero *iuris territorialis* tam in ecclesiasticis quam politicis exercitio, ditionibus, regalibus horumque omnium possessione vigore huius transactionis ita stabiliti firmatique sunto'	'leurs anciens droicts, prerogatives, liberté, privileges, libre exercice du *droit territorial* tant en l'Ecclesiastique qu'au Politique, Seigneuries, Regales, en vertu de la presente transaction'	'ihren uhralten Rechten, Prærogativen/ Freyheit und Privilegien/ freyen Gebrauch ihres *Juris Territorialis*, so in Geist= als Weltlichen Sachen/ Herrschafften/ Regalien und aller dieser Dingen besitzung krafft dieser Transaction dermassen bestätiget seyn'

Internet-Portal "Westfälische Geschichte"[b] *Münsterscher Friedensvertrag* (*Instrumentum Pacis Monasteriensis, IPM*) [*Volltext*] (*1984*)		*The Avalon Project, Yale Law School*[c] *Treaty of Westphalia. Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies* (*1720*)
Quote	***Art.***	**Quote**
'Fürst und [*Land*]graf von Neuchâtel'	-	'Prince and *Sovereign* Count of Neuschaftel'
'soll das *Ober*eigentum und das Untereigentum über die Ämter'	LII	'the Right of a *direct* Signiory over the Jurisdictions and Bayliwick'
'Die *landes*herrlichen Rechte aber, die geistliche und weltliche Gerichtsbarkeit des Erzbischofs von Köln'	LV	'The Rights of *Superiority* and Jurisdiction, as well Ecclesiastical as Secular, and the Revenues of the said Castles and Towns, shall remain in the Arch-bishop of Cologne'
'unbeschadet jedoch der *landesherrlichen Rechte* des Eigentümers'	LVI	'always saving the *Right* of the Lord Proprietor of the *Territory*'
'in ihren alten Rechten, Vorrechten, Freiheiten, Privilegien, der ungehinderten Ausübung der *Landeshoheit* sowohl in geistlichen als auch in weltlichen Angelegenheiten, Herrschaften, Regalien sowie in deren Besitz kraft dieses Vertrages derart bestätigt und bekräftigt werden'	LXIV	'confirm'd in their antient Rights, Prerogatives, Libertys, Privileges, free exercise of *Territorial Right*, as well Ecclesiastick, as Politick Lordships, Regales, by virtue of this present Transaction'

Acta Pacis Westphalicae (APW)[a]
Die Westfälischen Friedensverträge vom 24. Oktober 1648
Texte und Übersetzungen (IPM) (*1648 and 1651*)

Art.	*Quote*		
66	'ad iudicia cum *summa* Imperii tum singularia statuum'	'aux cours *souveraines* de l'Empire, ou aux subalternes des Estats'	'so wol in den *höchsten* Reichs Als andern der Stände mittelbaren Gerichten'
70	'Quod *supremum* dominium, iura *superioritatis* aliaque omnia'	'que le *haut* Domaine, Droit de *Souveraineté* & tous autres Droits'	'Sol das *supremum* dominium, jura *superioritatis*, und alle andere' Rechte
72	'ius directi dominii, *superioritatis* et quodcunque aliud'	'le droit de Seigneurie directe & *Souveraineté*, & tout ce qui appartenoit ou pouvoit appartenir jusques icy ou à soy'	'das jus directi dominii, *Superiorität* und alles was iemals Jhm'
74	'cum omnimoda iurisdictione et *superioritate supremo*que dominio amodo'	'avec toute sorte de Iurisdiction, & *Souveraineté*'	'mit aller Jurisdiction *Superiorität* und *Ober* Herrschafft'
78	'atque ita coronam Galliae in plena iustaque eorum *superioritate*, proprietate et possessione constituunt renunciantes omnibus in ea iuribus ac praetensionibus ex nunc in perpetuum,	'par ainsi ils establissent la Couronne de France en une pleine & juste *puissance* sur toutes cesdites places, renonçans dés maintenant & à perpetuité au Droits & Pretentions qu'ils y avoyent'	'und setzen hiermit die Kron Franckreich in völlige rechtmässige *Superiorität* Proprietät und Possession und renunciren hiemit allen und ieden Rechten und Prætensionen itzt und zu allen Zeiten'

Internet-Portal "Westfälische Geschichte"[b] *Münsterscher Friedensvertrag* (*Instrumentum Pacis Monasteriensis,* IPM) [*Volltext*] (*1984*)		*The Avalon Project, Yale Law School*[c] *Treaty of Westphalia. Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies* (*1720*)
Quote	***Art.***	**Quote**
'*höchsten* Reichsgerichte oder vor die Gerichte der Reichsstände'	LXVIII	'the *Sovereign* Courts of the Empire, or Subordinate ones of States'
'*Ober*herrschaft, die *Landeshoheit* und alle anderen Rechte'	LXXI	'That the chief Dominion, Right of *Sovereignty*, and all other Rights'
'das *Ober*eigentum, die *Landeshoheit* und alles andere Recht'	LXXIII	'the Right of direct Lordship and *Sovereignty*, and all that has belong'd, or might hitherto belong to him'
'samt der Gerichtsbarkeit, *Landeshoheit* und *landes*herrlichen Rechte'	LXXVI	'with all manner of Jurisdiction and *Sovereignty*'
'auf diese Art und Weise setzen sie die Krone Frankreich in die vollständige und rechtmäßige *Landeshoheit*, in das volle und rechtmäßige Eigentum und in den vollen und rechtmäßigen Besitz ein und verzichten von jetzt an und für dauernd auf alle Rechte und Ansprüche'	LXXX	'and consequently confirm the Crown of France in a full and just *Power* over all the said Places, renouncing from the present, and for ever, the Rights and Pretensions they had thereunto'

Acta Pacis Westphalicae (APW)[a]
Die Westfälischen Friedensverträge vom 24. Oktober 1648
Texte und Übersetzungen (IPM) (*1648 and 1651*)

Art.	*Quote*		
80	'ex communi ordinum sententia pro publica tranquillitate in alterius *dominium* legitime translatas'	'par le commun advis des Estats, pour le bien de la tranquillité publique, transportées au *Domaine* d'autruy'	'als welche mit aller Stände Consens und Einwilligung zu Erhaltung allgemeines Friedens in eines andern *Herrschafft* rechtmässig transferirt'
85	'omnibusque regaliis, iuribus, iurisdictionibus, feudis et patronatibus caeterisque omnibus et singulis ad *sublime* territorii ius patrimoniumque domus Austriacae'	'toutes les Regales, Droits, Iurisdictions, Fiefs & Patronages, & toutes les autres choses appartenantes au *souverain* droit du territoire, & au patrimoine de la Maison d'Austriche'	'allen Regalien/ Recht und Gerechtigkeiten Lehen und Schutzrecht und allem andern was zur *hohen LandesOber*Gerechtigkeit Recht und Eigenthum deß Hauses Oesterreich in dem gantzen umbzirck von Alters hero gehöret hat'
87	'ita ut nullam ulterius in eos regiam *superioritatem* praetendere possit, sed iis iuribus contentus maneat, quaecunque ad domum Austriacam spectabant et per hunc pacificationis tractatum coronae Galliae ceduntur … de eo omni *supremi* dominii iure, quod supra [vgl. §§ 73–74, 78–80 IPM] concessum est'	'de sorte que il ne puisse plus pretendre sur eux aucune *Superiorité* Royale, mais qu'il se contente des Droits qui regardoyent la Maison d'Austriche, & qui par ce present Traicté de Pacification son[t] cedés à la Couronne de France … rien deroger au Droit de *Souverain* Domaine desja cy-dessus accordé'	'daß Er keine Königl. *Hoheit* über Sie zu prætendiren sondern mit denen Rechten zufrieden was dem Haus Oesterreich zugestanden und durch diese Friedenshandlung der Kron Franckreich cedirt. Jedoch daß durch diese Declaration nichts abgehe dem juri *supremi* dominii, welches droben übergeben'

Internet-Portal "Westfälische Geschichte"[b] *Münsterscher Friedensvertrag* (*Instrumentum Pacis Monasteriensis,* IPM) [*Volltext*] (*1984*)		*The Avalon Project, Yale Law School*[c] *Treaty of Westphalia. Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies* (*1720*)
Quote	***Art.***	**Quote**
'weil sie mit einhelliger Zustimmung der Stände zur allgemeinen Sicherheit der *Landeshoheit* rechtswirksam übertragen worden sind'	LXXXII	'as having been legally transfer'd to another's *Dominion*, with the common Consent of the States, for the benefit of the publick Tranquillity'
'allen Regalien, Rechten, Gerichtsbarkeiten, Lehen und Patronaten und allem, was sonst in diesem Gebiet von alters her zur *Landeshohei*t und zum Erbe des Hauses Österreich gehört'	LXXXVIII	'all the Regales, Rights, Jurisdictions, Fiefs and Patronages, and all other things belonging to the *Sovereign* Right of Territory, and to the Patrimony of the House of Austria'
'und zwar in der Weise, daß er künftig keine *Ober*hoheit über sie in Anspruch nehmen wird, sondern sich mit jenen Rechten zufriedengibt, die das Haus Österreich innehatte und die durch den gegenwärtigen Friedensvertrag der Krone Frankreich abgetreten worden sind … daß dem Recht auf *Ober*herrschaft, das zuvor gewährt worden ist'	XCII	'so that he cannot pretend any Royal *Superiority* over them, but shall rest contented with the Rights which appertain'd to the House of Austria, and which by this present Treaty of Pacification, are yielded to the Crown of France … shall derogate from the *Sovereign* Dominion already hereabove agreed to'

Acta Pacis Westphalicae (APW)[a]
Die Westfälischen Friedensverträge vom 24. Oktober 1648
Texte und Übersetzungen (IPM) (*1648 and 1651*)

Art.	*Quote*		
96	'in *superioritate* seu iure *superioritatis*, quod habent in feudis'	'pour le suject du Dr<oit> de *Souveraineté* qu'ils sont sur les Fiefs'	'in *Superioritate* und jure *superioritatis*, so Sie haben an den Lehen'
109	'salvis tamen iuribus *superioritatis* cum inde dependentibus pro singulis quarumcunque dominis'	'leur soyent conservés, sauf toutesfois les Droits de *Souveraineté*, & ce qui en depend pour les Seigneurs de chacune d'icelles'	'(doch die *Ober*Gerechtigkeiten und was denen anhanget für alle und iede derselben Herren vorbehalten) gut und unverringert bleiben'

[a] Rita Bohlen, Birgit Karnbach, Antje Oschmann and Martin Brockmann, *Acta Pacis Westphalicae: Arbeitsstelle Westfälischer Frieden von 1648. Edition der Akten des Westfälischen Friedenskongress*, http://www.pax-westphalica.de/ipmipo/index.html: Vereinigung zur Erforschung der Neueren Geschichte. The French edition derives from Johannes Jacob Chifflet, *Recveil Des Traictés De Confederation Et D'Alliance, Entre la Couronne De France, Et Les Princes Et Estats Estrangers, Depuis l'an MDCXXI jusques à present, Avec quelques autres pieces appartenantes à l'histoire* (s.l., 1651), 407–454.

[b] http://www.lwl.org/westfaelische-geschichte/portal/Internet/finde/langDatensatz.php?urlID=741&url_tabelle=tab_quelle. The text is derived from Arno Buschmann, *Kaiser und Reich. Verfassungsgeschichte des Heiligen Römischen Reiches Deutscher Nation vom Beginn des 12. Jahrhunderts bis zum Jahre 1806 in Dokumenten* (Baden-Baden, 1980), 380–402. The same text is available at http://www.pax-westphalica.de/ipmipo/index.html.

[c] http://avalon.law.yale.edu/17th_century/westphal.asp. The Yale webpage contains no information on the background of the text, and the staff of the Lillian Goldman Law Library was not able to confirm its origins. Upon comparison with the APW texts, it appears to be the text printed in the first edition (1710–1713) of S. Whatley's *A General Collection of treaties*.

Internet-Portal "Westfälische Geschichte"[b] *Münsterscher Friedensvertrag* (*Instrumentum Pacis Monasteriensis,* IPM) [*Volltext*] (*1984*)		*The Avalon Project, Yale Law School*[c] *Treaty of Westphalia. Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies* (*1720*)
Quote	***Art.***	**Quote**
'in der Ausübung der *Landes*herrschaften die dieser in den Lehen [...] hat'	CI	'upon account of the Right of *Sovereignty* they have over the Fiefs'
'unbeschadet jedoch der jedem *Landes*herrn zustehenden *Hoheits*rechte einschließlich derjenigen [Rechte], die von diesen abgeleitet sind'	CXVII	'shall be maintain'd therein; save, nevertheless the Rights of *Sovereignty*, and what depends thereon, for the Lords to whom they belong'

Annex 2:

Civil War documents, 1576–1580	Pre-Westphalian documents, 1581–1648	Post-Westphalian documents, 1648–1664
25 April 1576: Union of Delft 8 November 1576: Pacification of Ghent 9 January 1577: First Union of Brussels 12 February 1577: Eternal Edict of Don Juan 10 December 1577: Second Union of Brussels 13 August 1578: Alliance between the Duke of Anjou and the Estates-General 6 January 1579: Union of Arras 23 January 1579: Union of Utrecht 17 May 1579: Treaty of Arras 12 September 1579: Treaty of Mons 15 March 1580: Ban of William of Orange by Philip II 5 July 1580: Acceptance of the High Governance over Holland and Zeeland by William of Orange	26 July 1581: Act of Abjuration 12 July 1582: Treaty between the Duke of Anjou and the Ommelanden 14 August 1582: Acceptance of the title of Count of Holland and Zeeland by William of Orange 26 March 1583: Treaty between the Duke of Anjou and the Estates-General 10 March 1585: capitulation of Brussels 10 August 1585: Treaty of Nonsuch 17 August 1585: capitulation of Antwerp 6 February 1586: Ordonnance of the Estates-General regarding the Earl of Leicester 12 April 1588: Ordonnance of the Estates-General regarding the Earl of Leicester	5 January 1648: Treaty of Munster 12 October 1651: Treaty of the Hague Between William of Orange and Philip IV 26 June 1652: Regulation of the Chambre Mi-Partie 17 October 1653: Revision of the regulation of the Chambre Mi-Partie 25 February 1658: first Division of Overmaze 13 December 1659: second Division of Overmaze 21 September 1660: Treaty regarding the succession to clerical properties 26 December 1661: third Division of Overmaze 20 September 1664: Treaty regarding the borders of Flanders

Civil War documents, 1576–1580	Pre-Westphalian documents, 1581–1648	Post-Westphalian documents, 1648–1664
19 September 1580: Treaty of Plessis-lès-Tours	6 May 1598: Act of Cession 24 April 1607: Truce for eight months 9 April 1609: Treaty of Antwerp/Twelve Years Truce 7 January 1610: First Treaty of The Hague 24 June 1610: Second Treaty of The Hague	

Annex 3:

Act of Abjuration, 1581		**Twelve Years Truce, 1609**		
Art.	**Dutch, 1728[a]**	**Art.**	**Dutch, 2009[b]**	**Spanish, 1740[c]**
/	‘Ende voor sulcx na recht ende redene mach ten minsten van sijne ondersaten, besondere by deliberatie van de Staten vanden Landen, voor egheen *Prince* meer bekent, maer verlaten, ende een ander in sijn stede, tot beschermenisse van henlieden, voor *Overhooft*, sonder misbruycken, ghecosen werden’	/	‘Alsoo de Doorluchtichste Princen, EertzHertogen, Albert ende Isabella Clara Eugenia, ghemaeckt hadden den vier ende twintichsten Aprilis, inden Jare duysent ses hondert ende seven, een Bestandt ende ophoudinghe van Wapenen voor acht Maenden, met de Illustre Heeren, die Staten Generael vande Vereenichde Provincien der Nederlanden, in qualiteyt, ende als d’selve houdende voor *vrije* Staten, Provintien, ende Landen, opte welcke syluyden niet en preteneerden’	‘Por cuanto los serenísimos príncipes archiduques Alberto e Isabel Clara Eugenia hicieron en 24 de abril de 1607 una tregua y cesación de armas por ocho meses con los ilustres señores Estados Generales de las Provincias Unidas de los Países Bajos, como con estados, provincias y países *libres*, sobre los cuales no pretendian nada, y teniéndolos por tales’

Treaty of Munster, 1648		
Art.	**Dutch, 2009[d]**	**Spanish, 1740[e]**
/	/	/

Act of Abjuration, 1581		Twelve Years Truce, 1609		
Art.	**Dutch, 1728[a]**	**Art.**	**Dutch, 2009[b]**	**Spanish, 1740[c]**
/	‘Hebbende oock meest alle de voors Landen haren *Princen* ontfangen op conditien, contracten ende accoorden, ende welcke breckende, ook nae recht den *Prince* vande *Heerschappije* vande lande is vervallen’	1	‘Inden eersten die voorsz Heeren Eertzhertoghen verclaren, soo in Haren namen, als inden naem vanden voorsz Heere Coninck, dat syluyden te vreden zijn te tracteren mette voorsz Heeren Staten Generael vande Vereenichde Provincien, in qualiteyt, ende als de selve houdende voor *vrije* Landen, Provincien, ende Staten, op de welcke syliyden niet en pretenderen, ende te maecken met haer inde voorsz namen ende qualiteyten, gelijck sy doen by deze jegenwoordige’	‘Primeramente los dichos señores archiduques declaran así en sus nombres como en el de dicho señor rey, que tiene por bien de tratar con los referidos señores Estados Generales de las Provincias Unidas de los Países Bajos, como con estados, provincias y países *libres*, sobre los cuales no pretendian nada, y teniéndolos por tales, y de hacer con ellos en los nombres y calidades sobredichas, como por las presentes hacen’

Treaty of Munster, 1648

Art.	Dutch, 2009[d]	Spanish, 1740[e]
1	'Inden eersten verclaert den voors Heer Coninck ende erkent, dat de voors Heeren Staten Generael vande Vereenichde Nederlanden, en de respective Provincien vandeselve, met alle haer geassocieerde Landschappen, Steden en aenhorige Landen, sijn *vrije* ende *Souveraine* Staten, Provincien en Landen, opde welcke, noch op haer geassocieerde Landschappen, Steden en Landen voors hij heer Coninck niet en pretendeert, noch nu, ofte namaels, voor hem selven, syne successeurs en nacomelingen immermeer ijets sal pretenderen'	'Primeramente el dicho señor rey declara y reconoce que los dichos señoresEstados Generales de los Pases Bajos Unidos y las provincias de ellos respectivamente, con todos sus países asociados, ciudades y tierras de su pertenencia, son estados, provincias y países *libres* y *soberanos*, sobre los cuales, ni sobre sus países, ciudades y tierras asociadas como se ha expresado el dicho señor rey no pretende nada, y que al presente o de aquí adelante no prentederá nunca cosa alguna para sí, sus herederos y sucesores'

Act of Abjuration, 1581		Twelve Years Truce, 1609		
Art.	**Dutch, 1728[a]**	**Art.**	**Dutch, 2009[b]**	**Spanish, 1740[c]**
/	‘Alle ’t welck ons meer dan ghenoegh wettige oorsake ghegeven heeft, om den Coningh van Spaengien te verlaten, ende een ander machtigh ende goedertieren *Prince*, om de voors. Landen te helpen beschermen ende voor te staen, te versoecken’	3	‘Een yegelijck sal behouden, ende datelijck gebruycken die Landtschappen, Steden, Plaetsen, Landen, ende Heerlijckheyden die hy jegenwoordich houdt ende besidt, sonder daerinne getroubleert ofte belet te worden, in wat manieren dattet zy, geduerende tvoorsz Bestandt; Daer onder men verstaet te begrijpen doe Vlecken, Dorpen, Gehuchten, ende platte Landen, die daer van dependeren’	‘Cada uno quedará en posesión y gozará efectivamente de los países, ciudades, plazas, tierras y señoríos que tiene y posee al presente, sin ser perturbado, ni inquietado durante la referida tregua, en que se entiende ser comprehendidas las villas, aldeas, caserías y país llano dependiente de ellos’

Treaty of Munster, 1648

Art.	Dutch, 2009[d]	Spanish, 1740[e]
3	'Een ijgelick sal behouden en datelick gebruijcken de Landschappen, Steden, plaetsen, Landen ende Heerlicheden, die hij tegenwoordich hout en besith, sonder daerin getroubleert off beleth te worden, directelick noch indirectelick, in wat manieren dat het zij, daer onder men verstaet te begrijpen de Vlecken, Dorpen, Gehuchten, en platte Landen, die daer van dependeren; [. …]blijven aende voors Heeren Staten in alle ende deselve rechten en delen van *Souverainiteit* en *superioriteit* niet uijtgesondert, en even gelijck als zij sijn houdende de Provincien vande Vereenichde Nederlanden'	'Cada uno quedará en posesión y gozará efectivamente de los países, ciudades, plazas, tierras y señoríos que tiene y posee al presente, sin ser perturbado, ni inquietado en ellos directa ni indirectamente, de qualquier manera que sea, en lo qual que se entiende comprehender las villas, lugares, aldeas y país llano dependiente [. …], quedarán a los dichos señores Estados, con todos y los mismos derechos y partes de *soberanía* y *superioridad*, sin exceptuar nada, y todo de la misma manera que los tienen las Provincias Unidas de los Países Bajos'

Act of Abjuration, 1581		Twelve Years Truce, 1609		
Art.	**Dutch, 1728[a]**	**Art.**	**Dutch, 2009[b]**	**Spanish, 1740[c]**
/	'den Coninghe van Spaengien verklaert hebben, ende verklaren mits desen, ipso jure, vervallen van sijne *Heerschappye, Gherechtiicheydt, ende erfenisse* vande voorz. landen, ende voortaene van egeene meyninghe te zijne den selven te kennen in eenighe saken, *den Prince*, sijne Hoogheyt, jurisdictie ende Domeynen van des voors. landen raeckende, sijnen Naem als *Over-heer* meer te ghebruycken, oft by yemanden toelaten ghebruyckt te worden'	/	/	/

[a] Jean Dumont (ed.), *Corps Universel Diplomatique du Droit des Gens; Contenant un Recueil des Traitez d'Alliance, de Paix, de Treve,* [...]*, depuis le Regne de l'Empereur Charlemagne jusques à présent* (The Hague/Amsterdam, 1728), vol. 5.1., 413–421.

[b] Simon Groenveld, *Unie-Bestand-Vrede. Drie fundamentele wetten van de Republiek der Verenigde Nederlanden* (Hilversum, 2009), 115–127.

[c] J.A. de Abreu y Bertodano (ed.), *Coleccion de los tratados de paz, alianza, neutralidad, garantia, proteccion, tregua, mediacion, accession, reglamento de limites, comercio, navegacion, &c. de España* [...] *Reynado del s.r rey D. Phelipe III* (Madrid, 1740), vol. 1, 458–483. Quoted in Jesús Maria Usunáriz, *España y sus tratados internacionales: 1516–1700* (Pamplona, 2006), 257–264.

[d] Groenveld, *Unie-Bestand-Vrede*, 158–186.

[e] de Abreu y Bertodano, *Coleccion*, 458–483. Quoted in Usunáriz, *España y sus tratados*, 310–326.

Treaty of Munster, 1648		
Art.	**Dutch, 2009[d]**	**Spanish, 1740[e]**
49	'en overgelevert ten proffijte van wijlen de heere Prince Maurits en December 1611 bijde Heeren Staten Generael der Vereenichde Nederlanden, als *souverains* der voors Stad Grave en Land van Cuijck'	'Y fue cedida en beneficio de del difunto señor príncipe Mauricio en deciembre 1611 por los Estados Generalos de los Paises Bajos Unidos, como *soberanos* de la ciudad de Grave y País de Kuyck'

Annex 4:

1st Division of Overmaze, 25/02/1658[a]

Art.	Content
/	'Alsoo sedert den gemaeckten Vrede tusschen den Heere Koninck van Spanje ter eenre, ende de Heeren State Generael der Vereenichde Nederlanden ter andere zyde, verscheyden differenten ende verschillen sijn opgeresen ende ontstaen, nopende de *Souvereyniteyt* ende het absolute gesagh over de Landen van Valckenborgh, Daelhem ende 's Hartogenrade, Overmaze, …'
/	'dat den hooch-gemelte Heer Coninck ende de meer hooch hoochgemelte Heeren Staten Generael yder in vollen vryen eygendom, superioriteyt ende *souverainiteyt* sullen hebben, houden ende besitten eeuwichlijck ende erflijck voor haer ende haere respective nakomelingen, de gerechte helft van de voorz. drie Landen van Overmaze'

[a] Jean Dumont (ed.), *Corps Universel Diplomatique du Droit des Gens; Contenant un Recueil des Traitez d'Alliance, de Paix, de Treve,* […]*, depuis le Regne de l'Empereur Charlemagne jusques à présent* (The Hague/Amsterdam, 1728), vol. 5.2, 212–213.

2nd Division of Overmaze, 13/12/1659[a]

Art.	Content
3.	'ende in cas eenige omslagen souden syn gerequireert voor het toekomende, dat de wedersijts officieren haer daer over sullen moeten addresseren aen de Heeren haer *Souverainen*, om by specificatie aen de selve te vertoonen 't geene in drie lan sal syn gerequireert voor het toekomende'

[a] Dumont, *Corps Universel,* vol. 5.2, 296–297.

3rd Division of Overmaze, 26/12/1661[a]

Art.	Content
/	'dewelcke daerop hadden goetgevonden den VII-en derselver maendt de eene partage, gestelt in de contrabalance, te accepteren, ende vervolgens haer ho.mo. op den IXen daeraen volgende geresolveert ende ordre gestelt hadden om deselve partage, in de voors. contrabalance begrepen, met volcomen recht van *souverainiteijt* ende superioritijt te aenvaerden'
/	'dat beijde de hooge partijen met den XVen Januarii des anestaende jaers CVIC tween entsestich cullen nemen de volcomen possessie van alle hetgeene bij de voors. verdeelinge volgens de voorgemelte acte onder hare *souverainiteijt* ende superioriteijt gevallen is'
/	'Alsoo sedert den gemaeckten Vrede tusschen den Heere Koninck van Spanje ter eenre, ende de Heeren State Generael der Vereenichde Nederlanden ter andere zyde, verscheyden differenten ende verschillen sijn opgeresen ende ontstaen, nopende de *Souvereyniteyt* ende het absolute gesagh over de Landen van Valckenborgh, Daelhem ende 's Hartogenrade, Overmaze'
/	'dat den hooch-gemelte Heer Coninck ende de meer hooch hoochgemelte Heeren Staten Generael yder in vollen vryen eygendom, superioriteyt ende *souverainiteyt* sullen hebben, houden ende besitten eeuwichlijck ende erflijck voor haer ende haere respective nakomelingen, de gerechte helft van de voorz. drie Landen van Overmaze'
2.	'Dat alle injurien ende offensien veroorsaeckt door de disputen over het maintien van wederzijts *souverainiteijt* in de voorschreve drie landen in questie geheelick sullen vernieticht ende wederzijts in vergeetenheijt gestelt worden'
3.	'Dat oock alle actien ende pretensien die de *souverainen* wederzijts ende derselver onderdanen souden mogen moveren ende ophalen ten respecte van den opheff van tollen, licenten often eenige andere opcomsten ende revenuen'

3rd Division of Overmaze, 26/12/1661[a]

Art.	Content
4.	'Indien eenige heerlickheden, dorpen ofte gehuchten in de voors. drie landen gevonden worden, die totnochtoe zijn subject geweest ende noch zijn eenige servituten ofte hoffdiensten te presteren aen eenige andere plaetsen ofte jurisdictien, die met dese partage souden mogen vallen onder het ressort van eenen andere *souverain*, dat soodanige servituten en corveen ten reguarde van de dorpen ende jurisdictien van den anderen *souverain* sullen zijn ende blijven gemortificeert, ende wederzijts officieren die voortaen niet meer en sullen hebben te vergen aen die voorschreve heerlijcheden, dorpen ofte gehuchten verder als onder het ressort van den *souverain* daer die onder vallen sullen'
5.	'Dat de wederzijts officieren ende ingesetenen die eenige domeijnen, renten, pachten ofte andere incomen van die van den anderen *souverain* te pretenderen ofte te eijschen hebben, bij gebreecke van betalinge haer geene deurwaerders ofte executeurs op haer eijgen authoriteijt in het district van den anderen *souverain* en sullen mogen senden'
12.	'De leenen, soo binnen de voors. drie landen als buijten deselve gelegen, die met dese partage oock verdeelt worden, sullen absolutelick releveren van de leenhoven ofte leencamers van den *souverain* daeronder deselve vallen sullen, sonder eenige verdere dependentie van de leenhoven ofte leencamers van den andere *souverain* daeraen zij voor desen mochten hebben gereleveert'
15.	'In cas eenigen delinquant door de justitie van eene der *souverainen* over eenich begaen delicht bij sententie contumacielle zoude mogen zijn gecondemneert, ende ondertusschen voor date van het voorschreve decreet van den anderen *souverain* over het selvige delicht mochte becomen hebben brieven van remissie ofte abolitie, om alle disordre te voorcomen ende alles voortaen te laten ter dispositie van den *souverain* ende oock van den rechter nae den uijtslach van meer gemelte partage comptetent, sal in faveur van soodanigen delinquant ende ten respecte van de brieven van remissie ofte abolitie, van den eenen *souverain* albereijts verleent, soo hij met sijne goederen ende woonplaetse come te vallen onder het ressort van den anderen *souverain*, denselven sich laten disponeren en van zijnentwegen bij expeditie van nieuwe brieven van abolitie gestant te doen hetgeene bij den anderen *souverain* albereijts gedaen was'

3rd Division of Overmaze, 26/12/1661[a]

Art.	Content
18.	'om alle ongeregeltheijt ende nieuwe oncosten van executie te verhoeden, dat over de portie, gevallen onder de *souverainiteijt* van haer Ho.Mo, dien opheff sonder eenich dilay ofte tergiversatie telcken jare sal worden gedaen door een officier bij haer Ho.Mo daertoe te ordonneren'
19.	'De gepretendeerde belastingen van de genegocieerde capitalen daermede de respective drie quartieren zijn beswaert van d'eene ende d'andere zijde, soo die vanouts daerop gevesticht als daerna voor den dienst van het landt ende van wederzijts *souverainen* daerop mogen gebracht sijn, werden gestelt ende begroot […], sullen provisionelick overgenomen worden, soodanich dat, nae desen, ende de verdeelinge der drie landen effective voltrocken zijnde, noch van d'eene noch van d'andere zijde geene verdere ofte nieuwe gerealiseerde laste ofte genegocieerde capitalen tot laste van de gesamentlicke *souverainen* ofte derselver portien sullen werden geacnosceert ofte aengenomen, bij wien ofte omme wat redenen oock deselve souden mogen worden gepretendeert, ende dat diegeene die hierboven gestelt ende gespecificeert zijn, ane de proportie in ijder landt gebruijckelick sullen werden verdeelt ende ommegeslagen, soodat ijeder partie met die belastinge sal overgaen ofte blijven aen de respective *souverainen*; ende voor sooveel de loopende ende noch openstaende schulden aengaet, mede in de voorschreve staten ende specificatien gebracht, ofte die noch op eeniger manieren souden mogen werden geeijscht ofte gepretendeert, wert bij desen verdragen ende oock vastgestelt, dat daervan geene gemeene massa ofte vermenginge gemaeckt sal worden, maer dat die sullen blijven gesepareert van de bovengestelde capitalen, tot laste van ijeder van de *souverainen* apart, om die te doen examineren ende justificeren ende vervolgens omme te slaen ende te vinden over de partage van zijn ressort'
20.	'Alles nochtans met desen verstande ende reserve, dat een ijeder van de *souverainen* sal vrij blijven onder sijn ressort ende voor zijn interest niet alleenlick het fondament ende de redenen van de voorschreve sommen, in het voorige articul geroert, nae te sien ende t'examineren, […], ende dat de voorschreve partage effective zijnde gedaen ende voltrocken, ten repsecte van het gemeene interest, hetwelcke beijde de *souverainen* in desen hebben'

3rd Division of Overmaze, 26/12/1661[a]

Art.	Content
/	Namentlick dat hoochstegemelten Heer Coninck in vollen vrijen eijgendom, superioriteijt ende *souverainiteijt* sal hebben, houden ende besitten, eeuwichlick ende erffelick, voor hem en zijne nacomelingen, uijt den voors. lande van Valckenburg, […], sonder eenige reserve ende buijten alle bedenckelicke bekommeringen, servituten ofte belastingen, met een volcomen recht van eijgendom, superioriteijt ende *souverainiteijt* sal blijven aen meer hoochgemelte Heeren Staten Generael, […],dat van gelijcken den hoochstegemelten Heer Coninck uijt den lande van Daelem in vollen vrijen eijgendom, superioriteijt ende *souverainiteijt* sal hebben, houden ende besitten, eeuwichlick ende erffelick, voor hem en zijne nacomelingen […],, Eijndelick dat hoochstegemelten Heer Coninck uijt den lande van s' hertogenrade in gelijcken vollen vrijen eijgendom, superioriteijt ende *souverainiteijt* sal hebben, houden ende besitten, eeuwichlick ende erffelick, voor hem en zijne nacomelingen als voren', [formula repeated for the Dutch Republic], Ende aengaende het voors. Ravensbosch, dat, blivende de *souverainiteijt* van gronden onder de banck ende het dorp hiervooren gespecificeert, eerst den opstall van dien ende daerna oock den grondt selve bij bequame parthijen sal worden te coop gestelt ende ter behoorlicker tijt onder redelijcke conditien vercocht, ten proffijte van hoochstgemelten Heere Coninck ende van meer hoochgemelte Heeren Staten Generael, Halff ende halff, […], mede sal blijven in soodanigen vollen eijgendom, superioriteijt ende *souverainiteijt* aen den hoochstgedachten Heer Coninck, gelijck van alle de parthijen hierboven gespecificeert, is gestipuleert geworden'

[a] J.A.K. Haas, *De verdeling van de landen van Overmaas 1644–1662. Territoriale desintegratie van een betwist grensgebied* (Maaslandse Monografieën, 27; Assen, 1978), 294–314.

Treaty regarding the borders of Flanders, 20/09/1664[a]

Art.	Content
1.	'in volkomen *souverainiteyt* sal blyven aen den Heere Koning van Hispangien ende alle het geende gevonden wort aen de andere syde ten Oosten ende ten Noorden in volkomen *Souverainiteyt* aen de Heeren Staten Generael'
/	'sullen syn ende blyven buyten alle recherche ende gecompenseert van wederzyden, ende de processen voor eenige subalterne rechters, of voor de *Souveraine* Collegien, ofte hoven geintenteert ter saeke van eenige goederen, de welcke by dit Accoort worden verklaert te blyven onder de eene of de andere *Souverainiteyt*, sullen worden gerenvoyeert aen de Rechters van die plaetsen de welcke ingevolgt van dese Transactie sullen bevonde worden competent te zijn'
/	'Is van gelijcken oock verdragen dat de tegenwoordige separatie van de *Souverainiteyt* geene prejudicie sal geven Aen de Heeren Vasaller, de welcke door de selve van Meesters sullen komen te veranderen'
/	'Is oock expresselijk geconvenieert, geaccordeert ende verdragen, dat alle en een iegenlijck van des Heeren Koninglijcke onderdanen de welcke by middel van dese Transactie met hare Goederen sullen komen te vallen onder de *Souverainiteyt* van de Heeren Staten Generael, de selve goederen sullen mogen regeeren ende gouverneren selfs'

[a] Dumont, *Corps Universel*, vol. 6,25–28.

CHAPTER 5

Sovereignty and Early Modern Private Property Rights

Shavana Haythornthwaite

1 Introduction

Bloodshed, conflict and total annihilation, all perceived notions of war. With a just prince bearing the right to ravage the enemy, it was commonplace for even private individuals to fall victim to war's cruel hand. After all, the just prince had every right to take from the enemy side that which was deemed just satisfaction. But moving into the seventeenth century, whilst the justness of war still existed, there was an evident evolution.[1] The individual non-combatant had become distinct from the combatant one and along with this distinction came the legal rights instilled in both sides during the period of declared war.[2] Although a right to booty and plunder still existed, the just sovereign's unlimited right had changed. With the emergence of the legality of war, the just sovereign no longer existed in the strictest of senses.[3] The seventeenth-century concept of legal war allowed both sovereigns to act as if they were the just side and with it, certain private property rights could be retained by the enemy, allowing disputes to be pushed into oblivion by amnesty clauses. This did not, however, preclude grievances on these property rights from the subjects of a sovereign, if anything, it encouraged it. On many an occasion, private individuals would object to a sovereign's seizure of their property and sometimes, be awarded the right to restitution of property.[4]

1 Joachim von Elbe, 'The evolution of the concept of the just war in international law', *American Journal of International Law,* 33 (1939) 665–88.

2 Thomas Head (trans.), 'Mansi, 'Sacrorum conciliorum nova, et amplissima collectio', 19:89–90', in Thomas Head and Richard Landes (eds.), *The Peace of God: Social Violence and Religious Response in France around the year 1000* (Ithaca, NY, 1992), 327–8; Matthew Strickland, *War and Chivalry: Conduct and Perception of War in England and France 1066–1217* (Cambridge, 1996) 32. Also see Bonet who contributed to the scholarship on non-combatant immunity: Honoreé Bonet, *The Tree of Battles* (transl. G.W. Coopland; Liverpool, 1949), 130.

3 See Stephen Neff, *War and the Law of Nations* (Cambridge, 2005), 85.

4 Randall Lesaffer and Erik-Jan Broers, 'Private property in the Dutch-Spanish Peace Treaty of Münster (30 January 1648)', in Michael Jucker, Martin Kintzinger and Rainer Christoph

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Although there were many ways in which private property rights in war could be challenged during the seventeenth century, this chapter will limit its focus to the capture of booty on land during war and the taking of private property more generally via widely used tools known as *lettres de marques*. Both of these issues in certain ways did overlap, especially in wars such as the Anglo-Dutch wars where the majority of the booty that was actually taken was done by these *lettres de marque* on the high seas. These actions were thus the main cause of complaint from individuals and one of the main subjects of diplomatic negotiations by sovereigns and their representatives. The overarching maritime dimensions of these wars mean that early modern admiralty court practices were crucial for the individual's right to refute the sovereign's claim to its property. The same was to be said for peace treaties ending the war, as they usually dictated what would happen to all that was captured during the conflict. In the case of the Anglo-Dutch wars, the two peace settlements of Westminster of 1654 and of 1674 and that of Breda of 1667 provide insight on maritime treaty provisions relating to private property rights. This, along with the doctrine from various writers such as Hugo Grotius and his Spanish predecessor Francisco de Vitoria, brings one closer to learning how private property rights were treated in the seventeenth century.

2 Peace Treaties

Peace treaties of the seventeenth century show the sovereign's use of the widely used tool of amnesty clauses. The insertion of the clauses into the treaties meant acts of war, and subsequent grievances relating to these acts, would remain within the confines of the period of declared war, not subject to dispute after the war had ended. During the early modern period, the concept of legal war was introduced. Legal war was a more formalistic approach to war, with an emphasis on the external features of war and thus on state practice, as opposed to the just war's divine ethos.[5] Once this new approach to war was introduced, war time acts straight after the declaration of war were permitted, but those committed as soon as the ink on the peace treaty had dried were

Schwinges (eds.), *Rechtsformen Internationaler Politik. Theorie, Norms und Praxis vom 12. Bis 18 Jahrhundert* (Zeitschrift fur Historische Forschung, Beihefte 45; Berlin, 2011), 165–95.

5 For example, the fulfillment of certain criteria, such as a war being formally declared and the attainment of sovereign authority, was involved.

not.[6] Amnesty clauses were inserted into the treaty to forgive and forget the enemy's deeds, including deeds towards individuals and their property, not only in an attempt to maintain good diplomatic relations after war, but also because it allowed to dispense with the difficulty in dealing with the endless claims of aggrieved subjects and the sheer impossibility of locating owners after a destructive war. Most importantly however, it was an assurance from each sovereign that war would not be resumed. The amnesty was symbolic to a new dawn of peace: one that was willing to forgive and forget past deeds committed in connection to the war. The early modern period was therefore one, which placed 'reciprocity, equality, esteem and orientation' at the heart of peacemaking practice, with amnesty being a representation of that.[7] Hugo Grotius discussed an implied amnesty in his work on the laws of war:

> If no other agreement has been made, in every peace it ought to be considered settled that there shall be no liability on account of the damages which have been caused by the war. This is to be understood also as to damages suffered by private persons [...]. In case of doubt it is presumed that belligerents intended to make such an agreement that neither would be condemned as guilty of injustice.[8]

A significant characteristic of amnesty clauses was their contrasting nature to the just war theory. In dealing with the restitution of property in a just war, Vitoria, in the sixteenth century, stated that 'it is permissible to recapt everything that has been lost and any part of the same'. The just prince, as his own judge on wartime issues, could enforce damages against the enemy. Vitoria was clear that the expenses, damage and injury from the war could be compensated through the taking of enemy property. The unjust enemy was obligated to provide redress, which the prince could obtain through war.[9] However, Vitoria also made allowances in the name of ignorance. He stated that a prince or a subject who had gone into an unjust war in ignorance, but subsequently learnt of his unjust actions, was under a duty to restore all the property still in his

6 Neff, *War and the Law of Nations*; Randall Lesaffer, 'A master abolishing homework? Vattel on peacemaking and peace treaties', in Vincent Chetail and Peter Haggenmacher (eds.), *Vattel's International Law from a XXIst Century Perspective* (Leiden/Boston, 2011), 3–4.

7 Heinhard Steiger, 'Peace treaties from Paris to Versailles', in Randall Lesaffer (ed.), *Peace Treaties and International Law in European History* (Cambridge, 2004), 84.

8 Hugo Grotius, *De iure belli ac pacis libri tres* (1625, text of 1646, Classics of International Law; Washington, 1913), 3.3.4–5; 3.3.12–13.

9 Francisco de Vitoria, 'On the law of war', in Ernest Nys (ed.), *Francisci de Victoria De Indis et De Ivre Belli Relectiones* (Buffalo, NY, 1995), 171, para. 430.

possession.[10] The property could 'not [be] consumed'. The 'consumed' property need not be restored if the war was fought in completely good faith. This was not the case if the war was fought in bad faith. In this case, all property, consumed or not, would have to be restored.[11]

Vitoria was certainly of the opinion that in a just war, the enemy could lawfully plunder innocent subjects. Since the property of the subjects could viably be used in war to facilitate their chance of victory, 'his strength [could be] sapped by this spoliation of his citizens'. Ships, engines, weapons, horses, even grains or anything else to deplete the enemy's resources could be taken.[12] However, Vitoria did not state this lightly. He did add that if the war could be won without the despoilment of the innocent, then this should be done. Since the Vitorian conception of war utilized the just war, it was based on the premise of a wrong done. He did not prescribe restitution for property that had lawfully been seized, as per the right under a just war. However, at the same time, he did not condone the plundering of innocents, such as farmers, foreigners and travellers, either. These innocent foreigners and travellers could also be interpreted as later neutrals who would not be part of the war as an enemy.[13]

The evolution of warfare in the century following Vitoria's time however illustrated a few key alterations. By eradicating the responsibility for actions that took place during wartime, but also by abstaining from attributing any guilt to a particular side, amnesty clauses made it impossible to inject a discriminatory element into warfare, as the just war conception had done. Amnesty was a consequence of a move from just war to legal war. Legal war was non-discriminatory and it was assumed that both sides had a prerogative to wage the war.[14] This non-discriminatory legal war, and the consequence of amnesty, can be seen as harmonious to the way the state was also forming. It was a sovereign's right to insert an element of oblivion, for wartime actions, in a peace treaty.

Alberico Gentili reasoned the idea of equality between states, which formed part of the characteristic of amnesty clauses during this period as an assurance of peace. Despite the victor's claim, it was remarked in *De iure belli ac pacis* that 'peace would be enduring, if it were fair on both sides'.[15] Indeed, the differing

10 Von Elbe, 'The evolution of the concept of the just war', 674–5.
11 Vitoria, 'On the law of war', 177, para. 433.
12 Vitoria, 'On the law of war', 180, para. 449.
13 Vitoria, 'On the law of war', 180–1, para. 449.
14 Lesaffer, 'A schoolmaster abolishing home-work?'.
15 This is included in *De iure belli* as a quote by Epaminondas. See Alberico Gentili, *De iure belli libri tres* (1598, text of 1612, Classics of International Law; Oxford, 1921), 354.

opinions on peace put forward by the victor and the vanquished would only make for an unfair justice, if ever there was one; thus, the 'common welfare [should be taken into account to make a peace] which is no less expedient for the vanquished [than as] for the victors'.[16] This implied a more pragmatic approach to the securing of peace, with the advocacy of benefits such as expediency and prudence. Furthermore, it was deemed that violations of the laws of war were inevitable in war and to seek a restoration of one's property after a peace treaty had been entered into would only create grounds for the revival of the war. This was strongly advised against and only strengthened the calls for amnesty provisions.[17]

The amnesty clauses, despite being within the power of the sovereign to insert them into the peace treaties, were applicable to all other parties of their domain, as well as the sovereigns themselves. The increasingly explicit and meticulous nature of attempting to apply the amnesty provision to as many parties as possible became further evident in the eighteenth century, where it had gone from simply stating 'on the one side and the other' as in the Treaty of Munster 1648[18] to terms such as 'his said Majesty and his subjects' in the Treaty of Breda 1667[19] to more extensive groups such as 'most faithful majesties and between their heirs and successors, kingdoms, dominions, provinces, countries, subjects and vassals, of what quality or condition soever they be, without exception of places or persons […]'.[20] The binding of successors was also something that was touched upon by Jörg Fisch in his study on peace treaties.[21]

In practical terms, an amnesty clause prevented the restitution of property for the sovereign or its subject. An enemy side could retain all the private property it had captured during the war. The entitlement of the sovereign and the captors to property however was limited to that which was regarded as moveable. On movable property, Grotius was clear that it was deemed as captured when the original owner had lost all expectation of retrieving it and thus, brought within the borders of which the captor belonged.[22] Later on in the

16 *Ibidem*, 355.

17 *Ibidem*, 302.

18 Treaty of Peace between France and the Empire, signed at Munster, 14 (24) October 1648, in Clive Parry, *Consolidated Treaty Series*, 231 vol. + index vol. (Dobbs Ferry, 1969–1981), vol. 1, 271 [henceforth CTS].

19 Treaty of Peace and Alliance between Great Britain and the Netherlands, signed at Breda, 21 (31) July 1667, 10 CTS 231.

20 Definitive Treaty of Peace between France, Great Britain and Spain [1763], 42 CTS 279, Art. I.

21 Jorg Fisch, *Krieg und Frieden in Friedensvertrag. Eine Universalgeschichtliche Studie Über Grundlagen und Formelemente des Friedensschlusses* (Stuttgart, 1979).

22 Grotius, *De iure belli ac pacis,* 3.6.3.

chapter, one shall read that property captured on the seas could be subject to various exceptions to the general rule of amnesty and which the sovereign at times was hard pushed to interfere with. This law was prize law and on certain occasions was an obstacle to the sovereign's right to property during war. For property seized on land however, amnesty was transferred through the notion of oblivion and may be looked upon as a distant cousin to the general pardon. Most often quoted as an example of an amnesty clause during the early modern period is the one that can be found in the Treaty of Munster between the Holy Roman Empire and France, which was part of the Westphalian peace settlement, which states:

> That there shall be on the one side and the other a perpetual oblivion, amnesty, or pardon of all that has been committed since the beginning of these troubles [...]. That they shall not act, or permit to be acted, any wrong or injury to any whatsoever; but that all that has pass'd on the one side, and the other, as well before as during the war, in words, writings, and outrageous actions, in violences, hostilitys, damages and expences, without any respect to persons or things, shall be entirely abolish'd in such a manner that all that might be demanded of, or pretended to, by each other on that behalf, shall be bury'd in eternal oblivion.[23]

Amnesty inferred that all claims which were brought for injuries or damage incurred during wartime were forced into 'oblivion', or in others words, they were nullified. From the sixteenth century onwards, amnesty clauses had become much more recurrent within peace treaties and by the following century, one was hard-pushed to find a treaty that did not contain a clause of this type. The regular usage of amnesty clauses in seventeenth-century peace treaties to a certain extent inferred their automatic existence after war, as in Grotius's words stated earlier in this chapter.

However, this did not relinquish all property rights in war. Aside from prizes, there were other occasions in which property rights were still valid and lost property could be restored. Any exceptions to the general amnesty clause

23 Treaty of Munster, Art. 2. Additional treaties that contain amnesties clauses include: Treaty of Peace and Alliance between Great Britain and the Netherlands, signed at Breda, 21 (31) July 1667, 10 CTS 231; Treaty of Peace between France and Spain, signed at Nijmegen, 11 September 1678, 14 CTS 437; Treaty of Peace between France and Great Britain, signed at Ryswick, 20 September 1697, 21 CTS 409; Treaty of Peace and Friendship between France and Great Britain, signed at Utrecht, 11 April 1713, 27 CTS 475.

however had to be explicitly affirmed in the peace treaty. The fact that amnesty clauses were inserted into treaties made restitution, for the individual or otherwise, impossible, as all deeds of war were of course to perish in the depths of 'oblivion', making claims for them unattainable.[24] It was for this reason that explicitly specifying the types of restitution that would be permitted – despite the amnesty clause – was even more imperative. The acceptance of the *status quo post bellum* in this regard was fostered by several doctrinal writers, from the likes of Pierino Belli,[25] Alberico Gentili, Christian Wolff[26] to Emer de Vattel. Belli, in 1563, stated that 'mere peace is made, with pardon for rebels, but with nothing said of the restoration of property [in peace treaties]; and then I do not think that the rebels recover their goods'.[27] Thereafter, Vattel, in 1758, wrote that:

> Since each of the belligerents claims to have justice on his side, and since there is no one to decide between them [...], the condition in which affairs stand at the time of the treaty must be regarded as their lawful status, and if the parties wish to make any change in it the treaty must contain an express stipulation to that effect. Consequently all matters not mentioned in the treaty are to continue as they happen to be at the time the treaty is concluded.[28]

Upon discussing matters relating to the losses incurred in war, Gentili submitted that private individuals could be included within a peace settlement, but that this could also be a motive for the renewal of war, if it meant departing from the terms of a peace. However, he also declared the right of a sovereign or state to distribute the goods of private persons, for the purpose of peace. At the same time, these persons were unable to dispute the state's actions in a civil or criminal suit: this was in lieu of the fact that the wrongs and losses of subjects could be 'remitted' by the sovereign.[29] It was usually only territory or property that had been confiscated or sequestered that was restored.

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24 See the Treaty of Munster for the use of the word 'oblivion'.

25 Pierino Belli, *A Treatise on Military Matters and Warfare* (1563, Classics of International Law; Oxford, 1936).

26 Christian Wolff, *Ius gentium methodo scientifica pertractatum* (1749, Classics of International Law; Oxford, 1934).

27 Belli, *De iure belli*, Book III, Chapter 6, III.

28 Emer de Vattel, *The Law of Nations or the Principles of Natural Law* (1758, Classics of International Law; Washington, 1916), 4.2.21.

29 Gentili, *De iure belli,* 300.

The Treaty of Munster of 24 October 1648 demonstrates the practice of precluding private property from restitution claims after war:[30]

> According to this foundation of reciprocal amity, and a general amnesty, all and every one of the electors of the sacred Roman Empire, the princes and the states […], their vassals, subjects, citizens, inhabitants to whom on the account of the Bohemian or German troubles or alliances […] might have been done by the one party or the other, any prejudice or damage in any manner […] shall be fully re-established on the one side and the other […].[31]

Proceeding articles in the treaty also accounted for the restitution of ecclesiastical and secular lands (Article 15); the restoration of bonds from creditors (Article 38); restoration of confiscated estates (Article 45);[32] and the restoration of certain places, cities, towns and lands to former owners (Article 112). Article 90 also allowed for

> All vassals, subjects, citizens and inhabitants, as well on this as the other side of the Rhine […] shall be restored to the possession of their goods, immovables and stable, also to their farms, castles, villages, lands, and possession, without any exception upon the account of expenses and compensation of charges, which the modern possessors may alledge, and without restitution of movables or fruits gathered in.

The above peace treaty provisions show that 'movables or fruits gathered in' could not be restored.[33] Preventing the restitution of movable property was quite common and regularly included in peace treaties of this era. One of the main reasons was the sheer impracticality of trying to locate the original owners of the endless number of movables that existed. For instance, the wars surrounding the Spanish-Dutch peace treaty of Munster of 30 January 1648 would have been so extensive and complex that securing peace efficiently would

30 See Lesaffer and Broers, 'Private property in the Dutch-Spanish Peace Treaty of Munster', for a detailed and contextual analysis on the negotiations and making of the Treaty of Munster, along with the relevance of the treaty for private property rights.

31 Art. 6.

32 This is with the exception to the situation where there is 'prejudice of their last masters and possessors'.

33 Art. 47 of this treaty also states the exemption of movable property being part of restitution after war.

have been an impossible task had the restitution of movables been part of the peacemaking process.[34] A long and drawn out peace process would not have been in line with the intentions of either of the signatory parties. It was therefore more often property such as realty, or certain kinds of annuity, which were of the restorable kind.

3 Admiralty Courts

Admiralty courts had a very prominent role to play with respect to private property rights during war. They were the platform in which private individuals such as merchants and seamen could resort to with their grievances of private property loss suffered on the high seas. Individuals could bring their claims to admiralty courts and argue for the restitution of their property. In some cases, reparation claims could be made for any injury and damage of property that had occurred during the war. Since the Anglo-Dutch wars were fought predominantly on the seas, the admiralty court in England saw a peak in the number of cases that came before it during this period. Admiralty courts in Europe had also become more organized jurisdictional bodies in the seventeenth century, mainly due to the increase in workload for the courts, given the commerciality of this era. These admiralty courts issued decisions, which in a way averted the sovereign's and his subjects's right to retain property that had been seized on the high seas during the war.

The courts would, upon following their legal procedure, have the authority to restore private property back to its former owners if the capture was proven to be illegal or not warranted. In war, attacking the enemy side was legal. On occasion however, it was not legitimate, and although goods would be captured under sovereign authority, substantively, they remained questionable. In these circumstances, the role of the domestic prize courts would be crucial in denying the sovereign or its subjects the right to captured property and instead, restoring it to the original victim. Sometimes the jurisdiction of the admiralty court would be explicitly declared in a peace treaty as the authority for resolving maritime disputes, at other times it would not but still be implied. The admiralty procedure involved the analysis of evidence, the hearing of witness testimony and other legal procedure necessary to get to the heart of the prize case at hand.

34 Lesaffer and Broers, 'Private property in the Dutch-Spanish Peace Treaty of Münster', 195.

Sovereigns, however, would not always be excluded from admiralty court proceedings and have what they thought was lawful booty taken away from them. Since many of the cases admiralty courts dealt with touched upon the matter of war and had an impact on the respective laws of war and peace, it was in the interest of the sovereign to be informed of the admiralty court proceedings. On this, one may see, in certain situations, the sovereign of the seventeenth century interfering with admiralty judges' work by encouraging them to lean a certain way when making a judicial decision. In other states, the sovereign had direct control over prize issues and decisions. International relations were at stake for the sovereign and sometimes it would be in their interest to mould the interpretation of law to suit its diplomatic needs. This can be seen at the English Admiralty Court, where the judge Leoline Jenkins frequently bemoaned the sovereign's attempt to infiltrate the independence of the court.[35] In the United Provinces, the situation was even more complicated with the Court of Admiralty separated into Chambers between five different municipalities. After the abolition of the stadtholdership in 1650, duties that were normally retained by the admiral general were transferred to the Estates General.[36] In both these countries, the sovereign could, and would – through varying degrees – influence the way in which a private person could claim back his property.

Admiralty courts did however also take heed of doctrinal rules, and sometimes even applied them. Grotian principles were quite often mentioned during prize cases, as were Roman law principles. Sir Leoline Jenkins, when discussing issues of prize during the seventeenth century, actually applied *ius postliminii* to the question of prizes and confirmed that the Parliament of Paris had stated that ships were not recoverable under this rule.[37] Other nations such as Venice and Spain went even further and actually allowed goods to be 'altered by pirates'.[38] Other times, admiralty courts would refuse to apply doctrinal principles and reject rules propounded by writers such as Grotius.

35 Shavana Musa, 'Tides and tribulations: English prize law and the law of nations in the seventeenth century', *Journal of the History of International Law*, 17 (2015) 47–82, 61; William Wynne, *The Life of Sir Leoline Jenkins, Judge of the High-Court of Admiralty, And Prerogative Court of Canterbury, &c. Ambassador and Plenipotentiary for the General Peace at Cologn and Nimeguen, And Secretary of State to K. Charles II and a Compleat Series of Letters, from the Beginning to the End of those Two Important Treaties*, 2 vols (London, 1724), vol. 2, 732.

36 Samuel Rawson Gardiner (ed.), *Letters and Papers Relating to the First Dutch War 1652–1654*, 6 vols (London, 1899), vol. 1, 48 ff., 57.

37 See, Musa, 'Tides and tribulations', 77, for other divergences; Arthur Browne, *A Compendious View of the Civil Law and of the Law of Admiralty* (London, 1802).

38 Browne, *A Compendious View*.

English judges were a good example of this, as they felt more bound to what they deemed as the imperial law of the land.[39]

Nonetheless, there was still property that was restored to its original owners. Neutral merchants were one such group that had their property frequently restored. Sometimes subjects of a belligerent side would also claim back their property by proving through the legal requirements that the seizure was unlawful. And sometimes this would occur to prevent the risk of a reprisal war, where sovereigns would never-endingly issue *lettres de marque* to compensate for their subject's injury. This caused a lot of confusion in the seventeenth century when the concept of the old compensatory reprisal intertwined with the newer form of reprisal, simply put in place to attack enemy commerce and to win the war. There were indeed times when the former was used as a guise for the latter. The authority to provide *lettres de marques* can be seen in the work of Vitoria. According to Vitoria, if the enemy refused to restore property that was wrongfully seized by them and the victim of this seizure was not able to obtain reparations for this injury from the enemy's sovereign or otherwise, then these letters could be provided by the victim's sovereign. The sovereign authority via these letters would allow the victim to take property from any subject of the enemy. The guilt or innocence of this subject would not matter. In referring to St Augustine, Vitoria explained that the sovereign who denied justice had committed a 'breach of duty' in 'neglect[ing] to vindicate the right against the wrongdoing of their subjects, and the injured sovereign could take satisfaction from every member and portion of their state'.[40] Although the concept of *lettres de marque* did change after Vitoria's time, its use did not disappear altogether. The Anglo-Dutch wars can demonstrate this type of practice. The wars took place on the seas and *lettres de marque* became one of the primary tools of attack.

The Anglo-Dutch wars were maritime wars, quite different in context, to other wars of the seventeenth century. Their maritime nature also meant that the usual private property rules for the sovereign did not apply. The wars perfectly epitomized how the sovereign could issue *lettres de marque* to its subjects to commit depredations against the enemy. They would capture good prize, which the sovereign and the captors could then retain. With an increasing number of captured goods came an increasing number of individual complaints of injury and calls for a return of property that was rightfully theirs.

39 Quite famously, the English prize court did explicitly state that Grotius was mistaken in his rules on capture, which went far beyond a rejection of the rule, but even extended to a criticism of the legitimacy of his work.

40 Francisco de Vitoria, 'On the law of war', 181.

The Treaty of Westminster 1654, ending the first Anglo-Dutch war, allowed for private property to be restored to their former owners.[41] Article 14 stated that for 'the preserving of commerce free, neither state shall harbour pirates, or conceal goods piratically taken from the subjects of the other, but shall return the same to the right owners on due and legal proof being made of the same in the respective courts of admiralty'.

Article 22 of the Treaty was forward-looking and stated 'that if any ships belonging to either republic, or to a neutral power, be taken in the harbours of either by a third power, they shall be obliged to recover such ships back at the expense of the owners'. In addition, under Article 24 'if any injury be done to the subjects of one republic by those of the other, the immediate remedy shall be by the common course of law; but that being denied, the party injured may have letters of marque and reprisal three months after refusal'. Those intending on committing depredations under the sovereign authority of the *lettres de marque* were also obliged to compensate injuries and damage done to property through the deposit of bail monies into the admiralty courts. The money would be held and then returned to the privateer if no injury was committed, or paid to the victim of the injury by way of compensation.[42]

Sometimes, in addition to the admiralty court, a separate commission would also be temporarily implemented after the war in order to deal with private property rights. After the first Anglo-Dutch war, a commission was put in place to hear claims from private individuals whose property had been subject to capture, as well as suffering bodily injury, by the actions of the Dutch and the Danish. Article 38 prescribed that due to a 'seizure and detainer of English effects in the dominions of the king of Denmark, since the 18th of May 1652. the states hereby obliged themselves to make the same good to the owners, to pay 5000 pounds English, to answer the expence of a proper enquiry, and 20,000 rixdollars to whom His Highness shall nominate immediately; which are to be deducted out of the gross sum to be awarded, and to enter into bonds of arbitration, in the penalty of 140,000, by proper persons in London, to answer the award'.[43] Once the restitution to individuals was provided, then the hostilities against Denmark would cease, which included a halt on the *lettres de marque* against any Danish subjects.[44]

The Treaty of Breda 1667 however was typical of peace treaties in applying *uti possidetis* and not restoring movable property.[45] The Treaty was quite

41 3 CTS 225.
42 Art. 25 of the Treaty of Westminster 1654.
43 Art. 38 of the Treaty of Westminster 1654.
44 Art. 39 of the Treaty of Westminster 1654.
45 10 CTS 231.

hostile to private individuals, neither allowing them any restitution of property nor providing any compensation for their injuries. As well as being an amnesty clause, Article 3 of the Treaty of Breda declared that

> both of the aforesaid parties, or either of them, shall keep and possess hereafter, with plenary right of sovereignty, property, and possession, all such lands, islands, cities, forts, places, and colonies (how many soever) as during this war, or in any former times before this war, by force of arms, or in any other way they have seized or retained from the other party, and this precisely in the manner in which they were seized of and possessed them on the tenth day of May last past, none of the said places being excepted.[46]

Moreover,

> all ships, with their equipment, and cargoes, and all movable goods which during this war, or at any time heretofore, have come into the power of either of the aforesaid parties, or of their subjects, shall be and remain to the present possessors, without any compensation or restitution; so that each may become and remain proprietor and possessor in perpetuity of that which has been thus seized, without any controversy or exception of place, time, or things.[47]

The use of the phrase 'without any controversy' infers the need for an efficient and straightforward peace. It would have been much easier for both sides to keep the possessions they had, rather than try to locate each and every previous owner of the property in order to restore and compensate their loss. The process would have been time-consuming and costly, and doing this without 'controversy' and disputes from owners would have been difficult. It is inevitable that in trying to restore property, disputes would have occurred with the risk of reigniting the war, which was not preferable.

At the end of the third Anglo-Dutch war, the Friendship and Commerce Treaty between England and the Netherlands from 1674 prohibited the seizure of neutral property. The treaty stated that any 'free and allowed goods, merchandize, and commodities found in the same ship, may not for that cause be in any manner seized or confiscated'.[48] If a sovereign's subjects seized any of

46 Art. 3 of the Treaty of Breda 1667.

47 Art. 4 of the Treaty of Breda 1667.

48 Art. 34 of the Friendship and Commerce Treaty between England and the Netherlands, 9 (19) February 1674, 13 CTS 123.

these types of property then the relevant admiralty court would order restitution. The payment of security for compensation was also necessary under this treaty.

The Anglo-Dutch wars were exceptional maritime wars of the seventeenth century, which demonstrated the significance of prize law for private property rights. The institutions applying prize law, the admiralty courts, were permanent platforms put in place to deal with individual grievances. Following a strict legal procedure, they could supplement or even circumvent peace treaty provisions depending on the circumstances. This could fall to the advantage of the sovereign and captor if property taken was deemed lawful, or to their disadvantage if declared unlawful. The latter would result in the restitution of the unlawfully seized property upholding the private property rights of the aggrieved person.

4 Conclusion

Given the context of wars, private property rights were never more important than in the seventeenth century, when the sovereign's right to seize private property was ever more apparent during the maritime Anglo-Dutch wars. *Lettres de marque* had become the go-to weapon of choice for the sovereign in order to dent enemy commerce and property. But this increasing utilisation of the *lettres de marque* resulted in many private individuals feeling more aggrieved. They brought claims for restitution to admiralty courts to take back what was rightfully theirs. The claims could also include a call for compensation for their injuries in addition to, or as an alternative. The Treaty of Westminster is a good example of explicitly stating the right of individuals to bring cases to their respective admiralties. These maritime platforms gave hope to individuals fighting against the sovereign's right of capture; especially since peace treaties usually disallowed the restitution of movable property through the sovereign's use of the amnesty clause. On occasion, depending on the context of the war, restitution clauses were inserted into the treaty to allow individuals their property back, as was done after the first Anglo-Dutch war. Generally speaking however, only landed property belonging usually to wealthy nobles was restored. Movable property was an unfortunate and inevitable loss in war due to the right to plunder, as affirmed by Vitoria in the sixteenth century. But Vitoria was not aware that his doctrine would undergo some tweaking by a legal head, which would slowly, over time, emancipate the individual, as far as its property rights were concerned.

Bibliography

Belli, Pierino. *A Treatise on Military Matters and Warfare* (1563). Classics of International Law. Oxford, 1936.

Browne, Arthur. *A Compendious View of the Civil Law and of the Law of Admiralty*. London, 1802.

Fisch, Jörg. *Krieg und Frieden in Friedensvertrag. Eine Universalgeschichtliche Studie Über Grundlagen und Formelemente des Friedensschlusses*. Stuttgart, 1979.

Gardiner, Samuel Rawson (ed.). *Letters and Papers Relating to the First Dutch War 1652–1654*. 6 vols. London, 1899.

Gentili, Alberico. *De iure belli libri tres* (1598, text of 1612). Classics of International Law. Oxford, 1921.

Grotius, Hugo. *De iure belli ac pacis libri tres* (1625, text of 1646). Classics of International Law. Washington, 1913.

Head, Thomas (trans.). 'Mansi, 'Sacrorum conciliorum nova, et amplissima collectio 19:89–90'. In Thomas Head and Richard Landes (eds.), *The Peace of God: Social Violence and Religious Response in France around the year 1000*, Ithaca, NY, 1992, 280–307.

Lesaffer, Randall. 'A master abolishing homework? Vattel on peacemaking and peace treaties'. In Vincent Chetail and Peter Haggenmacher (eds.), *Vattel's International Law from a XXIst Century Perspective*, Leiden/Boston, 2011, 353–84.

Lesaffer, Randall, and Erik-Jan Broers. 'Private property in the Dutch-Spanish Peace Treaty of Münster (30 January 1648)'. In Michael Jucker, Martin Kintzinger, and Rainer Christoph Schwinges (eds.), *Rechtsformen Internationaler Politik. Theorie, Norms und Praxis vom 12. Bis 18 Jahrhundert*, Zeitschrift fur Historische Forschung, Beihefte 45, Berlin, 2011, 165–95.

Musa, Shavana. 'Tides and tribulations: English prize law and the law of nations in the seventeenth century'. *Journal of the History of International Law*. 17 (2015) 47–82.

Neff, Stephen. *War and the Law of Nations*. Cambridge, 2005.

Steiger, Heinhard. 'Peace treaties from Paris to Versailles'. In Randall Lesaffer (ed.), *Peace Treaties and International Law in European History*, Cambridge, 2004, 59–100.

Strickland, Matthew. *War and Chivalry: Conduct and Perception of War in England and France 1066–1217*. Cambridge, 1996.

Vitoria, Francisco de. 'On the law of war'. In Ernest Nys (ed.), *Francisci de Victoria De Indis et De Ivre Belli Relectiones*, Buffalo, NY, 1995, 163–87.

Von Elbe, Joachim. 'The evolution of the concept of the just war in international law'. *American Journal of International Law*. 33 (1939) 665–88.

Wolff, Christian. *Ius gentium methodo scientifica pertractatum* (1749). Classics of International Law. Oxford, 1934.

CHAPTER 6

The 'Perfect Principality' of the Archdukes Albert and Isabella

Project and Reality of a 'Separate Sovereignty' of the Spanish Crown, 1529–1621

Alicia Esteban Estríngana

1 Introduction[1]

The existence of the territorial principality of the Archdukes Albert and Isabella Clara Eugenia (1598–1621) was based on an agreement for a succession separate from the patrimony as a whole that belonged by right of inheritance to Prince Philip (the future Philip III of Spain), as heir to Philip II's entire dynastic conglomerate. The principle of indivisibility and inalienability of this extensive but widely scattered patrimony – founded in the concept that it had to be transmitted in its entirety to the prince as his father's universal heir – was already well established in the reign of Philip II (1555/6–1598). It was understood at that time that the king's entire patrimony constituted the *mayorazgo* of the crown in perpetuity and was not in any sense the private estate of its holder; hence the limitations on the monarch in alienating territories belonging to the domain of the crown. Such constraints were commonplace in the patrimonial conception of sovereignty in the territorial possessions of the Spanish monarchy during the sixteenth and seventeenth centuries.[2] Given this scenario, the aim of this essay is to show how it was legally possible to separate the Netherlands and the Franche-Comté from the Spanish crown's hereditary possessions in 1598. The starting point for discussion will be the following key question: who or what inspired the separate succession of this part of the inheritance in the late sixteenth century?

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2 Laura Manzano Baena, *Conflicting Words: The Peace Treaty of Münster (1648) and the Political Culture of the Dutch Republic and the Spanish Monarchy* (Leuven, 2011), 182–188; and Id., 'Negotiating sovereignty: the Peace Treaty of Münster, 1648', *History of Political Thought*, 28.4 (2007) 617–641, 627–8, 636–8.

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An essay on the reception of Giovanni Botero's thinking in the Spanish monarchy suggests that this patrimonial dismemberment was possibly inspired by Botero.[3] In his *Della ragion di stato* (1589) he warned that no prince should ever persevere in protecting a state that brought him more 'harm' than 'usefulness', possibly with the Netherlands in mind;[4] so, and in reference to the costly Flemish conflict, some *procuradores* (delegates) of Castilian cities who attended the last *Cortes* of Castile of Philip II's reign (which began in Madrid in May 1592 and ended in November 1598) argued, at least from 1593 onwards, in favour of the need to amputate any rotting or infected limb in order to save a body threatened by the spread of a gangrenous disease.[5] As a consequence, and faced with the king's requests for more taxes, the Castilian *procuradores* in favour of closing war fronts in Europe put forward the notion that it was an opportune moment to dismember the Netherlands from the body of the monarchy in order to ensure the preservation of the remaining territories that comprised it and so avoid its ruin. It was the prevailing organic conception of Philip II's group of patrimonies – whose political organization was modelled on the human body, with the monarch as the head and the different kingdoms and territories as its limbs – which enabled the analogy of physical dismemberment to be used to deal with a patrimonial separation of the kind that Philip II effected in 1598. Seen this way, the dismemberment of the Netherlands (associated with the purpose of avoiding pointless military undertakings in order to preserve the integrity of the king's remaining patrimony) was an act inspired by prudence, according to the thinking of theorists of reason of state, such as the capacity to distinguish 'usefulness' (benefit) from 'harm' (damage) and, therefore, to recognize the political advantage that enabled effective government. This logic seems perfectly reasonable, but it should also be borne in mind that the cession of the Netherlands to a

3 Xavier Gil Pujol, 'Las fuerzas del Rey. La generación que leyó a Botero', in Mario Rizzo, José J. Ruiz Ibáñez and Gaetano Sabatini (eds.), *Le forze del principe. Recursos, instrumentos y límites en la práctica del poder soberano en los territorios de la Monarquía Hispánica*, 2 vols (Murcia, 2004), vol. 2, 1006–7.

4 Whose translation into Spanish, ordered by Philip II to serve as a guide in the education of Prince Philip, was the work of the historian and royal chronicler, Antonio Herrera y Tordesillas, and was published in Madrid in 1593.

5 The *procurador* for the city of Burgos, Jerónimo de Salamanca, said in May 1593: 'Cuanto a lo de Flandes, naturaleza señala que si podrece un miembro en el cuerpo humano, se corte, porque no inficione a los demás' ('As for Flanders, nature indicates that if a limb of the human body is rotten, it should be cut off so that it does not infect the rest'), quoted in Gil Pujol, 'Las fuerzas del Rey', 1007. The Netherlands were the cancer in Philip II's monarchy and should be removed to prevent the rest from being infected and corrupted by the disease.

Spanish infanta under the guise of a marriage dowry was not an innovative political project in the 1590s.

An attempt will now be made to show that the transfer of that heritage to the Infanta Isabella for her marriage to Archduke Albert – and hence the effective separation of the Netherlands from the Spanish crown during Albert's lifetime – was, in fact, a true reflection of a separate succession project conceived by Charles V, which passed through various versions between 1529 and 1554. An analysis of official evidence of this project in the emperor's various wills, codicils and political instructions to the heir can be used to explain the internal political and dynastic logic behind this separate succession. The transfer was deferred until the death of Philip II, and I propose that the separate succession to the Netherlands in 1598, and the situation of the Netherlands between 1598 and 1621 – considered as a 'separate sovereignty' from the Spanish crown – were a dynastic experiment aimed at empirically determining whether the separation of this territorial possession might or might not benefit the '*dynastic agglomerate*' of the Spanish monarchy and the Netherlands themselves in the transition to the seventeenth century.

The question of whether the archdukes were sovereign princes of the Netherlands – whether they possessed full territorial superiority or supremacy in managing the temporal affairs that affected their recent patrimony –, is argued on the basis of the notion of the 'perfect political principality'. This notion was formulated in opposition to *imperfecti principatus* by Francisco Suárez – the leading representative of neo-scholastic thought of the School of Salamanca – in his *Tractatus de charitate*, delivered in Rome in the spring of 1584 but only published in 1621.[6]

2 Separating the Netherlands from the Heritage of the Successor: the Project of Separate Succession between 1529 and 1547

The separate succession of the Netherlands is mentioned for the first time in the Emperor's second will, drawn up in Toledo on 8 March 1529, when Charles V already had two children (Prince Philip, born in 1527, and the Infanta Mary, born in 1528), and when the Empress Isabella was facing her third pregnancy (which resulted in the birth of the Infante Ferdinand on 22 November). This second will of the emperor has not survived, but its provisions with regard to

6 *Opus de triplici virtute theologica, fide, spe et charitate in tres tractatus* […], *Tractatus III: De charitate* (Lyon/Paris/Coimbra, 1621). See John P. Doyle, *Collected Studies on Francisco Suárez, S.J.* (*1548–1617*) (Leuven, 2010), 260.

the succession must have coincided with those contained in clause 10 of the will that his wife made in Toledo that same day, 8 March 1529, since wills made at the same time by both spouses could not contradict each other in the matter of succession.[7]

This clause confirms that at the end of the 1520s, Charles V had already decided to cede the Netherlands to a possible second son or to his eldest daughter Mary, by separating them from the hereditary patrimony of his first-born son, Prince Philip.[8] As a matter of fact, this is what Charles V had promised his aunt, Margaret of Austria, as she herself acknowledged in a letter addressed to Isabella (de Avis) from Brussels on 15 December 1529 to congratulate her on the birth of Ferdinand, who was to be raised by Margaret before taking up the personal and separate government of the Seventeen Provinces.[9] However, the early death of this infante, in July 1530, led to a fresh confirmation of the wills during Isabella's fourth pregnancy. The following will made by the empress in Madrid on 7 March 1535 (a few months prior to the birth of the Infanta Joanna, on 27 June), repeated the content of clause 10.[10] Charles V also made a new will in 1535; his third will, dated the last day of February of that year,

7 Apparently, it was destroyed after the third one came into force. See Jochen A. Fühner, *Die Kirchen- und die Antireformatorische Religionspolitik Kaiser Karls V. in den Siebzehn Provinzen der Niederlande, 1515–1551* (Leiden/Boston, 2004), 48.

8 'Declaro y mando que si Dios nos diere otro hijo segundo varón, que haya de suceder en los estados y señoríos de Flandes, Brabante y ducado de Borgoña que hoy día tiene y posee el emperador rey mi señor […], y si Dios no fuere servido de nos dar segundo hijo varón y hubiere de suceder en los dichos estados y señoríos de Flandes y Brabante y Borgoña la dicha infante doña María […], y si a Dios pluguiere de darnos otra hija tercera, que en tal caso, pues la segunda ha de heredar los estados e señoríos de Flandes como está dicho, mando que la tercera haya y herede lo que, en caso que haya segundo hijo varón que herede los dichos señoríos de Flandes, está declarando que se de a la dicha segunda hija' ('I declare and command that if God were to give us a second son, that he should succeed to the states and seigniories of Flanders, Brabant and the duchy of Burgundy, which today are held and possessed by my lord the king-emperor […], and if God were not to give us a second son, the said Infanta Doña Mary would succeed to the said states and seigniories of Flanders and Brabant and Burgundy […], and if God were pleased to give us another third daughter, that in such a case, then the second [daughter] is to inherit the states and seigniories of Flanders as has been said, I command that the third [daughter] should inherit that which, in the event of there being a second son who inherits the said seigniories of Flanders, it is declared that it be given to the said second daughter'. Will of Empress Isabella, Toledo, 8 March 1529: Archivo General de Simancas [henceforth AGS], Patronato Real [PTR], legajo [leg.] 30, doc. 11.

9 Manuel Fernández Álvarez (ed.), *Corpus documental de Carlos V*, 5 vols (Salamanca, 1973–1981), vol. 1, 28, 185–6.

10 Will of Empress Isabella, Madrid, 7 March 1535: AGS, PTR, leg. 30, doc. 14.

has not survived but its provision in the matter of succession was the same as his wife's.[11] This is confirmed by the codicil that Charles V issued immediately afterwards in Madrid on 5 November 1539,[12] because he mentioned the 1535 provisions for succession, specifying at that time he had stipulated ceding the Netherlands to a possible second son, to his daughter Mary or, in case of her death, to a possible third daughter, marrying the one who inherited the Netherlands to one of the sons of his brother Ferdinand (king of the Romans, as well as king of Bohemia and Hungary), the Archdukes Maximilian and Ferdinand, born in 1527 and 1529. Therefore, in the mid-1530s, Charles V confirmed his avowed intention to establish a new collateral branch of the Habsburgs in Brussels.

The making of the codicil in 1539 took place within a specific context that requires us to examine the changes happening in Europe between 1536 and 1538, since it was these changes that obliged Charles V and Isabella to make new wills in 1539. They made them when the empress was expecting her sixth child, the ill-fated Infante John.[13] She drew up a new will, dated in Toledo on 27 April, which has apparently not survived, and the emperor wrote the codicil in Madrid on 5 November.

Essentially, two changes had taken place. The first, the end of the Peace of Cambrai (1529) between the Houses of Habsburg and Valois, broken by Francis I when the French occupied Savoy and Piedmont at the beginning of 1536 after the death of the duke of Milan, Francesco II Sforza (1535), and followed by Francis claiming the investiture of the duchy of Milan for his second son, Henry of Valois, duke of Orleans. The second change was the subsequent restoration of harmony between Francis I and Charles V for a period of ten years by means of the Truce of Nice, concluded in June 1538 with the mediation of Pope Paul III, and after Charles had agreed to give the hand of one of his daughters

11 Just as he was preparing to travel from Madrid to Barcelona to embark with the war fleet on its mission to conquer Tunis.

12 Just before leaving the Iberian Peninsula for the Netherlands and travelling across France with the blessing and express invitation of Francis I, who was anxious to assist him in his determination to put down the uprising in Ghent (1538–1540) as quickly as possible. The French version of the codicil dated in Madrid on 5 November 1539 in Charles Weiss (ed.), *Papiers d'Etat du cardinal de Granvelle d'après les manuscrits de la Bibliothèque de Besançon*, 9 vols (Paris, 1841–1882), vol. 2, 542–8.

13 He died in a premature birth that also led to his mother's death later that same year. The Empress Isabella had had a fifth pregnancy, giving birth in October 1537 to an infante, also called John, who died in March 1538 and whose birth did not occasion any changes to the last testamentary dispositions made by his parents in 1535.

or of one of his brother Ferdinand's daughters in marriage to one of the king of France's sons, and to give the duchy of Milan as the marriage portion.

Charles of Valois, the duke of Orleans, was the son fortunate enough to receive the hand of a Habsburg princess after the death, in 1536, of his eldest brother, Francis, the dauphin, which made Henry the heir to the throne of France. The emperor's commitment to consolidating the dynastic friendship, by putting an end to the traditional reasons for friction and establishing a perpetual alliance between the Houses of Habsburg and Valois through a marriage, and even a double marriage, was drawn up in writing on 22 December 1538. The terms of this commitment were quite specific. In the following three years, Charles V would not consider any other marriage for Prince Philip than to Margaret of Valois (until Philip's 14th birthday in 1540). He offered to negotiate the marriage of the duke of Orleans to the Infanta Mary or to Archduchess Anne, the king of the Romans' second daughter (born in 1528) and also agreed to give this Habsburg-Valois marriage the state of Milan as dowry.[14]

This settlement obliged Charles V and Isabella to revise the earlier provisions concerning the separate succession of the Netherlands and Mary's marriage to one of her Habsburg cousins. As the Madrid codicil recognized, in her will of 1539, Isabella left both questions for her husband to decide and it was Charles V's decision that was included in the codicil; his decision was explained at length in an attached instruction, dated the same day, which the emperor addressed to Prince Philip to inform him of both the earlier and the recent dispositions that affected the marriage of his elder sister and the separate succession of the Netherlands.[15]

The 1539 instruction was addressed to Prince Philip and the codicil was addressed to the members of the House of Habsburg who had to ensure that Charles V's arrangement with Francis I was implemented if the emperor died before he was able to honour it. Its fulfilment was incumbent upon his

14 Francis I's favourable reception and his ratification of the content of this deed (undated, 1539), in Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 2, 533–535. The reiteration of the emperor's commitment, once he had seen this favourable declaration by Francis I: 'Escrit de l'empereur touchant son intention avec celle du roi que la trève de dix ans soit une paix ferme et assurée et les mariages acordés entre leurs enfants, pour plus grande assurance', Toledo, 1 February 1539, in Guillaume Ribier (ed.), *Lettres et Mémoires d'État des Roys, princes, ambassadeurs et autres ministres sous les règnes de François I, Henry II et François II*, 2 vols (Paris, 1666), vol. 1, 365–6.

15 The French version of the instruction, dated in Madrid on 5 November 1539, in Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 2, 549–61. The Spanish version of the instruction in AGS, PTR, leg. 26, doc. 56, and it is included in Fernández Álvarez, *Corpus documental de Carlos V*, vol. 2, 32–43.

successor, Philip, and the king of the Romans, Ferdinand; indeed, Ferdinand (as the future emperor) would have to take possession of the state of Milan and proceed with the investiture of the new duke, placing that territory at his disposal 'en faveur dudit mariage d'entre ledit duc d'Orléans et sadite seconde fille [Anne], ou du second filz de nostredit frère et de madame Marguerite de France'.[16] This was a change introduced into the codicil – and also reflected in the instruction – that would release Prince Philip from the hypothetical French marriage at the same time as it offered a glimpse of a way of establishing a new collateral Habsburg branch in Milan by means of a possible marriage between Archduke Ferdinand and Margaret of Valois. The option of giving this hypothetical marriage the state of Milan as dowry had not been discussed with Francis I and it could not have pleased the French king as much as the marriage of the duke of Orleans to a Habsburg princess with Milan as dowry, but Charles V had planned to satisfy Francis I by authorizing the marriage of Mary to the duke of Orleans with the Netherlands as dowry. In other words – and this was the real innovation of the Madrid codicil and instruction – the emperor proposed to effect the separate succession of the Netherlands in the person of the Infanta Mary, as his will of 1535 anticipated, but by marrying her to the duke of Orleans instead of to an archduke. Hence, to satisfy the king of the Romans, the possibility of investing Archduke Ferdinand with the duchy of Milan was also suggested and thereby facilitating his marriage to Margaret of Valois instead of to one of Charles' daughters.

In the instruction addressed to Prince Philip, Charles V declared that peace between princes depended on putting an end to the motives, generally territorial ones, that gave rise to their disputes and on establishing solid matrimonial alliances between them.[17] For that reason, he had consented to negotiate the marriage of the duke of Orleans to the Infanta Mary, or to Archduchess Anne, giving the state of Milan as the marriage portion, and thus he had left it stipulated in the deed of 22 December 1538 delivered to Francis I. The emperor also admitted that, initially, he had opted for approving Anne's marriage to the duke of Orleans to make the king of the Romans happy and, with this dowry, satisfy his ambitions concerning Milan. But knowing that the Valois preferred the marriage to Mary and aware that by approving it he could consolidate peace with France more effectively, he had suggested altering 'lo que

16 Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 2, 546.

17 I am following here the 'Copia de la instruzión que Su Majestad [Charles V] dejó al príncipe, mi señor' [Philip], in Madrid, 5 November 1539: AGS, PTR, leg. 26, doc. 56. Unless otherwise specified, the quotations in inverted commas in Spanish included in the following paragraphs come from this source.

habíamos dispuesto y ordenado por nuestro testamento [of 1535] de casarla con uno de los hijos del dicho Rey nuestro hermano' ('what we had disposed and ordered in our will [of 1535] to marry her to one of the sons of the said king, our brother').

Even so, Charles V recognized that 'placing' Mary in the state of Milan might not be readily accepted in the Crowns of Castile and Aragon, because it fell to her to succeed him in both crowns if her brother Philip died prematurely. Should Mary be invested duchess of Milan and succeed her father, a link would be forged from Milan to Castile and Aragon that could revive the conflict with the Valois, i.e. set the duke of Orleans (once he was king consort of Castile and Aragon) against his own brother, the dauphin and future king of France, for possession of Milan. This would be unjust to the Crowns of Castile and Aragon, which would see themselves embroiled again in an interminable war with France to keep the duchy.

Next, Charles V acknowledged that he was also aware that Mary's investiture as the duchess of Milan would not be welcomed either by the princes and potentates of Italy or by the members of the Holy Roman Empire; the former could 'temer que esto fuese por aspirar y pretender cosas nuevas y de grandes mudanzas y turbaciones' ('fear that this was in order to aspire to and attempt to make new claims that would bring about great changes and disturbances'), seeing the investiture as a manoeuvre aimed at strengthening Spanish hegemony in the Italian Peninsula; and the latter could fall 'en celos y suspición' ('into jealousy and suspicion'), interpreting the investiture as a stratagem designed to free the duchy from its dependence on the Holy Roman Empire. With this unfavourable reception, Mary 'y los suyos se hallarían tarde o temprano en pena y trabajo y nos y el dicho príncipe nuestro hijo embarazados' ('and her family would find themselves sooner or later in difficulties and we and our son, the said prince, in an awkward predicament'), that is, Mary and her possible descendants would encounter difficulties securing their rights over Milan, and that would compromise all the emperor's remaining states that Prince Philip was due to inherit in defence of such rights. Hence, Charles V had decided to postpone his decision concerning the alternative of Habsburg princesses offered in marriage to the duke of Orleans:

> hasta pasar en las dichas nuestras tierras de Flandes y ser informado y sentir dellas y mirar con parecer del dicho Rey nuestro hermano y de la Reyna viuda de Hungría, regente por nos en las dichas tierras, y otras buenas personas, si aquellas se podrían conservar convenientemente por el dicho príncipe [Philip], o si será necesario por su bien y obviar a mayor

> inconveniente, darlas a nuestra hija a favor del dicho casamiento con el dicho duque de Orléans.[18]

The emperor had still not communicated this possibility – marrying Mary to Orleans and giving the marriage the Netherlands as dowry – to his brother and sister, the Dowager Queen Mary of Hungary, governess general of the Netherlands since 1535, and Ferdinand, the king of the Romans, and intended to discuss it with them during his next visit to the Netherlands. In that regard, the purpose of the 1539 instruction was to inform Philip of the reasons behind Charles V proposing this other succession solution 'si antes de acabar esta deliberación, Dios será servido llamarnos para sí' ('in case, before this deliberation is finished, God decides to call us home').

Such a solution was justified in the instruction itself by citing one main and two subsidiary reasons. The main reason: to abide by the 1535 wills and testaments, which anticipated ceding the Netherlands to the Infanta Mary if the emperor and empress did not have another son, and which had awakened specific expectations of dismemberment in the Crowns of Castile and Aragon and in the Netherlands themselves. By ceding them to Mary, Charles V 'correspondería a la esperanza y favor de nuestros reinos de acá y de las tierras de Flandes han siempre esperado de su casamiento' ('would be corresponding to the hope and favour that our kingdoms here and the lands of Flanders have always expected of her marriage'), that is, it would compensate the Crowns of Castile and Aragon for the damage that the defence of the Netherlands was causing them and would compensate the Netherlands for the sorrow that they showed 'de estar tan luengamente sin su príncipe natural' ('from being so long without their natural prince').

The first subsidiary reason cited was for the good (benefit) of the Netherlands: to neutralize 'el malcontentamiento de ser gobernados por quien quiera que sea' ('the discontent of being governed by whomever it might be') instead of by their permanently absent natural prince, since the political and religious turmoil that they were suffering arose out of this discontent and which 'podría causar no solamente su entera perdición y apartarse de nuestra casa y linaje, más aún su enajenación de nuestra santa fe y religión' ('could cause not only

18 'Until we have spent time in our said lands of Flanders and being informed and hearing from them and considering the opinion of the king our brother and of the dowager queen of Hungary, regent for us in the said lands, and other good people, whether those [lands] could be best preserved by the said prince [Philip], or whether it will be necessary for their good and to avoid a greater problem, to give them to our daughter in favour of the said marriage to the said duke of Orleans'.

their total destruction and withdrawal from our House and lineage, but furthermore their alienation from our holy faith and religion'). The second subsidiary reason cited was for the good (benefit) of the Crowns of Castile and Aragon; in other words, to avoid the political problems that keeping the Netherlands within the territorial patrimony of the heir-apparent could pose later on for the future Philip II and for the whole of his territorial possessions: 'el gran bien de la Cristiandad y del dicho nuestro hijo, beneficio, reposo y tranquilidad de los reinos y otros estados y tierras que ha de heredar' ('the great good of Christendom and of our said son, benefit, repose and tranquillity of the kingdoms and other states that he is to inherit').

In spite of this declaration and the evidence of how difficult it would be for Philip to preserve the obedience of the Netherlands without residing in Brussels permanently, Charles V stated that, during the deliberation with his brother and sister mentioned above,

> puede estar el dicho príncipe nuestro hijo bien seguro y creer firmemente que nos miraremos con muy gran cuidado si habrá medio de reducir las dichas tierras [the Netherlands] y entretenerlas y conservarlas como están para que queden al dicho príncipe, nuestro hijo, y él suceda en ellas si es posible, esperando que con la ayuda de Dios ellos [the Netherlands] le puedan tener por señor y [a] alguno de los que del procedieren, y haremos en ello todo buen oficio de padre según el entero y perfecto amor que le tenemos.[19]

Were they empty words, devoid of intent, which the emperor included in the instruction to please Philip? If this were not the case, the declaration demonstrates that the separate succession of the Netherlands could be deferred for another generation, if there was the slightest glimmer of a chance that they could be held in peace for Philip. Should there be such a glimmer,[20] and if 'ellos [the Netherlands] se contentan de esperar la sucesión del dicho príncipe [Philip]' ('they [the Netherlands] are happy to await the succession of the

19 'Our son, the said prince, can be quite sure and firmly believe that we shall consider very carefully whether there will be some means of subduing the said lands [the Netherlands] and financing them and keeping them as they are so that they remain for our son, the said prince, and that he succeeds to them if it is possible, hoping that with the help of God they [the Netherlands] may have him for their lord and someone of those that proceed from him, and we shall make every good fatherly office in the matter in accordance with the whole and perfect love we have for him'.

20 Eradicating the conflict generated by the Revolt of Ghent with guarantees of future obedience.

said prince [Philip]'), Anne would marry the duke of Orleans, taking Milan as dowry. In that case, Mary would marry one of the archdukes without receiving any territorial dowry whatsoever, contravening what was anticipated in the testamentary dispositions of 1535, and the separation of the Netherlands from the Spanish crown's hereditary possessions would take effect during Philip II's reign by means of the cession of the territory to one of his sons or daughters.

Charles V's second codicil, made in Brussels on 12 October 1540, points in this direction as it confirms the postponement of any decision to do with the separate succession of the Netherlands and the patrimonial dowry of the Habsburg-Valois marriage.[21] Both questions were left to the discretion of Prince Philip in the event of the emperor's death; Philip would be able to retain the Netherlands for himself or dispose of them in favour of said marriage or of another that any of his sisters contracted with one of their Habsburg cousins. The secret investiture of Philip as duke of Milan (which took place in Brussels on 11 October 1540), reported in the codicil, strengthened his subsequent rights to dispose of the duchy and, apparently, Philip's capacity to give the Habsburg-Valois marriage Milan or the Netherlands as dowry.[22]

This dilemma arose after the Truce of Nice was broken and once the fourth war with France of Charles V's reign, and which took place between 1542 and 1544, was over. The alternative was reflected in the stipulations of the Peace of Crépy, concluded on 19 September 1544, which gave Charles V four months to communicate his decision and a year to solemnize the marriage of Anne or Mary to the duke of Orleans, counting from the date of the publication of the treaty.[23] However, the Treaty of Crépy was signed after the emperor had made two new codicils, one dated in Barcelona on 1 May 1543, and the other dated in Metz, on 21 June 1544.

The Barcelona codicil did not contain any new dispositions concerning matters of succession or marriage for his three children, because in 1542 a double marriage had been agreed with the Crown of Portugal: Prince Philip's, who would shortly marry the Portuguese infanta Maria Manuela de Avis, and the Infanta Joanna's, who would marry Maria Manuela's brother and heir to the Portuguese throne, João Manuel de Avis (born in 1537), when they were both old enough. Hence the stipulations of this third codicil focused on declaring

21 Once the family had deliberated on the matter and once the Revolt of Ghent had been put down.

22 AGS, PTR, leg. 29, doc. 7; the French copy, dated 28 October 1540 in Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 2, 601–4.

23 Clauses 13 and 18 of the public treaty. The Spanish version of the treaty in Jesús M. Usunáriz, *España y sus tratados internacionales* (Pamplona, 2006), 142–3.

which of the three children (Philip, Mary or Joanna) would benefit from bettering the third and the remnant of the fifth of their mother's goods, the free disposition of which she had commended to Charles V in her 1539 will before her death. The codicil also specified the legacy that corresponded to the Infanta Mary from each of her progenitors, both in the case of contracting marriage and of remaining unmarried. On this question, it stipulated that, unlike Joanna, Mary would not receive an amelioration of her dowry should she marry, and would have to be content with what had already been laid down in the earlier codicils, 'pues será cosa de mayor importancia y ventaja suya, y entonces no ha de llevar ni haber otra cosa alguna más de aquello' ('for it will be something of greater importance and advantage to her, and so she does not have to take or have anything more than that').[24] This phrase refers to the possibility already considered of giving the Netherlands as her marriage portion; a possibility that is addressed specifically in the fourth codicil, dated in Metz on 21 June 1544, once Philip's wedding to Maria of Portugal had taken place in November 1543.

In this fourth codicil, made at the most critical point of his new war with Francis I, Charles V declared he was 'libre de todas comunicaciones y capitulaciones de casamientos de las dichas nuestras hijas con Francia' ('free of all marriage communications and marriage contracts of our said daughters with France') and ruled out negotiating a marriage alliance with the House of Valois that concerned the Infanta Mary. Consequently, there was no more suitable match or marriage for her than one of the archdukes, Maximilian or Ferdinand. Therefore, Mary would marry one of them, whoever the emperor or Prince Philip decided on later, depending on whether Philip and Maria of Portugal, who was still not pregnant, had children or not. If a male child was born of her first pregnancy, Charles admitted that he would prefer the Infanta Mary to marry Maximilian, his father's successor, and for the Netherlands to remain as part of Philip's Spanish inheritance, but he stated that Philip was free to marry Mary to Ferdinand and to give her the Netherlands as dowry if he understood that the separation of this patrimony from the rest of the Spanish heritage proved to be advantageous for the 'conservación, seguridad y buen gobierno' ('preservation, security and good government') of the Seventeen Provinces. The emperor also contemplated the possibility of Philip dying prematurely without issue and the Infanta Mary, still unmarried, becoming his successor. In such a case, Mary would marry Maximilian, who would cede the succession of Austria, Bohemia and Hungary to his brother Ferdinand, and it

24 Codicil to the will of Emperor Charles V, Barcelona, 1 May 1543: British Library [henceforth BL], Egerton MS 284, fols. 1r-3v, 2v. A copy of this same codicil is in BL, Additional MS 14.014, fols. 9r-13v.

would be Joanna – if she still had not contracted marriage to the prince of Portugal – who would marry Ferdinand with the Netherlands as marriage portion. The reason stated was that Mary, once she was queen, would not be able to govern the Crowns of Castile and Aragon satisfactorily as well as 'las tierras bajas de Flandes y Borgoña [...] ni proveer en las necesidades dellas [...], como nos muchas veces habemos sido forzado hacerlo con muy grandes peligros, trabajos y gastos increíbles' ('the low countries of Flanders and Burgundy [...] or provide for the needs of them, as we have often been forced to do with very great perils, labours and incredible expense').[25]

The logic behind the separation of the Netherlands from Mary's inheritance, if she were the successor, was identical to that already explicitly stated by Charles V in previous testamentary dispositions: benefit, usefulness and advantage for both inheritances, the Spanish and the Burgundian. In short, the separation of the Netherlands and the Franche-Comté from Mary's inheritance was ruled out if, come the time of Mary's succession, Joanna was already married to the Prince of Portugal, in which case, Mary would keep the Netherlands and the Franche-Comté, whose succession separated from the rest of the Spanish inheritance would be deferred until the following generation.[26]

The Treaty of Crépy, which was concluded three months after the Metz codicil, upset these recent dispositions of 1544 on the succession, the existence of which also helps to explain the intense political debate generated by the alternative princesses (Mary or Anne) and dowries (Netherlands or Milan) included in its clauses. The debate unfolded in two locations (first of all in Valladolid and then in Brussels) during the autumn and winter of 1544–1545. Once it was over, on 22 March 1545, Charles V communicated to Francis I his decision to marry Anne to the duke of Orleans and to give the state of Milan as dowry;[27] the spouses would be invested with the ducal title and would take possession of the imperial fiefdom in Charles V's lifetime, while he would retain, also for

25 For the entire paragraph, see the text of the codicil published by Karl Brandi, 'Die Testamente und politischen Instruktionen Karls v. insbesondere diejenigen der Jahre 1543/44', *Berichte und Studien zur Geschichte Karls V, XII, Nachrichten von der Gesellschaft der Wissenschaften zu Göttingen: Philologisch-historische Klasse* (*Nachrichten aus der Mittleren und Neueren Geschichte*), 1 (1934–1936), 31–107, 99–103, 103.

26 *Ibidem*, 104.

27 Federico Chabod, '¿Milán o los Países Bajos? Las discusiones en España sobre la "alternativa" de 1544', in *Carlos V. Homenaje de la Universidad de Granada* (Granada, 1958), 333–72; José Martínez Millán (ed.), *La Corte de Carlos V. Corte y Gobierno*, 5 vols (Madrid, 2000), vol. 2, 160–1; Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 3, 67–90.

his lifetime, the two main strongholds of the duchy: the castles of Milan and Cremona.[28]

The main logic of the analysis adopted in the Valladolid debates (whose sessions took place in the presence of Prince Philip on several occasions) consisted of weighing up which of the two patrimonies, Milan or the Netherlands, it was most beneficial, useful and advantageous to keep tied to the whole of the territories that Philip II would inherit. The Spanish counsellors involved in those debates argued in terms of the global Spanish monarchy without losing sight of the perpetual rivalry with France and the uncertain guarantees, with a view to the future, that France offered of fulfilling the terms of the Treaty of Crépy. There were two positions: one in favour of giving Milan as the dowry to the marriage of the duke of Orleans and the other inclined to make the Netherlands the dowry, because the counsellors were able to put forward powerful arguments for keeping both patrimonies attached to the Spanish crown.[29]

Those who positioned themselves in favour of ceding Milan and retaining the Netherlands asserted dynastic-patrimonial criteria; for Charles V, Milan was not patrimony that was ancient and inherited but of recent acquisition, without ties to the Habsburgs although it did have ties to the kings of France, and given its nature as an imperial fiefdom, it was not altogether clear that the emperor could retain it legally in his line of succession by enfeoffment.[30] For this reason, the Peace of Crépy did not anticipate its return to Prince Philip if Anne died without issue from her marriage to the duke of Orleans, unlike what would happen with the Netherlands, whose lordship would return to Philip and his direct heirs if Mary died childless from the same marriage.[31]

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28 Clause 17 of the public treaty in Usunáriz, *España y sus tratados internacionales*, 143.

29 The summing-up of the reasons in a letter from Prince Philip to Charles V, Valladolid, 14 December 1544: AGS, Estado [henceforth E.], leg. 64, 80–5. In Valladolid, the Spanish counsellors weighed up the arguments and reasoning indicated by Charles V in 'La instrucción que se dio a [Alonso de] Idiáquez quando partió para España de Bruselas a XVIII de octubre de 1544': AGS, PTR, leg. 26, doc. 89. The content of this instruction coincides with the document: 'Discours et arraisonnement des considérations que l'on peult prendre sur l'alternative des mariaiges du duc d'Orléans avec la princesse fille aisnée de l'empereur, en disposant des Pays d'Embas, ou avec la seconde fille du Roy des Romains, avec l'Estat de Millan', Brussels, February 1545, reproduced by Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 3, 78–87. Therefore, it can be assumed that the same arguments and reasoning were considered by the counsellors convened in Brussels to debate alternative princesses and dowries.

30 Philip to Charles V, Valladolid, 14 December 1544: AGS, E., leg. 64, 81, 82–3.

31 According to clause 13 of the Treaty of Crépy, Mary and the duke of Orleans would assume the formal lordship of the Netherlands upon the death of Charles V; until then they would govern in the emperor's name, since, during Charles' lifetime, they were only going to be sworn in in advance as future natural princes to secure the duke of Orleans' rights of

The Spanish counsellors, however, doubted that the duke of Orleans, once he was a widower, would resign himself to losing the lordship; they realized that he could try to keep the Netherlands by force with the help of the French king and, even, that the French king himself would be able to occupy the Netherlands and drive out the duke of Orleans before Philip, once he was king, could do anything about it and would find himself, therefore, doomed to waging an endless war with France. Moreover, the Spanish counsellors also thought that giving the Netherlands as dowry for the marriage would weaken the authority and reputation of Charles V in the Holy Roman Empire and would increase those of France, enabling its king 'en los tiempos venideros hacerse superior en grandeza a la Corona destos reynos [Castile and Aragon]' ('in times to come to make himself superior in grandeur to the Crown of these kingdoms [Castile and Aragon]'). Everybody would blame Charles V 'de haber dado su propio patrimonio para engrandecer a su contrario y hacerle superior y darle fuerzas contra sí mismo' ('for having given his own patrimony to aggrandize his adversary and for making him superior and giving him strength against himself'); as emperor he was obliged to look after the imperial dignity and, to properly sustain it in the Empire and Germany, it was very important to keep the Netherlands.[32]

Furthermore, it was Charles V's duty to watch over the succession of the rest of the inheritances that were to go to Philip and to bear in mind that it was not just a matter of choosing which patrimony was to be the dowry for the marriage of the duke of Orleans, but also of choosing one spouse or another for the duke. The Infanta Mary possessed rights of succession over Philip's inheritance that Anne did not have. Philip was already married and his wife, Maria of Portugal, was pregnant at that time, but there was no certainty that Philip would be survived by his children, and if the Infanta Mary married the duke of Orleans, all of Philip's inheritance could, some day, go to them and their possible descendants. Indeed, it was Mary's rights of succession that made her such an ideal daughter-in-law for the king of the Romans, Ferdinand. The hopes that

succession, resulting from his marriage to Mary, the designated successor to this patrimony to the detriment of Philip; the three clauses 13, 16 and 17 of the public treaty cited in this paragraph, in Usunáriz, *España y sus tratados internacionales*, 142–3.

32 'Que en tenerlos [the Netherlands] consiste la principal autoridad de V.M. [Charles V] en Alemania y para las cosas del Serenísimo Rey de Romanos, y que se enflaquecería y disminuiría mucho cuando los dejase de su mano' ('Because the principal authority of Your Majesty [Charles V] in Germany and for the affairs of the Most Serene King of the Romans consists in having them [the Netherlands] and because it would be much undermined and diminished when he lets them go'), extract from a letter from Philip to Charles V, Valladolid, 14 December 1544: AGS, E., leg. 64, 81, 82.

the future emperor had placed in the wedding of Mary to one of his sons had prompted him to send the Archdukes Maximilian and Ferdinand to Brussels in 1544, thinking that their presence in the city could favour or precipitate the public announcement of the marriage.[33] However, the cession of the Netherlands to Mary also induced the king of the Romans to seek this marriage. If in the end it was Anne who married the duke of Orleans, Mary would have to be wed to an archduke and a decision be taken as to which one. This meant, in effect, deciding if the latter wedding was to receive the Netherlands as dowry or not. Should that be the case, Prince Philip would be deprived of Milan and the Netherlands and would suffer a double depletion of his patrimony, which could leave all of his hereditary states in an even weaker position with regard to France.

According to the record of the debates, and according to what Charles V himself reiterated in 1544, the plan to separate the Netherlands from Philip's inheritance had the two objectives already mentioned: the first, to provide this patrimony with its own prince who could reside in Brussels and govern it personally; and the second, to relieve Philip of the 'continuo cuidado y trabajo que necesariamente ha de tener en el buen gobierno, sostenimiento y defensión de las dichas tierras y descargar los otros nuestros reinos y señoríos, señaladamente los de España, de la obligación del peso de la dicha defensión' ('continuous care and work that he necessarily must have in the good government, sustenance and defence of the said lands and to remove the burden from the other kingdoms and seigniories of ours, particularly those of Spain, of the obligation of [carrying] the weight of the said defence').[34]

Because of her rank, Mary should marry the elder of the archdukes, Maximilian, although, with this husband, the Netherlands 'nunca quedarían reposados del temor que tendrían [de] que él se quisiese arrimar a los reinos de Bohemia y Hungría y que fuesen en continuo trabajo para ayudar a las cosas dellos' ('would never be free from the fear that they would wish to establish closer ties with the kingdoms of Bohemia and Hungary and that they would work constantly to further their affairs'); so, it was the likelihood of her succession

33 Charles V acknowledged as much in 'La instrucción que se dio a [Alonso de] Idiáquez quando partió para España de Bruselas a XVIII de octubre de 1544': AGS, PTR, leg. 26, doc. 89. Indeed, in February 1545 it was acknowledged in Brussels that the arrival of the two archdukes 'a baillé occasion de penser que ce soit pour en faire mariage' and that 'lesquelz tous deux sont sy bien condicionnez que l'on n'y sçauroit que désirer, avec bonne apparence et espérance d'estre prudens, saiges et vaillans pour bien gouverner' (Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 3, 68, 86).

34 'La instrucción que se dio a [Alonso de] Idiáquez quando partió para España de Bruselas a XVIII de octubre de 1544': AGS, PTR, leg. 26, doc. 89.

to both kingdoms and the probability of succeeding her father in the imperial dignity and in the duchies of Austria that made Maximilian less than ideal as the natural prince of the Netherlands, because he would be obliged to absent himself from Brussels and spend most of his time away from the provinces. Hence, his younger brother, Ferdinand, appeared to be, a priori, the more suitable one, as the codicil of 1540 had already confirmed. However, it was obvious that Philip would be bound to support Mary and any Habsburg husband once they became the natural princes of the Netherlands; he would be obliged to provide the means necessary to defend those provinces once they were ceded, because, should they be in need of external assistance, the couple would not be able to receive it from the Austrian branch of the House of Habsburg due to the persistent pressure on Hungary and the Holy Roman Empire from the Turk. From this point of view, it made more sense to marry Mary to an archduke without giving her the Netherlands as marriage portion and, in any event, entrust the couple with the government of the Netherlands temporarily in the name of Charles V, or of Philip later on. Consequently, the Spanish counsellors who favoured giving Milan as dowry to the marriage to the duke of Orleans suggested postponing Mary's wedding (she was only sixteen then) for three or four years, to see in that period 'el término que tomarán las cosas' ('how things would turn out') with France, Hungary and the Holy Roman Empire, 'y otras que Dios puede disponer en este tiempo entre los reyes y príncipes cristianos, en lo cual también es de tener consideración a que teniendo Vuestra Magestad [Charles V] nietos varones [...] con estos estados de Flandes se podría heredar alguno dellos' ('and others that God may dispose in this time between Christian kings and princes, in which it is also to be considered that Your Majesty [Charles V] having grandsons [...], these states of Flanders could be inherited by one of them').[35]

The counsellors reasoned that Charles V could still live for many more years (long enough for Philip to have several sons) and suggested that one of Philip's sons should succeed his father in the Netherlands. The implication of that was postponing the separation of that patrimony for a generation. Although the emperor had already envisaged this possibility of postponing the separation in identical terms – as included in the instruction addressed to Prince Philip on 5 November 1539 – in 1544 Charles V gave his assurance that the Netherlands

> no pueden bien estar así, sin haber señor que resida en ellos, y abiertamente confirmando esto dice la reina nuestra hermana [Mary of

35 Philip to Charles V, Valladolid, 14 December 1544: AGS, E., leg. 64, 82.

> Hungary], y así se ve, que ella no es para poderlos más gobernar […] y esperar hijos del [Philip] que pudieran venir [to Brussels] sería cosa muy larga y es de dudar que con desesperación no se perdiesen estas tierras.[36]

This conviction explains why, with the death of the duke of Orleans (9 September 1545) and the birth of the Infante Charles (8 July 1545), the male heir to Prince Philip who moved the Infanta Mary down the line of Spanish succession, Charles V let it be known that Mary would marry Archduke Ferdinand, as stipulated in the Metz codicil. He did this in the autumn of 1545 to satisfy the demands of the king of the Romans – who was pressing him to declare which of his sons would marry Mary – but still without coming to any formal family agreement, probably because Philip, although widowed after the birth of his firstborn, had options to contract a new marriage that would provide him with more sons.[37]

From the analysis so far, it can be deduced that despite having maintained the Burgundian territorial patrimony in his line of succession in the 1522 context – when he ceded the Habsburg Austrian patrimony to his brother Ferdinand – Charles V showed that he was firmly in favour, from the end of the 1520s, of separating it without any hesitation or contradictions from the Spanish heritage. Between 1529 and 1539, he planned its separation by transferring it

36 'cannot go on like this without there being a lord who resides there, and openly confirming this says the queen, our sister [Mary of Hungary], and it can be seen that she is not able to govern them for much longer […] and to wait for sons of his [Philip's] that might come [to Brussels] would be a lengthy business and there is a suspicion that these lands might be lost out of desperation'. This is how it is recorded in 'La instrucción que se dio a [Alonso de] Idiáquez quando partió para España de Bruselas a XVIII de octubre de 1544': AGS, PTR, leg. 26, doc. 89; the same idea is in Weiss, *Papiers d'Etat du cardinal de Granvelle*, vol. 3, 83, in these words: 'et d'attendre enffans dudit Prince [Philip] qui y pourroient venir, seroit chose forte longue, et y a desjà longtemps que la royne s'est vouslu excuser et descharger de ceste charge, et que dilayer la provision desditz pays si longuement seroit occasion de quelques désespération aux subjectz'.

37 'Relación de los negocios que embía el secretario Idiáquez', no date, apparently addressed by Alonso de Idiáquez to Francisco de los Cobos in the autumn of 1545: 'El Rey de Romanos ha andado en gran negociación y no sin importunidad con S.M. [Charles V] para que quisiese declarar el casamiento de la señora infanta doña María con uno de sus hijos; a la fin le ha satisfecho sin quedar obligados y por ahora se queda con S.M. el hijo segundo' ('The king of the Romans has been in a great negotiation, and not without making himself a nuisance, with H.M. [Charles V] to persuade him to announce the marriage of the Infanta Mary to one of his sons; in the end he has been satisfied without them being under any obligation and for now he and His Majesty agree on the second son'): AGS, E., leg. 641, 2, quoted in Wilhelm Maurenbrecher, *Karl V. und die deutschen Protestanten, 1544–1555* (Düsseldorf, 1865), Appendix, 27.

to a second son or one of his daughters, preferably the eldest. Nevertheless, after the death of the empress and in view of the need to lay the foundations of a solid peace with France by means of a Habsburg-Valois marriage, he faced the dilemma of separating or keeping the Burgundian patrimony and the Spanish heritage united for a further generation. The Infanta Mary became a possible bargaining chip of this peace on two occasions, in 1539 and 1544, and it was precisely between 1539 and 1544 when Charles V faced this dilemma, with considerable, explicit doubts and contradictions. His uncertainty in this respect arose from the need to weigh up the benefit and damage that the separation of both patrimonies or their transitory unity involved for the two legacies because he did not think of his territories in isolation but as interrelated. Everything indicates that between 1545 and 1547, the emperor's doubts were dispelled; Charles V decided to marry Mary to Archduke Maximilian without a territorial dowry and to transmit the Netherlands to his son Philip as the universal heir.

3 Deferring Separation: Postponement and Redefinition of the Project between 1548 and 1554

It has been claimed that the decision to transmit the Netherlands to Philip together with the rest of the Spanish inheritance was taken by the emperor in view of its importance in maintaining the hegemonic power of the Spanish monarchy in Europe.[38] At the same time, it was also important because it strengthened Philip's position within the Holy Roman Empire. Having a territory in the Empire was essential in order to participate successfully in the election of the king of the Romans and the real purpose that lay behind the decision not to separate the Netherlands from the Spanish inheritance was to improve Philip's chances of being elected king of the Romans, since he already had the resources of the Crowns of Castile and Aragon at his disposal, not to mention the Italian kingdoms, to enable him to fulfil the role of future emperor.[39] At the end of the 1540s, Charles V was determined to make a rather peculiar formula of imperial succession work, one that alternated between the two Habsburg branches and to conclude, therefore, a family agreement that committed the House as a whole; he intended to cede the imperial crown during his lifetime to his brother Ferdinand and win his support for putting forward

38 Fühner, *Die Kirchen- und die Antireformatorische Religionspolitik*, 51–2.

39 Friedrich Edelmayer, 'Los hermanos, las alianzas dinásticas y la sucesión imperial', in Alfredo Álvar and Friedrich Edelmayer (eds.), *Socialización, vida privada y actividad pública de un emperador del Renacimiento. Fernando I (1503–1564)* (Madrid, 2004), 171.

Philip's candidature for the election mentioned once he had persuaded Archduke Maximilian not to stand as a candidate.[40]

It was in this context that the instruction, written and dated in Augsburg, on 18 January 1548, was sent by Charles V to Philip.[41] In it, Charles explained to the prince his decision to marry Mary to Maximilian without a territorial dowry and to maintain the Netherlands attached to the Spanish Crown for another generation: 'estamos en que los guardéis confiando que Dios os dará más hijos' ('our view is that you should keep them, trusting that God will give you more children').[42] The emperor had not given up the idea of separating the Netherlands from Philip's heritage, but merely deferring it in order to establish a collateral line of the Spanish Habsburg branch in Brussels. The Netherlands were to be separated from this Crown by a transfer to a second son of Philip's (or, in the worst-case scenario, to one of his daughters). Charles V also addressed another question: the recognized advisability of delegating the government of the Netherlands to relatives of the blood royal. He considered the option of entrusting Maximilian and Mary with the task once they were married, but decided it would be counterproductive. If the couple governed, they could win over the will and affection of the provinces, especially if their children were born there. In that case, the risk would arise that some ill-intentioned natives of the Seventeen Provinces would induce Maximilian to stay on there to the detriment of Philip.

> Por este respecto no he querido tomar en ello resolución hasta vuestra venida y que hayáis visto las dichas tierras, y sepáis la importancia dellas y los humores de los de allí y que conozcáis y platiquéis al dicho archiduque Maximiliano. Es verdad que si pudiese acabar con la reina viuda de Hungría que continuase en el dicho cargo que ha tanto tiempo tenido sería lo que más convendría […], mas está puesta en descargarse del.[43]

40 That is what the French ambassador Raymond de Rouer, baron de Fourquevaux, claimed in a letter addressed to King Charles IX, Madrid, 12 February 1572, in Célestain Douais, *Dépêches de Monsieur de Fourquevaux, ambassadeur du Roi Charles IX en Espagne, 1565–1575*, 3 vols (Paris, 1896–1904), vol. 2, 422.

41 It is reproduced in Fernández Álvarez, *Corpus documental de Carlos V*, vol. 2, 569–592; the same original instruction in Spanish with its French translation in Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 267–318.

42 Fernández Álvarez, *Corpus documental de Carlos V*, vol. 2, 591; '[…] nous tenons à ce que vous conserviez ces provinces, dans l'espoir que Dieu vous donnera d'autres enfants', Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 314.

43 'For this reason, I have not wished to take a decision until your arrival and until you have seen these lands and realize the importance of them and the mood of the people there, and meet and converse with Archduke Maximilian. It is true that if the dowager queen

The emperor was alluding to the imminent journey that Philip was to make to the Holy Roman Empire, with the Netherlands as his final destination (1548–1551), to take the oath in advance as the future sovereign and natural prince of the Seventeen Provinces. He was also alluding to the equally imminent journey that Maximilian would make to Spain to contract matrimony with Mary and assume the joint regency of the Spanish kingdoms during Philip's absence, it being in Spain where Philip would be able to meet his cousin personally before leaving. Given that, for the Netherlands, Philip would be as much an absentee sovereign as his father was and that the governor at the time, Mary of Hungary, was intending to resign from the post, there was a pressing need to find someone to govern the Netherlands before and after Philip's succession. Charles V was determined to keep his sister in the post, explicitly acknowledging that lords and subjects both conceived the dynastic marriage as a basic mechanism of patrimonial separation, their descendants being the only guarantee of perpetuating it by means of a surviving collateral branch. Hence the fact that certain relatives, such as the dowager queen of Hungary (who occupied the post of governess unwillingly, with no prospect or possibility of marrying), were the most sensible option to be delegated to exercise the government of patrimonies linked together in the same dynastic conglomerate. Accordingly, it could not be assumed that Maximilian and Mary would end up transferring to Brussels once they were married.

If in 1548 Charles V was not sure who would govern the Netherlands as long as they remained part of Philip's Spanish inheritance, he was certain that, to make this transitory union more feasible, he needed to take further steps. He therefore linked his decision not to separate the Netherlands from Prince Philip's hereditary patrimony to modifying the ties that bound the Netherlands to the Holy Roman Empire. This modification arose out of the Diet of Augsburg (September 1547-June 1548) where the Treaty or Transaction of Augsburg or Burgundy was approved (26 June 1548), a public deed in its modality of transaction that regulated the future relations between the Netherlands and the Empire. Since a transaction is a bilateral legal act, by means of which the interested parties, by making mutual concessions, extinguish dubious or litigious obligations in order to resolve, through a pact of mutual compromise, any possible controversy, the question arises what were the obligations (understood as links of dependence) of the Netherlands and Franche-Comté towards the

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of Hungary could be persuaded to continue in said post that she has held for so long, it would be for the best [...] but she is determined to give it up', in Fernández Álvarez, *Corpus documental de Carlos V*, vol. 2, 591–2; the French translation in Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 316.

Empire that Charles V proposed to extinguish in 1548 and what concessions did he make to the Empire for the purpose of extinguishing them.

The text of the treaty itself supplies the answer, but so does a document previous to the treaty: a declaration that Charles V sent to the diet months before concluding the transaction in order to clarify, at the behest of the assembly, what his true claims were.[44] According to this document, Charles V sought to exempt the Netherlands 'de la jurisdiction, ressortz et appellations' of the Holy Roman Empire (extinguish their dependence or jurisdictional subordination) and at the same time keep them 'soubz la protection et garde des Empereurs et Rois de Romains et dudit Empire' in order to be 'défenduz, gardez et soubtenuz comme en semblable traicté a esté faict avec les ducz de Lorraine', which referred to an immediate precedent that removed its innovative character from the Transaction of Augsburg, namely, the Treaty or Transaction of Nuremberg (26 August 1542).[45]

Concluded by Duke Antoine of Lorraine, on the one hand, and by Charles V and the Holy Roman Empire on the other, this transaction renegotiated the position of Lorraine with respect to the Empire, as both a part and apart simultaneously, because it recognized the protection of the Empire and the emperor, yet maintained the duchy as a 'free principality and sovereignty not included among the enclaves of the Holy Roman Empire'. In fact, it clarified that Lorraine (although none of the other imperial fiefs of Duke Antoine) was a sovereign state *liber et non incorporatus* (and therefore *non incorporabilis*) under the protection of the Empire. The duke agreed to pay the imperial taxes required by the imperial diets (at two-thirds the amount paid by the other territorial princes), but would not contribute to levies for the emperor's wars. The right of final appeal was vested in the duke, removing Lorraine from the supreme jurisdiction of the Imperial Chamber Court at Speyer. Lorraine could thus be described as an 'associate member' instead of a 'constitutional member' of the Holy Roman Empire, as the duchy was no longer considered a fief that could revert to the emperor.[46] In Augsburg, Charles V sought the same thing for the Netherlands and, to attain it, he offered 'contribuer aulx aydes et communes contributions que s'accorderont par les commungz Estatz de

44 Both the treaty and the declaration in Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 319–30.

45 Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 320–1.

46 I follow almost word-for-word Jonathan Spangler, *The Society of Princes: The Lorraine-Guise and the Conservation of Power and Wealth in Seventeenth-Century France* (Farnham/Burlington, 2009), 43, 55–6. See also Jessica Munns, Penny Richards and Jonathan Spangler (eds.), *Aspiration, Representation and Memory: The Guise in Europe, 1506–1688* (Farnham/Burlington 2015), 3; and Robert Feenstra, 'A quelle époque les Provinces-Unies sont-elles devenues indépendantes en droit à l'égard du Saint-Empire?', *Revue d'Histoire du Droit/Tijdschrift voor Rechtsgeschiedenis*, 20.1 (1939) 30–63 and 182–218, 45, note 32.

l'Empire en général austant que deux électeurs, soit en gens de guerre, de pied ou de cheval, o en certaine quantité de deniers'.[47]

It must be borne in mind, however, that not all the provinces of the Netherlands shared the same links of jurisdictional dependence with regard to the Empire. In fact, some provinces were not even imperial fiefs (they had maintained and then severed their ancient feudal ties with the French crown), whereas others, which certainly were, considered themselves formally exempt from the justice and application of the laws of the Empire by virtue of the *privilegia de non evocando et de non appellando* which, in the Middle Ages, the emperors had granted them on an individual basis or, at least, that is what they claimed.

However, there were provinces that did not enjoy this exemption, especially those which Charles V had not inherited from his father in 1506, but had acquired during his reign in the north eastern region and which, in 1548, did not even belong to the Burgundian Circle, but to the Westphalian one, according to the organization into circles carried out by Maximilian I in 1512. All the provinces – both inherited and acquired – that maintained feudal links with the Holy Roman Empire were its tributary vassals in the sense that they had to contribute to the general or common taxes and aids agreed by the diets for the defence and joint security of the Empire, which were clearly being breached by the Turkish threat since the middle of the fifteenth century. Despite this, and despite the succession of demands for payment from the imperial diets, no province during the reign of Charles V had contributed because of the expense occasioned by the wars with France (as well as with Guelders and the duke of Cleves). By the same token, neither had the provinces received any aid from the Empire, at war with the Turk, to cope with this continual exposure to military attack.[48] This situation is crucial for understanding what the concessions were that Charles V offered the Empire in the context of the Transaction of Augsburg.

In the draft treaty that he addressed to the diet in 1548, Charles V proposed clearly fixing the scope of the Netherlands's tax contribution to the Empire, and also that their taxes should be 'pour tous nosdits pays joinctement, tant pour ceulx que peuvent recognoistre le dit Empire, que pour les aultres […], pourveu aussy que tous nosdits pays d'embas, desquelz à present avons la

47 Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 320.

48 Nicolette Mout, 'Core and periphery: the Netherlands and the Empire from the late fifteenth to the early seventeenth century', in Robert J.W. Evans and Peter H. Wilson (eds.), *The Holy Roman Empire, 1495–1806: A European Perspective* (Leiden/Boston, 2012), 205–7.

joyssance […] soient comprins soubz un seul cercle […] qui comprendrá tous nosdits pays d'embas par ensemble'.[49]

He offered all the provinces included in the Burgundian Circle the same taxation, even those that until then had no obligation to pay tax. The Burgundian Circle had to be enlarged to take in all of Charles V's patrimonial and hereditary provinces, according to the model of the Austrian Circle, which included in its own circle all the patrimonial and hereditary provinces ceded by Charles to his brother Ferdinand in 1522. In exchange, Charles V asked all the member states of the renewed Burgundian Circle to receive protection and assistance from the Empire 'contre tous ceulx qui hostillement les vouldroient invahir et entreprandre contre eulx', but without showing any apparent interest in clarifying or establishing its scope.[50] In spite of this vagueness, he obtained a 'confederation et alliance perpétuelle entre tous les estatz de l'Empire et ses pays patrimoniaux d'embas et de Bourgogne; et à ceste cause Sa Majesté réciprocquement doibt contribuer ès aydes d'icelluy Empire'.[51]

This statement, taken from an extract of essential points of what happened at the Diet of Augsburg until its conclusion at the end of June 1548, shows that, from then on, future relations of the renewed 'Circle of hereditary Burgundian Provinces'[52] and the Empire were based on a mutual aid pact, negotiated by the parties during the sessions. This pact placed the renewed Circle under a contractual protection regime that was specific and perpetual and which, for the Empire, did not involve any increase in the 'protección, guarda, apoyo o ayuda' ('protection, guarding, support or help') that it owed to the earlier

49 Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 325.

50 Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 327.

51 Weiss, *Papiers d'État du Cardinal de Granvelle*, vol. 3, 332.

52 This is how it is referred to in a Spanish document that distinguishes between the 'Círculo de Borgoña' ('Circle of Burgundy') (prior to 1548) and the 'Círculo de las Provincias Burgúndicas hereditarias' ('Circle of hereditary Burgundian Provinces') (after 1548); 'Compactados hechos entre el emperador Carlos 5º y los Estados del Imperio tocantes a las provincias de Flandes, en Augusta, a 16 de junio 1548, confirmados por el emperador Rodolfo Segundo a 3 de marzo 1588': Biblioteca Nacional de España [henceforth BNE], MS 10.819, 32 (I wish to thank Fernando Negredo del Cerro for bringing this document to my attention). Likewise, the French text of the Transaction of Augsburg distinguishes between the 'Circle de Bourgogne' ('Circle of Burgundy') (articles II, III and IV) and the 'Circle des pays patrimoniaulx de Bourgogne' ('Circle of Burgundian patrimonial lands'), renamed in this way in article XIX. See Émile de Borchgrave, *Histoire des rapports de droit public qui existèrent entre les Provinces Belges et l'Empire d'Allemagne depuis le démembrement de la monarchie carolingienne jusqu'à l'incorporation de la Belgique à la République Française* (Brussels, 1871), 385–6, 389.

circle;[53] it only extended it to certain provinces that were now included in the new one, in compensation for their recently agreed tax contribution to the Empire. Nevertheless, the reciprocity pact – which the deed of transaction presented as extendible to the whole (Articles XVII, XVIII, XIX, XXIII) in order to turn the agreement into an alliance or defensive confederation[54] – released from their jurisdictional dependence on the Empire those parts of the Circle that were still nominally subject to it.

If the dispositive Articles (XV-XXVII)[55] of the Transaction of Augsburg, promulgated by the emperor, are analysed, it is possible to conclude that Charles V's prime objective was to grant the 'Circle des pays patrimoniaulx de Bourgogne' (Articles XIII and XIX) a new juridical situation of freedom, understood as absence of dependence both on the constitution and laws of the Holy Roman Empire, and on the superior jurisdiction of its supreme court of justice (the Imperial Chamber of Speyer). This new situation turned the Circle into an entity comprising a group of principalities that were fully autonomous and independent in jurisdictional matters, and consequently principalities with the status of *superiorities* – since they also ceased, in nominal terms, to be dependent on supreme jurisdictions external to them and to the Circle itself – with the accommodating attitude of the imperial diet, the emperor and the king of the Romans. Even so, Article XXI made a distinction between jurisdictional dependence and feudal dependence with specific consequences that cannot be ignored.[56]

Seen in the light of the treaty as a whole, Article XXI seems to argue as follows: the renewed Burgundian Circle would include provinces that were neither imperial fiefs nor obliged by the constitution, laws and superior jurisdiction of the Empire. Charles V would negotiate with the diet in the name of the

53 Article XV of the Transaction: the Netherlands and hereditary and patrimonial territories of Charles V forming the renewed Circle of Burgundy 'seront doresenavant et à tousiours en la protection, garde, soustenement et ayde des Empereurs et Roys de Rommains et su Sainct Empire […] et seront par lesdictz Empereurs e Roys des Rommains et les estatz du dict Sainct Empire a tousiours, comme aultres princes, estatz et membres dicelluy Empire, deffenduz, gardez, soustenuz et loyaulment aydez'. This Article complements Article XVII; both are in de Borchgrave, *Histoire des rapports de droit public*, 338. For the subject of protection, its different juridical modalities, experiences and uses between the sixteenth and seventeenth centuries, see Fabrice Micallef, 'Sous ombre de protection. Stratégie et projets politiques au temps des affaires de Provence (France, Espagne, Italie, 1589–1596)', *Revue Historique*, 4.656 (2010) 763–94.

54 For this idea, see Feenstra, 'A quelle époque les Provinces-Unies sont-elles devenues indépendantes', 185.

55 de Borchgrave, *Histoire des rapports de droit public*, 388–90.

56 The complete text in de Borchgrave, *Histoire des rapports de droit public*, 389.

Circle as a whole and promise his later ratification of and consent to the agreement (Articles XXIV and XXVI) 'comme vray hereditable et souverain seigneur de noz dictz pays patrimoniaux d'embas, por nous, noz hoyrs et successeurs' (Article XV), i.e. he would negotiate as the sovereign lord of the Circle who neither admitted nor recognized the jurisdictional superiority of the Empire. The negotiation represented an entirely new point of departure for this group as a whole and, henceforth, no province would depend on the Empire in jurisdictional matters, although its sovereign lord would yield to the extent that all of them (the entire Circle) would answer to the ordinary justice of the Imperial Chamber on questions that concerned the delay or non-payment of their taxes to the Empire. In exchange for the imperial diet's consenting to and recognizing the jurisdictional independence of the Circle as a whole, the provinces that in earlier times had been feudal dependencies of the Empire would be so again. If these provinces resumed their feudal dependence it would be because Charles V did not intend to break their ancient feudal links with the Empire and would be concerned to ensure (for the Circle as a whole and not only for them) the right to take part and to vote in the imperial diets (Article XVI).

On the surface, nothing would change in terms of *dominium* or patrimonial property; the Empire and whoever held the imperial dignity would continue to be the holder of the *dominium directum* of certain parts of the Circle, while Charles V and his heirs and successors would continue to be the holder in perpetuity of the *dominium utile* as sovereign lords, that is, supreme in jurisdictional terms.[57] However, a significant change was produced in the rights that the holder of the *dominium directum* could exercise over those parts thereafter, according to a reference made to that same Article XXI in a recapitulation of the 'facts' (held in the National Library in Madrid) that were agreed by Charles V and the imperial Diet of Augsburg, a recapitulation that was later confirmed by Emperor Rudolf II in 1588:

> Las dichas provincias [all those of the now renewed Circle] han de ser provincias libres, no sujetas a devolución o confiscación, y tales quedarán para siempre y serán reconocidas de Su Magestad [Charles V] y sus sucesores emperadores y reyes de romanos y todos los electores y príncipes por provincias libres no sujetas a devolución o confiscación, por principado y superioridad no obligadas en otra cosa a la jurisdicción del Imperio sino en lo de las dichas contribuciones y en lo que se dirá, que es que

57 On the correlation between the notions of sovereignty, jurisdiction, *potestas* and *dominium*, see chapter 5 of Francesco Maiolo, *Medieval Sovereignty: Marsilus of Padua and Bartolus of Saxoferrato* (Delft, 2007), 141–60.

> las provincias que son feudo del Imperio sean reconocidas del por tales y que se tome de ellas la investidura en adelante como por lo pasado.[58]

At the same time as the diet was consenting to the rulings issued by the higher courts of justice within the Circle being final and could not be subject to appeal to the Imperial Chamber of Speyer – where they ceased to be 'subject to devolution' to the Chamber, or they ceased to be the subject of a devolutive appeal – it was consenting to the extinction of certain rights reserved for the holder of the *dominium directum* over the parts of the Circle that resumed their feudal dependence on the Empire, specifically, those that concerned his capacity to make them revert to the Empire by means of a 'commise féodale ou confiscation'.[59] If no part of the Circle could now revert to the Empire by *droit de commis*, the Circle as a whole acquired the condition of *liber et non incorporabilis*, much more in accord with its new situation of indisputable territorial superiority, no longer limited by any superior court of justice situated outside its boundaries with an overlapping jurisdiction that could suspend, annul or emend the rulings emanating from the superior courts of justice situated inside its boundaries.

Obviously, the status of the Circle as an entity became ambiguous and lent itself to future controversy, because, in spite of having representation at the diets, not all of its members had or recognized any feudal tie whatsoever with the emperor (nor would he be able to expect or lay claim to one). Nonetheless, what is of interest here is to make a connection between what formally occurred in 1548 in terms of territorial superiority, supremacy or sovereignty for the Circle as a whole and Charles V's decision to keep it as part and parcel of all the other heritable patrimonies of Prince Philip. In order to do this, it is first of all worth recalling briefly some observations made by Francisco Suárez

58 'The said provinces [all those of the now renewed Circle] are to be free provinces not subject to devolution or confiscation, and as such they will remain for ever and will be recognized by His Majesty [Charles V] and his succeeding emperors and kings of the Romans and all the electors and princes as free provinces not subject to devolution or confiscation, because of their principality and superiority they are not obliged in anything else to the jurisdiction of the Empire except in that of the said taxes and in what will be said, which is that the provinces that are fiefs of the Empire should be recognized by it as such and the investiture be taken from them henceforth as in the past'; 'Compactados hechos entre el emperador Carlos 5º y los Estados del Imperio tocantes a las provincias de Flandes, en Augusta, a 16 de junio 1548, confirmados por el emperador Rodolfo Segundo a 3 de marzo 1588': BNE, MS 10.819, 32.

59 For this right, see Claude de Ferrière, *Corps et compilation de tous les commentateurs anciens et modernes sur la coutume de Paris*, 3 vols (Paris, 1692), vol. 1, 294–312 (Titre I, De Fiefs, Article XLIII, but allusions to it throughout the whole of Titre I).

about supreme power of jurisdiction, and then explaining the significance of the Pragmatic Sanction submitted by Charles V to the Estates General of the Netherlands in November 1549 for their acceptance.

Suárez used 'perfect' to describe the political principality endowed with supreme jurisdiction: 'El signo de la suprema jurisdicción es que junto a tal príncipe o república exista un tribunal en el que concluyan todas las causas de su principado, sin apelación a otro tribunal superior. El que haya lugar a apelación es signo de un principado imperfecto, pues la apelación es un acto de inferior a superior' ('the sign of supreme jurisdiction is that, alongside the prince or republic, there is a court where every lawsuit in that principality is concluded, without any appeal to a higher court. The fact that there is a place of appeal is the sign of an imperfect principality, since an appeal is an act made by an inferior to a superior').[60]

Jurisdictional supremacy implied perfection because it turned the principality into a jurisdictionally complete, self-sufficient and independent whole. Therefore, it may be assumed that this was the contribution of the Transaction of Augsburg to those parts of the renewed Burgundian Circle that had not yet reached jurisdictional perfection: the first step towards forging indissoluble and inalienable links between all parts of the Circle (now all of equal jurisdictional rank as far as their prince was concerned), creating a single heritable entity with the status of a sovereign state under the protection of the Holy Roman Empire.

The second step was taken with the Pragmatic Sanction, whereby Charles V established this inheritance as a united (but not unified) entity, by introducing the right of hereditary representation in the Circle as a whole as something new in the succession.[61] Both steps were understood to be necessary, initially,

60 Quoted by Luis Sánchez Agesta, 'El concepto de soberanía en Suárez', *Archivo de Derecho Público*, 1 (1948) 51–71, 57; the quotation comes from *Tractatus De charitate*, Disputatio XIII et ultima (De bello).

61 In this edict the group of provinces or lands is declared to form one body and that all of them are bound indissolubly and perpetually together by the law of succession. It stipulated that after Charles V's death all provinces would be inherited by a single heir, declaring the general validity of the right of hereditary representation 'en tous nosdits Pays, en ce que attouche la succession du Prince'. It also stated that the succession would fall to Prince Philip who was sworn in as the future sovereign and natural prince of the Seventeen Provinces in advance, in order to exclude Philip's sisters, the Infantas Mary and Joanna, from this succession. But the Pragmatic Sanction did not exclude future younger sons or daughters of Philip (who already had a male heir, Charles, born in July 1545), because it did not expressly mention the order of birth (adoption of primogeniture) or the precedence of males over females (adoption of male primogeniture). See Jean Rousset de Missy, *Supplément au Corps universel diplomatique du droit des gens contenant l'Histoire des anciens traitez* […] *Un recueil des traitez d'alliance, de paix, de trêve qui*

in order to link the Circle to the Spanish crown, and then to establish a collateral line of the Spanish Habsburg branch in Brussels, which would have the guaranteed protection and help in perpetuity of the Empire, with the objective of minimizing the costs that the defence and security of the Circle might occasion in the short and medium term for the rest of the heritable patrimonies of the Spanish branch of the House of Habsburg. Charles V's purpose was to separate the Circle from Philip's inheritance by ceding it later on to one of Philip's sons or daughters, according to a letter that the emperor sent to Philip from Villach on 31 May 1552.[62]

Consequently, the dynastic future of the renewed Burgundian Circle was not subject to debate in the family negotiations held in Augsburg by the two branches of the House of Habsburg between the years 1550–1551. In those negotiations, Charles V's fundamental objective was to persuade Archduke Maximilian to renounce the imperial succession in exchange for receiving one of the territories from Charles V.[63] The step taken with regard to the Netherlands in 1549, with the anticipated swearing in of Philip as his father's successor, placed the duchy of Milan in the spotlight once more. The second investiture of Prince Philip as the duke of Milan (5 July 1546) by Charles V had not been made public either, and the possibility of ceding this patrimony to Philip came to light in February 1550 (when the governor, Ferrante Gonzaga, swore the oath of allegiance to Philip, as duke of Milan, in the event that the emperor should cede the territory to his son), several months before the negotiations began.[64]

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avoient échappé aux premières recherches de Mr. Dumont continue jusqu'à présent [...], 5 vols (Amsterdam/The Hague, 1739), vol. 2, partie 1, 131.

62 'Ya os acordaréis cómo queriendo los días pasados, estando en Flandes, prevenir y obviar, a toda manera de duda, dificultad e inconveniente que podría ofrecerse en la sucesión de aquellos nuestro estados bajos, por manera que en caso de fallecimiento vuestro, no se entendiese haber de suceder en ellos las otras nuestras hijas, segundo y tertiogénitas vuestras hermanas, sino nuestros nietos o nietas vuestros hijos y dellos descendientes, en la junta que en Bruselas se hizo de los dichos nuestros Estados [Generales] lo mandamos establecer o corroborar por nuestra Pragmática Sanción' ('You will remember how, being in Flanders the last few days and wanting to prevent and avoid, beyond any doubt, any difficulty and problem that might arise in the succession of those Netherlands of ours, so that in the event of your death, it should not be understood that the other daughters of ours, your second- or third-born sisters, are to succeed to them, but our grandsons or granddaughters, your sons and descendants of theirs, at the meeting of the said Estates [General] of ours, which was held in Brussels, we commanded that it be established and corroborated through our Pragmatic Sanction'), in Fernández Álvarez, *Corpus documental de Carlos V*, vol. 3, 436.

63 Edelmayer, 'Los hermanos, las alianzas dinásticas y la sucesión imperial', 175–6.

64 Antonio Álvarez-Ossorio Alvariño, *Milán y el legado de Felipe II. Gobernadores y corte provincial en la Lombardía de los Austrias* (Madrid, 2001), 25, 27.

The possibility of ceding Milan imminently was synonymous with willingness to cede it immediately and, perhaps, this possibility was leaked in order to awaken Maximilian's ambition and obtain his commitment to withdraw his name from consideration for election as king of the Romans, in accordance with the formula devised by Charles V for the two Habsburg branches to alternate in the succession. When he did not attain his objective, Charles V publicized the investiture of Milan in favour of Philip in 1551, designated him Vicar of the Empire in Italy and drew up the deed of Philip's investiture as 'soberano príncipe y señor' ('sovereign prince and lord') of the parts of the Burgundian Circle that were feudatories of the Empire (Augsburg, 7 March 1551) with the same vagueness and indeterminacy that was in the wording of the Transaction of Augsburg, and, one supposes, considering the Burgundian Circle as a whole as a mere 'associate member' of the Empire, since those parts had lost their reversible fief status and could no longer return to the Empire.[65] However, the cessions of Milan and the Burgundian Circle were actually implemented a few years later: the Circle's in the context of Charles V's abdication (1555–1556), and Milan's in 1554 (together with the kingdom of Naples) on the occasion of Philip's marriage to Mary I Tudor.

Philip's marriage to Queen Mary in 1554 made it possible for him to engender more offspring. The prenuptial agreement negotiated between December 1553 and January 1554, together with the Act of Marriage decreed by the English parliament (2 April 1554), both confirmed Charles V's resolve to separate the Circle of Burgundy from the Spanish crown and to found a Spanish Habsburg secundogeniture that would inherit the kingdoms of England and Ireland together with the said Circle. Philip might have a second son, but also a daughter and, according to the stipulations in the Act, either of the two would inherit these territories if Philip's firstborn, the Infante Charles, survived to succeed his father in the rest of the Spanish inheritance.[66] This possible linking of the Circle to the patrimony of the House of Tudor was very well received in the Netherlands and Charles V ratified it in his last will and testament (Brussels, 6 June 1554).[67] With some considerable satisfaction, the emperor himself explained its benefit, usefulness and advantage for the Netherlands, as well as for

65 Feenstra, 'A quelle époque les Provinces-Unies sont-elles devenues indépendantes', 54–8; and de Borchgrave, *Histoire des rapports de droit public*, 202–3.

66 The Latin version of the ratification of the Act of Marriage, signed by Queen Mary I Tudor, Westminster, 6 March 1554: AGS, PTR, leg. 55, doc. 28; the Act for the Marriage of Queen Mary to Philip in George Burton Adams and Henry Morse Stephens (eds.), *Select Documents of English Constitutional History* (New York/London, 1901), 283–9.

67 *Testamento de Carlos V* (Madrid, 1982), 29–33.

the Spanish kingdoms, in the proxy of 31 March 1554 that he sent to his daughter Joanna to govern the Crowns of Castile and Aragon during the absence of Philip, who had to travel to England to ratify in person his wedding to Mary, which had been celebrated by proxy some weeks before.[68]

The Habsburg-Tudor marriage sought to ensure the defence and security of the Netherlands without damaging (jeopardizing) the Spanish crown, by ridding it of a burden that could encumber it in perpetuity, as Charles V had reiterated on countless occasions over the previous few decades. The marriage proved ineffective through lack of issue, already evident in 1557, when Philip – the reigning king of the Crowns of Castile and Aragon since the previous year – made a will in London dated 2 July in which he declared his only son, Charles, to be his universal heir.[69] Despite the fact that the separate succession of the Burgundian Circle for a possible son or daughter born to Mary Tudor had been planned, the will determined that Charles should inherit everything. This move by Philip II may be interpreted as taking up a position, opposed to separating the Circle from the Spanish crown, which anticipated the retention of that territorial bloc until the end of the reign, but also as a necessary response to an undeniably awkward circumstance at the time the will was made: Philip had no children with Mary, was involved in a new war with France and had to

68 'Habiéndose tratado el matrimonio entre los serenísimos Príncipe [Philip] y Reina de Inglaterra y héchose los tratados y capitulaciones [matrimoniales] ha placido a Nuestro Señor que sea concluido por palabras de presente en virtud del poder que el dicho serenísimo Príncipe envió, que ha sido de gran calidad e importancia y muy útil y conveniente no sólo para el bien universal de la Cristiandad, pero para nuestros señoríos y estados y conservación dellos y especialmente para esos reinos [of Spain] así por apartarle y quitarle de la obligación que tienen al sostenimiento continuo destos estados de Flandes, que es tan costoso, dificultoso y trabajoso, como el trato y comercio que tendrán nuestros súbditos y vasallos [of the Netherlands] libremente en el dicho reino de Inglaterra, de que se les podría seguir mucho beneficio por la vecindad que tienen' ('The marriage between the Most Serene Prince [Philip] and the Queen of England having been treated and the treaties and [marriage] contracts made, it has pleased Our Lord that it be concluded by expressing present [and mutual] consent by virtue of the proxy that the said Most Serene Prince sent, which has been of great quality and importance and very useful and advantageous not only for the universal good of Christendom, but for our seigniories and states and preservation of them and especially for those kingdoms [of Spain] and remove from him and relieve him of the obligation of the continuous support that those states of Flanders have, which is so costly, troublesome and arduous, as the dealings and trade that our subjects and vassals [of the Netherlands] will have freely in the said kingdom of England from which they would be able to derive a good deal of benefit because of their proximity to each other'): AGS, PTR, leg. 26, doc. 129; Fernández Álvarez, *Corpus documental de Carlos V*, vol. 4, 33–7.

69 AGS, PTR, leg. 29, doc. 33.

make a will to organize his succession. Nevertheless, the death of the queen in November 1558, and Philip II's third marriage to Elisabeth of Valois, which took place to seal the Peace of Cateau-Cambrésis of April 1559, opened up a completely new succession scenario. This marriage produced the Infantas Isabella Clara Eugenia (1566) and Catherine Michelle (1567), two Spanish princesses who provided the monarch with the possibility of implementing the project of the separate succession of the Burgundian Circle devised by Charles V with the aim of benefiting the Netherlands at the same time as the Spanish crown.

4 Implementing the Separation Project at the End of Philip II's Reign

Since the separation of the Burgundian Circle from the Spanish crown's hereditary possessions in 1598, in association with a dynastic marriage between the two Habsburg branches (between a Spanish infanta and an archduke of Austria), one might wonder whether Philip II shared the same dynastic strategy as Charles V with regard to his succession, and whether it was this same strategy that led him to separate the Circle from the heritage of his own son Philip (the future Philip III) at the end of his reign. In the light of what we know to date, Philip II resisted ceding the Netherlands until the end of his life. All the indications are that his motive for separating this territory from the Spanish crown was the need to promote peace (with France, England, and the Republic of United Provinces) rather than from personal conviction; in other words, he did not entirely share his father's views on a separate succession for the Netherlands.

Recent studies show that dynastic attitudes towards succession within the Spanish branch of the Habsburgs changed during Philip II's reign. This branch opted for the principle of the indivisibility and inalienability of its territorial possessions, based on the concept that these should be transmitted in their entirety to a single universal heir as the *mayorazgo* (primogeniture) of the crown. In the absence of a general succession law for the Spanish monarchy in its entirety, the wills of the various kings served as such, and from Philip II's will onwards, all royal wills (from Philip III to Charles II) placed increasing emphasis on the indivisibility of hereditary possessions, urging their heirs not to cede any part of these and forbidding them to do so.[70] The separate succession of the Netherlands, concluded during the lifetime of Philip II, does not contradict

70 Liesbeth Geevers, 'The miracles of Spain: dynastic attitudes to the Habsburg succession and the Spanish Succession Crisis (1580–1700)', *The Sixteenth Century Journal*, 46 (2015) 99–119.

this assessment. The provision contained in clause 29 of his last will, dated in Madrid on 7 March 1594 declared Prince Philip the 'universal heir' to all crown territories, including the Netherlands and the Franche-Comté.[71] Clause 31 forbade him to relinquish any of the territories, but did contemplate one exception: he could cede the Netherlands 'en dote y casamiento a la infanta doña Isabel mi hija, que sola esta desunión reservo y permito, para si yo la dexare hecha en mi vida, o al dicho príncipe mi hijo pareciere después della hazerla a favor de la dicha infanta doña Isabel, su hermana' ('as marriage portion to the Infanta Doña Isabella my daughter, for this separation alone I reserve and permit, were I to leave it done in my lifetime, or it should seem to my son, the said prince, after it [my lifetime] to make it [the separation] in favour of his sister, the said Infanta Doña Isabella'); all other territories should 'permanecer perpetuamente impartibles e inalienables en la Corona' ('remain perpetually indivisible and inalienable in the crown') and Prince Philip was obliged to instruct his heirs to do the same.[72] The dynastic strategy reflected here respected the legal framework that governed the succession in force at the time, in two ways: it did not contradict the Pragmatic Sanction (1549) – which did not give precedence to the order of primogeniture or to males over females – and it proved that Philip II was finally resolved to consummate Charles V's project of separating the Netherlands from the Spanish crown's possessions.

Philip II separated the Netherlands from the Spanish crown's possessions before his death, as stipulated in clause 2 of the codicil added to his last will on 7 August 1597.[73] This clause indicated the identity of Isabella's future husband (Archduke Albert) together with the three legal formulas or figures to be used for separating the territory (enfeoffment or infeudation in perpetuity received from the holder of the Crown of Castile by Isabella on the occasion of her future marriage, donation by marriage-contract, and dowry) and alluded to the conditions under which this would take place[74] (subsequently included in both the public or principal and the private or secret Acts of Cession of 6 May 1598).[75] All the conditions were in conformity with the feudal law

71 *Testamento de Felipe II*, with an introduction by Manuel Fernández Álvarez (Madrid, 1982), 33–9, 33.

72 *Testamento de Felipe II*, 41.

73 *Testamento de Felipe II*, 73–6.

74 These conditions are recapitulated in a paper that was attached to the codicil: 'Las condiciones con que Su Majestad es servido de disponer de lo de Flandes en favor de la señora Infanta y del archiduque Alberto, con quien se ha de casar', *Testamento de Felipe II*, 99–103.

75 Victor Brants (ed.), *Recueil des ordonnances des Pays-Bas. Deuxième Série* (*1506–1700*). *Règne d'Albert et Isabelle* (*1598–1621*), 2 vols (Brussels, 1909), vol. 1, 7–11, 12–3.

that regulated the acts of enfeoffment and with the civil (or private) law that regulated the acts of transmission of patrimony between private individuals. Clause 2 also commanded Prince Philip to comply with his father's last will 'tanto en el matrimonio como en la entrega real de los estados baxos por vía de dote y feudo con las dichas condiciones' ('both with regard to the marriage and to the actual transfer of the Netherlands by dowry and fiefdom with the said conditions'), if death prevented the ageing monarch from carrying it out in his lifetime.

With respect to the legal formula of the king of Castile's enfeoffment, several aspects should be borne in mind. This defined Isabella and Albert as vassals or feudatories subject to Philip II and his heir and also defined the Netherlands, enfeoffed in perpetuity to the archdukes, as perpetually or indefinitely linked to the Crown of Castile, although not as a constituent or constitutional part of the Spanish Monarchy. In fact, it placed both the Archdukes and Philip II and his heir in a situation within the Spanish monarchy that was not so novel if one considers that, in 1557, Philip II had sub-enfeoffed in perpetuity the territories of the former Republic of Sienna (the city and its state) to the dukes of Florence (grand dukes of Tuscany since 1569), thereby making them perpetual vassals of his and of his successors.[76] In both cases, in 1557 and 1598, the cession of the territory was subject to particular conditions, adapted to each context and circumstance. Through this measure (and in accordance with the medieval notion of ownership divided into the *dominium directum* and *dominium utile*), only the use and possession (*dominium utile*) were transferred to the grantee (feudatory) by the grantor (landowner or superior feudal lord), being the one who retained the *dominium directum* or ultimate ownership, all according to the terms of the grant negotiated and agreed by both parties (one might think

76 'Stipulatione dell' Investitura di Siena del Rè Filippo al duce Cosimo di Medici', Dat. 3 die Julii, anno 1557, in Jean Du Mont, *Corps universel diplomatique du droit des gens contenant un recueil des traitez d'alliance, de paix, de trève, de neutralité, de commerce* […] *faits en Europe* […], 8 tomes in 12 vols (Amsterdam/The Hague, 1726–1731), t. 5, part 1, 10–3; the Latin original of 'La capitulación del Estado de Siena que Su Majestad [Philip II] dio al duque de Florencia [Cosimo I de' Medici]', 3 July 1557: AGS, PTR, leg. 46, 38; 'Cédula del duque de Florencia en que promete que no se contentando S.M. que el nono capítulo de la escritura de lo de Siena quede como se ha puesto, se enmiende conforme a la orden que tuvo de S.M. don Juan de Figueroa', Florence, 4 July 1557: AGS, PTR, 46, 40; 'Cédula del duque de Florencia [Cosimo I di Medici] en que promete de casar sus hijos a satisfacción de Su Majestad [Philip II]': AGS, PTR, leg. 46, doc. 39. A commentary on some of the conditions stipulated in the deed of cession of 3 July 1557 in Giovanni Antonio Pecci, *Memorie storico-critiche della città di Siena*, 4 vols (Siena, 1755–1760), vol. 4, 305–8.

that such terms were defined by one party and that they were accepted by the other, but ultimately they were agreed by both).

The relationship established between the grantor and the feudatory was one of reciprocal obligation; while the feudatory had to carry out or refrain from carrying out specific actions insisted upon by the grantor for his own benefit, the latter became implicitly responsible for the fate and well-being of the feudatory as far as the use and possession of the transferred territory was concerned, which was a responsibility to safeguard, operative in political and military terms. Since the transfer of the *dominium utile* was indefinite[77] and the feudatory had no right of free disposition over the territory, many of those actions affected the transfer of the *dominium* in question to his heirs,[78] while others reflected the grantor's own interests, adapted to the specific purposes for which the cession was implemented. In the case of the cession of the Netherlands in 1598, for example, the archdukes and their successors had to refrain from 'sailing towards' and 'trading with' the East and West Indies; to observe, practise and promote the Roman Catholic confession; to pledge on oath to stop the expansion of heresy and actively persecute it; and, in consequence, refrain from keeping in their service servants or other persons suspected of heresy.[79]

As far as the use and possession of the *dominium utile* was concerned, which was the real objective of the transfer (usufruct, according to the concept of ownership in Roman law, although usufruct without any time limit and, therefore, automatically transmissible through inheritance in the line of succession of the feudatory), the grantor could make the cession a complete one (absolute) or a limited one (restricted), excluding parts or powers whose enjoyment he reserved or retained for himself.

77 Because its effect did not expire after a certain period of time had passed.

78 This is how the grantor established the rules of succession, at the same time as he assumed control of the feudatory's matrimonial policy, deciding the dynastic marriages of their successors and descendants; he stipulated that the cession would revert to the grantor or his successors either because the feudatory had no issue or because of the extinction of the male line; he established the inalienability of the *dominium* that was the object of the cession, prohibiting the feudatory and his successors from alienating it (sub-enfeoffing it) and dividing it; and he stipulated that it was obligatory for the feudatory's successors to obey and fulfil these same actions. In the case of the archdukes, see clauses 2, 3, 4, 5, 6, 7 and 11 of the public deed of cession of 6 May 1598, see Brants, *Recueil des ordonnances des Pays-Bas*, vol. 1, 8. It should be noted that clause 2 established new rules of succession for the Netherlands: order of birth (adoption of primogeniture) and precedence of males over females, contrary to the Pragmatic Sanction of 1549.

79 Clauses 8 and 10 of the public deed of cession and the unnumbered clauses (but 2nd and 3rd) of the private or secret deed of the same date, see Brants, *Recueil des ordonnances des Pays-Bas*, vol. 1, 8–9, 13.

So, what did Philip II grant the archdukes in the Netherlands and what did he reserve for himself and his successor? The restrictions on use and possession established by Philip II were minimal, not to say non-existent, as we shall see. There were in fact no restrictions in matters of supreme power of jurisdiction, because the monarch did not retain for himself (or for his line of succession) any type of jurisdictional superiority over the couple, who enjoyed the domestic government of their new territorial principality in absolute terms. As Philip II transferred to the archdukes all the 'domestic powers' expected of a ruler, without limiting their right to exercise political power over those who lived there (their *potestas gubernandi*), the couple's acts of government were not subject to the legal control of any other superior authority.[80] As the couple 'did not depend on' or were not 'subordinate to' a superior temporal power in order to govern their recently acquired territorial patrimony, it can be stated that the archdukes possessed their principality with 'perfecto dominio de jurisdicción y potestad política' ('perfect dominion of jurisdiction and political power') over their subjects.[81] Their political principality was as perfect as Philip II's had been, in accordance with the notion of Francisco Suárez already commented on: the archdukes were fully sovereign princes in jurisdictional terms as they were neither subject to nor consented to being subjected to any external jurisdictional interference in the sphere of domestic affairs or domestic action.[82] This argument is strengthened by the affirmation made by some contemporary theorists, such as Leonardo Lessius, that the *dominium* could be divided into *dominium iurisdictione* and *dominium propietatis*, in other words, it could be understood as jurisdiction (the right to exercise political power over the subjects) and as property (the right to decide on matters of property or *ius disponendi*).[83] In accordance with this division, in 1598 jurisdiction (civil power) was ceded entirely and ownership was retained, without the free exercise of the former by the archdukes being affected.

It is a fact that Philip II retained for himself and his heir certain strongholds in the Netherlands, although the nature of that retention must be made clear

80 This was confirmed by clauses 12 and 13 of the public deed, see Brants, *Recueil des ordonnances des Pays-Bas*, vol. 1, 9–10.

81 Francisco Suárez, *Defensio fidei III. Principatus politicus o la soberanía popular* (eds. Eleuterio Elorduy and Luciano Pereña; Madrid, 1965), clxv.

82 This idea is stressed, although using a different argument, by Georges Martyn, 'How "sovereign" were the Southern Netherlands under the archdukes?', in Randall Lesaffer (ed.), *The Twelve Years Truce (1609): Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century* (Leiden/Boston, 2014), 203–4.

83 Maiolo, *Medieval Sovereignty*, 160.

and should be done by means of a comparison, because Philip II also retained several strongholds for himself when he granted Siena to Cosimo I de' Medici for his annexation to the Medicean duchy of Florence as a sub-enfeoffed Spanish domain in 1557. The ports of Talamone and Ansedonia, together with those of Orbetello, Porto Ercole, Santo Stefano and all of the Monte Argentario, were excluded from the cession and formed the so-called 'Nuovo Stato dei Presidi di Toscana' as a constituent part of the Spanish monarchy. In the case of the Netherlands, Philip II retained 'los castillos de Amberes y de Gante y Cambrai, y otras dos o tres plazas de las que se conquistaren o redujeren a los rebeldes, las que mejor pareciere' ('the castles of Antwerp, Ghent and Cambrai and another two or three strongholds that may be conquered or taken from the rebels, those which seem the best'), but without excluding them from the territorial cession. The monarch only retained the following powers: paying for the garrisoning of these forts with his own funds; deciding the provenance of the soldiers who would guard them (Spanish or foreign troops); and designating the military commanders who would govern them, directly subordinate to him, but also subordinate to Isabella, as the feudatory, and to Albert, as the consort of the feudatory and captain general of the Army of Flanders, the expeditionary force that Philip II maintained (and which his successor would continue to maintain) in the Netherlands until their pacification was secured, largely funded with money sent by the monarch from outside the country.[84] This subordination of the retained strongholds to the archdukes – and effective in political, military and financial terms, since the power to distribute the funds in question was delegated to the captain general of the army by the king – eased the constraints, as the strongholds mentioned were only 'financed and held' in the name of the monarch, and with a twofold purpose that was expressed in the 1597 codicil:[85]

84 Brants, *Recueil des ordonnances des Pays-Bas*, vol. 1, 13; and *Testamento de Felipe II*, 101.

85 This was how Albert himself understood the situation after learning the terms under which the cession was implemented, as a letter that he addressed to Philip II, and dated in Brussels on 30 May 1598, proves: 'En lo de las plazas que se han de entretener y guardar en nombre de Vuestra Majestad, se despacharán los recaudos necesarios a su tiempo en [la] conformidad que V.M. más fuere servido, en cuyo cumplimiento no habrá falta por mi parte, sino toda puntualidad, como en lo demás que V.M. me mandare de su gusto y servicio, como es razón' ('As far as the strongholds that are to be financed and guarded in the name of Your Majesty are concerned, the necessary orders will be dispatched at the proper time in accordance with whatever most pleases Your Majesty, in the compliance of which there will be no fault on my part, but complete conscientiousness, as in everything else Your Majesty may command me at his pleasure and service, as is right'): AGS, E., leg. 615, 126.

> Que lo que en esto se pretende es que, debajo de color de quedar a Su Majestad esta mano como rehenes de la guarda de las condiciones, quede a Sus Altezas este golpe de gente vieja y confidente y estas plazas y puestos seguros por lo que toca al país, para cualquiera alteración que pudiese dar cuidado, sin que los naturales puedan formar queja de sus dueños [the archdukes] ni atribuírselo a desconfianza.[86]

In general terms, the contribution of the obedient provinces of the Netherlands to the war chest was used to finance the garrison (to pay for the new and the old 'ordinary garrisons',[87] assigned to the different provincial Estates), whereas the mobile shock troops, artillery and supply trains, and a certain number of garrisons considered 'extraordinary' were funded with the king's money transferred to Antwerp by means of bills of exchange that were handled through the offices of the army's military treasury.[88] Hence Philip II's concern for ensuring that certain garrisons were always 'pagadas con dinero de España' ('paid for with money from Spain'),[89] even if the contribution by the provinces to the war chest were to increase later on or, in the future, the provincial Estates were to take on the payment of a greater number of garrisons; it was planned to negotiate this with the Estates General once they were convened in Brussels after Isabella's arrival.[90] In the monarch's opinion, the retained garrisons could act as guarantors of the agreed conditions under which the enfeoffment-donation of the territory was implemented; they could, however, also serve to safeguard the rights of the feudatories in the use and possession of the territory against

86 'For what is intended with this is that under the pretext of leaving this power in the hands of His Majesty like hostages to ensure that the conditions are met, this garrison of experienced, loyal people [i.e. Spanish soldiers] and these strongholds and safe havens are left to Their Highnesses for what might arise in the country, for whatever upheaval that may cause concern, without the native inhabitants being able to complain about their masters [the archdukes] or harbour any mistrust towards them'. Excerpt from 'Las condiciones con que Su Majestad es servido de disponer de lo de Flandes […]', in *Testamento de Felipe II*, 101, 103.

87 Louis Prosper Gachard (ed.), *Actes des États Généraux de 1600* (Brussels, 1849), ci-cii, 474, 487-2.

88 See, for example, Alicia Esteban Estríngana, 'Paréntesis bélico y reformación militar en el período de los Archiduques. Fundamentos de la acometida reformista de 1609', in Bernardo J. García García, Manuel Herrero Sánchez and Alain Hugon (eds.), *El Arte de la Prudencia. La Tregua de los Doce Años en la Europa de los Pacificadores* (Madrid, 2012), 425–85.

89 *Testamento de Felipe II*, 101.

90 For the negotiations between the archdukes and the Estates General in 1600, see Alicia Esteban Estríngana, *Madrid y Bruselas. Relaciones de gobierno en la etapa postarchiducal, 1621–1634* (Leuven, 2005), 81–7.

third parties, in actual fact, against the Netherlands's own inhabitants if, for any reason or circumstance, they decided to question the feudatories's rights and proposed to infringe them by mutinying or revolting. Indeed, the garrisons would be able to fulfil that safeguarding function without spoiling the relations established between the archdukes and their new subjects in the Netherlands, because the existence of those fortified citadels would surely be interpreted by everyone as an imposition by the grantor and not as the fruit of the interested decision of the feudatory.[91] This logic fits in with Philip II's initial intention of implementing the enfeoffment-donation of the Netherlands by means of a single public deed that should contain all the conditions to be published, that is, known by all the interested parties (including the people of the Netherlands), without concealing any of them from public knowledge through being included in a private deed.[92]

Among the powers retained by the grantor, there were two others that did not affect the use and possession of the territory. One of them was specified in the 1597 codicil, even though it was not expressed in either of the two deeds of enfeoffment-donation of 1598, perhaps because it was not necessary to do so. This power was all of a piece with the relationship of reciprocal obligation to which vassals and feudal lords were committed and, as a result, it was implicitly understood:

> Que entre estos reinos [of the Crown of Castile and, by extension, the Spanish monarchy] y aquellos estados [the Netherlands and the Franche-Comté] haya liga y confederación perpetua y sean amigos de amigos, y enemigos de enemigos, y que en cualquier otra liga, o confederación que se haga por cada una de las partes con otros príncipes o potentados, vaya siempre salvada esta liga como la principal y inviolable.[93]

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91 For the significance and implications of fortifications and citadels in political relations between princes and subjects, see Antonio Álvarez-Ossorio Alvariño, 'Nido de tiranos o emblema de la soberanía: las ciudadelas en el gobierno de la Monarquía', in Carlos J. Hernando Sánchez (ed.), *Las fortificaciones de Carlos V* (Madrid, 2000), 117–54.

92 It was Albert who requested the monarch to do just the opposite, that is, not to make any of the conditions public and to put them all in a private or secret deed, in a letter from Albert to Philip II, Brussels, 6 January 1598: AGS, E., leg. 615, 53. The explanation of the reason for his request is in Alicia Esteban Estríngana, 'Los estados de Flandes. Reversión territorial de las provincias leales (1598–1621)', in José Martínez Millán and Maria Antonietta Visceglia (eds.), *La Monarquía de Felipe III*, 4 vols (Madrid, 2008), vol. 4, 626–8; and in Id., 'Haciendo rostro a la fortuna. Guerra, paz y soberanía en los Países Bajos (1590–1621)', in *Tiempo de paces. La Pax Hispanica y la Tregua de los Doce Años, 1609–2009* (Madrid, 2009), 85–6.

93 'That there should be between these kingdoms [of the Crown of Castile and, by extension, the Spanish Monarchy] and those states [the Netherlands and the Franche-Comté]

It was the archdukes's duty as feudatories to maintain a perpetually good relationship with the holder of the Crown of Castile and the whole of the Spanish monarchy. This circumstance limited their capacity for forming a confederation with other European princes without the prior advice and consent of Philip II and his successors. Nonetheless, according to the codicil, this limitation of the power to define an independent foreign policy, and therefore the subordination of the archdukes to the Spanish monarch when it came to declaring war or concluding peace, stemmed from the alleged existence of a prior *confoederatio*, based on a pact or alliance agreed by them on terms of inequality not of parity: a kind of *foedus iniquum* or unequal bilateral treaty of Roman tradition, which entailed recognizing the precedence or superiority of the monarch in this area of activity.[94]

Even so, the superior feudal lord's responsibility for safeguarding the interests of his feudatories – arising from the act of enfeoffment-donation itself, rather than the subordination of the archdukes's interests to the monarch's in the field of foreign policy – involved the confluence or coincidence of their mutual interests, since the monarch could not jeopardize the archdukes either when deciding upon his alliances and implementing his own policy of war and peace, particularly because, if the monarch broke with any European prince, it caused an immediate break in relations between that prince and the archdukes, which could compromise the viability of the archducal regime itself.[95] In any case, such a limitation – the monarch's interference in the

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a league and perpetual confederation and they should be friends of friends and enemies of enemies, and that in any other league, or confederation that is made by each one of the parties with other princes or potentates, this league should always be saved as the principal inviolable one'. *Testamento de Felipe II*, 101.

94 Karl-Heinz Ziegler, 'Aequitas in Roman international law', in Alfredo Mordechai Rabello (ed.), *Aequitas and Equity: Equity in Civil Law and Mixed Jurisdictions* (Jerusalem, 1997), 48–63, also included in the latest Karl-Heinz Ziegler, *Fata Iuris. Gentium kleine Schriften zur Geschichte der europäischen Völkerrechts* (Baden-Baden, 2009), 167–76; Carole Plancherel-Bongard, 'Les rapports de subordination entre Rome et les confédérations latine et italique', *Revue d'Histoire du Droit/Tijdschrift voor Rechtsgeschiedenis*, 66.3 (1998) 279–87. See also Maria Floriana Cursi, 'International relationships in the Ancient World', *Fundamina* (*Pretoria*), 20.1 (Jan. 2014) *On-line version.* According to the latter author, the category of *foedus iniquum* did not originate in Roman experience but is based on the contribution of Hugo Grotius who reconsidered the Roman sources on unequal treaties, introducing the notion of *foedus inaequale,* semantically similar to *foedus iniquum* and contrasted with situations where *summum imperium* (*foedus aequum*) was fully preserved; see Maria Floriana Cursi, 'Il carattere paradigmatico della classificazione dei foedera dalla partizione di Livio alla sistematica di Grozio', in Luigi Labruna (ed.), *Tradizione romanistica e Costituzione* (Naples, 2006), 1561–85, 1574 ff.

95 Esteban Estríngana, 'Haciendo rostro a la fortuna', 101.

sphere of external activity – was not included in either of the two deeds of enfeoffment-donation of 1598 and the archdukes could send ambassadors to other European princes and enjoy one of the ceremonial elements of 'external sovereignty': the exchange of ambassadors. Moreover it should be noted that the restriction on independently declaring or ending a war was understood to be implicit, not only because such a restriction figured in Philip II's codicil (observance of which was as obligatory for Philip III as it was for Isabella and Albert), but also because in financial and military terms, the archdukes were totally dependent on the Spanish monarch, one of whose armies was fighting in the Netherlands financed by funds remitted by him from abroad. As captain general of this army, Albert exercised a royal office: he was the highest military authority with special jurisdiction over the king's soldiers and freedom to dispose of the financial resources provided by the king as he saw fit. In fact, the 'Spanish military presence' and the presence of this royal commanding officer in certain territories were the most visible signs of the tie binding them to the 'imperial system' of the Spanish monarchy.[96]

The other power retained by the grantor that did not affect the use and possession of the territory ceded to the archdukes was 'la qualité de chief et souverain' of the order of the Golden Fleece, attached to the title of the duke of Burgundy. Nevertheless, it was a title that the monarch expressly authorized Isabella and her consort to use, together with the individual titles specific to the various provinces of the Netherlands and the Franche-Comté.[97] This particular feature shows that retaining the ducal dignity of Burgundy in his direct line of succession was not a priority for the Spanish monarch, only the position of grand master and sovereignty of the order. The decision to retain it was justified because the knightly brethren who formed part of the confraternity in 1598 came not only from the territories ceded to the archdukes, but also from many other European territories situated both inside and outside the Spanish monarchy.

The honour of the collar of the order of the Golden Fleece had been used by the monarch to secure the high-titled nobility's political commitment of some of their patrimonial territories, as well as other great Catholic lords and princes who were not his subjects, under the oath of allegiance that preceded admission to the order. Renouncing an instrument that enabled him to consolidate foreign alliances and strengthen bonds of fealty with the members of the

96 Juan F. Pardo Molero, '*Oficio de calidad y de confianza*. La condición de la capitanía general en la Monarquía Hispánica', *Estudis. Revista de Historia Moderna*, 37 (2011) 361–75.

97 As specified in clause 13 of the public deed of cession-enfeoffment of 1598, see Brants, *Recueil des ordonnances des Pays-Bas*, vol. 1, 10.

most preeminent and well-known noble houses of his own monarchy was not justified. This was especially the case bearing in mind that, as far as the high nobility from the Netherlands and the Franche-Comté were concerned, the bonds of fealty created with the monarchy by means of the collar before 1598 would not only be preserved, but, looking ahead, could be renewed periodically, with the consequent safeguard of personal ties that it entailed for Philip II's successors.[98] Hence Archduke Albert had to resign himself to forming part of the order of the Golden Fleece without being its grand master, unlike his great-great-grandfather Maximilian of Habsburg, who was also duke consort of Burgundy but sovereign of the order between 1478 and 1494.

Nevertheless, it was not Philip II's intention to deprive Albert of the administration of the award of the collar of the Golden Fleece as his own patronage resource. At the end of 1599, Philip III granted him the vicariate of the order in perpetuity within the Netherlands and the Franche-Comté and even certified in writing that no Fleming or Burgundian could be admitted to it without Albert's intercession, making it inevitable that any native of those territories who aspired to enter the confraternity had to be approved by the archduke.[99] The collar, in fact, was not the only patronage resource that the Spanish monarch placed at the archdukes's disposal during the years 1598–1621. The *vinculum iuris* that bound both parties enabled Philip III to distribute several more honours among the natives of the Netherlands during his reign, but always at the express request of the archdukes, who backed the aspirations of Flemings and Burgundians with letters of introduction, intercession and recommendation addressed to the king.[100] In practice, this mediation by the archdukes enabled a status quo to be created that benefited the three actors involved: the

98 For the apparent incompatibility that the maintenance of a dual link of fealty to the archdukes and Philip III represented for the Flemish and Burgundian nobility, and for the hierarchy assigned to both fealties by the monarch himself, who declared the one that bound this nobility to the archdukes was paramount while the other tying this nobility to the sovereign of the Golden Fleece was subsidiary, see Alicia Esteban Estríngana, 'El collar del Toisón y la Grandeza de España. Su gestión en Flandes durante el gobierno de los Archiduques (1599–1621)', in Krista De Jonge, Bernardo J. García García and Alicia Esteban Estríngana (eds.), *El legado de Borgoña. Fiesta y ceremonia cortesana en la Europa de los Austrias, 1454–1648* (Madrid, 2010), 507–61, 504–12.

99 *Ibidem*, 512–8, 514.

100 See Alicia Esteban Estríngana, 'Agregación de territorios e integración de sus élites. Flandes y la Monarquía de Felipe III (1598–1621)', *Studia Historia. Historia Moderna*, 32 (2010) 261–304; and Id., 'Flemish elites under Philip III's patronage (1598–1621): household, court and territory in the Spanish Habsburg monarchy', in René Vermeir, Dries Raeyemaekers and José E. Hortal Muñoz (eds.), *A Constellation of Courts: The Courts and Households of Habsburg Europe, 1555–1665* (Leuven, 2014), 123–66.

archdukes, who were able to employ the resources of someone else's patronage to reward or satisfy their subjects and so strengthen their position as territorial princes; the Flemish-Burgundian elites, who had access to Philip III's resources with the blessing of their sovereign princes, the archdukes; and the monarch, who, in this way, preserved personal ties with the elites in question, presenting them as subsidiaries of the fundamental bonds of fealty and jurisdiction that they established with the archdukes in the context of 1598.

With respect to the legal formula of the donation by marriage-contract, it should be considered that the transfer of *dominium utile* was carried out within a specific legal framework forming a documentary corpus that consisted of five notarial deeds issued in Madrid between 4 and 8 May 1598: by Philip II (the two deeds of enfeoffment-donation by reason of marriage, i.e. the public and private Acts of Cession that served as deeds for the constitution of Isabella's dowry); by Isabella (the deed of acceptance of the donation made in her favour); by Prince Philip, the future Philip III (the deed that is explained below); and the marriage contract or marriage articles agreed jointly by Albert's mother, the Dowager Empress Mary, on behalf of her son, and Philip II, Prince Philip and Isabella.[101] I should like to draw attention to the deed issued by Prince Philip, the future Philip III (which was backdated to 4 May 1598, two days before the public and private Acts of Cession), because it was this that ensured the legal validity of the transfer.[102]

Legally, Philip II could not cede territories without the acceptance, consent and authorization of his universal heir, the prince – declared as such in the elderly monarch's last will of 1594 – and who by that time had reached his majority (he was twenty years old) and enjoyed full legal capacity. In this deed, the prince renounced or resigned (on his own and his heirs's behalf) the right of *restitutione in integrum* which was not subject to prescription and allowed him to restore the former legal status of the hereditary territory ceded to Isabella on the basis of the damage that his father's cession inflicted on his inheritance rights; this damage allowed him to legally challenge the cession and claim its invalidity at any time. The resignation deed indicates that the Spanish Habsburgs provided the contract of donation by reason of marriage with the necessary requisites of validity in order to avoid any assumption both of its

101 A political and legal analysis of this documentary corpus in Esteban Estríngana, 'Los estados de Flandes', 619–31; 'Haciendo rostro a la fortuna', 83–9; and in Id., 'Preparing the ground: the cession of the Netherlands' sovereignty in 1598 and the failure of its peacemaking objective, 1607–1609', in Lesaffer, *The Twelve Years Truce* (*1609*), 20–7.

102 'Lettres patentes du prince royal d'Espagne approuvant la cession des Pays-Bas à sa sœur', Madrid, 4-5-1598, see Brants, *Recueil des ordonnances des Pays-Bas*, vol. 1, 11–2.

nullity and subsequent voidability. Therefore, once the marriage of Albert and Isabella had taken place, the legal effectiveness of the contract had to be maintained as long as none of the situations foreseen in the public and private Acts of Cession leading to its extinction arose. These situations were specified in a set of resolutory conditions or clauses detailed in both deeds and it was the occurrence of one of them – the dissolution of the archducal marriage without issue as a result of the death of one of the spouses, one of the situations contemplated in 1598 that rendered the contract ineffective – which deprived the contract of its juridical effects and brought about the reincorporation of the Netherlands and the Franche-Comté into Philip III's heritage in July 1621.

5 The Separate Succession of the Netherlands: a Dynastic Experiment?

Given that the plan of a separate succession of the Netherlands was defined and redefined on the basis of the benefit that the separation of the Spanish and Burgundian inheritances could bring to the territories of which they were comprised, the question arises as to whether the step taken in 1598 by the Habsburgs in Madrid was an attempt to test the real advantages and disadvantages of this separation of patrimonies empirically.

Nothing is known about the specific conditions under which Charles V had put into effect his plan of a separate succession, either in its versions prior to 1548–1549 or in its later versions; in other words, not even when it was proposed to separate the Netherlands from the heritage of his successor, or from the heritage of Philip II's successor. In 1598, however, the Habsburgs in Madrid were concerned to make quite sure of their ability to recover the patrimony that they were separating from Philip III's inheritance, as the legal figures employed to do so demonstrate; the figure of the dowry, for example, strengthened the ability to recover the territory if the marriage was dissolved without issue.

In the context of 1598, the reciprocal benefit that separation could bring was summed up by Philip II in two documents. The first, his codicil dated the end of August 1597 (clause 2): the 'alivio destos reinos [the Crowns of Castile and Aragon] y mejor gobernación dellos y de los mismos Estados Baxos' ('the relief of these kingdoms [the Crowns of Castile and Aragon] and the better governance of them and of the Netherlands themselves');[103] the second, a letter addressed to Archduke Albert on the 10 September 1597: 'le repos et tranquilité'

103 *Testamento de Felipe II*, 73.

of the Netherlands and 'voir si, par telle voye, on sçauroit reduire les provinces rebelles desvoyées et distraictes de mon obéisance, par quelque raisonnable traicté et appoinctement, à rejoindre les dictes provinces toutes en bonne paix, union et accord'.[104]

It was, then, a matter of releasing the Spanish kingdoms from the burden that financing the costly conflict in the Netherlands represented for them, and it was also a matter of pacifying and restoring the Netherlands by creating a new political scenario that favoured the reconciliation of the provinces opposing the king with new particular princes of the House of Habsburg (that is, princes exclusively their own) who were established there. However, the balance of the war with the Republic of United Provinces in the years 1600–1605 brought about no benefit whatsoever for any of the parties; nor did the balance of the negotiation process (1607–1609) that led to the signing of the Treaty of the Twelve Years Truce with the Estates General of the Republic in 1609 end up satisfying the political and financial expectations raised by it.[105] A truce instead of peace meant the war could be resumed after a certain time had passed as could the persistence of the burdensome fiscal overload that the Spanish kingdoms of Philip III suffered, not to mention the survival of the political and religious disunity of the Seventeen Provinces of the Netherlands. It can be assumed, then, that the Habsburgs in Madrid were very soon able to confirm that the dynastic logic that had inspired the separation of this patrimony from the rest of the Spanish monarchy did not provide explicit advantages for either the Spanish or the Burgundian inheritance. Perhaps it did not provide them simply because the separate succession of those two inheritances had been delayed too long. Although it is not possible to assess here the reasons the led Philip II to defer the separation until the end of his life, it is possible to assess Philip III's feelings about the possibility of separating both patrimonies again in the future, by ceding the Netherlands and the Franche-Comté himself to one of his children, or his successor and universal heir, Prince Philip (the future Philip IV) ceding them to one of his.

Philip III's will, of 30 March 1621, was written during the spring and summer of 1619. By then, the recovery of the inheritance from the archdukes and reuniting it with Philip III's inheritance was already decided. The monarch had

104 Brants, *Recueil des ordonnances des Pays-Bas*, vol. 1, 1: '[…] pour le bien et repos de nosdicts pays d'embas, et que s'est le vray chemin pour parvenir à une bonne et solide paix, et se délivrer d'une si ennuyeuse guerre, de laquelle ils ont esté travaillez par si longue espace d'années' is repeated in the public Act of Cession of 6 May 1598, *Ibidem*, 7.

105 *Tiempo de paces. La Pax Hispanica y la Tregua de los Doce Años, 1609–2009* (Madrid, 2009); García García, *El Arte de la Prudencia*; and Lesaffer, *The Twelve Years Truce*.

himself been sworn in by the Estates Provincial of the Netherlands as the future successor to the archdukes in 1616. The wording of the clause in the will that ought to have made mention of that recovery, as well as the capacity and willingness of the king to have this patrimony at his disposal once it was recovered raised some doubts; in particular, whether it was advisable to declare Prince Philip to be his father's successor to the Burgundian inheritance or whether it was preferable not to do so, leaving the door open for Philip III to be able to cede it in his lifetime to one of his second sons (the Infantes Charles and Ferdinand) or to his daughter (the Infanta Maria Anna, the future empress). Since the monarch might die before either of the archdukes, the most logical thing to do was to designate the prince as successor to that inheritance as well, although the clause could leave the door open so as to cede it himself in his lifetime, if he considered it opportune, to one of his siblings or to one of his future children. This alternative was put to the king by those who took part in writing his will in the following terms:

> Bien podría parar la mención que Su Majestad hiciere de los Estados Bajos en la devolución y retención dellos en su persona real cuando se disuelva el matrimonio del archiduque Alberto y la señora Infanta, aun sin hacer memoria del Príncipe, nuestro señor, su hijo, y desta manera venía a quedar Su Magestad dueño de poder disponer de los estados en adelante en cualquier de sus hijos o hijas, según fuese su voluntad, y el estado de las cosas lo pidiese. Podrá ver Su Magestad cuál le agradará más, o declarando luego a su hijo [...] o parar por ahora en sí mismo, como lo apunta esta advertencia por quedarse con libertad de poder hacer adelante lo que quisiere, aunque lo liso y llano parece es lo del Príncipe, nuestro señor [...]. También es de considerar cuál será más acertado para los tiempos venideros, si dejar omitido algo, con que quedará mano a alguno de los dueños futuros para poder apartar otra vez los dichos Estados [Bajos] si quisiere, o si convendrá más cerrar esta puerta del todo, para que siempre hayan de ser los dichos Estados indivisibles e inalienables de las personas y dueños que efectivamente fueren Reyes de España.[106]

106 'The mention that His Majesty makes of the Netherlands could well end with the return and retention of them to and by his royal person when the marriage of the Archduke Albert and the Lady Infanta is dissolved, without mentioning the prince, our lord, his son, and in this way His Majesty would be free to dispose of the states later to any one of his sons or daughters, depending on what his will would be, and what the state of affairs requires. His Majesty will be able to see which wording pleases him most, either declaring already in favour of his son [...] or mentioning for now only himself, as this notice points out, in order to remain free to do what he wishes in the future, although the simplest and

The final wording of the clause in Philip III's will that made reference to the Burgundian inheritance (clause 34) confirms that, depending on the king's choice, no succession to the Netherlands and the Franche-Comté separated from the Spanish inheritance was going to take place in the future; he himself ruled out doing so in his lifetime and prohibited Philip IV and his descendants from separating them from the Spanish crown.[107] The experience of his reign had shown him that ceding and separating that patrimony did not bring advantages with it, hence his personal option: an integral, indivisible inheritance for his successor, based on empirical proof. Probably for that reason – empirical proof and not a simple acceptance of his predecessor's testamentary dispositions – no other separate succession of that same patrimony ever happened again during the course of the seventeenth century, in spite of the fact that the possibility of ceding it and even exchanging it was considered in

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most straightforward is for the prince, our lord, to succeed […]. What would be the best for future times should also be considered, whether to leave something out, in which case one of the future lords will be free to be able to separate the said Netherlands if he wished, or whether it would be more advisable to shut that door completely, so that the said states would always be indivisible and inalienable from the people and lords that are indeed the kings of Spain'. 'Apuntamiento de algunas consideraciones para quitar o añadir del papel que trata de los Estados Vaxos', undated [1619]: Private collection, box XXIII, folder 2.

107 'Declaro y mando que, si viviendo yo, o después de muerto reinando el Príncipe mi hijo, o por su muerte […] otro cualquiera de mis hijos o sucesores, se disolviere el dicho matrimonio por muerte de qualquiera de los dichos señores, mi hermana o tío, que desde ahora para entonces, declaro y quiero, se tenga entendido que los dichos Estados [Bajos] han de pertenecerme a mí y me han pertenecido por derecho propio y mayorazgo antiguo y por el mismo han de ser y pertenecer al Príncipe, mi hijo, y a los sucesores que por tiempo fueren en estos reinos, sin que se puedan dividir ni apartar dellos, antes les encargo y mando que […] asistan y defiendan y conserven los dichos Estados […], pues tanto importa para la exaltação y conservação de la Religión Católica y conservação de los demás reynos y estados de Italia, Indias Occidentales y Orientales y conservação de la Cassa de Austria' ('I declare and command that, if I am still living, or after my death the prince my son is reigning, or because of his death […] [during the reign of] any other of my children or successors, the said marriage should be dissolved by the death of either of the said spouses, my sister or uncle, who from now and henceforth, I declare and wish, it be understood that the said Netherlands are to belong to me and have belonged to me as of right and ancient *mayorazgo* and for the same reason are to belong to the prince, my son, and his successors who for whatever time are in these kingdoms, without the possibility of their being divided or separated from them; rather I enjoin and command that […] they assist and defend and preserve the said states […] since they are so important for the exaltation and preservation of the Catholic religion and the preservation of the rest of the kingdoms and states of Italy, the West and East Indies and the preservation of the House of Austria'): *Testamento de Felipe III* (introduction by C. Seco Serrano and palaeographic transcription by J.L. de la Peña; Madrid, 1982), 44–5.

a good number of cases, contexts and circumstances throughout the century.[108] Such a possibility was often inspired by the territorial ambitions of other European dynasties, for example the Bourbons and even the Austrian branch of the Habsburgs themselves. However, it was also caused by the diplomatic manoeuvres of the Habsburgs in Madrid, who on more than one occasion threatened to give up their rights over the Netherlands in order to force every possible ally – starting with the United Provinces themselves, after the fruitful Hispano-Dutch rapprochement following the Treaty of Munster in 1648 – into committing themselves to the military defence of the zone; a zone upon which the general stability of early modern Europe largely depended.[109]

Bibliography

Álvarez-Ossorio Alvariño, Antonio. 'Nido de tiranos o emblema de la soberanía: las ciudadelas en el gobierno de la Monarquía'. In Carlos J. Hernando Sánchez (ed.), *Las fortificaciones de Carlos V*, Madrid, 2000, 117–54.

Álvarez-Ossorio Alvariño, Antonio. *Milán y el legado de Felipe II. Gobernadores y corte provincial en la Lombardía de los Austrias*. Madrid, 2001.

Brandi, Karl. 'Die Testamente und politischen Instruktionen Karls v. insbesondere diejenigen der Jahre 1543/44'. *Berichte und Studien zur Geschichte Karls V, XII, Nachrichten von der Gesellschaft der Wissenschaften zu Göttingen: Philologisch-historische Klasse* (*Nachrichten aus der Mittleren und Neueren Geschichte*). 1 (1934–1936) 31–107.

Brants, Victor (ed.). *Recueil des ordonnances des Pays-Bas. Deuxième Série* (*1506–1700*). *Règne d'Albert et Isabelle* (*1598–1621*). 2 vols. Brussels, 1909.

Burton Adams, George, and Henry Morse Stephens (eds.). *Select Documents of English Constitutional History*. New York/London, 1901.

Chabod, Federico. '¿Milán o los Países Bajos? Las discusiones en España sobre la "alternativa" de 1544'. In *Carlos V. Homenaje de la Universidad de Granada*, Granada, 1958, 333–72.

De Borchgrave, Émile. *Histoire des rapports de droit public qui existèrent entre les Provinces Belges et l'Empire d'Allemagne depuis le démembrement de la monarchie carolingienne jusqu'à l'incorporation de la Belgique à la République Française*. Brussels, 1871.

108 Rafael Valladares, '*Decid adiós a Flandes*. La Monarquía Hispánica y el problema de los Países Bajos', in Werner Thomas and Luc Duerloo (eds.), *Albert & Isabella. Essays* (Turnhout, 1998), 47–54; and Luis Ribot, '¡Tan lejos! ¡Tan cerca! La difícil permanencia de Flandes en la Monarquía de España' in *La senda española de los artistas flamencos* (Madrid, 2009), 21–43.

109 In this regard, see the thoughts of Manuel Herrero Sánchez, *El acercamiento hispano-neerlandés* (*1648–1678*) (Madrid, 2000), 172–6.

Douais, Célestain. *Dépêches de Monsieur de Fourquevaux, ambassadeur du Roi Charles IX en Espagne, 1565–1575*. 3 vols. Paris, 1896–1904.

Doyle, John P. *Collected Studies on Francisco Suárez, S.J.* (*1548–1617*). Leuven, 2010.

Edelmayer, Friedrich. 'Los hermanos, las alianzas dinásticas y la sucesión imperial'. In Alfredo Álvar and Friedrich Edelmayer (eds.), *Socialización, vida privada y actividad pública de un emperador del Renacimiento. Fernando I* (*1503–1564*), Madrid, 2004, 167–82.

Esteban Estríngana, Alicia. *Madrid y Bruselas. Relaciones de gobierno en la etapa postarchiducal, 1621–1634*. Leuven, 2005.

Esteban Estríngana, Alicia. 'Los estados de Flandes. Reversión territorial de las provincias leales (1598–1621)'. In José Martínez Millán and Maria Antonietta Visceglia (eds.), *La Monarquía de Felipe III*, 4 vols, Madrid, 2008, vol. 4, 593–639.

Esteban Estríngana, Alicia. 'Haciendo rostro a la fortuna. Guerra, paz y soberanía en los Países Bajos (1590–1621)'. In Bernardo José García García (ed.), *Tiempo de paces. La Pax Hispanica y la Tregua de los Doce Años, 1609–2009*, Madrid, 2009, 85–91.

Esteban Estríngana, Alicia. 'El collar del Toisón y la Grandeza de España. Su gestión en Flandes durante el gobierno de los Archiduques (1599–1621)'. In Krista De Jonge, Bernardo J. García García, and Alicia Esteban Estríngana (eds.), *El legado de Borgoña. Fiesta y ceremonia cortesana en la Europa de los Austrias, 1454–1648*, Madrid, 2010, 507–61.

Esteban Estríngana, Alicia. 'Agregación de territorios e integración de sus élites. Flandes y la Monarquía de Felipe iii (1598–1621)'. *Studia Historia. Historia Moderna*. 32 (2010) 261–304.

Esteban Estríngana, Alicia. 'Paréntesis bélico y reformación militar en el período de los Archiduques. Fundamentos de la acometida reformista de 1609'. In Bernardo J. García García, Manuel Herrero Sánchez, and Alain Hugon (eds.), *El Arte de la Prudencia. La Tregua de los Doce Años en la Europa de los Pacificadores* (Madrid, 2012), 425–85.

Esteban Estríngana, Alicia. 'Flemish elites under Philip iii's patronage (1598–1621): household, court and territory in the Spanish Habsburg monarchy'. In René Vermeir, Dries Raeymaekers, and José E. Hortal Muñoz (eds.), *A Constellation of Courts: The Courts and Households of Habsburg Europe, 1555–1665*, Leuven, 2014, 123–166.

Esteban Estríngana, Alicia. 'Preparing the ground: the cession of the Netherlands' sovereignty in 1598 and the failure of its peace-making objective, 1607–1609'. In Randall Lesaffer (ed.), *The Twelve Years Truce* (*1609*)*: Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century*, Leiden/Boston, 2014, 15–47.

Feenstra, Robert. 'A quelle époque les Provinces-Unies sont-elles devenues indépendantes en droit à l'égard du Saint-Empire?'. *Revue d'Histoire du Droit/Tijdschrift voor Rechtsgeschiedenis*. 20.1 (1939) 30–63 and 182–218.

Fernández Álvarez, Manuel (ed.). *Corpus documental de Carlos V*. 5 vols. Salamanca, 1973–1981.

Floriana Cursi, Maria. 'Il carattere paradigmatico della classificazione dei foedera dalla partizione di Livio alla sistematica di Grozio'. In Luigi Labruna (ed.), *Tradizione romanistica e Costituzione*, Naples, 2006, 1561–85.

Floriana Cursi, Maria. 'International relationships in the Ancient World'. *Fundamina* (*Pretoria*). 20.1 (Jan. 2014) On-line version.

Fühner, Jochen A. *Die Kirchen- und die Antireformatorische Religionspolitik Kaiser Karls V. in den Siebzehn Provinzen der Niederlande, 1515–1551*. Leiden/Boston, 2004.

Gachard, Louis Prosper (ed.). *Actes des États Généraux de 1600*. Brussels, 1849.

García García, Bernardo José (ed.). *Tiempo de paces. La Pax Hispanica y la Tregua de los Doce Años, 1609–2009*. Madrid, 2009.

Geevers, Liesbeth. 'The miracles of Spain: dynastic attitudes to the Habsburg succession and the Spanish Succession Crisis (1580–1700)'. *The Sixteenth Century Journal*. 46 (2015) 99–119.

Gil Pujol, Xavier. 'Las fuerzas del Rey. La generación que leyó a Botero'. In Mario Rizzo, José J. Ruiz Ibáñez, and Gaetano Sabatini (eds.), *Le forze del principe. Recursos, instrumentos y límites en la práctica del poder soberano en los territorios de la Monarquía Hispánica*, 2 vols, Murcia, 2004, vol. 2, 969–1022.

Herrero Sánchez, Manuel. *El acercamiento hispano-neerlandés* (*1648–1678*). Madrid, 2000.

Lesaffer, Randall (ed.). *The Twelve Years Truce* (*1609*)*: Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century*. Leiden/Boston, 2014.

Maiolo, Francesco. *Medieval Sovereignty: Marsilus of Padua and Bartolus of Saxoferrato*. Delft, 2007.

Manzano Baena, Laura. 'Negotiating sovereignty: the Peace Treaty of Münster, 1648'. *History of Political Thought*. 28.4 (2007) 617–41.

Manzano Baena, Laura. *Conflicting Words: The Peace Treaty of Münster* (*1648*) *and the Political Culture of the Dutch Republic and the Spanish Monarchy*. Leuven, 2011.

Martínez Millán, José (ed.). *La Corte de Carlos V. Corte y Gobierno*. 5 vols. Madrid, 2000.

Martyn, Georges. 'How "sovereign" were the Southern Netherlands under the archdukes?'. In Randall Lesaffer (ed.), *The Twelve Years Truce* (*1609*)*: Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century*, Leiden/Boston, 2014, 196–209.

Mout, Nicolette. 'Core and periphery: the Netherlands and the Empire from the late fifteenth to the early seventeenth century'. In Robert J.W. Evans and Peter H. Wilson (eds.), *The Holy Roman Empire, 1495–1806: A European Perspective*, Leiden/Boston, 2012, 203–15.

Munns, Jessica, Penny Richards, and Jonathan Spangler (eds.). *Aspiration, Representation and Memory: The Guise in Europe, 1506–1688*. Farnham/Burlington, 2015.

Pardo Molero, Juan F. *'Oficio de calidad y de confianza*. La condición de la capitanía general en la Monarquía Hispánica'. *Estudis. Revista de Historia Moderna*. 37 (2011) 361–75.

Plancherel-Bongard, Carole. 'Les rapports de subordination entre Rome et les confédérations latine et italique'. *Revue d'Histoire du Droit/Tijdschrift voor Rechtsgeschiedenis*. 66.3 (1998) 279–87.

Ribot, Luis. '¡Tan lejos! ¡Tan cerca! La difícil permanencia de Flandes en la Monarquía de España'. In *La senda española de los artistas flamencos*, Madrid, 2009, 21–43.

Sánchez Agesta, Luis. 'El concepto de soberanía en Suárez'. *Archivo de Derecho Público*. 1 (1948) 51–71.

Spangler, Jonathan. *The Society of Princes: The Lorraine-Guise and the Conservation of Power and Wealth in Seventeenth-Century France*. Farnham/Burlington, 2009.

Suárez, Francisco. *Defensio fidei iii. Principatus politicus o la soberanía popular*. Eds. Eleuterio Elorduy and Luciano Pereña. Madrid, 1965.

Testamento de Felipe iii. Introduction by C. Seco Serrano and palaeographic transcription by J.L. de la Peña. Madrid, 1982.

Usunáriz, Jesus M. *España y sus tratados internacionales*. Pamplona, 2006.

Valladares, Rafael. '*Decid adiós a Flandes*. La Monarquía Hispánica y el problema de los Países Bajos'. In Werner Thomas and Luc Duerloo (eds.), *Albert & Isabella. Essays*, Turnhout, 1998, 47–54.

Weiss, Charles (ed.). *Papiers d'Etat du cardinal de Granvelle d'après les manuscrits de la Bibliothèque de Besançon*. 9 vols. Paris, 1841–1882.

Ziegler, Karl-Heinz. 'Aequitas in Roman international law'. In Alfredo Mordechai Rabello (ed.), *Aequitas and Equity: Equity in Civil Law and Mixed Jurisdictions*, Jerusalem, 1997, 48– 63 = Karl-Heinz Zigler, *Fata Iuris. Gentium kleine Schriften zur Geschichte der europäischen Völkerrechts*, Baden-Baden, 2009, 167–76.

PART 3

Sovereigns and Sovereignty in Practice

CHAPTER 7

'The King is the Real Sovereign of this Countries'

Politics of Justice and Order from the Duke of Alba in the Netherlands, 1567–1571

Gustaaf Janssens

1 Introduction

When Fernando Álvarez de Toledo (1507–1582), the third duke of Alba and a renowned Castilian military commander under Emperor Charles V, arrived in the Netherlands in the summer of 1567, he had already gained considerable political experience by serving as a member of the Council of State in Madrid (1543–1560), as governor of Milan (1555–1556), and as viceroy of Naples (1556–1558). As a result of the great political and religious confusion in the Netherlands following the violent summer of 1566, there was a widely shared desire for King Philip II to restore calm by establishing his presence within this provinces. The king promised to come, but wished the duke of Alba to clear the way for his arrival and punish the culprits responsible for the so-called 'troubles' of 1566.

This chapter is not an exhaustive study of the duke of Alba's actions as governor of the Netherlands (1567–1573). It instead focuses on the years 1567–1571 and examines how the duke, as the king's representative, worked to restore royal authority and sovereignty over the Netherlands.After the opposition threatened the king's sovereignty through both a series of contentious demands and escalating violence, Alba would restore peace, security, justice, and the rule of law throughout the Low Countries.[1]

The duke of Alba was convinced that his assignment in the Netherlands would be a short one. He took the view that the rebels, while hiding behind

1 An overview of the historiography on the third duke of Alba can be found in Gustaaf Janssens, 'The duke of Alba: governor of the Netherlands in times of war', in Maurits Ebben et al. (ed.), *Alba: General and Servant to the Crown* (Protagonists of History in International Perspective, 3; Rotterdam, 2013), 91. The best biography is still William S. Maltby, *Alba: A Biography of Fernando Alvarez de Toledo, Third Duke of Alba. 1507–1582* (Berkely/London, 1983). For a Spanish translation, with an introduction by Jacobo Siruela, see Id., *El Gran Duque de Alba. Un siglo de España y de Europa. 1507–1582* (Colección Casa de Alba Atlanta, 18; Girona, 2007).

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frequent political demands, actually desired to establish religious freedom. He believed that 'precisely because they were blinded by heresy, they could no longer see what their duties were to God and to the ruler'.[2] This attitude was consistent with the view that the king was God's representative (*vicarius Dei*) on earth – an ideology that originated in the political philosophy of St Augustine and that came to be more explicitly articulated at a meeting of the *Cortes* of Valladolid in 1440.[3]

In the sixteenth century, Antonio de Guevara and a host of other authors officially propounded this political Augustinianism. They saw the prince as the quintessential righteous peacemaker (*vir iustus et pacificus*) and, as a ruler of a modern state, that his reliance on the concept of justice served as the primary hallmark of his royal authority. Moreover, all citizens had a right to just treatment before both the legal courts and the government, regardless of rank or position.[4] The Spanish humanist Fadrique Furió Ceriol, the Frisian jurist Joachim Hopperus, who had been Keeper of the Seals and adviser on Dutch affairs to the king in Madrid since late 1566, and Lorenzo de Villavicencio, a Spanish Augustinian who lived in the Netherlands from 1551 to 1558 and 1560 to 1566, also elaborated on the role of the king as the 'good shepherd' in their formal writings, many of which they sent to Philip II, who, indeed, read them.[5]

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2 Quoted by Janssens, 'The duke of Alba', 99.

3 José Antonio Maravall, *Estado moderno y mentalidad social* (*Siglos XV a XVII*), 2 vols (Madrid, 1972), vol. 1, 260. For background on the political philosophy of St Augustine, see Segundo Folgado Flórez, 'El Estado y el principio de la justicia. Una aproximación a la teoría de las limitaciones del poder político, según San Agustín', *Anuario Jurídico Escurialense*, 19–20 (1987–1988) 75–115.

4 Maravall, *Estado moderno*, vol. 2, 230–3.

5 Gustaaf Janssens, *'Brabant in het Verweer'. Loyale oppositie tegen Spanje's bewind in de Nederlanden van Alva tot Farnese, 1567–1578* (Anciens Pays et Assemblées d'États – Standen en Landen, 89; Kortrijk/Heule, 1989), 387–8. About Fadrique Furió Ceriol (1527–1592) and the Dutch Revolt: Lisa Kattenberg, 'Het goede dieet voor de Nederlanden. Fadrique Furió Ceriol en het Spaanse denken over de Nederlandse Opstand 1566–1573', *Skript. Historisch Tijdschrift*, 31 (2014) 206–19. See also Janssens, *'Brabant in het Verweer'*, 121–2. About Lorenzo de Villavicencio (ca. 1518–1583) and Joachim Hopperus (1523–1576), see Gustaaf Janssens',"Barmhartig en rechtvaardig". Visies van L. de Villavicencio en J. Hopperus op de taak van de koning', in Wim P. Blockmans and Herman Van Nuffel (eds.), *État et religion aux XVe et XVIe siècles. Actes du colloque à Bruxelles du 9 au 12 octobre 1984 – Staat en religie in de 15e en 16e eeuw. Handelingen van het colloquium te Brussel van 9 tot 12 oktober 1984* (Brussels, 1986), 25–42. About Hopperus, see also Gustaaf Janssens, 'Joachim Hopperus en Willem van Oranje, 1566–1576', in Dries Vanysacker et al. (eds.) *The Quintessence of Lives. Intellectual Biographies in the Low Countries presented to Jan Roegiers* (Bibliothèque de la Revue d'Histoire ecclésiastique, 91; Louvain-la-Neuve/Leuven, 2010), 29–42, and 'Copia del parecer de Hopperus çerca del estado y remedio de las cosas de los Payses Baxos. Traduzido de Francés': Archivo General de Simancas, Secretaría de Estado [henceforth AGS, E.], leg. 2842 (s.d.).

2 Alba in the Netherlands

The Iconoclastic Fury in the summer of 1566 had left a trail of destruction that had started in southern Flanders before quickly spreading across large parts of Brabant and the northern and eastern parts of the Low Countries. The general reaction to this eruption of violence was one of astonishment, and the danger of a crisis of authority loomed throughout the Netherlands. After the troubles, governess Margaret of Parma began organising investigations into what had happened during the 'wondrous summer' of 1566, but was unable to formulate a clear policy. Contact with the king was difficult, and she faced opposition from both civic leaders and members of the nobility. Margaret responded hesitantly to this resistance and her actions were not always straightforward. According to a number of observers, she lacked the necessary energy and authority.[6]

Political leaders in both Brussels and Madrid agreed that the situation in the Netherlands had become serious. They believed that a series of general measures, backed up by a strong and reliable army, needed to be implemented immediately and that, above all, the king's presence was urgently required.[7] Philip II, however, decided that he should first send a military officer with a strong army to prepare the country for his arrival. The duke of Alba did not initially believe he was cut out for the task. The king, however, ultimately chose him after both Ottavio Farnese and Emmanuel-Philibert of Savoy refused. Alba, aware of the benefits that the Netherlands brought to the Spanish crown, understood the challenges that he faced in re-establishing Spanish sovereignty, especially since these countries were difficult to control in the absence of the king. In 1563, for example, he had been outraged at the opposition of Orange, Egmont and Horn to Cardinal Granvelle. Moreover, he had also been present at the secret meeting in which Philip II, under pressure, formally conceded to the Dutch opposition party and revoked the concessions he promised in 1566. Thus, in 1567, at the head of around 10,000 soldiers, the duke of Alba made his way to the Netherlands by the 'Spanish Road', travelling via northern Italy, Switzerland, Franche-Comté, and Lorraine. Although his commission of 1 December 1566 indicated that his army would not enter the territory of the

6 Lorenzo de Villavicencio to Philip II, 28-7-1566 (AGS, E., leg. 531, fol. 77) and Thomas de Armenteros to Antonio Pérez, 16-10-1566 (AGS, E., leg. 531, fols. 30–2); Charlie R. Steen, *Margaret of Parma: A Life* (Studies in Medieval and Reformation Traditions, 174; Leiden/Boston, 2013), 200–29.

7 Thomas de Armenteros to Philip II, 28-9-1566: AGS, E., leg. 531, fol. 29.

Low Countries, by 1 January 1567, the duke had been appointed commander-in-chief of the army in the Netherlands and, in addition, was granted the authority to punish rebels and those he deemed responsible for the troubles.[8]

These actions by the Spanish crown in early 1567 put Margaret of Parma into a difficult position and led to an embarrassing incident that resulted in her disgrace. On 27 April, she had signed an ordinance to curb heresy in Antwerp, which the king promptly branded ill-judged and dangerous. The text had caused him, in his own words, 'much pain and anxiety'.[9] Seeing the proposed repressive measures as insufficiently tough, Philip II overruled his half-sister and had the ordinance revoked, much to Margaret's dismay. When she subsequently learned of the far-reaching powers granted to the duke of Alba in the Netherlands, she felt completely rejected and impotent.[10]

By the time the duke of Alba reached the Netherlands in the summer of 1567, calm had apparently been restored; some observers even believed that peace and security were now possible. The duke of Alba's task was therefore to pacify the Low Countries so that the king could safely come. This assignment reflected the notion that the ruler, and therefore his deputy, had a duty to preserve his subjects's safety through a combination of the rule of law and military force. By doing this, as Charles V had once lectured a young Philip in 1548, a just king could ensure security, peace, and good governance throughout his kingdom.[11]

Upon reaching the Netherlands, and still a few days before his arrival in Brussels (22 August), Alba received a top secret letter from the king dated 7 August 1567. In it, Philip II indicated that he might not be able to come to the Netherlands until the spring of 1568. The king further ordered Alba to immediately start to punish those responsible for the troubles. Philip also referred to the need to raise enough money in the Netherlands to ensure that they no longer had to be exclusively funded by money from Spain. The duke also knew

8 Violet Soen, *Vredehandel.Adellijke en Habsburgse verzoeningspogingen tijdens de Nederlandse Opstand (1564–1581)* (Amsterdam, 2012), 66; Janssens, 'The duke of Alba', 93.

9 'Un edicto muy malo y pernicioso [...] que a mi me ha dado gran pena y cuidado': Philip II to Cardinal Granvelle, 12 july 1567 (*Colección de documentos inéditos para la historia de España* [henceforth CODOIN], 112 vols (Madrid, 1842–1895), vol. 4 (Martín Fernández Navarete et al. eds.; Madrid, 1844), 374.

10 Gustaaf Janssens, 'De ordonnantie betreffende de pacificatie van de beroerten te Antwerpen (24 mei 1567): breekpunt voor de politiek van Filips II ten overstaan van de Nederlanden', *Handelingen* [*van de*] *Koninklijke Commissie voor de uitgave der Oude Wetten en Verordeningen van België – Bulletin* [*de la*] *Commission royale pour la publication des Anciennes Lois et Ordonnances de Belgique*, 50 (2009) 105–32.

11 Maravall, *Estado moderno*, vol. 2, 223, 232–3.

by this time that Margaret of Parma was unhappy with his presence and that she was intending to leave the country in October.[12]

Following Margaret's departure, Philip II appointed the duke of Alba as governor. In this role, Alba was to act first and foremost as a soldier who was carrying out his duties as deputy to the king and who issued orders on his behalf. It was expected that these commands were to be unconditionally obeyed, as they carried royal authority, which the king's subjects had to heed at all times.[13] Thus, forming an agreement or arrangement with local rebels or heretics was unthinkable to Alba, as it would have meant an end to the notion of total obedience to the king and would have likely resulted in further unrest and rebellion.[14]

In early October of 1567, Alba wrote that calm had again returned to the Netherlands.[15] This represented an important claim, but was it true? There were no open protests, but Lorenzo de Villavicencio warned against taking too tough a line, as Alba's arrival and the king's continued absence sowed discontent among the population. Villavicencio was of the opinion that military action was only necessary to prepare for the arrival of the king, and not as a means of restoring law, justice, or religion to the Netherlands. In his advice – which was intended for Philip II, but was sent as well to the duke of Alba – Villavicencio repeatedly stressed that the king's presence in the Netherlands was necessary so that he could listen to their grievances and, through this simple action, retain the love of the people. Furthermore, he also pointed out that those vassals who had remained loyal must be rewarded. Yet, he warned that this love could quickly turn to hatred if he stationed troops throughout local cities and that the Catholics and heretics might join together in a common cause if they felt like they had to defend their liberties. Moreover, he feared that loyal nobles might also join the rebels to avoid being governed by the Spaniards. Villavicencio further noted that there was great disappointment in the Netherlands that the king had remained in Spain and that he had instead sent an army to punish and subdue the people, something he felt ran counter to

12 Geoffrey Parker, '1567: The end of the Dutch Revolt?', in Ana Crespo Solana and Manuel Herrero Sánchez (eds.), *España y las 17 provincias de los Países Bajos. Una revisión historiográfica (XVI-XVIII)*, 2 vols (Estudios de Historia Moderna. Colección 'Maior', 22; Cordoba, 2002), vol. 1, 57.

13 The duke of Alba to Francisco de Eraso, 2-11-1553: Duque de Alba (ed.), *Epistolario del III duque de Alba don Fernando Alvarez de Toledo* [henceforth *Epistolario*], 3 vols (Madrid, 1952), vol. 1, 57.

14 The duke of Alba to Catherine de Medici, 10-12-1567: *Epistolario*, vol. 1, 711.

15 The duke of Alba to Francisco de Álava and to Diego de Espinosa, 4-10-1567: *Epistolario*, vol. 1, 685.

royal clemency and justice. Villavicencio therefore argued that Philip II must do what was necessary to ensure that he maintained the love and respect of his Dutch servants. If this could be done, the king would then be 'lord of these provinces', with subjects who would willingly give their lives for him and who would allow him to freely punish the rebels. In other words, Philip II would have reestablished himself as sovereign of the Low Countries. If the king was no longer able to come to the Netherlands this year (meaning 1567), according to Villavicencio, he should closely monitor the duke of Alba's actions, as this would determine whether or not he would be able to retain either the devotion and love of his Dutch subjects or control over the Netherlands.[16]

3 Punishing the Culprits

To punish the ringleaders of the troubles of 1566, the duke of Alba set up a special tribunal, the so called Council of Troubles, shortly after his arrival in the Netherlands. To ensure that all members of this council were aware of the events that had occurred between 1559 and 1566, he had Joachim Hopperus's *Recueil et mémorial des troubles des Pays Bas du Roy* read out to the newly appointed members on 22 September 1567.[17] This account, drawn up by Hopperus earlier that year, took a strong line against the senior nobility and, by a series of examples, made it clear that 'a good vassal should not think that he has more wisdom than his lord', and also that 'the government and general administration are only exercised by the ruler, not by individual vassals'. The *Receuil* dispassionately described how, after the departure of Philip II from the Netherlands, a league had been formed against Cardinal Granvelle, how figures such as the prince of Orange and counts of Egmont and Horn had played an important role in its creation, and how Margaret of Parma was put under pressure by the opposition. Moreover, it also related how the demand for a mitigation of the edicts against heretics, the rejection of an inquisition on the Spanish model, and the desire to convene the Estates General had gone hand-in-hand with the call for the king's presence. This situation had run completely out of control during the violent iconoclasm of 1566. The *Recueil* stated that the Catholic religion and the king's authority in the Netherlands were under

16 'Recuerdo del padre fray Lorenzo de Villavicencio sobre la consideración que se debe tener de lo que ha de hacer el duque en su entrada en Flandes' [1567], joint to a letter of Lorenzo de Villavicencio to Gabriel de Zayas, 16-10-1567: CODOIN, vol. 37 (eds. Marqués de Pidal et al.; Madrid, 1860), 42–57.

17 AGS, Secretarías Provinciales, Libro 1413, fols. 8r-18r (with a summary of the *Recueil*).

severe threat, and that the Dutch senior nobility was largely at fault for the resulting rebellions. By presenting Hopperus's version as an official report on the previous few years to the members of the Council, Alba indicated how he (and therefore the king) interpreted recent events. The senior nobility of the Low Countries had played a significant role in the troubles, and the king viewed its leaders as an important and established political force with clear views.[18] In Madrid, the Council of State was therefore very suspicious of Orange, Egmont and Horn, as its members accused the prince and the two counts of being ambitious and seeking to usurp royal authority in an effort to gain religious freedom.[19]

Given Alba's use of the *Receuil* during the first session of the Council of Troubles to outline the historical context behind the tribunal's creation, it is interesting to examine the view taken by Joachim Hopperus in two memoranda from 1567, both of which concern the possibility of restoring law and order to the Netherlands. Hopperus wrote the texts shortly after Alba's arrival, and they were intended for his use.[20] According to the author, the ultimate goal of repairing the situation in the Netherlands was to ensure 'the preservation of the Catholic faith, and of the country's peace, tranquillity and security, under the authority of and obedience to the king and the courts'. To achieve this, the bad subjects must be eradicated, the good must take their place, and measures must be passed to ensure that the former would not return and that the latter would retain their worthiness. In order to rid themselves of the bad subjects, the court must take proper action and permanently punish the ringleaders, while granting a pardon to anyone prepared to live by the rules of the church and the laws of the monarch. By acting in this manner, the king could display his paternal and regal clemency to the people. In reality, he could not punish everyone involved in the troubles: not only would this depopulate the country and drive away merchants, but many souls would also be lost. Moreover, Hopperus pleaded for a return to the 'old order', for the abolition of 'innovations', and for the restoration of law and justice. These changes would show

18 Janssens, 'The duke of Alba', 97–8. See also Joachim Hopperus, 'Recueil et mémorial des troubles des Pays Bas du Roy', in Alphonse Wauters (ed.), *Mémoires de Viglius et d'Hopperus sur le commencement des troubles des Pays Bas* (Collection de mémoires relatifs à l'histoire de Belgique, 2; Brussels, 1858), 366.

19 Liesbeth Geevers, *Gevallen vazallen. De integratie van Oranje, Egmont en Horn in de Spaans-Habsburgse monarchie (1559–1567)* (Amsterdam, 2008), 114, 151, 174.

20 'Dos memoriales que dio Hopperus a Su Magestad sobre las cosas de los estados de Flandes. Dupplicandose en castellano para embiar al Duque': AGS, E., leg. 531, fols. 55–6 (a summary of the documents in Louis-Prosper Gachard (ed.) *Correspondance de Philippe II sur les affaires des Pays-Bas*, 5 vols (Brussels, 1848–1879), vol. 1, 528–9).

his subjects that the king intended to administer justice without distinction of person. While it is not known when Alba received Hopperus's advice or whether he actually read it, it is clear that the jurist's thinking often paralleled what the duke of Alba had in mind.

The most notorious trials conducted by the Council of Troubles were those of the counts of Egmont and Horn. Both nobles were taken into custody on 9 September 1567 and the report of their arrest, which reached Madrid on 19 September, caused great commotion.[21] The duke of Alba, however, declared that he wished to try Egmont and Horn 'according to justice and reason'.[22] Convinced that his behaviour was consistent with both his duty as a servant of the king and his orders to gain control of the situation, he was confident of his position and was therefore disinclined to give details of the powers on which he based his actions.[23] Shortly before the Council of Troubles began its work, he declared that 'to bring peace to these lands does not mean having to behead people who took action because of the beliefs of others'.[24] In a letter to Luis de Requeséns, Alba expressed his regret that Egmont and Horn had been brought before the Council of Troubles, but argued that it was unavoidable. It was the only way to put their obligation to God and the king back on a normal footing. He also wrote that the king did not plan to shed blood, and that he himself was no advocate of doing so either. Moreover, by the time the king came to the Netherlands, the punishments had to be over. This would allow the king to make his entrance as a 'good, clement and forgiving prince', while also supporting his desire to bestow favours on the deserving and sanctioning a general feeling of goodwill during his visit. If the king was present when the punishments were carried out, however, he would likely be abhorred.[25] In an instruction to François de Halewijn, lord of Zwevegem, whose task it was to inform the duke of Cleves of the arrest of Egmont and Horn, Alba wrote that the king would pursue actions only based on fairness and justice. He would therefore act accordingly in a matter as important as the fate of the two counts.[26]

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21 Gustaaf Janssens, *Les comtes d'Egmont et de Hornes. Victimes de la répression politique aux Pays-Bas espagnols* (Historia Bruxellae, 2; Brussels, 2003). The news of their arrest: AGS, E., leg. 535, fol. 341 ('Nuevos de Flandes', [1567]).

22 The duke of Alba to Thomas Perrenot, 14-9-1567: *Epistolario*, vol. 1, 674–5.

23 The duke of Alba to Philip II, 13-9-1567: *Epistolario*, vol. 1, 670.

24 The duke of Alba to Philip II, 14-9-1567: *Epistolario*, vol. 1, 672–3.

25 The duke of Alba to Luis de Requeséns , 14-9-1567: *Epistolario*, vol. 1, 675–6. See also Peter Arnade, *Beggars,Iconoclasts, and Civic Patriots. The Political Culture of the Dutch Revolt* (Ithaca, 2008), 185.

26 The duke of Alba to François de Halewijn, and to the duke of Cleves (2-10-1567): CODOIN, vol. 37, 29–31.

Further correspondence between the duke of Alba and Philip II shows that the governor always acted in consultation with the king. Thus, Philip II knew that Alba was doing what needed to be done and that they both understood that every action must follow due judicial process.[27]

It was the duke of Alba's intention to harshly deal with the ringleaders (*'los principales'*), while offering those who committed less serious offences a pardon.[28] By early January 1568, however, the duke had still not shown the clemency that he had promised, as he claimed that it was not yet the proper time for such actions. He also remained convinced that a pardon should only be proclaimed in the king's presence, so that the monarch would then be able to gain his subjects' goodwill and love.[29] Gaspar de Roblés, a military officer with a long record of service and a close associate of the duke, shared this view. He hoped that Alba's approach would satisfy the local population and stressed the need for loyal subjects to be treated well.[30]

There was also much debate about whether members of the order of the Golden Fleece had to be judged by their fellow Knights in a special assembly presided over by the king, or if they could be tried by the established tribunal. The duke of Alba, however, had received the necessary authorisation from Philip II to undertake proceedings against Knights of the Fleece even before his arrival in the Netherlands.[31] Nevertheless, he decided to proceed with caution on this legal matter and arranged to check the order's archives in order to search for a historical precedent on which to base his actions. After the duke's discovery of several examples, the tribunal wasted little time in finding the counts of Egmont and Horn guilty of treason. The Council of Troubles sentenced them to death on 4 June 1568, and beheaded them the next day on the Grand'Place in Brussels. The duke of Alba, distraught at the proceedings, regretted that sentence had been passed on the two knights of the Golden Fleece, whom he 'had always esteemed and loved as his own brothers'. Yet, regardless of the duke's

27 Philip II to the duke of Alba, 16-10-1567 and 31-3-1568: CODOIN, vol. 37, 32–5 and *Ibidem*, 198.

28 Violet Soen, *Geen Pardon zonder paus! Studie over de complementariteit van het koninklijk en pauselijk generaal pardon (1570–1574) en over inquisiteur-generaal Michael Baius (1560–1576)* (Verhandelingen van de Koninklijke Vlaamse Academie van België voor Wetenschappen en Kunsten. Nieuwe reeks, 14; Brussels, 2007), 156–7.

29 The duke of Alba to Philip II, 6-1-1568: AGS, E., leg. 539, fol. 8 (not in *Epistolario*). See also CODOIN, vol. 37, 100 (the duke of Alba to Philip II, 6-1-1568).

30 Gaspar de Roblés to Philip II, 6-1-1568: CODOIN, vol. 37, 76.

31 CODOIN, vol. 4, 344-9 (AGS, E., leg. 535, fol. 262-3). This permission was backdated by the King to 15 april: Philip II to the duke of Alba, 20-12-1567 (AGS, E., leg. 537, fol. 26v°).

personal feelings, execution was, according to the contemporary legal system, the inevitable punishment for treason. A further factor that influenced the Council's passing of a guilty verdict was that there appeared to be more than treason at stake, as the pair was also accused of committing 'a great insult to God', and for that, as Maximilien Morillon wrote to Cardinal Granvelle, 'the king could not grant clemency'. Thus, it is untrue to claim that the Spanish had pre-arranged the verdict. On 9 June, the duke of Alba wrote to Philip II that he regretted this outcome, but that justice could not have been attained in any other way. The punishment of Egmont had caused considerable surprise in the Netherlands, but 'the greater the surprise', reckoned Alba, 'the more the example would bear fruit'. The duke's comment at the end of the letter is also important: 'Your Majesty is now the master of these countries'. Alba had thus restored the king's authority and had made an example of strength against the rebellious faction within the Netherlands, which was exactly what he had set out to do. Philip II thanked Alba and expressed his great appreciation for the governor's work.[32]

A prince, however, must be able to count on the loyalty of his vassals. In order to ensure the nobility's future allegiance to the Spanish crown, Alba believed that the sons of rebellious nobles should be brought up in Spain. Egmont's sons were too young and were therefore eventually ruled out. Among those taken to Spain, however, was Philip-William (1554–1618), count of Buren, the eldest son of William of Orange, who in 1568 was a student at the University of Louvain.[33] This 'abduction' of the prince has gone down in the historiography as an example of the duke of Alba's wickedness: an authoritarian soldier who cared nothing for the privileges of the university and who seized and deported a fourteen year old boy.[34] Unsurprisingly, the prince of Orange greatly aggrieved the removal of his son to a foreign country, as he specifically mentions the abduction in his *Apologie* against Philip II (1580).[35] For the duke of Alba, however, the transfer of Philip-William to Spain was an element in ensuring

32 Janssens, 'The duke of Alba', 98.

33 The duke of Alba to Philip II, 19-1-1568: *Epistolario*, vol. 2, 11.

34 A few examples of the old historiography's approach to the 'unwarrantable act' of the 'kidnapping' of the count of Buren, inspired by Cardinal Granvelle, can be found in William H. Prescott, *History of the Reign of Philip the Second, King of Spain*, 2 vols (London, 1855), vol. 2, 183–4; and Théodore Juste, *Le soulèvement des Pays-Bas contre la domination espagnole (1567–1572)* (Brussels, s.d.), 89–92. A short modern biography of Philip-William: Renildis van Ditzhuyzen, *Oranje-Nassau. Het biografisch woordenboek* (The Hague, 2015), 66.

35 Harm Wansink (ed.), *The Apologie of Prince William of Orange Against the Proclamation of the King of Spaine. Edited after the English edition of 1581* (Textus minores in usum academicum sumptibus E.J. Brill editi, 40; Leiden, 1969), 71.

the longer-term security of the royal ties with the House of Orange. This was why the leading rebel's son had to be brought up in a 'better' and, above all, more reliable setting. Royal hostages were not an uncommon piece of the contemporary political and diplomatic power game. Incidentally, it is striking how often Philip II and Alba mention the privileged treatment that the count of Buren received at court within their correspondence.[36]

4 Creating a 'New World'

Peace is often the result of good justice. Bringing this into being is, in the Augustinian tradition, the God-given task of a monarch.[37] Philip II wanted law and justice to be both omnipresent and available to all. The duke of Alba agreed, and supported the king's plan to implement the same legal provisions and rules throughout the Netherlands, although he argued that the law would also have to take the specific nature of the country into account. In this way, a 'New World' would be created. However, the duke was aware that convincing a people that had always acted with extensive freedom to quit relying upon what he called 'obsolete usages' of the law would be a very difficult task. The king agreed and pressed the duke to not proceed too quickly, but to instead make careful preparations and to properly discuss matters with him before implementing them.[38]

Nevertheless, the duke of Alba failed in his initial attempts at executing the planned judicial reforms. In the spring of 1568 he faced an army under the leadership of Louis of Nassau, who invaded Friesland from Germany and gained an initial success at Heiligerlee (23 May 1568). Fortune, however, then swung the other way, with the king's army emerging victorious at Jemmingen (21 July 1568), while further military action by William of Orange in the autumn of 1568 yielded no permanent benefit for the prince. In his *Waerschouwinghe des Princen van Oraengien aen de ingheseten ende ondersaten van den Nederlanden* (*'Warning to the Inhabitants of the Netherlands',* 1 September, 1568), Prince William contended that the king's enemies blinded him and that he, William, sought to have Philip II restore the privileges of the Netherlands.[39] Yet, the

36 The duke of Alba to Philip II, 19-1-1568: CODOIN, vol. 37, 87.

37 FolgadoFlórez, 'El Estado y el principio de la justicia', 84–7, 106, 114–5.

38 The duke of Alba to Philip II, 6-1-1568: CODOIN, vol. 37, 84. See also Philip II to the duke of Alba, 31-3-1568: *Ibidem*, 196.

39 Magdalena Geertruida Schenk and Aart Arnout van Schelven (eds.) *Verantwoordinge, Verklaringhe ende Waerschouwinghe mitsgaders eene Hertgrondighe begheerte des edelen,*

subsequent failure of Orange's invasion instead proved to be a great success for the duke of Alba, who now hoped that peace could finally be realized.[40]

By the end of 1569, Alba was able to begin reforming the legal system in the Netherlands. He gave the Brussels's Council of State, the Privy Council, and the Council of Troubles the responsibilities of preparing the revisions for both criminal law and criminal procedure. His intention was to put an end to judicial abuses and to enact a single criminal law code for all of the provinces of the Netherlands. The ordinances of 1570 elevated Roman law and canon law into legal principle. They applied to everyone and gave defendants better legal protection. By 30 April 1570, Alba was able to report to the king that he had finally completed his greatest task, as his new legislation simplified and improved upon the law, while also introducing a clear system into both criminal law and procedure. The duke of Alba also wanted to tackle civil law, but feared that this project would require another ten to twelve years to complete, as he had discovered that there was no extant written series of ordinances for the Netherlands.[41] He therefore ordered that texts be collected and recorded. In the meantime, he had asked the regional justice councils and local authorities to submit the texts of the *costuymen* (the local common law). This was no easy task, but 'the fortress had been built, and the building only needed to be decorated to look beautiful'. Once completed, the governor could proudly report to the king that all abuses in the administration of criminal justice had been eliminated and all the provinces had received uniform legislation.[42] Philip II's publication of a *Nueva recopilación de las leyes de España* in 1567 also serves as in important factor in this process.[43]

5 Alba, Bringer of Peace to the Netherlands

There can be no doubt that by 1568, after Alba's dual victories over the troops of both Louis of Nassau and William of Orange, the duke considered his mission in the Netherlands as complete. He was therefore keen to return to Spain. A medal by Giuliano Giannini (1568) with the inscription 'RELIGIONEM ET

lancmoedighen ende hooghgeboren Princen van Oraengien (Amsterdam-Sloterdijk, 1933), 125.

40 Janssens, 'The duke of Alba', 110.

41 Janssens, 'The duke of Alba', 108.

42 The duke of Alba to Philip II, 30-4-1570 and 5-5-1570: *Epistolario*, vol. 2, 364, 369.

43 Maravall, *Estado moderno*, vol. 2, 427.

OBEDIENTIAM REDINTEGRAVIT' commemorates his achievements: he had restored religion and obedience (to the king).[44] In 1568 a print (by Hans Liefrinck and Hieronimus Wierix) also appeared in which the likeness of Philip II was shown next to that of Christ, with an inscription below that read 'DEUM TIMETE – REGEM HONORIFICATE' ('Fear God – Honour the King'). Importantly, the cartouche under the two portraits contained, among other things, two verses from the First Letter of Peter: *Subiecti igitur estote omni humanae creaturae propter Deum, sive regi, quasi praecellenti, sive ducibus tanquam ab eo missis ad vindictam malefactorum laudem vero bonorum, quia sic est voluntas Dei* (1 Peter, 2, 13–15).[45] I believe that, given the year in which the print was produced, these verses are a reference to Philip II's policies and the duke of Alba's actions in the Netherlands. The iconography and the inscription on the pedestal of the larger-than-life statue that the duke of Alba commissioned of himself, cast in bronze by Jacques Jonghelinck from captured enemy cannon and set up in the plaza of the Antwerp citadel in 1571, likewise indicate that he was convinced that he had succeeded in ending the revolt, driving out the rebels and bringing peace and justice to the Netherlands ('FERDINANDO ALVAREZ A TOLEDO ALBAE DUC. PHILIPPI II HISP. APUD BELGAS PRAEFEC. QUOD EXTINCT SEDIT. REBELLIB. PULSIS RELIG. PROCUR. IUSTIT. CULTA PROVINC. PACEM FIRMAR. REGIS OPTINI MINISTRO FIDELISS. POSITUM', 'To Fernando Álvarez de Toledo, duke of Alba, Philip II's representative with the Netherlands, for having extinguished sedition, chastised rebellion, restored religion, secured justice, established peace in the provinces; to the king's most

44 Janssens, 'The duke of Alba', 110. Pictures of the medal: Gerard Van Loon, *L'histoire métallique des XVII provinces des Pays-Bas depuis l'abdication de Charles V jusqu'à la Paix de Bade en 1716,* 5 vols (The Hague, 1732–1737), vol. 1, 123 and *Epistolario*, vol. 3, plate XXXI (of the collection of the dukes of Alba: Madrid, Palacio de Liria). This medal is also present in the Coins and Medals Department of the Belgian National Library (Brussels, Koninklijke Bibliotheek Albert I – Bibliothèque royale Albert I): Henri Pauwels, 'Catalogus', in *Het Gulden Vlies. Vijf eeuwen kunst en geschiedenis. Tentoonstelling ingericht door het Ministerie van nationale Opvoeding en Cultuur en de Stad Brugge in het Stedelijk Museum voor Schone Kunsten. Groeningemuseum, Dyver 12. 14 juli – 30 september 1962. Catalogus* (Bruges, 1962), 186 (nr. 132).

45 Translated in the King James Bible as 'Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme, or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well. For so is the will of God', quoted by Sylvène Édouard, *L'empire imaginaire de Philippe II. Pouvoir des images et discours du pouvoir sous les Habsbourg d'Espagne au XVIe siècle* (Bibliothèque d'histoire moderne et contemporaine, 17; Paris, 2005), 177–81 (with a reproduction of the print at page 179).

faithful minister this statue is erected').[46] Finally, the title at the bottom of the print of the statue, made by Philippe Galle, is *Statuam aeneam Albae duci pacificatoris habitu* ('Bronze statue of the duke of Alba, peacemaker').[47] He had brought peace and could therefore go home.[48]

6 Winning over the Hearts of the Subjects

In late 1568 and early 1569, the duke of Alba, as well as a number of political observers, believed it was now necessary to earn the goodwill of the subjects in the Netherlands, especially the leading nobles, officials, and high-ranking soldiers. One method of doing this was through the *voie de douceur*, or the gentle approach. This involved rewarding the nobles who had remained loyal with money, gifts, or other favours (*mercedes*).[49] In a memorandum from 31 January 1569, the duke of Alba unfolded his plan. Within this document, he reviewed all of the key individuals, stated his opinion on each one, suggested how to best redistribute offices, such as the vacant stadtholder positions, and divided up money among various nobles and officials. In his reply to Alba's proposals, the king also suggested the possibility of temporarily granting the lands confiscated from the knights of the Golden Fleece to loyal nobles for the duration of the beneficiary's life, with the expectation that they would afterwards revert back to the crown. The king also wanted nobles who had been newly appointed to the knighthood to be able to obtain confiscated property.[50] Philip II's response was based on a proposal initially suggested by Joachim Hopperus. In Hopperus's opinion, the king could rapidly strengthen his position as sovereign by

46 Janssens, 'The duke of Alba', 110; Judith Pollmann and Monica Stensland, 'Alba's reputation in the early modern Low Countries', in Ebben, *Alba: General and Servant to the Crown*, 315–7 (with a reproduction of the text).

47 A reproduction of the print by Galle can be viewed in Luc Smolderen, *La statue du duc d'Albe à Anvers par Jacques Jonghelinck (1571)* (Académie royale de Belgique. Mémoires de la Classe des beaux-arts. Collection in 8°. 2ième Série, XIV,1; Brussels, 1972), plate II. For more on the reactions against the statue, see *Ibidem*, 41–50, and Arnade, *Beggars*, 191–8, 200–2.

48 Sylvaine Hänsel, 'Alba als Friedensstifter. Ein gescheiterter Versuch politischer Bildargumentation', *Wolfenbüttler Renaissance Mitteilungen*, 19 (1995) 1–14.

49 Soen, *Geen pardon*, 84–5.

50 José Eloy Hortal Muñoz, 'La concesión de mercedes en los Países Bajos durante el gobierno del duque de Alba. La importancia del control del gobierno de las ciudades y de las provincias', in Jesús Bravo Lozano (ed.), *Espacios de poder: Cortes, ciudades y villas*, 2 vols (Madrid, 2002), vol. 1, 189–91.

rewarding some nobles with confiscated estates and others with funds derived from the proceeds of confiscated goods.[51]

Another way to win the hearts of the people was through the proclamation of a general pardon, as many considered this action to be the ultimate expression of the king's sovereignty. Once the troubles were over and those responsible had been punished, a good and gracious monarch would actively seek to bestow forgiveness upon the remaining population and bring about a general reconciliation. As Philip II had delayed his trip to the Netherlands and seemed unlikely to visit the country in the foreseeable future, the king gave the duke of Alba the task of working out the terms of a pardon. While Alba believed that forgiveness could only be granted after punishment, the lack of a royal pardon was beginning to cause considerable discontent and criticism. Eventually, the duke came up with a basic text that started with a description of the events that occurred during the *Wonderjaar* or *annus mirabilis* (1566, the year of the Iconoclasm). In this text, Alba alleged that the culprits had violated the laws of the king and of his father Charles V, a crime that was aggravated still further by conspiracy through the formation of a rival league and, in the case of the iconoclasts, by sacrilege. The duke of Alba received four drafts of a pardon text from Madrid. He eventually opted for the formulation in which the members of the conspiracy, the iconoclasts, and the participants in the military invasion of 1568 were all refused forgiveness. Only those who had committed what the duke considered to be 'minor irregularities' were eligible for a full pardon. Anyone wishing to benefit from a royal pardon had to also show their desire for religious reconciliation through their endorsement of the creed of the Council of Trent.[52]

The General Pardon was proclaimed in Antwerp on 16 July 1570. Much pomp and circumstance accompanied the ceremony in the Grand'Place, which was followed by a homily in the cathedral, where François Richardot, bishop of Arras, proved on biblical grounds that compassion was one of the greatest qualities that a ruler could possess: 'God's compassion will always exceed the rigour of his judgement'. The image of the merciful and compassionate king was central to this homily, and the bishop praised Philip II for having implemented the provisions of the Council of Trent and taken up the struggle with the apostates. As a result of the pardon, concluded Richardot, those who had

51 'Paresçer de Operus sobre la erection de las encomiendas en Flandes (traduzido de francés)': AGS, E., leg. 544, fol. 101.

52 Violet Soen, 'De reconciliatie van "ketters" in de zestiende-eeuwse Nederlanden (1520–1590)', *Trajecta*, 14 (2005) 337–362, 351; and Soen, *Vredehandel,* 89. See also the duke of Alba to Philip II, 15-1-1572 (*Epistolario*, vol. 3, 21).

not been convinced by the tough approach would now be persuaded by the king's grace and compassion to repent.[53]

7 A New, Fair Tax System

Unfortunately, keeping the peace costs money, which Alba did not have. He was therefore forced to find a structural solution to his persistent lack of funding from Spain. This was not a new problem. Both Charles V and Philip II had already attempted to modernize the tax system in the Netherlands, but their respective proposals foundered against the protests emanating from the Estates General (the representatives of the Estates), which clung to the traditional system of *beden* or subsidies.[54] To avoid having to repeatedly request the Estates to raise taxes, the prince (or the governor standing in for him) considered implementing 'permanent general resources'. As a newly appointed governor in the Netherlands, Alba quickly grew irritated at what he called 'the poor governance in the Low Countries'. Moreover, he wrote to the king that the Estates acted as if 'anyone can be messed around; they negotiate like children'.[55] The Estates, Alba claimed, wanted nothing less than 'to lay down the law for the prince', or, in other words, to 'patronize' him.[56]

The endless negotiations with the Estates proved to be a thorn in Alba's flesh, as the general resistance to the permanent taxes proposed in March of 1569 (the Tenth and Twentieth Pennies) originated from within this body. In the end, the new taxes were not collected and were instead replaced with a

53 Gustaaf Janssens, ' "Superexcellat autem misericordia iudicium". The homily of François Richardot in the occasion of the solemn announcement of the General Pardon in the Netherlands (Antwerp, 16 July 1570)', in Judith Pollmann and Andrew Spicer (eds.), *Public Opinion and Changing Identities in the Early Modern Netherlands. Essays in Honour of Alastair Duke* (Studies in Medieval and Reformation Traditions. History, Culture, Religion, Ideas, 121; Leiden/Boston, 2007), 114–7.

54 Janssens, 'The duke of Alba', 104–6, Id., 'De Tiende Penning van Alva: factor van goed bestuur en catalysator van verzet en opstand in de Nederlanden', *Eigen Schoon & De Brabander*, 91 (2008) 17–50; and Id., 'Le duc d'Albe, artisan de la paix et initiateur de la bonne gouvernance aux Pays-Bas?', in Claude de Moreau de Gerbehaye et al. (eds.), *Gouvernance et administration dans les provinces belgiques* (*XVI^e – XVIII^e siècles*). *Ouvrage publié en hommage au Professeur Claude Bruneel* (Archives et Bibliothèques de Belgique – Archief- en Bibliotheekwezen in België. Numéro spécial, 99; Brussels, 2013), 131–53, 149–50.

55 Janssens, 'The duke of Alba', 107.

56 Janssens, 'The duke of Alba', 106. Also see the duke of Alba to Philip II, 2-1-1574: *Epistolario*, vol. 3, 577.

traditional subsidy in 1572. The resistance to Alba's Tenth Penny brought together opponents from both sides of the political and religious spectrum and acquired a symbolic significance for the opposition to the duke of Alba's policies in the Netherlands. Ferdinand Grapperhaus, a contemporary Dutch tax specialist, pointed to the modern character of Alba's new taxes. They were permanent, which freed the ruler from the control of the Estates, and both progressive and universal, meaning that nobody was exempt from them. Moreover, taxpayers were guaranteed legal security because the government organized collection itself rather than subcontracting the task. In this way, corruption could be prevented.[57] The duke of Alba's ultimate inability to enforce the new taxes, however, was related to his concurrent failure to sweep aside the old mechanisms of government in the Netherlands, which he regarded as poorly functioning and too reliant on the Estates.

Thus, 1572 brought the duke of Alba few successes. Rebels continued to threaten his provinces, as from April onwards they took up arms against his rule and gained control of large parts of Holland and Zeeland. This war forced the duke to continue in his role as governor and commander-in-chief in the Netherlands and delayed his return to Spain until late 1573.[58]

8 The Law Emanates from the Sovereign

Although the duke of Alba issued numerous royal ordinances as governor, few of them can be fairly categorized as repressive in nature. There are measures to protect crops and forests, to ban the export of grain, and to prevent subjects from enlisting in hostile foreign armies. There are also laws and regulations to provide logistical support to military operations, and there are a considerable number of prohibitions on contact or trade with the enemy. Furthermore, Alba did not tolerate clientelism and nepotism, causing him to ban the sale of offices.[59] Naturally, there were also ordinances to safeguard the people against

57 Ferdinand H.M. Grapperhaus, *Alva en de Tiende Penning* (Zutphen/Deventer, 1982), 286–93.

58 Anton van der Lem, *De Opstand in de Nederlanden 1568–1648. De Tachtigjarige Oorlog in woord en beeld* (Nijmegen, 2014), 76–89. For more on the last months of Alba's governorship, as well as his advice for his successor, see Gustaaf Janssens, 'Het "politiek testament" van de hertog van Alva: aanbevelingen voor don Luis de Requeséns over het te voeren beleid in de Nederlanden (Brussel, 2 december 1573)', *Bulletin de la Commission royale d'Histoire – Handelingen van de Koninklijke Commissie voor Geschiedenis*, 175 (2009) 447–74.

59 Janssens, 'The duke of Alba', 110.

heretical ideas (such as a ban on studying at foreign universities and a new list of proscribed books), and to curb the pursuit and dissemination of non-Catholic religions. It was 'a part of the policy of confessionalisation that had to be introduced [...] with the concomitant religious ideology that was intended to justify the king's political decisions'.[60] By issuing ordinances that applied to the whole of the Netherlands, the duke of Alba confirmed and reinforced the king's sovereignty, making it clear that authority only emanated from the royal power of the monarch.

9 Conclusion

The duke of Alba's policies in the years between 1567 and 1571 were aimed at establishing peace and justice in the Netherlands through the restoration of the authority of the king and its forceful defence, the punishment of wealthy and powerful rebels, and by rewarding anyone who had remained loyal to the crown. Those who wanted reconciliation with the king, and who were also prepared to make an explicit declaration of their Catholicism, could count on a full pardon. The overall character of these policies was far from negative: within two years after the troubles of 1566, the king's authority had been restored in the Netherlands and the rebels had either been punished or expelled. Two years after that, both criminal and procedural law had been reformed and there were no important nobles left in the Netherlands who could offer armed opposition to the governor. Between 1567 and 1571, the duke of Alba pursued a policy of peace that was based on upholding law and justice. He succeeded in restoring respect for the authority of the king, strengthened the ties of a number of nobles, officers, and soldiers to the monarch through the skilful distribution of favours, and successfully repelled the incursions of both William of Orange and his brother Louis. For the duke of Alba, it was axiomatic that proper justice and sound finances were characteristics of good governance. In achieving these goals, he restored and strengthened the sovereignty of Philip II over the Netherlands. He deliberately opted for legislation that underlined the place of central authority in state administration, the equality of all provinces, and the power of the sovereign, furthering progress towards the creation of

60 Werner Thomas, 'Alba and religion', in Ebben, *Alba: General and Servant to the Crown*, 116–135, 133. See a list of ordonnances on religious affaires (sept. 1567 – august 1571) in Aline Goosens, *Les inquisitions modernes dans les Pays-Bas méridionaux 1520–1633*, 2 vols (Brussels, 1997), vol. 1, 210–1.

a modern state. The only area in which he failed was in tax reform, as a new rebellion forced the duke to prematurely abandon his work in this area and to contend with spreading hostilities that quickly dragged the Netherlands for many years into a civil war.

Bibliography

Alba, Duque de (ed.). *Epistolario del III duque de Alba don Fernando Alvarez de Toledo*. 3 vols. Madrid, 1952.

Arnade, Peter. *Beggars, Iconoclasts, and Civic Patriots: The Political Culture of the Dutch Revolt*. Ithaca, 2008.

Édouard, Sylvène. *L'empire imaginaire de Philippe II. Pouvoir des images et discours du pouvoir sous les Habsbourg d'Espagne au XVIe siècle*. Bibliothèque d'histoire moderne et contemporaine, 17. Paris, 2005.

Folgado Flórez, Segundo. 'El Estado y el principio de la justicia. Una aproximación a la teoría de las limitaciones del poder político, según San Agustín'. *Anuario Jurídico Escurialense*. 19–20 (1987–1988) 75–115.

Gachard, Louis-Prosper (ed.). *Correspondance de Philippe II sur les affaires des Pays-Bas*. 5 vols. Brussels, 1848–1879.

Geevers, Liesbeth. *Gevallen vazallen. De integratie van Oranje, Egmont en Horn in de Spaans-Habsburgse monarchie (1559–1567)*. Amsterdam, 2008.

Goosens, Aline. *Les inquisitions modernes dans les Pays-Bas méridionaux 1520–1633*. 2 vols. Brussels, 1997.

Grapperhaus, Ferdinand H.M. *Alva en de Tiende Penning*. Zutphen/Deventer, 1982.

Hänsel, Sylvaine. 'Alba als Friedensstifter. Ein gescheiterter Versuch politischer Bildargumentation'. *Wolfenbüttler Renaissance Mitteilungen*. 19 (1995) 1–14.

Hopperus, Joachim. 'Recueil et mémorial des troubles des Pays Bas du Roy'. In Alphonse Wauters (ed.), *Mémoires de Viglius et d'Hopperus sur le commencement des troubles des Pays-Bas*, Collection de mémoires relatifs à l'histoire de Belgique, 2, Brussels, 1858, 229–374.

Hortal Muñoz, José Eloy. 'La concesión de mercedes en los Países Bajos durante el gobierno del duque de Alba. La importancia del control del gobierno de las ciudades y de las provincias'. In Jesús Bravo Lozano (ed.), *Espacios de poder: Cortes, ciudades y villas*, 2 vols, Madrid, 2002, vol. 1, 187–215.

Janssens, Gustaaf . ' "Barmhartig en rechtvaardig". Visies van L. de Villavicencio en J. Hopperus op de taak van de koning'. In Wim P. Blockmans and Herman Van Nuffel (eds.), *État et religion aux XVe et XVIe siècles. Actes du colloque à Bruxelles du 9 au 12 octobre 1984 – Staat en religie in de 15e en 16e eeuw. Handelingen van het colloquium te Brussel van 9 tot 12 oktober 1984*, Brussels, 1986, 25–42.

Janssens, Gustaaf. *'Brabant in het Verweer'. Loyale oppositie tegen Spanje's bewind in de Nederlanden van Alva tot Farnese, 1567–1578*. Anciens Pays et Assemblées d'États – Standen en Landen, 89. Kortrijk/Heule, 1989.

Janssens, Gustaaf. *Les comtes d'Egmont et de Hornes. Victimes de la répression politique aux Pays-Bas espagnols*. Historia Bruxellae, 2. Brussels, 2003.

Janssens, Gustaaf. ' "Superexcellat autem misericordia iudicium". The homily of François Richardot in the occasion of the solemn announcement of the General Pardon in the Netherlands (Antwerp, 16 July 1570)'. In Judith Pollmann and Andrew Spicer (eds.), *Public Opinion and Changing Identities in the Early Modern Netherlands. Essays in Honour of Alastair Duke*, Studies in Medieval and Reformation Traditions. History, Culture, Religion, Ideas, 121, Leiden/Boston, 2007, 107–23.

Janssens, Gustaaf. 'De Tiende Penning van Alva: factor van goed bestuur en catalysator van verzet en opstand in de Nederlanden'. *Eigen Schoon & De Brabander*. 91 (2008) 17–50.

Janssens, Gustaaf. 'De ordonnantie betreffende de pacificatie van de beroerten te Antwerpen (24 mei 1567): breekpunt voor de politiek van Filips II ten overstaan van de Nederlanden'. *Handelingen* [*van de*] *Koninklijke Commissie voor de uitgave der Oude Wetten en Verordeningen van België – Bulletin* [*de la*] *Commission royale pour la publication des Anciennes Lois et Ordonnances de Belgique*. 50 (2009) 105–32.

Janssens, Gustaaf. 'Het "politiek testament" van de hertog van Alva: aanbevelingen voor don Luis de Requeséns over het te voeren beleid in de Nederlanden (Brussel, 2 december 1573)'. *Bulletin de la Commission royale d'Histoire – Handelingen van de Koninklijke Commissie voor Geschiedenis*. 175 (2009) 447–74.

Janssens, Gustaaf. 'Joachim Hopperus en Willem van Oranje, 1566–1576'. In Dries Vanysacker et al. (eds.) *The Quintessence of Lives. Intellectual Biographies in the Low Countries presented to Jan Roegiers,* Bibliothèque de la Revue d'Histoire ecclésiastique, 91, Louvain-la-Neuve/Leuven, 2010, 29–42.

Janssens, Gustaaf. 'The duke of Alba: governor of the Netherlands in times of war'. In Maurits Ebben et al. (ed.), *Alba: General and Servant to the Crown*, Protagonists of History in International Perspective, 3, Rotterdam, 2013, 90–115.

Janssens, Gustaaf. 'Le duc d'Albe, artisan de la paix et initiateur de la bonne gouvernance aux Pays-Bas?'. In Claude de Moreau de Gerbehaye et al. (eds.), *Gouvernance et administration dans les provinces belgiques* (*XVI^e^ – XVIII^e^ siècles*). *Ouvrage publié en hommage au Professeur Claude Bruneel*, Archives et Bibliothèques de Belgique – Archief- en Bibliotheekwezen in België. Numéro spécial, 99, Brussels, 2013, 131–53.

Kattenberg, Lisa. 'Het goede dieet voor de Nederlanden. Fadrique Furió Ceriol en het Spaanse denken over de Nederlandse Opstand 1566–1573'. *Skript. Historisch Tijdschrift*. 31 (2014) 206–19.

Maltby, William S. *Alba: A Biography of Fernando Alvarez de Toledo, Third Duke of Alba. 1507–1582*. Berkeley/London, 1983.

Maravall, José Antonio. *Estado moderno y mentalidad social* (*Siglos XV a XVII*). 2 vols. Madrid, 1972.

Parker, Geoffrey. '1567: The end of the Dutch Revolt?'. In Ana Crespo Solana and Manuel Herrero Sánchez (eds.), *España y las 17 provincias de los Países Bajos. Una revisión historiográfica* (*XVI-XVIII*), 2 vols, Estudios de Historia Moderna. Colección 'Maior', 22, Cordoba, 2002, vol. 1, 269–90.

Pauwels, Henri. 'Catalogus'. In *Het Gulden Vlies. Vijf eeuwen kunst en geschiedenis. Tentoonstelling ingericht door het Ministerie van nationale Opvoeding en Cultuur en de Stad Brugge in het Stedelijk Museum voor Schone Kunsten. Groeningemuseum, Dyver 12. 14 juli – 30 september 1962. Catalogus*, Bruges, 1962.

Pollmann, Judith and Monica Stensland. 'Alba's reputation in the early modern Low Countries'. In Maurits Ebben et al. (ed.), *Alba: General and Servant to the Crown*, Protagonists of History in International Perspective, 3, Rotterdam, 2013, 308–25.

Prescott, William H. *History of the Reign of Philip the Second, King of Spain*. 2 vols. London, 1855.

Schenk, Magdalena Geertruida and Aart Arnout van Schelven (eds.). *Verantwoordinge, Verklaringhe ende Waerschouwinghe mitsgaders eene Hertgrondighe begheerte des edelen, lancmoedighen ende hooghgeboren Princen van Oraengien*. Amsterdam-Sloterdijk, 1933.

Siruela, Jacobo. *El Gran Duque de Alba. Un siglo de España y de Europa. 1507–1582*. Colección Casa de Alba Atlanta, 18. Girona, 2007.

Smolderen, Luc. *La statue du duc d'Albe à Anvers par Jacques Jonghelinck* (*1571*). Académie royale de Belgique. Mémoires de la Classe des beaux-arts. Collection in 8°. 2ième Série, XIV,1. Brussels, 1972.

Soen, Violet. 'De reconciliatie van "ketters" in de zestiende-eeuwse Nederlanden (1520–1590)'. *Trajecta*. 14 (2005) 337–62.

Soen, Violet. *Geen Pardon zonder paus! Studie over de complementariteit van het koninklijk en pauselijk generaal pardon* (*1570–1574*) *en over inquisiteur-generaal Michael Baius* (*1560–1576*). Verhandelingen van de Koninklijke Vlaamse Academie van België voor Wetenschappen en Kunsten. Nieuwe reeks, 14. Brussels, 2007.

Soen, Violet. *Vredehandel. Adellijke en Habsburgse verzoeningspogingen tijdens de Nederlandse Opstand* (*1564–1581*). Amsterdam, 2012.

Steen, Charlie R. *Margaret of Parma: A Life*. Studies in Medieval and Reformation Traditions, 174. Leiden/Boston, 2013.

Thomas, Werner. 'Alba and religion'. In Maurits Ebben et al. (ed.), *Alba: General and Servant to the Crown*, Protagonists of History in International Perspective, 3, Rotterdam, 2013, 116–35.

Van der Lem, Anton. *De Opstand in de Nederlanden 1568–1648. De Tachtigjarige Oorlog in woord en beeld*. Nijmegen, 2014.

Van Ditzhuyzen, Renildis. *Oranje-Nassau. Het biografisch woordenboek*. The Hague, 2015.

Wansink, Harm (ed.). *The Apologie of Prince William of Orange Against the Proclamation of the King of Spaine. Edited after the English edition of 1581*. Textus minores in usum academicum sumptibus E.J. Brill editi, 40. Leiden, 1969.

CHAPTER 8

Electing a Prince

The Popular Transfer of Sovereignty at the End of the Sixteenth Century

José Javier Ruiz Ibáñez

1 Introduction[1]

A current of political instability surged across Europe during the last twenty years of the sixteenth century. The resulting rebellions and civil wars opened new spaces for reflection and political practice that updated the debate about who could possess and successfully transfer sovereignty. Within this context, the king of Spain received several legitimate proposals from local inhabitants that requested him to incorporate their territories into the growing empire. If he complied, he would formally recognize the right of the people to elect its sovereign. While the Spanish monarchy often seemed willing to accept these various offers, there was a natural reluctance to do so, as war and geopolitics caused these operations to frequently fail. Yet, in many of the smaller cases, such elections proved successful. This chapter will begin by analysing the events that occurred at Cambrai in early October 1595 in order to better understand the people's role in the transfer of sovereignty within limited contexts.

2 By the Grace of the People, Philip II Lord of Cambrai?

In October 1595, the urban militia of Cambrai decided to rise up in revolt after the Spanish army had laid siege to the city for well over a month. During the last few decades, Europeans had witnessed the emergence of a remarkable group of political leaders from various parties that combined to shape and influence the civil wars that occurred across the continent.[2] The rise of an armed

1 This study represents one part of a broader research project titled 'Hispanofilia IV: Los mundos ibéricos frente a las oportunidades de proyección exterior y a sus dinámicas interiores', code HAR2017-82791-C2-1-P , *FEDER/Ministerio de Ciencia e Innovación*, Spain. Translated by Gabriela Vallejo Cervantes.

2 A useful general vision in Marc Greengrass, *Christendom Destroyed. Europe, 1517–1648* (London, 2014), chapters 11–5.

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people was a powerful reminder to courts, ministers and kings of the important role that local groups played within the establishment and maintenance of political power.[3] Historians have generally preferred to focus on the many legal theories constructed by jurists and the religious proclamations of theologians in order to better understand sovereignty. But we must not forget that it was primarily a combination of political matters and concrete political practices that challenged the rights of sovereignty and influenced the rise and fall of kings during these troubled times. In the frequent rebellions, civil wars, and conspiracies that characterized the second half of the sixteenth century (in Aragon, Flanders, the Alpujarras, England, Scotland, France, and Greece), the local population emerged as a decisive agent of change and helped to redefine who represented 'the people', what sovereignty actually meant, and how the transfer of power could be justified within this context.[4]

In Cambrai, this process proved unusual in both the speed in which events transpired and the eventual outcome. The French warlord Jean de Montluc, sieur de Balagny, had occupied the town and, in 1593, had reached an agreement with Henry IV, who had emerged as the most important force within the French civil war, that recognized Balagny as sovereign prince and Henry as protector. Nevertheless, two problems arose: Balagny was not the natural lord of Cambrai and Henry maintained no actual jurisdiction over the city. The Cambrésis instead belonged to the emperor, who possessed *suzerainété*, while the local lord, Archbishop Louis de Berlaymont, held *souveraineté* as both count and duke. The term *souveraineté*, as it appears in the case of Cambrai, bore little resemblance to the modern conception of the term as formulated by Jean Bodin.[5] When local leaders returned to the debate on the property of Cambrai in the eighteenth century, the change in its definition was evident. What 'souveraineté' represented in the sixteenth century had become 'seigneurie', and

3 Paul Knevel, *Burgers in het geweer. De schutterijen in Holland, 1550–1700* (Hilversum, 1994), 17–82.

4 Marco Penzi and José Javier Ruiz Ibáñez, 'Ius populi supra regem. Concepciones y usos políticos del pueblo en la liga radical católica francesa (1580–1610)', *Historia Contemporánea*, 28 (2004) 111–45; José Javier Ruiz Ibáñez, *Hispanofilia. Los tiempos de la hegemonía española* (Madrid, 2021), chapter 6.

5 Diego Quaglioni, *I limiti de la sovranità. Il pensiero di Jean Bodin nella cultura politica e giuridica dell'età moderna* (Padua, 1992), 211–62; Giuseppe Duso, 'La Majestas populi chez Althusius et la souveraineté moderne/The Majestas Populi in Althusius and modern sovereignty', in Gian Mario Cazzaniga and Yves Charles Zarka (eds.), *Penser la souveraineté à l'èpoque moderne et contemporaine*, 2 vols (Paris/Pisa, 2001), vol. 1, 85–106; Cathérine Secretan, *Les privilèges berceau de la Liberté. La Révolte des Pays-Bas aux sources de la pensée politique moderne (1566–1619)* (Paris, 1990); David Parker, 'Sovereignty, absolutism and the function of the law in seventeenth-century France', *Past and Present*, 122 (1989) 36–74.

'suzeraineté' turned into 'souveraineté'.[6] In 1595, jurists defined sovereignty as a group of rights exclusive to the local lord. These rights, however, were often either appropriated by the Spanish king or rarely used in order to avoid bringing attention to them.[7] Previously, the king of Spain, as lord of the Low Countries, could invoke his hereditary right of military protection over the territory, doing so in order to build a citadel there in the 1540s.[8]

The bourgeois rebellions, led by their territorial companies and *serments,* are the perfect examples of those occasions in which an armed group forced a change in local and royal authority. The Day of the Barricades, occurring in Paris on 12 May 1588, was the most important such event and represented a clear example of effective leaders refusing power from an authority that was no longer deemed trustworthy.[9] While it is understood that the people forced Henry III to abandon Paris, he was not the only ruler that was overthrown by a popular movement. In several towns throughout both the Low Countries and France, the local militia often unilaterally decided if its loyalty was bound to a certain established party, or if its allegiances could change to a rival leader.[10] The revolutionary potential of these urban institutions originated in the Middle Ages and they were often used to deal with local problems when the sovereign did not possess the right to introduce professional troops.[11] The introduction of the militia to political situations reminds the historian of the complexities

6 Eugène Bouly, *Dictionnaire Historique de la Ville de Cambrai des Abbayes, des Châteaux-Forts et des Antiquités du Cambrésis* (Cambrai, 1854), 492; Louis Renon, *Contribution à l'Histoire de Cambrai. Un épisode de la lutte entre l'Archevêché et le Magistrat. Un procès de droit féodal au XVIII^e siècle* (Cambrai, 1939).

7 José Javier Ruiz Ibáñez, *Felipe II y Cambrai. El consenso del pueblo. La soberanía entre la práctica y la teoría política. Cambrai (1595–1677)* (Rosario, 2003), 146.

8 Ruiz Ibáñez, *Felipe II y Cambrai*, 37–61; Alain Lottin and Philippe Guignet, *Histoire des Provinces françaises du Nord. De Charles Quint à la Révolution française (1500–1789)* (Arras, 2006), 119–21.

9 Robert Descimon, 'Milice bourgeoise et identité citadine à Paris au temps de la Ligue', *Annales ESC*, 4 (1993) 885–906.

10 Guy Saupin, 'La milice bourgeoise? Relais politique fondamental dans la ville française d'Ancien Régime. Réflexions à partir de l'exemple de Nantes', in Bruno Dumons and Olivier Seller (eds.), *Gouverner la ville en Europe. Du Moyen Age au XXe siècle* (Paris, 2006), 73–89; Laurent Coste, 'Les milices bourgeoises en France', in Jean-Pierre Pousou and Philippe Evanno (eds.), *Les sociétés urbaines au XVIIe siècle. Angleterre, France, Espagne* (Paris, 2007), 175–90; Maarten Prak, 'Milicia cívica y política urbana en Holanda: Leiden, siglos XVII y XVIII', in José Javier Ruiz Ibáñez (ed), *Las milicias del rey de España. Sociedad, política e identidad en la monarquías ibéricas* (Madrid, 2009), 330–48.

11 Marc Boonen and Maarten Prak, 'Rulers, patricians and burghers: the great and the little traditions of urban revolt in the Low Countries', in Karel Davids and Jan Lucassen (eds.), *A Miracle Mirrored: The Dutch Republic in European Perspective* (Cambridge, 1995), 99–134.

of monarchies since, despite their absolute nature, they were conditioned by the consensus of those institutions that held effective control over a territory.[12] The question then becomes what to do with sovereignty when its holder was forced to leave, whether through expulsion by a prior authority or by the deposition of a prince condemned as a tyrant. It is true that the people, when armed and coordinated, held considerable power, yet how did it establish legitimate regimes? And was the new *status quo* acceptable for the rebels's foreign allies?

The well-studied theoretical debates on tyrannicide – including the right to resist, the origin of sovereignty, and the possibility of offering it to the people[13] – mixed with the urgency prompted by both contemporaneous circumstances and the understanding of the local political group's own history. For most of the rebellions that took place throughout Europe, the new order had to have monarchic support: an armed people's intervention was considered to be an extraordinary action with little precedence. Therefore it was necessary to identify who had the authority over the principality, either by natural right or by one's virtues. The people could be considered either a judge or an elector, holding the power to choose its own sovereign. In both cases, the appeal to the people as a source of political agency (*populus*) was always a desperate measure, only justified by the absence of a sovereign, a lack of legitimate candidates to reclaim the kingdom, or a case of tyrannical prince. This appeal to the people was quite extraordinary. For most theorists, this process was irreversible: once they completed the transfer of sovereignty, their role as judge or elector of the people ceased and the political environment returned to its original form. This transfer of power had to be sanctioned by an oath of loyalty that confirmed the new political situation, while also ending the period of expiation.[14] Only the most radical theorists, such as the priest Jean Boucher, thought that the people could start this process whenever they wished to do so. Theoretically, in this shared political culture, the action of the people was limited, but its involvement always remained possible during times of conflict.

12 José Javier Ruiz Ibáñez, 'Introducción. Las milicias y el rey de España', in Id., *Las milicias,* 7–38, 23–32.

13 While I do not have the space to fully outline the enormous scholarly production about this topic, a useful summary can be found in Pedro Cardim, *Portugal Unido y separado. Felipe II, la Unión de territorios y el debate sobre la condición política del Reino de Portugal* (Valladolid, 2014), 56–8, 73, 78, 227–8.

14 This oath, with a collective base, had created a legitimate political bond. This is a completely different conception of what Bodin proclaimed, reducing it to a function of mere confirmation of the dependence of the subject to the sovereign. See Paolo Prodi, *Il sacramento del potere. Il giuramento politico nello storia costituzionale dell'Occidente* (Bologna, 1992), 238–40, 250.

Yet, the people also represented a potential danger for the established authorities, since the views that many maintained were quite malleable and allowed for the easy creation of new and innovative political contexts.

And so it was in Cambrai. The militia and the city council organized several assemblies in which they decided the city's political future. Many important leaders had collaborated with the French occupation-government and most worried about the possibility of the return of the archbishop's and the canons's power over the city. On the one hand, a certain attitude of vengeance from the high clergy could be expected, since they were forced into exile for almost fifteen years. On the other, direct control by the canons would reduce municipal power and city representatives would be under the control of the cathedral chapter. Meanwhile, Spanish troops had already entered the city and were received as liberators. With this development, the future of local political institutions seemed rather obvious: the Spaniards would restore Archbishop Berlaymont to power so that he could take charge of local administration, while they would take care of the military through control of the citadel. Municipal leaders considered such a solution to be far from acceptable, so they looked for an alternative. They began discreet negotiations with the entourage of Pedro Enríquez de Acevedo, count of Fuentes, who was the successful interim-governor of the Low Countries. This proposal was particularly original: the Cambresians were willing to recognize King Philip II as their prince, count and duke, and as the holder of sovereignty. This was clearly detrimental to the rights of Archbishop Berlaymont. To justify this seemingly drastic action, the city's municipal leaders argued that since Balagny's expulsion led to a complete lack of sovereignty in Cambrai, the local inhabitants now possessed the right to choose their new master.[15]

Thus, the Spanish monarchy acquired and incorporated a new territory by the proclamation of the people's right to transfer local sovereignty. Though this was an uncommon situation, it was certainly not a particularly rare one. The historiography has often explored the idea of popular political legitimacy within certain governmental traditions and concrete territories, especially in the Low Countries. It has given significantly less attention, however, to the cultural and genealogical reasons of what happened in other spaces.[16] Yet, the transfer of sovereignty through the *consensus populi* occurred frequently

15 Ruiz Ibáñez, *Felipe II*, 83–92.

16 Francisco Xavier Gil Pujol, 'Pensamiento político español y europeo en la Edad Moderna. Reflexiones sobre su estudio en una época post-'whig'', in María José Pérez Álvarez and Laureano M. Rubio Pérez (eds.), *Campo y campesinos en la España Moderna. Culturas políticas en el mundo hispano*, 2 vols (León, 2012), vol. 1, 297–320.

throughout the late-sixteenth and early-seventeenth centuries. In most cases, the recipient of this designation was the Spanish king.[17] For those on the Iberian Peninsula, the *consensus populi* was a particularly successful mechanism for the royal integration of new kingdoms because of its place within their own political tradition.[18] The election, in absentia, of a legitimate sovereign, was a legal right that juridical theorists like Francisco de Vitoria and Francisco Suárez defended; it was also useful for Portuguese jurists like Pedro Simôens or Diogo de Sá. In fact, there had been a long tradition of this practice that originated during the fourteenth century. The Portuguese king, Dom Manuel, memorably recalled this right when he asked his new viceroy in India to convince the people of Cochin to choose him as their sovereign after the death of their legitimate king in 1505.[19]

3 Kings in Trouble and Popular Sovereignty

The last decades of the sixteenth century witnessed the convergence of several events that reinforced popular political autonomy and the recognition of the king of Spain as the people's ally during a historical moment when European interest in Spain and its culture reached its peak.[20] First of all, a global dynastic crisis affected much of Occidental Europe, as the thrones of Portugal, France and England-Ireland were vacant and lacked acceptable successors. This was especially true after the death of Mary Queen of Scots in England and a general lack of proper candidates in the Portuguese House of Avis with the reputation and resources necessary to win over the population. Secondly, a lack of discipline exhibited by the nobility within their respective cities, along with the affirmation of an omnipresent royal power, led to fractures within the

17 José Javier Ruiz Ibáñez, 'Théories et pratiques de la souveraineté dans la Monarchie Hispanique: un conflit de juridictions à Cambrai', *Annales HSS,* 3 (2000) 55–81.

18 Magdalena Rodríguez Gil, *La 'incorporación de Reinos'. Notas y textos doctrinales de derecho común* (Cáceres, 2002); Jon Arrieta Alberdi, 'Formas de unión de reinos. Tipología y casuística en perspectiva jurídico-política (siglos XVI-XVIII)', in Alfredo Floristán Imízcoz (ed.), *1512. Conquista e incorporación de Navarra. Historiografía, derecho, y otros procesos de integración en la Europa renacentista* (Barcelona, 2012), 89–126; Óscar Mazín Gómez (ed.), *Las representaciones del poder en las sociedades hispánicas* (Mexico City, 2012).

19 António Vasconcelos de Saldanha, *Iustus Imperium. Dos tratados como fundamento do Império dos portugueses no oriente. Estudo de Historia do dereito international e do direito português* (Lisbon, 1997), 469, 487–8.

20 Jocelyn N. Hillgarth, *The Mirror of Spain, 1500–1700: The Formation of a Myth* (Ann Arbor, 2000), chapter 9.

internal stability of certain monarchies. Thirdly, the religious tension between Catholics and Protestants within government justified rival claims of illegitimate power, giving rebels in France, England, Ireland, Greece, and Cyprus an extraordinary opportunity to press their demands. Fourthly, the increasing prestige of the Spanish monarchy, earned during the fight against the Turks and Protestants between 1580 and 1586, created a continent-wide vision of the Spanish empire as a powerful machine fuelled by inexhaustible resources. Finally, the empire's success at integrating and reintegrating the territories under Philip's II control, such as the incorporation of Portugal, the *Reconquista*, and the repression of the revolt in Aragon in 1591, courted the respect of both local powers and foreign leaders.[21]

For many groups of dissidents, the best strategy was to ask the Spanish king for support.[22] Although they often received varying amounts of military and financial cooperation, Spanish support did not necessarily imply submission to the Catholic King or to his political and dynastic agency. The nobility's dissidence did not aim to replace one lord for another, but to weaken or seize royal authority for its own benefit.[23] For most rebels, inviting a foreign prince into their territories raised serious problems of effectiveness and local political consensus. Nonetheless, the more radical or desperate leaders, like François de Morin Crôme, in his *Dialogue d'entre le malheustre et le manant* (1594), believed that it was the sovereign's politics, not his origins, that mattered most in his appeal to the people. In this context, the Spanish king was often the ultimate recipient of any authority bestowed by the people.[24]

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21 Cardim, *Portugal Unido,* 75–122; Jon Arrieta Alberdi, 'Forms of union: Britain and Spain, a comparative analysis', *Revista Internacional de Estudios Vascos*, 5 (2009) 23–53; Floristán Imízcoz, *1512*; Xavier Gil Pujol, 'Integrar un mundo. Dinámicas de agregación y de cohesión en la Monarquía de España', in Óscar Mazín Gómez and José Javier Ruiz Ibáñez (eds.), *Las Indias Occidentales. Procesos de incorporación territorial a las Monarquías Ibéricas* (Mexico City, 2012), 7–40.

22 José Javier Ruiz Ibáñez, 'Inventar una monarquía doblemente católica. Los partidarios de Felipe II en Europa y su visión de la hegemonía española', *Estudis. Revista de Historia Moderna*, 34 (2008) 87–109.

23 Spanish intervention occurred during an era of very complex local interests. An example can be found in Fabrice Micallef, *Un désordre européen. La compétition internationale autour des affaires de Provence, 1580–1598* (Paris, 2014).

24 *Dialogue d'entre le maheustre et le manant,* in Le Duchat (ed.), *Satyre Menippée, de la vertu du Catholicon d'Espagne* (Ratisbonne, 1752), vol. 3, 367–586; 561: '*Manant:* Les vrais heretiers de la Couronne ce sont ceux qui sont dignes de porter le caractere de Dieu, s'il plaist à Dieu nous donner un Roy de nation Françoise, son nom soit benist; Si de Lorraine, son mon soit benist; si Espagnol, son nom soit benist; Si Alleman, son nom soit benist: De quelque nation qu'il soit estan Catholique, & remply de pieté & justice, comme venant de la main de Dieu, cela nous est indifferent, nous n'affectons la nation, mais la Religion'; 562,

How did the people express themselves and who made up these movements? In Cambrai, it was a bourgeois assembly who, 'in one and only voice' offered sovereignty to Philip II.[25] In 1588, rebelling Irish nobles requested, through their ambassador Cornelius Laonen, that Philip II grant one of his children or his nephew, Archduke Albert, to rule over the island as king. The Irish reaffirmed this last petition in 1596 when they offered to proclaim themselves as vassals of the Spanish king through an oath of fidelity on the condition that Albert would reside in Ireland.[26] In 1613, the rebels of the Mani Peninsula in Greece organized an important assembly (*Parlamento*) in which local bishops incited rebellion against the Turks 'for our Holy Faith and the royal Crown of Castile […], [and] all of them said with one voice that they would offer their lives and possessions and everything they had […] to serve and help our Catholic and Very Christian King don Phelipe […] as their king and lord for they take him from that day on, for ever and ever'.[27] However, the transfer of sovereignty could often be difficult and time-consuming, requiring long and sometimes unsuccessful negotiations, such as when the candidacy of the Infanta Isabella Clara Eugenia's claim to the throne of France passed through the *États Généraux* in 1593.[28] The proposal to proclaim Philip II king of France

'*Manant:* […] nous n'affections qu'un Prince Catholique et debonnaire'; and 564: 'J'aime mieux estre Espagnol Catholique, pour vivre en ma Religion & faire mon salut, que d'être François heretique à la perte de mon âme & vous diray que j'aime le pays de France dont je suis natif pour ma Religion & hors ma Religion je ne desire y habiter'. I thank Marco Penzi for this citation.

25 Ruiz Ibáñez, *Felipe II*, 85, note 51.

26 Óscar Recio Morales, *El socorro de Irlanda en 1601 y la contribución del Ejército a la integración social de los irlandeses en España* (Madrid, 2002), 37–43. In Laonen's words: 'cuando me embiaron los grandes de aquella isla por ambaxador a V[uestra] Mag[esta]d […] me dixeron que yo suplicase a V[uestra] Mag[esta]d fuesse servido por darles por rey de Irlanda a uno de los serenísimos prinçipes hijos de V[uestra] Mag[esta] d […] o al príncipe cardenal su sobrino. Y sino, reçebirlos por sus vasallos como fuessse la real voluntad de V[uestra] Mag[esta]d'.

27 Archivo General de Simancas [henceforth AGS], Sección de Estado [henceforth E.], 1641, without number: '30 de enero de 1615, El p[adr]e fray Gabriel Malama del cabo de Mayna'.

28 Valentín Vázquez de Prada, *Felipe II y Francia (1559–1598). Política, religión y razón de estado* (Pamplona, 2004), 394–410; Sylvie Daubresse and Bertrand Haan (eds.), *Actes du parlement de Paris et documents du temps de la Ligue (1588–1594). Le recueil de Claude Pitou* (Paris, 2012), 399–455; Edward Shannon Tenace, 'Messianic imperialism or traditional dynasticism? The Grand Strategy of Philip II and the Spanish failure in the wars of the 1590s', in Tonio Andrade and William Reger (eds.), *The Limits of Empire: European Imperial Formation in Early World History. Essays in Honor of Geoffrey Parker* (Farnham/Burlington, 2012), 281–308.

also had to pass through a *parlement*, following the same procedure as Charles X in 1589.[29]

For other countries, like Greece, Scotland, France, and England, a few dissident leaders reacted against a perceived tyrannical power by choosing an external protector who they conferred with the right of local sovereignty and promised their willing submission to the respective crown. The 'unanimity' of the members of that town or country, represented by their *maior et sanior pars,* was the necessary condition for submission to the king of Spain or his next of kin. This unanimous decision could be seen within electoral tradition as an expression of *Vox Populi Vox* (*Populi*) *Dei*,[30] with all of its accompanying religious and political implications. This belief was frequently present in both the radical Catholic and Protestant political movements of the sixteenth century,[31] but led to a rather uncomfortable situation for a monarchy that was becoming more and more absolute and that did not want to support any uprising that could lead to future contractualism in regard to the right of possession or control of land.[32] This meant that, in the words of Tamar Herzog, 'the debate on land, possession and jurisdiction was therefore not only legal but also moral, religious and political'.[33]

There was, however, one solution that could put aside the juridical problems that the election prompted: the return to a feudal and vertical (or even an imperial) structure of Christendom. Its head would have the authority to identify the person who would possess the exercise of sovereignty. It was in this way that the *Seize,* the most radical group within the French League of Paris, declared in 1591 that Philip II 'receive the sceptre of this crown' not for himself, but for his daughter.[34] Hence, the sovereignty of the princess would

29 Robert Descimon and José Javier Ruiz Ibáñez, *Les ligueurs de l'exil. Le refuge catholique français après 1594* (Seyssel, 2005), 143.

30 Michel Poizat, *Vox populi, Vox Dei. Vox et pouvoir* (Paris, 2001), 41–50.

31 Richard A. Jackson, 'Elective kingship and consensus populi in sixteenth century France', *The Journal of Modern History*, 44.1 (1972) 155–71; Marie-France Renoux-Zagamé, *Du droit de Dieu au droit des hommes* (Paris, 2003), 148–82.

32 Fanny Cosandey and Robert Descimon, *L'absolutisme en France. Histoire et historiographie* (Paris, 2002), 52–93; Arlette Jouanna, *Le pouvoir absolu. Naissance de l'imaginaire politique de la royauté* (Paris, 2013), 298–312; and Id., *Le prince absolu. Apogée et déclin de l'imaginaire monarchique* (Paris, 2014), 20–33.

33 Tamar Herzog, *Frontiers of Possession: Spain and Portugal in Europe and the Americas* (Harvard, 2015), 126.

34 José Javier Ruiz Ibáñez and Gaetano Sabatini, 'Entre Aguirre y el gran rey. Los discursos de la elección de Felipe II al trono de Francia en 1591', in Alberto Marcos Martín (ed.), *Hacer historia desde Simancas. Homenaje a José Luis Rodríguez de Diego* (Valladolid, 2011), 661–85, esp. 673–5.

not be confirmed by the *États Générales,* but rather in the actions of her father as king-judge.[35] This proved that neither Philip II nor the *Seize* could agree on the methods required for the transfer of sovereignty to the Spanish princess. The king based his actions on hereditary rights, while the *Seize* preferred the free will of a monarch whose authority to express the 'Common Good' came from the recognition of the people themselves.

4 Popular Election and Other Claims to Sovereignty

The proclamation of Philip II as lord of Cambrai showed the juridical problems that could result from popular election. The archbishop, with the eventual support of both Rome and the empire, denounced the validity of the electorate in granting power. Since his sovereignty had not been interrupted by the tyrannical dominion of the French, no case could be legitimately made that either the city or his territory were actually *res nullius.* The people lacked the authority to depose princes (especially a Catholic prince) and transfer their loyalty. In this case, it was not a political necessity but rather a crime of lèse-majesté. Philip II often supported this stance, especially when it affected him. It was generally beneficial to help rebels from neighbouring countries, but to create new dominions based on the exclusive rights of the people seemed as dangerous to Spain's own domestic affairs as it was to those of its foreign allies.[36]

Thus, few kingdoms that could benefit from territorial expansion through claims of popular sovereignty attempted to do so, as people from across Europe still attempted to legally justify their right to influence the transmission of power.[37] The papacy still represented an essential voice in the election of new rulers and often acted as a judge over possible candidates. While the Spanish king could choose to ignore the pope's will, such as during Portugal's succession dispute, the pope, as a geopolitical partner, had to eventually be taken into account. Moreover, there were many princes with inheritance rights over each territory. Both the grand duke of Tuscany and the duke of Savoy, for example,

35 Marie-France Renoux-Zagamé, 'Du juge-prêtre au Roi-Idole. Droit divin et constitution de l'État dans la pensée juridique française à l'aube des temps modernes', Jean-Louis Thireau (ed.), *Le Droit entre laïcisation et néo-sacralisation* (Paris, 1997), 143–86.

36 Ruiz Ibáñez, 'Théories et pratiques', 634–6.

37 Alfredo Floristán Imízcoz, 'Los debates sobre la conquista y la reconfiguración de la identidad navarra (1512–1720)', in Id., *1512*, 31–61.

reclaimed the kingdom of Cyprus, a situation that limited the possibilities of expansion in that direction.[38]

Furthermore, the Spanish government questioned the elective capacity of the people and sought to relegate the *consensus populi* to a secondary position, one that was still politically significant, but that could not actually transmit sovereignty. The most natural right was a people's heritage, which the Habsburgs had frequently relied upon to consolidate power within numerous territories. By the end of the sixteenth century, the monarch, in league with Spanish jurists, had proposed the possibility of Spain's succession to both the French and English thrones by petitioning to annul Salic law and by offering to do the same in England. The various houses that came together to form the Spanish monarchy had accumulated rights since the fifteenth century that, by the end of the sixteenth century, could be used to justify the nomination of Philip II's eldest daughter as heiress to the two thrones.[39] Through this, any proposals from their allies would not only be justified in the eyes of neighbouring countries, but were also legitimate claims of previous rights. The designation of a single king as heir to a foreign throne was a rather unusual way to access sovereignty, but not unprecedented. The Portuguese, for example, used this method of transferring power in 1597, when the king of Portugal claimed sovereignty over the kingdom of Kotte (Ceylon) following the death of the local monarch, King dom João Dharmapala Peria Bandara.[40] The renunciation and transmission of established noble rights to the Spanish king also seemed to be a proper method of extending sovereignty, even if it implied, as in the case of Finale, the initiation of very complicated negotiations.[41]

The allies of the king invoked heritage claims as an alternative to the complications that could result from papal designation. During the debates on the succession of Elisabeth I of England, for example, radical partisans, like Robert Persons and Joseph Creswell, sought the restoration of Catholicism to

38 Toby Osborne, *Dynasty and Diplomacy in the Court of Savoy: Political Culture and the Thirty Years' Wars* (Cambridge, 2002), 36, 42.

39 Vázquez de Prada, *Felipe II*, 338–46; José María Iñurritegui Rodríguez, '"El intento que tiene S.M. en las cosas de Francia". El programa hispano-católico ante los Estados Generales de 1593', *Espacio, tiempo y forma*, serie IV, *Historia Moderna*, 7 (1994) 331–48; María José Rodríguez Salgado, '"Ni cerrando ni abriendo la puerta". Las negociaciones de paz entre Felipe II e Isabel I, 1594–1598', in Marcos Martín, *Hacer historia*, 633–60.

40 Cardim, *Portugal Unido*, 92–4, 190; Saldanha, *Iustus Imperium*, 504–17.

41 José Luis Cano de Gardoqui, *La incorporación del marquesado del Finale (1602)* (Valladolid, 1955); Paolo Calcagno, *'La puerta a la mar'. Il marchesato del Finale nel sistema imperiale spagnolo (1571–1713)* (Roma, 2011), 39–54.

the island by offering sovereignty to the Spanish empire.[42] In France, however, the more recalcitrant members of the Catholic League rarely evoked the dynastic argument, but showed themselves to be far more favourable to an electoral vision. Nevertheless, the claim to a people's heritage was not absent in even the most radical versions of the proposals made to the Catholic King. Propositions came from Rouen, for example, that demanded that the kingdom should be incorporated by Philip II, as he was the rightful successor of John II (1350–1364) of Burgundy, which represented a minor branch of the French Royal House.[43] On the other hand, the Cypriot nobleman, Julio César de Santa Maura, informed Spanish ministers in Rome that due to 'the liberty of the kingdom of Cyprus and its conquest by the crown of Spain' as well as its place as a 'direct dominion of Your Majesty', the agents of Venice vigorously pursued him and the duke of Savoy regarded him unfavourably.[44]

No hereditary rights, however, could be claimed over Cambrai. This forced the Spanish ministers to take a very different approach in their effort to acquire local sovereignty: *ius belli,* or the direct conquest of a territory as a justified response to an act of aggression. Due to the alliance between Balagny and Henry IV, the French and Cambresian troops initiated hostilities against the neighbouring counties of the Low Countries. Artois and Hainaut, for example, were especially concerned with the increasing frequency of invasions and the rumoured possibility of a large French attack. A defensive war was considered a just war and the territory gained in it could therefore be legitimately kept.[45]

The argument for conquest as a means of acquiring sovereignty, however, did not negate the possibility of a concurrent popular election. In Cambrai, both occurred simultaneously, especially when one considers that the Spanish did not claim to carry out its attack against the people, but rather its tyrants. Instead of being a brutal and ruthless conquest, many viewed it as a means of emancipation for a people who maintained a political and religious affinity with its invaders and who had already decided to submit to the prince, a liberator who had proved himself worthy of being their king. If the proposals for election came from the armed rebels, the idea to claim sovereignty by

42 Peter Holmes, *Resistence and Compromise: The Political Thought of the Elizabethan Catholics* (Bristol, 1982), 129–60, 205–9; Victor Houliston, *Catholic Resistance in Elizabethan England: Robert Persons's Jesuit Polemic, 1580–1610,* (Aldershot/Burlington/Rome, 2007), 75–88; Stefania Tutino, *Law and Conscience: Catholicism in Early Modern England, 1570–1625* (Aldershot/Burlington/Rome, 2007), chapter 3.

43 Ruiz Ibáñez and Sabatini, 'Entre Aguirre', 672–6.

44 AGS, E., 1633 without number, 28 September and 31 August 1613, 'Por don Julio César Santa Maura'.

45 Ruiz Ibáñez, *Felipe II*, 73–6.

conquest came from internal plotters who sought potentially violent support from a group of political exiles desiring to involve the Spanish king in the reclamation of their land of origin. In the Portuguese Orient, incorporated into the kingdom of Spain after 1580, the acquisition of the kingdom of Pegú in Burma initially failed due to the illegitimacy of its actual lord and the local people's incapacity for holding a popular election.[46]

The king could not, at least in theory, ignore such a petition from an oppressed people, as his role as the defender of European Christendom and the era's chivalric spirit galvanized him into action. In 1613, the archbishop of Cyprus sent a letter signed by all of the 'prelates that are with me and all the people' to Philip III so that he would liberate the island from Ottoman control. In return, the archbishop promised that 'we will recognize Your Serene Highness as our only King after God'.[47] This compromise was not strictly for the benefit of the Cypriots; the island would serve as the first step in the liberation of the Holy Land. A similar proposal also existed between Ireland and Spain. In 1593 Maurice Fitzgerald proposed that Philip II send an army to conquer and control the island. While he rejected the creation of an arbitrary Spanish government, he did welcome the fair exercise of sovereignty as shown through both a continued respect for local Irish traditions and the defence of Catholicism.[48] The offers, however, did not end there. Constantin Paleologo, a native of Thessalonika, proposed the conquest of Constantinople so that it too could 'serve Your Majesty'.[49] The participation of the Spanish king would inspire 'all the peoples of Macedonia, who are prepared with arms at hand under the hope they have on Your Majesty as a most fortunate king and protector of the Holy Catholic Faith' and would allow him to add the title of emperor of Byzantium to his growing list of honours. After freeing Constantinople, Paleologo argued, the Spanish could then pursue 'the conquest of the Holy Sepulchre of our Lord which directly concerns Your Majesty', and guaranteed that Bosnia, Dalmatia, Bulgaria and Greece would also rise up 'and will be most faithful to Your Majesty'.[50]

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46 Saldanha, *Iustus Imperium,* 470–94.

47 AGS, E., 1645 without number: July 1614, Cyprus, 'El arcobispo de Chipre y los Prelados y el Pueblo'.

48 Recio Morales, *El socorro de Irlanda*, 33–4.

49 AGS, E., 1673 without number: 5 and 18 March 1614; Jonathan Harris, 'Despots, emperors and Balkan identity in exile', *The Sixteenth Century Journal*, 44.3 (2013) 643–62.

50 AGS, E., 495 without number: 'Papel de Hirmo Prenda en que haze relación de quan buena ocassion es la presente para intentar empresas en Levante y echar al Turco de Europa y dize la forma como se ha de intentar'. Most proposals to the king of Spain from the

The discourse of conquest as 'liberation' was fairly common within the Spanish monarchy. The polysemy of the word facilitated the numerous attempts of Spain's government to prove that the use of force had not been aimed at local populations, meaning that the Spanish had not engaged in any act representing a true conquest. There was a simple reason for this claim: a conquered territory had in principle fewer rights in fiscal negotiations than territories either inherited or freely incorporated into royal power.[51] This process of denying the act of conquest or presenting it as an instrument of emancipation was frequently used by the Spanish to justify their attacks on a variety of cities in Northern France. The municipal authorities of Amiens, for example, argued that wartime suffering meant that the city deserved liberation. The king was not to act as a conqueror but had to instead recognize the devotion of a grateful people and respect the city's ancient privileges.[52]

These rhetorical constructions, though, had their limits, especially when presented to either international communities or local powers. For Cambrai, the jurists of the diverse archbishoprics easily deconstructed the discourse that had sustained Habsburg and Bourbon claims for sovereignty over the city. They argued that Spain acquired the land through both the rights of conquest and election. An illegitimate leader, however, could not be the one to initiate a 'conquest', since Balagny ruled as a tyrant from the beginning. Furthermore, the archbishop's original claim to the land could not be suppressed, so he could rightfully request its restoration at any moment. Popular election was also invalid, unless the people were specifically granted the right, and could only use it to elect a new ruler more suitable to their taste. Despite the attempts of Spanish and Cambresian jurists and administrators, the debate always returned to the principle of the archbishop's original claim to the territory in perpetuity. But theory and practice were intertwined. If the permanence of the territory could not be justified by proper juridical elements, they would have to create new ones. Finally, in 1622–1624, the Spanish administration applied a contingency on the discourse of legitimate possession, and used it to replace the already unsuccessful claim of appropriation. In other words, the king of

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Balkans can be found in José María Floristán Imícoz, *Fuentes para la política oriental de los Austrias. La Documentación Griega del Archivo de Simancas (1571–1621)*, 2 vols (León, 1988).

51 Jon Arrieta Alberdi, 'Las formas de vinculación a la Monarquía y de relación entre sus reinos y coronas en la España de los Austrias. Perspectivas de análisis', in Antonio Álvarez-Ossorio and Bernardo J. García García (eds.), *La Monarquía de las Naciones. Patria, nación y naturaleza en la Monarquía de España* (Madrid, 2004), 303–27.

52 José Javier Ruiz Ibáñez and Gaetano Sabatini, 'Monarchy as conquest: violence, social opportunity and political stability in the establishment of the Hispanic monarchy', *Journal of Modern History*, 81.3 (2009) 501–36, 501–9.

Spain could retain *sine die* the city of Cambrai since it was the best option for both Christendom and the local population. Through this, the Spanish government preserved the church's and the archbishops' rights, saved the interests of the city, and maintained the authority of the king. The only group that remained disappointed was the canons, who could do nothing against such a powerful coalition.[53]

The problems of the Spanish administration in Cambrai show the complexity of negotiations in the transfer of sovereignty and inform the debate as to whether a people actually possessed the right to hand over a city and to engage in subsequent fiscal negotiations within these states.[54] Bound within a common historical context and often negotiating for the same practical purposes, agents from across Europe were willing to tolerate varying notions of power and sovereignty, and engaged in political discourses that meant very different things to the countries involved in negotiation. The urgency of war implied the coexistence of different discourses that could lead to perfectly contradictory results.[55]

The official discourse of the commune of Cambrai centred on the people's authority to grant sovereignty as a right of conquest, as the rebels had been the ones to open their borders to the Spaniards in the first place.[56] The Spanish command, however, saw their claims to sovereignty very differently: the *ius belli* gave them the authority to occupy a besieged city, a point of view that remained canonical for the Spanish administration before 1622.[57] A similar doctrine would be discussed for decades in the kingdom of Portugal: Philip I (II) was king on his own right, recognized by the *Cortes* of Thomar, but he had to pacify the kingdom first, simultaneously making him Portugal's conqueror, pacificator, and liberator. Once the political urgency passed, the use of these concepts became essential in subsequent fiscal debates, in discussions of

53 Ruiz Ibáñez, *Felipe II*, 105–10.

54 Michel de Waele, 'La reddition de Meaux et la fin des guerres de Religion en France', *Bulletin de la Société littéraire et historique de la Brie*, 50 (1995) 23–48; Thierry Wanegffelen, 'Entre concorde et intolerance. Alexandre Farnèse et la pacification des Pays-Bas', in Id. (ed.) *De Michel de l'Hospital à l'édit de Nantes. Politique et religion face aux Églises* (Aubenas d'Ardèche, 2002), 51–70; Michel Cassan, 'La réduction des villes à l'obéissance', *Nouvelle Revue du XVIe siècle*, 22.1 (2004) 159–74; Violet Soen, 'Reconquista and reconciliation in the Dutch Revolt: the campaign of governor-general Alexander Farnese in the Dutch Revolt (1578–1592)', *Journal of Early Modern History*, 16 (2012) 1–22; Cardim, *Portugal Unido*, 151–81.

55 Ruiz Ibáñez, 'Théories et pratiques', 638–41.

56 Ruiz Ibáñez, *Felipe II*, 86, 177–8.

57 Ruiz Ibáñez, *Felipe II*, 90–91, 178–186.

precedence, and in debates on the king's rights, all of which revolved around the arguments on the proper definition and exercise of sovereignty.[58]

5 Conclusions

For each situation in which a group of people offered the crown to the Spanish king or to his family, the proposal was strongly conditioned by historical context, whether through political opportunity, an urgency caused by civil wars, the capacity of various agents to negotiate, or the influence of local political cultures. The underlying principle in all cases, however, was that the king of Spain would be Catholic and a fair ruler. Both qualities would lead to a common good, although the definition of what was 'fair' represented another source of conflict, especially since the basis of a kingdom's incorporation were often so ambiguous. In most cases, the Spanish did not propose the integration of territories into an administrative network, as their political rivals often claimed. Instead, Philip desired to both implicitly and explicitly preserve the complete political identity of his kingdoms. In their propositions to the Spanish government, for example, Jean Boucher, a French priest, and Robert Persons, an English Jesuit, both claimed that finding a man or dynasty that possessed the qualities of good kingship was more important than a people's general willingness to submit to a foreign nation. Moreover, the theory behind the organization of these new territories emphasized the prominence of the indigenous people in government and showed respect for their traditions and liberties. The draconian conditions set forth by the great nobles for the election of the king's daughter, Isabella Clara Eugenia, to the throne of France in 1592–1593 were representative of the subordination of Spanish forces to local aristocratic interest.[59] The Spanish monarchy had to send troops, weapons, and military personnel to defend their new territories,[60] but the local institutions and elite always held considerable power.[61]

In most cases, an attentive reading of the historical records show that rebels sought a new leader in an effort to attract resources and to mediate between

58 Cardim, *Portugal Unido*, 95–130.

59 Vázquez de Prada, *Felipe II*, 391–403.

60 AGS, E., 495 without number: 'Breve relación hecha por m Athanasio Patriarca de la Primera Justiniana natural de la ciudad de Messia de parte de lo q e hecho y me obligo de hazer todo por aumento de la n^{ta} S^{ta} Fe Catolica y creçentamiento de muchos reynos a la real corona de VM^{d}'.

61 Ruiz Ibáñez and Sabatini, 'Monarchy', 527–33.

different local factions. The resulting anti-Spanish propaganda was often misleading when it considered those who looked to the Habsburgs in Madrid for political leadership as traitors. In the end, Greek, Albanese, Cypriot, Scotch, French, Irish, and English rebels sought a framework in which they could develop their own radical politics. The sovereignty these rebels offered to the king was, like in Cambrai, a mixture of limited and undefined rights. Acceptance, also as in Cambrai, confirmed the financial and military support of the king of Spain, as well as the consolidation of political authority sustained through popular legitimacy. The attainment of monarchic powers at the end of the sixteenth century (in both France and England) at the expense of popular sovereignty was not only a victory of the kings, but a triumph for those, especially the local nobles and jurists, who favoured order above all else.[62] Through their strict obedience to the king, they developed a profound respect of the 'fundamental laws' of the kingdom.[63]

Offering sovereignty in the name of the people, however, was not a practice exclusive to the Low Countries. Instead, it was a doctrine that came to be adopted by a host of rebellious subjects and ambitious countries throughout Europe. This situation led to political practices in which expanding notions of sovereignty were more intimately connected to the changing political climate of the era than to any historical need. The same doubts, errors of interpretation and opportunistic theories spread across Europe from Ireland to the Mediterranean. This was not random coincidence: in the end, these territories were all incorporated into the same shared political culture.

Bibliography

Arrieta Alberdi, Jon. 'Las formas de vinculación a la Monarquía y de relación entre sus reinos y coronas en la España de los Austrias. Perspectivas de análisis'. In Antonio Álvarez-Ossorio and Bernardo J. García García (eds.), *La Monarquía de las Naciones. Patria, nación y naturaleza en la Monarquía de España*, Madrid, 2004, 303–27.

Arrieta Alberdi, Jon. 'Forms of union: Britain and Spain, a comparative analysis', *Revista Internacional de Estudios Vascos*. 5 (2009) 23–53.

62 Annette Finley-Croswhite, *Henry IV and the Towns: The Pursuit of Legitimacy in French Urban Society, 1589–1610* (Cambridge, 1999); Olivia Carpi, *Les guerres de Religion* (*1559–1598*). *Un conflit franco-français* (Paris, 2012); Michel de Waele, *Réconcilier les français. Henri IV et la fin des troubles de religion* (*1589–1598*) (Quebec, 2010).

63 Jouanna, *Le pouvoir absolu*, 196–215, 282–97.

Arrieta Alberdi, Jon. 'Formas de unión de reinos. Tipología y casuística en perspectiva jurídico-política (siglos XVI-XVIII)'. In Alfredo Floristán Imízcoz (ed.), *1512. Conquista e incorporación de Navarra. Historiografía, derecho, y otros procesos de integración en la Europa renacentista*, Barcelona, 2012, 89–126.

Boonen, Marc and Maarten Prak. 'Rulers, patricians and burghers: the great and the little traditions of urban revolt in the Low Countries'. In Karel Davids and Jan Lucassen (eds.), *A Miracle Mirrored: The Dutch Republic in European Perspective*, Cambridge, 1995, 99–134.

Bouly, Eugène. *Dictionnaire Historique de la Ville de Cambrai des Abbayes, des Châteaux-Forts et des Antiquités du Cambrésis*. Cambrai, 1854.

Calcagno, Paolo. *'La puerta a la mar'. Il marchesato del Finale nel sistema imperiale spagnolo* (*1571–1713*). Rome, 2011.

Cano de Gardoqui, José Luis. *La incorporación del marquesado del Finale* (*1602*). Valladolid, 1955.

Cardim, Pedro. *Portugal Unido y separado. Felipe II, la Unión de territorios y el debate sobre la condición política del Reino de Portugal*. Valladolid, 2014.

Carpi, Olivia. *Les guerres de Religion* (*1559–1598*). *Un conflit franco-français*. Paris, 2012.

Cassan, Michel. 'La réduction des villes à l'obéissance'. *Nouvelle Revue du XVIe siècle*. 22.1 (2004) 159–74.

Cosandey , Fanny and Robert Descimon. *L'absolutisme en France. Histoire et historiographie*. Paris, 2002.

Coste, Laurent. 'Les milices bourgeoises en France'. In Jean-Pierre Pousou and Philippe Evanno (eds.), *Les sociétés urbaines au XVIIe siècle. Angleterre, France, Espagne*, Paris, 2007, 175–90.

Daubresse, Sylvie and Bertrand Haan (eds.). 'Le recueil de Claude Pitou'. In Id. (eds.), *Actes du parlement de Paris et documents du temps de la Ligue* (*1588–1594*), Paris, 2012, 399–455.

Descimon, Robert. 'Milice bourgeoise et identité citadine à Paris au temps de la Ligue'. *Annales ESC*. 4 (1993) 885–906.

Descimon, Robert and José Javier Ruiz Ibáñez. *Les ligueurs de l'exil. Le refuge catholique français après 1594*. Seyssel, 2005.

Duso, Giuseppe. 'La Majestas populi chez Althusius et la souveraineté moderne/The Majestas Populi in Althusius and modern sovereignty'. In Gian Mario Cazzaniga and Yves Charles Zarka (eds.), *Penser la souveraineté à l'èpoque moderne et contemporaine*, 2 vols, Paris/Pisa, 2001, vol. 1, 85–106.

Finley-Croswhite, Annette. *Henry IV and the Towns: The Pursuit of Legitimacy in French Urban Society, 1589–1610*. Cambridge, 1999.

Floristán Imícoz, José María. *Fuentes para la política oriental de los Austrias. La Documentación Griega del Archivo de Simancas* (*1571–1621*). 2 vols. León, 1988.

Floristán Imízcoz, Alfredo (ed.). *1512. Conquista e incorporación de Navarra. Historiografía, derecho, y otros procesos de integración en la Europa renacentista*. Barcelona, 2012.

Floristán Imízcoz, Alfredo. 'Los debates sobre la conquista y la reconfiguración de la identidad navarra (1512–1720)'. In Id., *1512*, 31–61.

Gil Pujol, Francisco Xavier. 'Integrar un mundo. Dinámicas de agregación y de cohesión en la Monarquía de España'. In Óscar Mazín Gómez and José Javier Ruiz Ibáñez (eds.), *Las Indias Occidentales. Procesos de incorporación territorial a las Monarquías Ibéricas*, Mexico City, 2012, 7–40.

Gil Pujol, Francisco Xavier. 'Pensamiento político español y europeo en la Edad Moderna. Reflexiones sobre su estudio en una época post-'whig''. In María José Pérez Álvarez and Laureano M. Rubio Pérez (eds.), *Campo y campesinos en la España Moderna. Culturas políticas en el mundo hispano*, 2 vols, León, 2012, vol. 1, 297–320.

Greengrass, Marc. *Christendom Destroyed. Europe, 1517–1648*. London, 2014.

Harris, Jonathan. 'Despots, emperors and Balkan identity in exile'. *The Sixteenth Century Journal*. 44.3 (2013) 643–62.

Herzog, Tamar. *Frontiers of Possession: Spain and Portugal in Europe and the Americas*. Harvard, 2015.

Hillgarth, Jocelyn N. *The Mirror of Spain, 1500–1700: The Formation of a Myth*. Ann Arbor, 2000.

Holmes, Peter. *Resistence and Compromise: The Political Thought of the Elizabethan Catholics*. Bristol, 1982.

Houliston, Victor. *Catholic Resistance in Elizabethan England: Robert Persons's Jesuit Polemic, 1580–1610*. Aldershot/Burlington/Rome, 2007.

Iñurritegui Rodríguez, José María. ' "El intento que tiene S.M. en las cosas de Francia". El programa hispano-católico ante los Estados Generales de 1593'. *Espacio, tiempo y forma, serie IV, Historia Moderna*. 7 (1994) 331–48.

Jackson, Richard A. 'Elective kingship and consensus populi in sixteenth century France'. *The Journal of Modern History*. 44.1 (1972) 155–71.

Jouanna, Arlette. *Le pouvoir absolu. Naissance de l'imaginaire politique de la royauté*. Paris, 2013.

Jouanna, Arlette. *Le prince absolu. Apogée et déclin de l'imaginaire monarchique*. Paris, 2014.

Knevel, Paul. *Burgers in het geweer. De schutterijen in Holland, 1550–1700*. Hilversum, 1994.

Lottin, Alain and Philippe Guignet. *Histoire des Provinces françaises du Nord. De Charles Quint à la Révolution française (1500–1789)*. Arras, 2006.

Mazín Gómez, Óscar (ed.). *Las representaciones del poder en las sociedades hispánicas.* Mexico City, 2012.

Micallef, Fabrice. *Un désordre européen. La compétition internationale autour des affaires de Provence, 1580–1598*. Paris, 2014.

Osborne, Toby. *Dynasty and Diplomacy in the Court of Savoy: Political Culture and the Thirty Years' Wars*. Cambridge, 2002.

Parker, David. 'Sovereignty, absolutism and the function of the law in seventeenth-century France'. *Past and Present*. 122 (1989) 36–74.

Penzi, Marco and José Javier Ruiz Ibáñez. 'Ius populi supra regem. Concepciones y usos políticos del pueblo en la liga radical católica francesa (1580–1610)'. *Historia Contemporánea*. 28 (2004) 111–45.

Poizat, Michel. *Vox populi, Vox Dei. Vox et pouvoir*. Paris, 2001.

Prak, Maarten. 'Milicia cívica y política urbana en Holanda: Leiden, siglos XVII y XVIII'. In José Javier Ruiz Ibáñez (ed.), *Las milicias del rey de España. Sociedad, política e identidad en la monarquías ibéricas*, Madrid, 2009, 330–48.

Prodi, Paolo. *Il sacramento del potere. Il giuramento politico nello storia costituzionale dell'Occidente*. Bologna, 1992.

Quaglioni, Diego. *I limiti de la sovranità. Il pensiero di Jean Bodin nella cultura politica e giuridica dell'età moderna*. Padua, 1992.

Recio Morales, Óscar. *El socorro de Irlanda en 1601 y la contribución del Ejército a la integración social de los irlandeses en España*. Madrid, 2002.

Renon, Louis. *Contribution à l'Histoire de Cambrai. Un épisode de la lutte entre l'Archevêché et le Magistrat. Un procès de droit féodal au XVIIIe siècle*. Cambrai, 1939.

Renoux-Zagamé, Marie-France. 'Du juge-prêtre au Roi-Idole. Droit divin et constitution de l'État dans la pensée juridique française à l'aube des temps modernes'. In Jean-Louis Thireau (ed.), *Le Droit entre laïcisation et néo-sacralisation*, Paris, 1997, 143–86.

Renoux-Zagamé, Marie-France. *Du droit de Dieu au droit des hommes*. Paris, 2003.

Rodríguez Gil, Magdalena. *La 'incorporación de Reinos'. Notas y textos doctrinales de derecho común*. Cáceres, 2002.

Rodríguez Salgado, María José. ' "Ni cerrando ni abriendo la puerta". Las negociaciones de paz entre Felipe II e Isabel I, 1594–1598'. In Alberto Marcos Martín (ed.), *Hacer historia desde Simancas*, Valladolid, 2011, 633–60.

Ruiz Ibáñez, José Javier. 'Théories et pratiques de la souveraineté dans la Monarchie Hispanique: un conflit de juridictions à Cambrai'. *Annales HSS*. 3 (2000) 55–81.

Ruiz Ibáñez, José Javier. *Felipe II y Cambrai. El consenso del pueblo. La soberanía entre la práctica y la teoría política. Cambrai (1595–1677)*. Rosario, 2003.

Ruiz Ibáñez, José Javier. 'Inventar una monarquía doblemente católica. Los partidarios de Felipe II en Europa y su visión de la hegemonía española'. *Estudis. Revista de Historia Moderna*. 34 (2008) 87–109.

Ruiz Ibáñez, José Javier. 'Introducción. Las milicias y el rey de España'. In José Javier Ruiz Ibáñez (ed), *Las milicias del rey de España. Sociedad, política e identidad en la monarquías ibéricas*, Madrid, 2009, 7–38.

Ruiz Ibáñez, José Javier and Gaetano Sabatini. 'Monarchy as conquest: violence, social opportunity and political stability in the establishment of the Hispanic monarchy'. *Journal of Modern History*. 81.3 (2009) 501–36.

Ruiz Ibáñez, José Javier and Gaetano Sabatini. 'Entre Aguirre y el gran rey. Los discursos de la elección de Felipe II al trono de Francia en 1591'. In Alberto Marcos Martín (ed.), *Hacer historia desde Simancas. Homenaje a José Luis Rodríguez de Diego*, Valladolid, 2011, 661–85.

Ruiz Ibáñez, José Javier. *Hispanofilia. Los tiempos de la hegemonía española*. Madrid, 2021.

Saldanha, António Vasconcelos de. *Iustus Imperium. Dos tratados como fundamento do Império dos portugueses no oriente. Estudo de Historia do dereito international e do direito português*. Lisbon, 1997.

Saupin, Guy. 'La milice bourgeoise? Relais politique fondamental dans la ville française d'Ancien Régime. Réflexions à partir de l'exemple de Nantes'. In Bruno Dumons and Olivier Seller (eds.), *Gouverner la ville en Europe. Du Moyen Age au XXe siècle*, Paris, 2006, 73–89.

Secretan, Cathérine. *Les privilèges berceau de la Liberté. La Révolte des Pays-Bas aux sources de la pensée politique moderne* (*1566–1619*). Paris, 1990.

Soen, Violet. 'Reconquista and reconciliation in the Dutch Revolt: the campaign of governor-general Alexander Farnese in the Dutch Revolt (1578–1592)'. *Journal of Early Modern History*. 16 (2012) 1–22.

Tenace, Edward Shannon. 'Messianic imperialism or traditional dynasticism? The Grand Strategy of Philip II and the Spanish failure in the wars of the 1590s'. In Tonio Andrade and William Reger (eds.), *The Limits of Empire: European Imperial Formation in Early World History. Essays in Honor of Geoffrey Parker*, Farnham/Burlington, 2012, 281–308.

Tutino, Stefania. *Law and Conscience: Catholicism in Early Modern England, 1570–1625*. Aldershot/Burlington/Rome, 2007.

Vázquez de Prada, Valentín. *Felipe II y Francia* (*1559–1598*). *Política, religión y razón de estado*. Pamplona, 2004.

Waele, Michel de. 'La reddition de Meaux et la fin des guerres de Religion en France'. *Bulletin de la Société littéraire et historique de la Brie*. 50 (1995) 23–48.

Waele, Michel de. *Réconcilier les français. Henri IV et la fin des troubles de religion* (*1589–1598*). Quebec, 2010.

Wanegffelen, Thierry. 'Entre concorde et intolerance. Alexandre Farnèse et la pacification des Pays-Bas'. In Id. (ed.) *De Michel de l´Hospital à l'édit de Nantes. Politique et religion face aux Églises*. Aubenas d'Ardèche, 2002, 51–70.

CHAPTER 9

North-Netherlandish Sovereigns at Work in the First Half of the Seventeenth Century

Simon Groenveld

1 Introduction

In the period before 1648 the concept of sovereignty was so thorny an issue, and in such different ways, that many preferred not to use the word at all.[1] The meanings could be diverse. To the South-Netherlandish Frédéric Maurice, duke of Bouillon and prince of Sedan, the first mark of sovereignty was that it was tied to a particular territory, or could even be considered a part of the territory. The term was synonymous with autonomy, 'n'estant pas necessaire d'estre issu de Maison souveraine pour devenir souverain. Il suffit de posseder une seigneurie souveraine ainsi quil devoit en tous les estats et Duchez souverains'.[2] This also seems to have been the case in the Northern Netherlands. Many referred to the United Provinces as sovereign because they had long been autonomous, as could be seen from the rights held by charter. Each sovereign territory within the Low Countries was considered an independent statelet.

Others linked the term to institutions or persons exercising independent authority: such an institution or person was regarded as sovereign. The late-eighteenth-century grand pensionary Laurens Pieter van de Spiegel, for

1 Hendrik Gerlach, *Het proces tegen Oldenbarnevelt en de 'Maximen in den staet'* (Haarlem, 1965), 411–2.

2 Landeshauptarchiv Sachsen-Anhalt, Abteilung Dessau, in Dessau [henceforth LHASA, AD], Z44 A7b, inv. no. 93, fol. 136r. Bouillon argued that there were dukes whom the king had personally or as a family elevated to the status of sovereign, but that none of them surpassed him due to the status of his duchy: 'dont la digneté est souveraine […], son Duché estant plus ancien qu'aucun d'Eulx' (fols. 138v-139r). This Bouillon was involved in the well-known conspiracy of the marquis de Cinq-Mars against Cardinal Richelieu in 1642. Once this was discovered and the conspirators executed, Bouillon was pardoned by Louis XIII of France. The petition for pardon was supported by Bouillon's uncle, Frederick Henry of Orange: the duke was the son of Orange's half-sister Maria Elisabeth. Bouillon himself presented a number of legal arguments in support of his status as *prince estranger* in France, arguments supported among other documents by the archival piece here cited, which with a number of other pieces relating to the conspiracy seems to have come from Frederick Henry's archive. See Philippe Erlanger, *Richelieu and the Affair of Cinq-Mars* (London, 1971).

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example, spoke of sovereignty as both 'the possession of unlimited power' and 'possession of first or supreme power'.[3] The former was the meaning that Jean Bodin had given the term in 1576: perfect power, absolute authority, concentrated in the right to make laws. Authors prior to Bodin had regarded sovereignty rather as characterized by a series of duties, listing not just legislative power but also the authority to make war and peace, to grant pardon, to be the highest court of judicature and to issue coin.[4] The latter of Van der Spiegel's definitions – supreme power – left open the possibility of other, inferior powers.

The United Provinces were certainly regarded by their inhabitants as independent statelets, each with its own prince. What power the prince exercised, and by what right, was a matter of different opinions as early as the sixteenth century. Contrary to the convictions of the Habsburgs, who by 1543 had become rulers of all of the Seventeen Provinces, new ideas developed, especially during the Dutch Revolt, the earliest stage of the Eighty Years War. According to the historian Martin van Gelderen these ideas developed in the wake of changing circumstances.[5] Particularly influential was the *Corte vertoninghe* by François Vranck, pensionary of Gouda, published in 1587. In this book the author argued that for eight hundred years, since far back in the Middle Ages, the highest authority had resided in a sort of popular assembly, a predecessor of the Estates colleges. It was this assembly that appointed a count.[6] The count therefore depended upon the assembly, but went beyond the boundaries allowed by law and by his inaugural oath of allegiance to the privileges to become a tyrant. This subsequently gave rise to a number of extremely important events. The first was the 1572 decision by the Estates of Holland, which had previously lacked any governmental power, to claim such power for themselves. Similarly, the somewhat irregularly assembled Estates General of 1576 declared itself empowered to govern. And five years later, in 1581, the revolted Netherlanders deposed Philip II as ruler in a resolution of only five lines, justifying their

3 Gerlach, *Proces tegen Oldenbarnevelt,* 412–3.

4 Jean Bodin, *Les Six livres de la République* (Paris, 1576). Ernst H. Kossmann, 'Volkssouvereiniteit aan het begin van het Nederlandse Ancien Régime', in Id., *Politieke theorie en geschiedenis. Verspreide opstellen en voordrachten* (Amsterdam, 1987), 59–92, 67.

5 Martin van Gelderen, *Op zoek naar de Republiek. Politiek denken tijdens de Nederlandse Opstand (1555–1590)* (Hilversum, 1991); Id., *The Political Thought of the Dutch Revolt, 1555–1590* (Cambridge, 1992).

6 François Vranck, *Corte vertoninghe van het recht byden Ridderschap, Eedelen ende steden van Hollandt ende Westvrieslant van allen ouden tijden in den voorschreven Lande gebruyckt tot behoudenisse vande vryheden, gherechticheden, Privilegien ende Loffelicke ghebruycken vanden selven Lande* (Rotterdam, 1587).

decision in the famous *Plakkaet van Verlatinge* (Placcard of Abjuration).[7] The upshot was that the defiant assemblies of Estates themselves provisionally began to exercise sovereign authority within their own province, while proffering a curtailed sovereignty to the duke of Anjou, heir presumptive to the crown of France, and after his death to Henry III of France and to Elisabeth Tudor. But when all of this proved to be a failure and no foreign prince was acquired as a new sovereign, in April 1588 they decided to do without a prince all together, as the Republic of the United Netherlands. Sovereignty was now vested not in an individual but in collective provincial assemblies.[8]

What sort of assemblies were these? Who manned them, what position did they claim, what was the content of their authority? What mutual relationships would develop internally between members of the assembly, and externally between different Estates assemblies or between an assembly and a foreign power? The emphasis of this chapter will be on the province of Holland, because it has been studied more thoroughly than the others and use can be made of some telling documents that have only recently come to light.

2 Provincial Sovereignty in the Republic

As has already been mentioned, every inhabitant of the Northern Netherlands during the Republican period was convinced of one thing: his province was an independent state, not subject to any of the surrounding territories, let alone to any other kingdom or principality. Stronger still: Holland and Zeeland, territories that in earlier centuries had formed a personal union, now moved apart, primarily due to Zeeland's desire for autonomy. This can be seen clearly in the case of feudal tenancies and the administration of the comital domains in the smallest province. Up until then actions and registration relating to these had taken place in Holland. Now Zeeland demanded not only that enfeoffment and the concomitant payments should take place in Middelburg, but that the old original domain accounts should be transferred there too – which took from 1593 to 1607. The separation never did become quite complete, however: the

7 M.E.H.N. Mout, *Plakkaat van verlatinge 1581. Inleiding, transcriptie en vertaling in hedendaags Nederlands* (The Hague, 1979); Paul Brood and Raymond Kubben (eds.), *The Act of Abjuration: Inspired and Inspirational* (Nijmegen, 2011).

8 The course of events in Simon Groenveld, Huib Leeuwenberg et al., *De Tachtigjarige Oorlog. Opstand en consolidatie in de Nederlanden, ca. 1560–1650* (5th edn; Zutphen, 2012; 6th edn; Zutphen, 2021).

princes of Orange had to do fealty for their Zeeland domains in Holland as well as in Zeeland.[9]

Whether similar problems arose between other provinces, and to what extent, can only be guessed at: as yet extremely little work has been done on the mutual relationships between the provinces. The same can be said of comparisons between the administrative practices of the different provinces.[10] Nevertheless, a small number of differences can be indicated. It has gradually been established that both locally and at a provincial level the governmental bodies had their own peculiar characteristics. These seem to be related to a stronger German background in the east and a certain degree of French influence in the west. Differences in economic activities might have been just as important. The west was primarily characterized by trade and manufactures and only secondarily by cattle-breeding and agriculture, while the east, with its poor soils, was largely marked by a lagging agrarian economy. Here, in the east, the nobility – agrarian by descent – had been able to maintain its authority better than in the west.[11] There, in the west, where society was rapidly urbanising, burgher patricians had taken the lead. In the east there were few trunk roads, and what roads there existed were poorly maintained, so that traffic had a hard time of it. In the west the tempo of movement increased, especially after the introduction of modern sailing ferries and passenger barges – developments that also influenced provincial governmental practices.[12]

When after 1581–1588 the Estates assemblies everywhere began to wield governmental power, all of these needed time to find the most suitable forms for it: for the combination of what would later be called legislative and executive power with their already existing financial tasks, which were concentrated on fiscal competences. The differences between west and east clearly played a role in this. Each of the eastward provinces, all showing German influences,

9 Simon Groenveld, 'De Oranjes als markiezen van Veere. Hun politieke invloed in Zeeland en de stad Veere, 1581–1702', in Peter Blom (ed.), *Borsele Bourgondië Oranje. Heren en markiezen van Veere en Vlissingen, 1400–1700* (Hilversum, 2009), 105–52, 112–6; Id., 'Politieke verhoudingen', in Paul Brusse and Wijnand W. Mijnhardt (eds.), *Geschiedenis van Zeeland, vol. II: 1550–1700* (Zwolle, 2012), 147–98, 155–7.

10 The only work to compare the practices of provincial governments is Combertus W. van der Pot, *Bestuurs- en Rechtsinstellingen der Nederlandse Provinciën* (Zwolle, 1949), 49–117.

11 Conrad Gietman, *Republiek van adel. Eer in de Oost-Nederlandse adelscultuur, 1555–1702* (Utrecht, 2010).

12 Jan de Vries, *The Dutch Rural Economy in the Golden Age, 1500–1700* (New Haven/London, 1974); Id., *Barges & Capitalism: Passenger Transportation in the Dutch Economy, 1632–1839* (Utrecht, 1981).

was subdivided into smaller units, quarters with their own government. These quarters maintained some sort of mutual contact, occasionally joined together in a single assembly or at least holding their meetings in the same place and at the same time. In Friesland and Gelderland they regularly assembled as Estates, but each in its own chamber within the same building. A special college for the maintenance of links – the *Landschapstafel* in Gelderland, the *Mindergetal* in Friesland – was a necessity to keep such a system working. The frequency of ordinary sessions was low: only one or two per year, lasting a few weeks. Sometimes, extraordinary sessions were called, taking up only a few days. In the meantime, day-to-day work was carried out by a standing committee: the *Gedeputeerde Staten* ('Delegated Estates') – or in Gelderland by the provincial court that, unlike in other provinces, continued to combine political and judicial authority in a single body.[13]

In the urbanised west, structures of rule were quite different. Here there had been no quarters. And unlike in the east, the nobility had a limited role in the Estates. In the assembly of Holland the noble estate – the members of the exclusive, tiny *Ridderschap* – had only a single vote, alongside eighteen cities with one vote each. In smaller Zeeland the single noble vote – that of the marquis of Veere, who was usually also prince of Orange – was dwarfed by the votes of the six boroughs that were represented. Both of these provinces also had a day-to-day government, a standing committee called *Gecommitteerde Raden* ('Commissioned Councillors') that kept things running in periods between sessions of the Estates colleges. Due to different developments in the course of the Revolt, the standing committee of the Estates of Zeeland had much more extensive powers than that of the Estates of Holland.[14]

What remained true of all the provinces was that the representatives of the various constituent parts only bore sovereignty when assembled together in session. As soon as each member returned home, he no longer had any sovereign status. Which, however, did not prevent many deputies from regarding themselves as having a share in sovereignty.

13 On Friesland: Hotso Spanninga, *Gulden Vrijheid? Politieke cultuur en staatsvorming in Friesland, 1600–1640* (Hilversum, 2012), 92–7. On Gelderland: Robert Fruin and Herman T. Colenbrander, *Geschiedenis der staatsinstellingen in Nederland tot den val der Republiek* (2nd edn, The Hague, 1922), 227–30; Sijbrandus J. Fockema Andreae, *De Nederlandse staat onder de Republiek* (3rd edn, Amsterdam, 1969), 40–2; Van der Pot, *Bestuurs- en Rechtsinstellingen,* 56.

14 Groenveld, 'Politieke verhoudingen', 167.

2.1 *The Case of Holland*

How were the new structures of rule expressed in formal terms? How did they function in practice? A previously unknown source sheds some light on these questions. On 2 December 1642, an as yet unidentified writer finished a treatise entitled *Vanden Staet ende forme van Regeringe vande Provincie van Hollant* (*'Of the State and form of Government of the Province of Holland'*), which was to be preserved in the archive of Frederick Henry of Orange or of his son, William II.[15] It was clearly intended to initiate the then sixteen-year-old William into the structures of government in Holland and is therefore related to Frederick Henry's two recently rediscovered political testaments, written for his son in 1640, one about the role of the stadtholder, the other about the captain-generalship.[16]

Just as François Vranck had done, this anonymous writer goes back to medieval Holland to discuss the role of the count. But unlike Vranck he sees other officeholders very much as subordinates: they were 'onder de aensienelycke ende Wtsteeckende auctoriteyt vande Prince vanden lande genochsaem […] verdonckert gebleven' ('sufficiently […] obscured under the honourable and excellent authority of the prince of the country'). The count was 'in des selfs persoon de voornaemste representatie vande souverainiteyt vanden lande' ('in his own person the foremost representative of the country's sovereignty').[17] The sovereign state gave him his position, he exercised 'de souverainiteijt vande Regeringe vande selven Staet' ('the sovereignty of the government of the same state'). This view corresponds to that of the duke of Bouillon, mentioned earlier. This comital position, being transferred during the Revolt, as we saw, to the Estates met in session, 'het hooge recht van regeringe, ende om op […] Groote ende andere saecken te delibereren ende resolveren, aende ordre vande Edelen, ende aende Raeden, ende Vroetschappen, vande Steden' ('the high right of government, and the deliberation and resolution of […] great and other questions' had come to reside in 'the order of nobles, and the councils and magistracies of the cities'), or in other words, in the 'souveraine Vergadering vande Staten van Hollant ende Westvrieslant' ('sovereign Assembly of the

15 LHASA, AD, Z44 A7b, inv. no. 90, fols. 5r-25v. It is not improbable that this treatise was written by the well-known but rather controversial jurist Dirck Graswinckel (1600–1666), who became private legal adviser to the stadtholder Frederick Henry in 1632, and maybe participated in the education of young William II.

16 LHASA, AD, Z44 A7b, inv. no. 122, fols. 1r-5r (The Hague, 29 April 1640) and 6r-11r ('s-Hertogenbosch, 23 July 1640). It is my intention to place these documents in their proper context in a new biography of William II that I am preparing.

17 LHASA, AD, Z44 A7b, inv. no. 90, fol. 8v.

Estates of Holland and West Friesland'). So after 1588 this assembly represented sovereignty, according to the writer even *was* sovereign. He takes steps that many others also took: the state was sovereign, the government over it was sovereign by abstraction, this sovereignty was exercised by the assembled Estates – and so the Estates themselves were in practice sovereigns.[18] So Holland was no longer governed by 'een alleen absolutelyck' ('one alone absolutely') and could in this view be characterized as a republic.[19]

The anonymous writer then lists 'de deelen ende rechten vande hoochste macht van regeringe in 't generael' ('the parts and rights of the highest power of governance in general'), to go on to check whether all those parts were actually exercised by sovereign Holland. Here he uses a sort of definition of sovereignty that predated Bodin's innovative ideas.[20] Where Bodin took the power to make laws as the full core of sovereign power, our writer goes back to listing various types of power. A sovereign government could conclude treaties, could decide to go to war, to make peace, to agree a truce, could issue laws, appoint magistrates and officers of state, impose tolls and other levies, grant pardons and strike coin. It turned out, according to him, that Holland did not possess all these powers: war, peace, treaties and coinage it had relinquished, he thought – a view which he was not unique among his contemporaries in holding, and which was gradually becoming a subject of contentious debate. This is a point I will return to.[21]

By indicating that in the changed situation of the Republic sovereignty was exercised by the Estates, the author seems to bring us to the new alternative to monarchy: the sovereignty of the people. Ernst Kossmann has shown that we do need to understand this term in the light of what early modern writers meant by 'the people'. A distinction was made between *populus* – the many-headed mob – and a *corpus consociatum.* The former was an unstructured mass of individuals, incapable of governing itself. Democracy, grounded upon this base, could only cause chaos, and was dismissed by political thinkers. The latter was an emanation of a divinely created social order: this was made up of corporations in which each individual had been given a place. This society was led by the highest of the corporations: the estates clergy, nobility and citizenry. Representatives of these elites spoke on behalf of all inhabitants and exercised the highest authority over

18 LHASA, AD, Z44 A7b, inv. no. 90, fol. 13r.

19 LHASA, AD, Z44 A7b, inv. no. 90, fols. 8r-v.

20 Kossmann, 'Volkssouvereiniteit', 61–7.

21 LHASA, AD, Z44 A7b, inv. no. 90, fols. 12r-v. Ernst H. Kossmann, 'Bodin, Althusius en Parker, of: over de moderniteit van de Nederlandse Opstand', in Id., *Politieke theorie,* 93–126, 95: Bodin's formulation was: 'la premiere marque du Prince souuerain, c'est la puissance de donner loy à tous en general, et à chacun en particulier'.

them. They were not elected members of the Estates by society, but were drawn from the nobility, assembled in the *Ridderschap,* and from the boroughs, out of their own midst. The first estate, the clergy, which had almost vanished and which had lost its formal and social position, was no longer represented. So sovereignty of the people and aristocracy were two sides of the same coin.[22]

2.2 *Everyday Reality*

This brings us to the day-to-day practice of government in Holland. While it is true that the Estates of Holland were not in permanent session, they did meet more frequently than their counterparts in other provinces: they assembled for a few weeks at a time at least during four periods per year. Our anonymous author informs us of the seldom-mentioned background to the choice of dates of session. The first session each year fell in March, the third in September, both shortly before the times that the collection of the 'common means' (*gemene middelen*) – a series of structural and incidental or 'ordinary and extraordinary' (*ordinaris en extraordinaris*) taxes – would be farmed out. This would give an opportunity to reach prior agreements. The second session had to be in July, in the middle of the campaigning season, so that matters of war could be deliberated. And the fourth, in November, was at the time that proposals for the financing of the next campaign – the 'general petition' (*generale petitie*) – could be expected, proposals that were drafted by the Council of State (*Raad van State*) on behalf of the Estates General and that needed the consent of the provinces.[23] If it was felt to be desirable, additional sessions could be held in the periods between these regular sessions.

During a doctoral seminar at the University of Leiden the meetings of the Estates were explored (see Table 9.1). Firstly the frequency of their sessions was looked at. It turned out that the number of sessions varied each year:

TABLE 9.1 Annual number of sessions of the Estates of Holland, 1625–1643[a]

	1625	1627	1629	1631	1633	1635	1637	1639	1641	1643
Sessions	5	7	7	5	7	6	5	7	7	6

[a] The sources for this and the following table are the printed books of minutes (*Resolutieboeken*) of the Estates of Holland for the years given. Nationaal Archief The Hague [NA] 3.01.04.01, Archief Staten van Holland [SH], inv. nos. 58–76.

22 Kossmann, 'Volkssouvereiniteit', 67–72; Id., 'Bodin, Althusius en Parker', passim; Wiebe Bergsma, *Aggaeus van Albada* (*c. 1525–1587*)*, schwenckfeldiaan, staatsman en strijder voor verdraagzaamheid* (Groningen, 1983), 113–21.

23 LHASA, AD, Z44 A7b, inv. no. 90, fol. 15r.

If we go on to tally up the number of days per year spent in session, times of heightened tension are immediately apparent. In 1633, a year in which negotiations with the South were taking place in Tilburg and in The Hague, there was a total of 161 days, while in an average year like 1641 there were 155. Usually meetings only took place before noon (*voor noen*), only very occasionally in the late afternoon. Each session was called by the standing committee, the *Gecommitteerde Raden*. These sent a letter to each member with the date to attend and the *Poincten van Beschrijving,* the issues for debate. These issues were to be discussed beforehand by the *Ridderschap* and within the city governments, so that those deputized to the meeting would arrive commissioned 'with a charge' ('met een last').[24] The gentlemen met at the Inner Court (*Binnenhof*) of the comital castle in The Hague, initially in what was probably a simple meeting room on the ground floor – between the stadtholder's quarters and the court chapel – and after 1650 in a spacious new chamber on the first floor. There the seating was in a square, with each delegation in a fixed order of precedence, while the city pensionaries – legal officials – sat in front at little desks. The knights had a table of their own, where the grand pensionary also took his seat.[25]

Before 1572 the sessions of the Estates comprised only the gentlemen of the *Ridderschap* and representatives of six great cities: Dordrecht, Haarlem, Delft, Leiden, Amsterdam and Gouda. From 1572 these were joined by – in fixed order – Rotterdam, Gorcum, Schiedam, Schoonhoven, Brielle, Alkmaar, Hoorn, Enkhuizen, Edam, Monnickendam, Medemblik, and Purmerend.[26] The first five were boroughs south of the river IJ, in the *Zuiderkwartier*; the other seven were in the *Noorderkwartier*. This geographical distinction was a result of the course of the war during the Revolt and had no deeper historical roots.

As we have already seen, each delegation to the Estates, regardless of its size, had a single vote. Determining the number of delegates present at sessions or from day to day is rather more of a challenge. The official books of resolutions only record who had been appointed for the session as a whole, not who turned up on any given day. The records known as 'private minutes' (*particuliere notulen*), kept by individual members of delegations alongside the official

24 On *Gecommitteerde Raden:* Simon Groenveld, '"Edele Mogende Heeren". De Gecommitteerde Raden van het Zuiderkwartier als besogne van de Staten van Holland ten tijde van Frederik Hendrik', in Marijke Bruggeman et al. (eds.), *Mensen van de Nieuwe Tijd. Een liber amicorum voor A.Th. van Deursen* (Amsterdam, 1996), 169–92.

25 Robert Jan van Pelt and Marieke E. Tiethoff-Spliethoff, *Het Binnenhof. Van grafelijke residentie tot regeringscentrum* (Dieren, 1984), 42, 48. The Upper House of the Dutch parliament now meets in this chamber.

26 Fockema Andreae, *Nederlandse staat,* 44.

resolutions, are no more revealing on this point.[27] So we know the numbers of delegates appointed and their names, but not who was actually present.

Over this period as a whole, the total increased from 128 to 165 appointed delegates, or from an average of 53 to an average of 72 per session (see Table 9.2). But, as we know from other sources, not all of them were present at every meeting. A 1585 decree, the *Ordonnantie op de Vergaderinge van de Staten* (*'Ordinance on the session of the Estates* [of Holland]*'*), specified that the knights had to have at least three members present to be quorate, and seven great cities at

TABLE 9.2 Numbers of delegates per session of the Estates of Holland, 1625–1643

Session	**1625**	**1627**	**1629**	**1631**	**1633**	**1635**	**1637**	**1639**	**1641**	**1643**
I	60	52	76	62	63	60	60	57	62	65
II	56	65	41	63	69	65	65	65	67	79
III	52	59	60	70	66	67	63	56	67	72
IV	61	60	57	64	61	64	56	61	64	71
V	58	57	69	63	62	65	64	68	64	77
VI	-	29	38	-	60	53	-	-[a]	68	70
VII	-	51	66	-	67	-	-	62	71	-
Total number appointments	287	373	407	322	448	374	308	369	463	434
Average per session	57	53	58	64	64	62	62	62	68	72
Total number of persons	128	128	147	143	131	131	135	140	150	165

[a] Three days in session, but no appointments mentioned; this session was held outside these tallies.

27 For this period we have an important series of private minutes, kept by Nicolaes Stellingwerff, pensionary of Medemblik, and Sybrant Schot, pensionary of Purmerend. These resolutions have been published for the period 1620–1636 in the *Rijks Geschiedkundige Publicatiën* (Grote Serie nos. 217, 200, 206, 228, 245, 249, 252). On these minutes, see J.G. Smit, 'Algemene Inleiding', in J.W. Veenendaal-Barth et al. (eds.), *Particuliere Notulen van de vergaderingen der Staten van Holland 1620–1640 door N. Stellingwerff en S. Schot I* (The Hague, 1992), vii-xxiv. The complete series of these minutes, preserved in the West-Frisian Archives at Hoorn, will be digitized during 2020-2021. On private minutes in general: Nicolaas Japikse, 'Verslag van een onderzoek naar ongedrukte resolutiën der Staten van Holland na 1572', *Bijdragen en Mededeelingen van het Historisch Genootschap,* 28 (1907) lxxviii-cxiii.

least two delegates.[28] The ordinance says nothing about the others. But because all boroughs were bound to be present, they would have to have had at least one delegate turn up. This gives a minimum of twenty-eight delegates for a session of the full Estates: probably often the number actually present.

Occasionally this minimum was not met at the beginning of a session. The delegations of many of the boroughs, especially the smaller ones, could fail to appear on time. In this eventuality, letters, requests and small matters were dealt with first. But if after a few days the required number was still not reached, the larger questions were brought to the floor regardless. During each meeting, after the common prayer and the reading of the minutes of the previous day, the president raised the points for discussion one by one, presenting them to each delegation in order of precedence. First the knights gave their opinion, with the grand pensionary as their spokesman, then the boroughs in their fixed order, first the great cities, then the smaller. The latter seldom pronounced an independent view, but adhered to the position of one of the great cities. Data like these and differences of opinion are not apparent from the official books of resolutions, but are frequently recorded in the private minutes. These allow historians to identify the formation of factions within the assembly.[29] Once the full circuit of delegations had been completed, the president formulated a conclusion. This usually formed the basis for the resolution, the wording of which had to be confirmed the following day.

If discussions took an unforeseen turn, one of the members of a delegation could be sent home for further consultation. This certainly delayed the decision – and was sometimes used as a cunning way of deferring any conclusion at all. If a decision had to be taken unanimously – a requirement for weighty matters – then the majority had to use persuasion (*persuasie*) to move the dissenting delegations 'to accommodate' (*accomoderen*). If they were unsuccessful, then voting the minority down (*overstemmen*) was inevitable. This had to be avoided as much as possible, as it set bad blood between delegations and made further co-operation awkward. If unanimity was not required, then this problem did not occur.

The increase in the number of members appointed to delegations to the Estates that is apparent from the tallies must surely have been related to the growing amount of work the assembly had to get through. The way the assembly worked was also affected. As early as the sixteenth century the Estates began to have all sorts of preparatory work done by committees, or *besognes,*

28 NA 3.01.04.01, States of Holland, inv. no. 20, Printed minutes 1585, 12 March. See also Fruin and Colenbrander, *Geschiedenis der staatsinstellingen,* 230.

29 Simon Groenveld, *'Evidente factiën in den staet'. Sociaal-politieke verhoudingen in de 17e-eeuwse Republiek der Verenigde Nederlanden* (Hilversum, 1990).

made up of their members, and to a lesser extent to have a resolution of the Estates executed by such a committee. These were primarily committees with brief life spans, appointed *ad hoc*. The growth in the number of committees and in their size is one indicator of the increase in business. Between 1574 and 1588 roughly ninety committees were appointed each year, each with an average membership of three delegates.[30] Towards 1650 the number of committees had risen to at least 110 per year. If this increase was not spectacular, the heavier pressure of work and the growing importance of the tasks entrusted to committees can be seen from an almost doubling of their size: around 1650 they were on average taking up the energies of five or six delegates. It is hard to tell from the resolutions whether the lifespan of committees also increased over this period. This seems less likely, because the Estates preferred not to have a committee continue its business during the assembly's recess, and so had the committee members complete as much of their work as possible during a single session.

And then there were questions that of necessity had to be kept secret, sometimes even from the assembly of the Estates. In such cases a secret committee (*secreet besogne*) could be appointed, the members of which had to take an oath of confidentiality. Such a committee would particularly be entrusted with preparatory work, occasionally with executive power, and exceptionally 'resolveren sulcks als ten meesten dienste vanden Lande bevonden sal werden te behooren' ('to resolve such as shall be found most fitting to the service of the country').[31] The committee would in such a case be empowered to carry the matter it was entrusted with through all the stages of the decision-making process, albeit for a limited period. Occasionally the decisions were not even recorded. The first time we encounter such a *secreet besogne* is on 15 March 1576, when secret talks were to be conducted with England.[32] Over time the number of secret committees would also increase, but only slowly. Committees like these can be seen as precursors to a custom that began to take shape in Holland before the middle of the seventeenth century: the creation of permanent, fixed committees with a reasonably defined specific task. The *Gecommitteerde*

30 Johannes W. Koopmans, *De Staten van Holland en de Opstand. De ontwikkeling van hun functies en organisatie in de periode 1544–1588* (The Hague/Groningen, 1990), 199–202; Simon Groenveld, *Verlopend getij. De Nederlandse Republiek en de Engelse Burgeroorlog 1640–1646* (Dieren, 1984), 74–87; Id., *Regeren in de Republiek. Bestuurspraktijken in de 17e-eeuwse Noordelijke Nederlanden: terugblik en perspectief. Afscheidscollege* (Leiden, 2006), 13.

31 NA 3.01.04.01, States of Holland, inv. no. 74, Printed minutes 1641, 21 August.

32 Groenveld, *Verlopend getij,* 75; Koopmans, *Staten van Holland,* 200.

Raden were the first foreshadowing of committees of this type, as were some of the committees led by one particular borough to focus on one specific field.[33]

2.3 *Provincial Officials*

The Estates had only a small body of functionaries for the entirety of its governmental task. The highest of these were the grand pensionary and the stadtholder. The former post had developed since 1477 from that of an advocate (the *Landsadvocaat*) serving the county's authorities to a highly expert jurist heading the provincial administration. He carried out his function with a tiny staff – four clerks in the time of Jacob Cats (1636–1651) and between five and eight under Johan de Witt (1653–1672). Without a doubt the grand pensionary was the linchpin of the provincial government, due to a combination of his great legal expertise, his long term of office, and his presence in just about every important body, at the provincial level or in the Union as a whole. His instructions made him president of the Estates, but prohibited him from holding any other office concurrently. It was only in 1672 that he was officially allowed to combine his function with that of pensionary of the *Ridderschap*, although he had long exercised this function informally.[34]

The other high functionary was the stadtholder, who had formerly been the direct deputy of the Habsburg count of Holland. Now that the sovereign dignities had been assumed by the Estates and these, when not in session, were represented by the *Gecommitteerde Raden*, the function of stadtholder had in theory become meaningless.[35] Nevertheless, each province did maintain a stadtholder, because it wanted the services of a lord who could command

33 Simon Groenveld, 'De institutionele en politieke context', in Jacobus Th. de Smidt et al. (eds.), *Van tresorier tot thesaurier-generaal. Zes eeuwen financieel beleid in handen van een hoge Nederlandse ambtsdrager* (Hilversum, 1996), 55–88, 62–7; Rudi van Maanen, 'Een Hollands besogne in Leidse bronnen. De commissie voor de kerkelijke zaken van de Staten van Holland', in Maurits A. Ebben and F. Pieter Wagenaar (eds.), *De cirkel doorbroken. Met nieuwe ideeën terug naar de bronnen. Opstellen over de Republiek aangeboden aan S. Groenveld* (Leiden, 2006), 42–55; Mieke E. Meiboom, *Inventaris van het archief van de gedeputeerden van Haarlem ter dagvaart van de Staten van Holland, (1589) 1603–1787* (The Hague, 1990).

34 Simon Groenveld, 'Van landsadvocaat naar raadpensionaris. De eerste fase van een Hollands ambt, 1477–1621', *Holland, historisch tijdschrift,* 45.1 (2013) 2–13; Jan den Tex, *Oldenbarnevelt*, 5 vols (Haarlem, 1960–1972); Herbert H. Rowen, *John de Witt, Grand Pensionary of Holland, 1625–1672* (Princeton, NJ, 1978).

35 This was already emphasized by Fruin and Colenbrander, *Geschiedenis der staatsinstellingen,* 219.

respect inside and outside the Republic and could act as a generally accepted mediator or even arbiter. The province took him into paid service, so as an official, and after every vacancy assigned the stadtholder's tasks anew. In Friesland, Groningen and Gelderland these tasks were defined in relatively precise instructions, but in Holland and Zeeland they were only specified in fairly short and sweeping letters of commission. The stadtholder was usually delegated the sovereign dignity of president of the provincial court of judicature, and the similarly sovereign power to grant pardons, a power that has barely been studied in the context of the Republic.[36] In Holland and Zeeland the Estates usually empowered him as well to name the magistrates of many cities for the coming year, from lists drawn up by the boroughs. This capacity gave an able stadtholder the politically useful opportunity to install sympathetic patricians in civic governments, and so to exercise, by way of these, indirect influence on his employers, the Estates. In the east he did not have this power: here the urban governments were, until 1674–1675, chosen and installed directly by the borough, usually in and by an assembly of citizens drawn from the higher middle class (*gemeenslieden*), or, in Gelderland, by the Court of Gelre at the borough's proposal.[37]

Although each province was free to choose its own stadtholder, from 1590–1591 onwards all seven consistently appointed members of the families of Orange-Nassau and Nassau-Dietz. The Oranges, in particular, who held at least five provincial stadtholderships, were easily seen as officeholders of general weight, by the smaller provinces even as their natural champion against what they perceived as the predominance of Holland. Holland alone, after all, covered 58% of the general expenses of the Union of the seven provinces, sometimes with strings attached. The idea of Orange having a central role was reinforced by the fact that the stadtholders simultaneously held a second function, again inherited from Habsburg times but also much changed: the captain-generalship of each province individually – another function that has as yet barely been studied. The captain general was no longer the actual leader

36 The following studies treat the granting of pardon with the focus almost entirely on the Habsburg Netherlands: Marjan Vrolijk, *Recht door gratie. Gratie bij doodslagen en andere delicten in Vlaanderen, Holland en Zeeland, 1531–1567* (Hilversum, 2004); Hugo de Schepper en Marjan Vrolijk, 'Vrede en orde door gratie in Holland en Zeeland onder de Habsburgers en de Republiek, 1500–1650', in: Bruggeman, *Mensen van de Nieuwe Tijd,* 98–117. Some sight on the practice of the power to grant pardon in Frederick Henry's times in Simon Groenveld, '"Vanden Hujze te Mujden". P.C. Hooft als drost, kastelein, baljuw en grootofficier', in *De Muiderkring zeven maal zeven 1954–2004* (The Hague, 2004), 31–55.

37 The eastern model, in the case of Overijssel, has been treated in a thorough study by Jean Cornelis Streng, *'Stemme in staat'. De bestuurlijke elite in de stadsrepubliek Zwolle 1579–1795*

of the provincial forces, but was now a paid officeholder who maintained the connection between the political authorities and the military command. That he simultaneously acted as a military commander was due to his appointment to a general as well, in his case usually to a general of cavalry, the most senior commander in the Republic. His position became even more considerable in 1625, when the Estates General appointed Frederick Henry, already captain general of Holland, as captain general of the Union, thus captain general for all the forces in Dutch service.[38]

It was therefore easy to look at Orange in different ways. Our much-cited anonymous author did not neglect to impress his view upon his pupil, William II. On the stadtholder, he wrote, 'is als by representatie vande persoon vande Prins vanden lande, geconfereert het exercitie vande hoochste macht' ('is as by representation of the person of the prince of the land, conferred the exercise of the highest power'). He therefore suggests that there had been no real shift in the powers the function conferred: the stadtholder continued to hold the highest government, on behalf of the overlord, as in Habsburg times. During serious financial problems of his own days, for example, he, rather than the Estates of Holland, should project 'een hooger Wijsheijt en beleijt, en nijet soe seer een radende, maer veel eer dringende, en genochsaem dwingende auctoriteijt' ('a higher wisdom and policy, and not so much an advisory, as rather an urgent and sufficiently compelling authority').[39] These views seem to be related to the political testaments of Frederick Henry, who had in all likelihood commissioned the writing of the manuscript of 1642 and who advised his son William, 'in welcker voeghen, onses bedunckens, het Politique Gouvernement der Gemelten Provincien soude dienen beleidt te werden ende geadministreert' ('in what way we consider the politic government of the said provinces should be conducted and administered').[40] So according to the prince, Orange *did* hold 'Politique Gouvernement'! This determined the qualifications in the anonymous writer's description of Holland. The provincial government could, he argued, 'beneffens eenige andere Provincien, nyet anders aengemerckt werden, als een forme van Regeringe, ofte Republycke, bestaende wt eene Aristocratie, vermengt met de forme van een Prinsdom, ofte Principatus' ('alongside certain other provinces,

(Hilversum, 1997); Id., *'Zich met de publique zaaken bemoeien'. Het staatkundige debat in Overijssel tijdens het Oude Bewind* (Intellectueel Overijssel 4; Epe, 2009), 39–46 (for the stadtholder).

38 Fruin and Colenbrander, *Geschiedenis der staatsinstellingen,* 209–13.

39 LHASA, AD, Z44 A7b, inv. no. 90, fols. 14r and 18v.

40 LHASA, AD, Z44 A7b, inv. no. 122, fol. 1r.

not be otherwise regarded, but as a form of commonwealth, or republic, consisting of an aristocracy, mixed with the form of a principality or principatus'). This is a view taken from the young Hugo Grotius, who in 1610 arrived at a *regnum mixtum*, a mixed form of government, by drawing the historical lines back from François Vranck into Antiquity and then taking the best guarantee against political degeneration to be an aristocracy combined with a 'legal principality' ('wettelick Vorstendom'), something he thought he discerned among the ancient Batavians.[41] In other words: for the anonymous author, as for many others, Orange was at that time not a servant of the Estates, but a sharer in their sovereignty.

2.4 *Generality*

The unsurprising discovery that the anonymous author was pro-Orange brings us back to the place I left him before: where he argued that not all the elements of sovereignty actually resided in the provincial Estates. According to him, on the basis of the 1579 Union of Utrecht, widely and constantly invoked,[42] and in consultation with other provinces, Holland had decided 'sonder de andere, nyet te disponeren, nochte in 't maecken van besluyt van pais, ofte bestant, nochte om oorloch aen te nemen, nochte om verbonden te maecken met eenige naebuirige, ofte Wtheemsche, Heeren, ofte landen, nochte oock in 't stuck vande Munte' ('not to make dispositions without the others either for the making of peace of truce, or for going to war, or for making alliances with any Lords or countries, neighbouring or Foreign, or for the striking of coin').[43] These affairs – especially war, peace and truce, including their financing, and the conclusion of treaties which was extended to all foreign relations – were said to have been transferred to the Generality (*Generaliteit*), the commonality or overarching body. Or more precisely, to 'eene souvraine permanente

41 LHASA, AD, Z44 A7b, inr. no. 90, fols. 9r-v. Hugo Grotius, *Liber de antiquitate reipublicae Batavicae* (Leiden, 1610). See also Simon Groenveld, *De Prins voor Amsterdam. Reacties uit pamfletten op de aanslag van 1650* (Bussum, 1967), 32–53; Gert Onne van de Klashorst, ' "Metten schijn van monarchie getempert". De verdediging van het stadhouderschap in de partijliteratuur, 1650–1686', in Hans W. Blom and Ivo W. Wildenberg (eds.), *Pieter de la Court en zijn tijd. Aspecten van een veelzijdig publicist (1618–1685)* (Amsterdam/Maarssen, 1986), 93–136, 101–10; Pieter Geyl, 'Het stadhouderschap in de partijliteratuur onder De Witt', *Mededeelingen der Koninklijke Nederlandsche Akademie van Wetenschappen,* New series, 10.2 (1947) 17–84.

42 The text of the Union has again been published, now on the basis of the best original, which has been preserved in the City Archives of Ghent, in Simon Groenveld (ed.), *Unie-Bestand-Vrede. Drie fundamentele wetten van de Republiek der Verenigde Nederlanden* (Hilversum, 2009), 33–83.

43 Compare the preceding text at note 23. LHASA, AD, Z44 A7b, inv. no. 90, fols. 10v, 12v.

Vergadering, bestaende Wt gecommitteerde vande respective Provincien, onder den titul van, Vergadering vande Staten Generael' ('a sovereign permanent Assembly, consisting of deputies of the respective Provinces, under the title of Assembly of the Estates General'). In other words, each of the provinces had ceded a portion of its sovereign power to a joint apparatus that spoke on matters of common import, and beneath which ran subordinate administrations made up of several bodies, such as the Council of State.

Here we come up against a fiercely debated point, controversial in particular from the time of the Twelve Years Truce (1609–1621). The heart of the issue was the question of whether sovereignty was indivisible or could be split up among a variety of bodies. Some took the view that the latter was possible, that within a single state there could be more than one sovereign. Under certain circumstances one sovereignty could also be higher than another. According to this group this had been the case in the Republic during the bitter controversies of the Truce, as a result of which the Estates General had gained in power. Provincial sovereignty, such as that of Holland, had been subordinated to the general sovereignty of the Union. It is noteworthy that this view was particularly embraced by Prince Maurice and his supporters, in other words the pro-Orange groups. The remarks of the above-mentioned anonymous author show that this view persisted in circles around the Orange family after the Truce had expired and still had its supporters at mid-century.[44]

Against it, from the very beginning of the century, had been the views of the grand pensionary Johan van Oldenbarnevelt, and later Hugo Grotius, and their far more numerous adherents. In 1618 Grotius had declared 'dat ick de Staten van Hollant alleen voor mijne absolute Souverainen hadde gekent; dat de Staten Generael nyet en hadde anders als een gelimiteerde Souverainiteit quoad quid' ('that I acknowledged the Estates of Holland alone as my absolute sovereign; that the Estates General had no other than a limited sovereignty as to that'). In this view sovereignty was indivisible, and consequently could only reside with each of the provinces individually. These guarded their sovereignty jealously. They had no other choice, according to the historian Gerlach, because they could not relinquish any legal power without ceasing to be a state. All that could possibly be transferred was a certain empowerment to act on behalf of the sovereign – and thus they delegated to the general college the competence of exercising certain sovereign rights.[45] But they maintained

44 Gerlach, *Proces tegen Oldenbarnevelt,* 260–311, 417–8. Den Tex, *Oldenbarnevelt,* vol. 4, 332–4.

45 Gerlach, *Proces tegen Oldenbarnevelt,* 417.

their control even over this exercising of power because their deputies continued to express the views of the province in the aforesaid fields on the basis of their imperative mandate. This meant that the Estates General, increasingly a policy-making organ within the Generality, had no power over the provinces, could occupy no place *above* the provinces, but stood *between* the sovereign provincial assemblies of the Estates. It was not a supranational body, but 'merely' an intergovernmental apparatus.[46] It had no direct ties to the inhabitants who were not considered as its subjects, it issued no decrees that directly impacted on these, but could approach them only by means of the provincial administrations.[47]

These relationships did not make it any easier for the Estates General to reach decisions. The important issues they discussed often required unanimity, but the divergent interests of the provinces sometimes made this difficult to achieve. Here, in the Estates General, there were again frequent attempts at persuasion and accommodation – and only in extreme cases recourse to one side voting the other down. The best-known instance is the conclusion of the Treaty of Munster. Zeeland was against, as it had been against the Twelve Years Truce. The Zeeland delegates not only rejected the peace treaty, but refused to ratify its acceptance by the full assembly. The province held out to the end, only dropping its objections after the treaty had been promulgated.[48] While this was a form of passive resistance, more active positions could also strain relations. This became apparent two years later. In England a civil war between crown and parliament had been raging since 1642. Both parties to the conflict had been stopping and impounding neutral ships, alleging that they were supplying their opponent over the North Sea. Holland, which suffered from this in particular, demanded diplomatic action from the Estates General, which was after all in charge of foreign affairs. But the majority in the Estates General was opposed: refusing to recognize the Commonwealth of England that had

46 F. Pieter Wagenaar, Toon Kerkhoff and Mark Rutgers (eds.), *Duizend jaar openbaar bestuur in Nederland. Van patrimoniaal bestuur naar waarborgstaat* (Bussum, 2011), 110–3, 142.

47 Simon Groenveld, 'De "Heren van Ter Goes" in de zeventiende eeuw. Stad-eiland-gewest-generaliteit', in Cornelis Dekker, Simon Groenveld and Albert L. Kort, *Goes zeshonderd jaar stad. Drie studies over zijn geschiedenis (1405–2005)* (Goes, 2005), 26–65, 53–64. The difficulties foreigners had in understanding these Dutch structures, were shown by the French resident in The Hague Henri Brasset who, in a letter of 20 June 1648 to the Estates General, called more than once all inhabitants 'leurs Subjects'. LHASA, AD, Z44 A7b, inv. no. 101, fols. 9r-11v.

48 Jan Hendrik Kluiver, *De souvereine en independente staat Zeeland. De politiek van de provincie Zeeland inzake vredesonderhandelingen met Spanje tijdens de Tachtigjarige Oorlog tegen de achtergrond van de positie van Zeeland in de Republiek* (Middelburg, 1998).

been proclaimed in the meantime, it did not have any legal argument to send an embassy that could make representations. Views diverged so much that in 1650 Holland sent its own low-ranking diplomat to London – a commissioner – even though this went against the relationships between the provinces. There was ferocious contestation, which died down only when the necessity became evident, recognition followed, and the same diplomat was sent by the Generality.[49]

3 Conclusion: Recognising Sovereignty

This case of recognition of a new state brings us to a final aspect of the phenomenon of sovereignty-in-practice. The Republic, though it had in previous decades constantly spoken of the sovereignty of the provinces, was itself a new state, arisen through rebellion. How was the Republic regarded by foreign powers? The jurist Frowein studied international ideas about recognition over the course of the centuries. He demonstrated that there was a clear tension between the political and the diplomatic sides of the issue. In the frequent wars of the sixteenth and seventeenth centuries all sorts of states would readily ask the assistance of external forces, whether or not these were recognized as sovereign. But they were aware that the law of nations and the standards of diplomacy crosscut this. The main view was that international recognition was only possible once the previous sovereign, in the Dutch case the repudiated Spanish Habsburgs, recognized the new government as sovereign.[50]

Because this was slow to happen, Elisabeth Tudor in England and Henry IV of France tied themselves in knots to give aid and support to the rebel provinces in order to maintain some sort of hold in the strategically situated Low Countries. They went as far as spoken recognition without formal recognition, as defensive treaties full of reservations, as neutral participation in discussions, such as those that led to the Truce in 1609. But even then it remained a question whether the much-discussed sovereignty of the seven provinces had been recognized. The formulations of the Treaty of the Truce were deliberately kept ambiguous, so that the Netherlanders could read recognition into them, as

49 Simon Groenveld, '"Een Schaep in 't Schapelandt". Het Hollandse gezantschap van Gerard Schaep Pietersz. naar Engeland, 1650–1651', *Jaarboek Amstelodamum,* 87 (1995) 179–96.

50 Jochen A. Frowein, 'Die Entwicklung der Anerkennung von Staaten und Regierungen im Völkerrecht', *Der Staat,* 11 (1972) 145–59; Simon Groenveld, '"Verlatinge" and the recognition of a new state', in Brood and Kubben, *Act of Abjuration,* 65–79.

could others who desired to make treaties with the Republic. But Philip III of Spain and the sovereign princes in Brussels, Albert and Isabella, had no desire to recognize sovereignty and read the formulations otherwise.[51]

So after 1621 the struggle continued and although the Republic behaved outwardly as though recognized for being sovereign, it nevertheless in the preparations of the Treaty of Munster insisted on formal recognition by Philip III's successor, Philip IV. His position weakened by wars on many fronts, the king finally conceded. The result was a clear formulation in the Treaty of Munster: 'In den eersten verclaert den voors Heer Coninck ende erkent, dat de voors Heeren Staten Generael vande vereenichde Nederlanden, en de respectieve Provincien vandeselve [...] sijn vrije ende Souveraine Staten, Provincien en Landen, opde welcke [...] hij heer Coninck niet en pretendeert, noch nu, noch naemaels' ('In the first place the said lord the king declares and acknowledges, That the said lords and Estates General of the Low Countries, and all the respective provinces thereof [...] are free and sovereign states, provinces and countries upon which [...] the said lord the king has no manner of pretensions, and that neither at this time, nor *in futurum*, he shall ever make any pretensions to them for himself or for his heirs and successors').[52]

The sovereignty of the seven provinces, so long an internal object of heated debate, and internationally subject to cautious manipulations and ferocious warfare, had been recognized by the former prince. There was then no longer any obstacle to other states doing likewise. The Republic was now able to maintain and develop its remarkably structured and exceptional form of government at will, and to act freely in international affairs. It was immediately regarded as a major power and fully engaged, more than had previously been possible, in grand politics. It continued to do so for over half a century. Internally, the debates about sovereignty continued, the Republic oscillating between emphasising the exclusive sovereignty of the provincial Estates and the shared authority of these sovereign provincial Estates and the Orange-dominated Estates General. In the eighteenth century, symptoms of centralisation for the benefit of the Estates General would gradually occur, and at other moments attempts were made by circles around the Oranges to develop

51 Simon Groenveld, *Het Twaalfjarig Bestand, 1609–1621. De jongelingsjaren van de Republiek der Verenigde Nederlanden* (The Hague, 2009), 59–66; Randall Lesaffer (ed.), *The Twelve Years Truce (1609): Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century* (Leiden/Boston, 2014). The text of the Truce is published in Groenveld, *Unie-Bestand-Vrede,* 85–127.

52 Groenveld, *Unie-Bestand-Vrede*, 160. English translation in Stephen Whatley, *A General Collection of Treatys*, vol. 2 (2nd edn, London, 1732), 337.

the stadtholdership into a more general and monarchical role – attempts not supported by the princes themselves – which would lead to new tensions between different visions of sovereignty.[53]

Bibliography

Bergsma, Wiebe. *Aggaeus van Albada (c. 1525–1587), schwenckfeldiaan, staatsman en strijder voor verdraagzaamheid*. Groningen, 1983.

Bodin, Jean. *Les Six livres de la République*. Paris, 1576.

Brood, Paul and Raymond Kubben (eds.). *The Act of Abjuration: Inspired and Inspirational*. Nijmegen, 2011.

Den Tex, Jan. *Oldenbarnevelt*. 5 vols. Haarlem, 1960–1972.

De Schepper, Hugo en Marjan Vrolijk. 'Vrede en orde door gratie in Holland en Zeeland onder de Habsburgers en de Republiek, 1500–1650'. In: Marijke Bruggeman et al., *Mensen van de Nieuwe Tijd,* Amsterdam, 1996, 98–117.

De Vries, Jan. *The Dutch Rural Economy in the Golden Age, 1500–1700*. New Haven/London, 1974.

De Vries, Jan. *Barges & Capitalism: Passenger Transportation in the Dutch Economy, 1632–1839*. Utrecht, 1981.

Erlanger, Philippe. *Richelieu and the Affair of Cinq-Mars*. London, 1971.

Fockema Andreae, Sijbrandus J. *De Nederlandse staat onder de Republiek*. 3rd edn. Amsterdam, 1969.

Frowein, Jochen A. 'Die Entwicklung der Anerkennung von Staaten und Regierungen im Völkerrecht'. *Der Staat*. 11 (1972) 145–59.

Fruin, Robert and Herman T. Colenbrander. *Geschiedenis der staatsinstellingen in Nederland tot den val der Republiek*. 2nd edn. The Hague, 1922.

Gabriels, A.J.C.M. *De heren als dienaren en de dienaar als heer. Het stadhouderlijk stelsel in de tweede helft van de achttiende eeuw*. The Hague, 1990.

Gerlach, Hendrik. *Het proces tegen Oldenbarnevelt en de 'Maximen in den staet'*. Haarlem, 1965.

Geyl, Pieter. 'Het stadhouderschap in de partijliteratuur onder De Witt'. *Mededeelingen der Koninklijke Nederlandsche Akademie van Wetenschappen*. New series, 10.2 (1947) 17–84.

53 Simon Groenveld, F. Pieter Wagenaar and Frits van der Meer, 'Pre-Napoleonic centralization in a decentralized polity: the case of the Dutch Republic', *International Review of Administrative Sciences,* 76-1 (2010) 47–64; A.J.C.M. Gabriels, *De heren als dienaren en de dienaar als heer. Het stadhouderlijk stelsel in de tweede helft van de achttiende eeuw* (The Hague, 1990).

Gietman, Conrad. *Republiek van adel. Eer in de Oost-Nederlandse adelscultuur, 1555–1702*. Utrecht, 2010.

Groenveld, Simon. *De Prins voor Amsterdam. Reacties uit pamfletten op de aanslag van 1650*. Bussum, 1967.

Groenveld, Simon. *Verlopend getij. De Nederlandse Republiek en de Engelse Burgeroorlog 1640–1646*. Dieren, 1984.

Groenveld, Simon. *'Evidente factiën in den staet'. Sociaal-politieke verhoudingen in de 17e-eeuwse Republiek der Verenigde Nederlanden*. Hilversum, 1990.

Groenveld, Simon. ' "Een Schaep in 't Schapelandt". Het Hollandse gezantschap van Gerard Schaep Pietersz. naar Engeland, 1650–1651'. *Jaarboek Amstelodamum*. 87 (1995) 179–96.

Groenveld, Simon. ' "Edele Mogende Heeren". De Gecommitteerde Raden van het Zuiderkwartier als besogne van de Staten van Holland ten tijde van Frederik Hendrik'. In Marijke Bruggeman et al. (eds.), *Mensen van de Nieuwe Tijd. Een liber amicorum voor A.Th. van Deursen*, Amsterdam, 1996, 169–92.

Groenveld, Simon. 'De institutionele en politieke context'. In Jacobus Th. de Smidt et al. (eds.), *Van tresorier tot thesaurier-generaal. Zes eeuwen financieel beleid in handen van een hoge Nederlandse ambtsdrager*, Hilversum, 1996, 55–88.

Groenveld, Simon. ' "Vanden Hujze te Mujden". P.C. Hooft als drost, kastelein, baljuw en grootofficier'. In *De Muiderkring zeven maal zeven 1954–2004*, The Hague, 2004, 31–55.

Groenveld, Simon. 'De "Heren van Ter Goes" in de zeventiende eeuw. Stad-eiland-gewestgeneraliteit'. In Cornelis Dekker, Simon Groenveld, and Albert L. Kort, *Goes zeshonderd jaar stad. Drie studies over zijn geschiedenis* (*1405–2005*), Goes, 2005, 26–65.

Groenveld, Simon. *Regeren in de Republiek. Bestuurspraktijken in de 17e-eeuwse Noordelijke Nederlanden: terugblik en perspectief. Afscheidscollege*. Leiden, 2006.

Groenveld, Simon. 'De Oranjes als markiezen van Veere. Hun politieke invloed in Zeeland en de stad Veere, 1581–1702'. In Peter Blom (ed.), *Borsele Bourgondië Oranje. Heren en markiezen van Veere en Vlissingen, 1400–1700*, Hilversum, 2009, 105–52.

Groenveld, Simon (ed.). *Unie-Bestand-Vrede. Drie fundamentele wetten van de Republiek der Verenigde Nederlanden*. Hilversum, 2009.

Groenveld, Simon. *Het Twaalfjarig Bestand, 1609–1621. De jongelingsjaren van de Republiek der Verenigde Nederlanden*. The Hague, 2009.

Groenveld, Simon. ' "Verlatinge" and the recognition of a new state'. In Paul Brood and Raymond Kubben (eds.), *The Act of Abjuration: Inspired and Inspirational*, Nijmegen, 2011, 65–79.

Groenveld, Simon. 'Politieke verhoudingen'. In Paul Brusse and Wijnand W. Mijnhardt (eds.), *Geschiedenis van Zeeland,* vol. II: *1550–1700*, Zwolle, 2012, 147–98.

Groenveld, Simon, Huib Leeuwenberg et al. *De Tachtigjarige Oorlog. Opstand en consolidatie in de Nederlanden, ca. 1560–1650*. 5th edn. Zutphen, 2012.

Groenveld, Simon. 'Van landsadvocaat naar raadpensionaris. De eerste fase van een Hollands ambt, 1477–1621'. *Holland, historisch tijdschrift*. 45.1 (2013) 2–13.

Groenveld, Simon, Pieter Wagenaar, and Frits van der Meer. 'Pre-Napoleonic centralization in a decentralized polity: the case of the Dutch Republic'. *International Review of Administrative Sciences*. 76-1 (2010) 47–64.

Japikse, Nicolaas. 'Verslag van een onderzoek naar ongedrukte resolutiën der Staten van Holland na 1572'. *Bijdragen en Mededeelingen van het Historisch Genootschap*. 28 (1907) lxxviii-cxiii.

Kluiver, Jan Hendrik. *De souvereine en independente staat Zeeland. De politiek van de provincie Zeeland inzake vredesonderhandelingen met Spanje tijdens de Tachtigjarige Oorlog tegen de achtergrond van de positie van Zeeland in de Republiek*. Middelburg, 1998.

Koopmans, Johannes W. *De Staten van Holland en de Opstand. De ontwikkeling van hun functies en organisatie in de periode 1544–1588*. The Hague/Groningen, 1990.

Kossmann, Ernst H. 'Volkssouvereiniteit aan het begin van het Nederlandse Ancien Régime'. In Id., *Politieke theorie en geschiedenis. Verspreide opstellen en voordrachten*, Amsterdam, 1987, 59–92.

Kossmann, Ernst H. 'Bodin, Althusius en Parker, of: over de moderniteit van de Nederlandse Opstand'. In Id., *Politieke theorie en geschiedenis*, Amsterdam, 1987, 93–126.

Lesaffer, Randall (ed.). *The Twelve Years Truce (1609): Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century*. Leiden/Boston, 2014.

Meiboom, W.E. *Inventaris van het archief van de gedeputeerden van Haarlem ter dagvaart van de Staten van Holland, (1589) 1603–1787*. The Hague, 1990.

Mout, M.E.H.N. *Plakkaat van verlatinge 1581. Inleiding, transcriptie en vertaling in hedendaags Nederlands*. The Hague, 1979.

Rowen, Herbert H. *John de Witt, Grand Pensionary of Holland, 1625–1672*. Princeton, NJ, 1978.

Smit, J.G. 'Algemene Inleiding'. In J.W. Veenendaal-Barth et al. (eds.), *Particuliere Notulen van de vergaderingen der Staten van Holland 1620–1640 door N. Stellingwerff en S. Schot I*, The Hague, 1992, vii-xxiv.

Spanninga, Hotso. *Gulden Vrijheid? Politieke cultuur en staatsvorming in Friesland, 1600–1640*. Hilversum, 2012.

Streng, Jean Cornelis. *'Stemme in staat'. DSe bestuurlijke elite in de stadsrepubliek Zwolle 1579–1795*. Hilversum, 1997.

Streng, Jean Cornelis. *'Zich met de publique zaaken bemoeien'. Het staatkundige debat in Overijssel tijdens het Oude Bewind*. Intellectueel Overijssel, 4. Epe, 2009.

Van de Klashorst, Gert Onne. ' "Metten schijn van monarchie getempert". De verdediging van het stadhouderschap in de partijliteratuur, 1650–1686'. In Hans W. Blom and Ivo W. Wildenberg (eds.), *Pieter de la Court en zijn tijd. Aspecten van een veelzijdig publicist (1618–1685)*, Amsterdam/Maarssen, 1986, 93–136.

Van der Pot, Combertus W. *Bestuurs- en Rechtsinstellingen der Nederlandse Provinciën*. Zwolle, 1949.

Van Gelderen, Martin. *Op zoek naar de Republiek. Politiek denken tijdens de Nederlandse Opstand* (*1555–1590*). Hilversum, 1991.

Van Gelderen, Martin. *The Political Thought of the Dutch Revolt, 1555–1590*. Cambridge, 1992.

Van Maanen, Rudi. 'Een Hollands besogne in Leidse bronnen. De commissie voor de kerkelijke zaken van de Staten van Holland'. In Maurits A. Ebben and F.P. Wagenaar (eds.), *De cirkel doorbroken. Met nieuwe ideeën terug naar de bronnen. Opstellen over de Republiek aangeboden aan S. Groenveld*, Leiden, 2006, 42–55.

Van Pelt, Robert Jan and Marieke E. Tiethoff-Spliethoff. *Het Binnenhof. Van grafelijke residentie tot regeringscentrum*. Dieren, 1984.

Vrolijk, Marjan. *Recht door gratie. Gratie bij doodslagen en andere delicten in Vlaanderen, Holland en Zeeland, 1531–1567*. Hilversum, 2004.

Wagenaar, Pieter. Toon Kerkhoff, and Mark Rutgers (eds.). *Duizend jaar openbaar bestuur in Nederland. Van patrimoniaal bestuur naar waarborgstaat*. Bussum, 2011.

CHAPTER 10

Early Seventeenth-Century Representative Institutions and Law Making in the Habsburg Netherlands

René Vermeir

1 Princely Legislation in the Habsburg Netherlands

The princely legislation passed within the Habsburg Netherlands has not yet been thoroughly researched. While it is certain that princely legislation took on an increasingly prominent role in society starting in the second half of the fifteenth century, not much is known about its creation, content, jurisdiction, or the number of actual texts promulgated and who was involved in their creation.[1]

Traditionally, the sovereign held the prerogative to pass laws ('condere leges') within his own principalities. In 1576, Jean Bodin, a supporter of princely legislative sovereignty, was the first to examine the concept in a systematic manner, and his analysis became widespread in later centuries.[2] As many scholars have pointed out,[3] Bodin wrote in his *Livre premier* that 'the chief characteristic of the sovereign ruler is the power to impose rules on all of the subjects in general, and on each of them separately'. 'But', he continued, 'that is not enough, because it must be added that this should be done without the approval of someone higher, equal or lower in status than him. Because if the ruler can only enact laws with the consent of someone higher, then he himself

1 Jean-Marie Cauchies, 'L'essor d'une législation générale pour les Pays-Bas Bourguignons dans le dernier quart du XVe siècle: aperçu et questions', in *Publication du Centre Européen d'Etudes Burgondo-Médianes* (Basel, 1981), 59–70, 61. In recent years there has fortunately been a growing interest in this field of research, as witnessed by the important reference work by Jean-Marie Cauchies, *'Es plantar un mundo nuevo'. Légiférer aux anciens Pays-Bas, XIIe-XVIIIe siècle* (Brussels, 2019), and Nicolas Simon's (as yet unpublished) doctoral thesis, *Quand légiférer, c'est communiquer. La dynamique de la décision gouvernementale dans les anciens Pays-Bas, ca. 1580–ca. 1610* (Université Saint-Louis Brussels, 2017).

2 David Parker, 'Sovereignty, absolutism and the function of the law in seventeenth-century France', *Past and Present*, 122 (1989) 36–74, 37.

3 E.g. Luc Foisneau, 'Sovereignty and reason of state: Bodin, Botero, Richelieu and Hobbes', in Howell A. Lloyd (ed.), *The Reception of Bodin* (Leiden/Boston, 2013), 326–8.

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is a subject; if he can do so only with the authorization of an equal, then he has to share power; and if he must have the consent of the subjects or a parliament or the people, then he is no sovereign'.[4] In other words, all power flowed from the prince; he had the authority to make or change laws without having to take the opinions of others into account.[5]

Of course this interpretation has been thoroughly critiqued by modern scholars – David Parker, for example, refers to it as 'a deceptively attractive explanatory concept'[6] – but the actual dynamics behind princely legislation deserve far more attention than they have thus far received. This chapter explores the last aspect that Bodin considered at odds with princely sovereignty, namely, the participation of the 'senate', or the people, in the legislative process. Furthermore, it addresses the question of whether, and to what extent, the Estates's representatives in the Habsburg Netherlands affected princely law. Previous authors have already pointed out that the Estates did participate in the legislative process, but this matter has not yet received systematic treatment.[7] This chapter will provide such an analysis with regard to the government of Philip IV (1621–1665) by focusing on the Estates General during its only meeting in this period (1632–1634), and the Estates of Flanders, which served as a permanent discussion partner for the prince, just like other provincial estates assemblies.[8]

The political importance of estates assemblies has frequently been noted. In particular, the Estates General, thanks to its overarching character, was a very powerful institution that held great political importance. The duke of Burgundy, Philip the Good, created the institution in the fifteenth century to support

4 'La premiere marque du Prince souverain, c'est la puissance de donner loy à tous en general, & à chacun en particulier: mais ce n'est pas assez, car il faut adiouster sans le consentement de plus grand, ny de pareil, ny de moindre que soy. Car si le prince est obligé de ne faire loy sans le consentement d'un plus grand que soy, il est vray suget; si d'un pareil, il aura compaignon; si des sugets, soit du senat ou du peuple, il n'est pas souverain'. Jean Bodin, *Les Six Livres de la Republique* (Paris, 1576), 197 (Book I, Chapter XI, 'Des vrayes marques de souveraineté').

5 Jean-Fabien Spitz, *Bodin et la souveraineté* (Paris, 1998), 48–9.

6 Parker, 'Sovereignty', 37.

7 Hugo De Schepper and Jean-Marie Cauchies, 'Justicie, gracie en wetgeving. Juridische instrumenten van de landsheerlijke macht in de Nederlanden, 1200–1600', in Hugo Soly and René Vermeir (eds.), *Beleid en bestuur in de Oude Nederlanden. Liber Amicorum prof. dr. M. Baelde* (Ghent, 1993), 176.

8 Paul Van Peteghem pointed out the lack of research on the role played by the provincial assemblies in the legislative process. See Paul Van Peteghem, *De Raad van Vlaanderen en staatsvorming onder Karel V (1515–1555). Een publiekrechtelijk onderzoek naar centralisatiestreven in de XVII Provinciën* (Nijmegen, 1990), 187.

the political and institutional unification of the Netherlands. Charles V regularly negotiated with the Estates General, which was faster and more efficient than talking with the provincial Estates separately. But its unifying character gave the Estates General a great deal of power, which led to major tensions with Philip II in the second half of the sixteenth century. The effective abolition of the institution in the seventeenth century – the meeting of 1632–1634 was the last convened by the king during the Spanish Habsburg period[9] – cannot, however, be understood as evidence that the Estates's influence was weakening,[10] because the provincial Estates simply took over the subsidy negotiations once again. Recent research has demonstrated that the provincial estates assemblies continued unabated in their representative role, and acted as a permanent counterweight to princely power. The Estates of Flanders and the Estates of Brabant were an inextricable part of the government. They accounted for more than half of the *beden*, or state subsidies, during the seventeenth century, with the county of Flanders often bringing in more than the duchy of Brabant.[11] Thus, the Estates of Flanders provide an excellent depiction of both the power that could be wielded by an estates assembly, and how they could translate their influence into legislation fit to be passed by the prince.

But what should be considered legislation? Defining 'legislation' is a problem that the editors working within the framework of the *Commission Royale pour la Publication des Anciennes Lois et Ordonnances de la Belgique* have struggled with for a long time. Certainly, not all texts in which the ruler communicated or imposed a decision or norm can be called legislation. Moreover, the contemporary terminology is inconsistent and offers no guidance in this area; it is not because the words *loi*, *décret*, *ordonnance*, *placard*, *constitution*, *pragmatique*, *lettres patentes*, *diplôme*, *privilège*, *arrêté*, *déclaration* or *règlement* appear in the title of a text, that it ipso facto has to do with legislation. Based upon the research conducted by Jean-Marie Cauchies, the renowned specialist in Burgundian law, I suggested in a previous article that 'princely legislation' should be understood to encompass all legal norms emanating from the sovereign, his deputy the governor general, also while acting as captain general, and his central or regional councils, and which were intended to be of long duration, and have general application by applying to everyone or to a specific social or professional group (e.g. the nobility) within the province where the

9 René Vermeir, *En estado de guerra. Felipe IV y Flandes, 1629–1648* (Cordoba, 2006), 66 ff.

10 As Karin Van Honacker has rightfully remarked: Karin Van Honacker, 'Un état fédéral', in Paul Janssens (ed.), *La Belgique espagnole et la principauté de Liège, 1585–1715*, 2 vols (Brussels, 2006), vol. 1, 162.

11 Vermeir, *En estado de guerra*, 355.

law was promulgated. Thus their legal force could not be limited to a particular situation, but must apply to an entire community of persons, meaning, for example, that letters of appointment or patents of nobility cannot be considered part of the corpus of princely legislation.[12]

2 Procedure

First, it is necessary to have a general understanding of how the legislative procedure worked in practice. How did statutory laws in the Habsburg Netherlands come into being? The act of legislating was one of the *regalia* and belonged entirely to the prince, who could delegate this power to his representative, the governor general.[13] Legislation came in various types, each with its own material characteristics.[14] Content variations probably influenced these formal differences, but more research is required in order to determine the precise relationship between content and form.

As Berkvens has previously noted, Southern Netherlandish jurists also traced the prince's legislative power back to the *Lex Regia*, a Roman legal statute in which the Roman people had irrevocably handed the imperium to the emperor. When asked 'Quae origo legis?', Paul Christinaeus (1553–1631), a member of the Great Council of Malines, replied with the famous maxim: 'Quod principi placuit legis habet vigorem'. The Antwerp jurist and canonist Franciscus Zypaeus (1580–1650) responded with 'leges, constitutiones, edicta, ordinationes, placita ad principes hodie pertinent ex lege regia'.[15] In ordinances, this principle is invariably formulated 'car ainsi nous plaist-il'.

Yet, because the Habsburg Netherlands was actually a personal union and earlier sovereign principalities continued to exist within it, the sovereign could

12 René Vermeir, 'Combler les lacunes. L'édition des ordonnances de Philippe IV (1621–1665)', *Bulletin de la Commission Royale pour la publication des anciennes lois et ordonnances de la Belgique*, 46 (2005) 39–50, 42–3.

13 In their official letter of appointment, every governor general was granted the authority 'de faire faire toutes manieres d'edictz, statutz et ordonnances qu'il verra servir au bien, utilité, commodité et police de nosdits pays et subiectz et de la chose publicque d'iceulx' (Letter of appointment to interim governor general don Francisco de Melo, 6 december 1641: Brussels, Archives Générales du Royaume [henceforth AGR], Papiers d'État et de l'Audience [henceforth Aud.], no. 1225, fols. 42-43v).

14 Louis A.M.J.A. Berkvens distinguishes between *plakkaten*, *patenten* and *verordeningen* of the governor general. See A.M.J.A. Berkvens, *Plakkatenlijst Overkwartier 1665–1794. Deel I: Spaans Gelre. Instellingen, territorium, wetgeving (1580-) 1665–1702* (Nijmegen, 1990), 151–4.

15 Quoted in Berkvens, *Plakkatenlijst*, 132.

not make general laws under a single title. Instead, as the duke of Brabant, duke of Luxembourg, count of Flanders, count of Hainault, etc., he legislated for each region separately, even when issuing identical regulations. In some instances, laws were intended for a particular region, while others were meant to apply everywhere. Brabant, however, was particularly insistent on its individuality. Invoking the amended Article 5 of the 1549 Joyous Entry,[16] the Council of Brabant refused to publish princely laws created by the central government, unless the chancellor of Brabant – rather than the president of the *Conseil Privé* – had initialled them, the secretary of the Council of Brabant – rather than the *audiencier,* who was the chief secretary of the Collateral Councils – had given his signature, and they bore the official seal of Brabant.[17]

Despite this piece-meal approach of princely legislation, the ruler or governor generally relied upon the central institutions for the conceptualization, editing and general enactment of laws. The Council of Finance dealt with regulations of a financial or commercial nature, while the *maestre de campo general* or the *superintendente de la justicia militar* prepared military matters. However, in the greater majority of cases, the *Conseil Privé* was primarily responsible for handling legal issues, and had been since 1531.[18] The council's jurists drafted the laws and gathered advice from the relevant agencies, institutions, and – presumably – the councils of the provinces that would be subject to the proposed legislation. The involvement of the provincial councils made sense in light of the fact that the safeguarding of regional privileges was one of their traditional tasks. However, in 1628, Archduchess Isabella, who had become governess general for life following the death of Albert in 1621, replied to a consultation from the Estates of Upper Guelders (the Overkwartier), by insisting that it was not necessary for the central government to discuss legislation with provincial councils, and that this was certainly not the case with regard to provincial estates assemblies.[19] Whether the consultation stage included the provincial representatives or not, once the draft was complete, it was sent to the governor general along with any recommendations. Following its approval, the *Conseil Privé* issued the regulation in a neat copy, initialled by

16 Louis Galesloot, 'Charles-Quint et les États de Brabant en 1549', *Bulletin de la Commission Royale d'Histoire*, 52 (1882) 150–1.

17 Louis Prosper Gachard, 'Notice sur l'usage, qui était particulier au Brabant, de promulguer les édits et ordonnances sous le sceau de cette province', *Commission Royale pour la Publication des Anciennes Lois et Ordonnances de la Belgique*, 2 (1852) 167–97, 176, 191; Arthur Gaillard, *Le Conseil de Brabant*, 3 vols (Brussels, 1898), vol. 1, 222.

18 Prosper Alexandre, *Histoire du Conseil Privé* (Brussels, 1895), 382–7.

19 Cited in Berkvens, *Plakkatenlijst*, 138.

the president of the *Conseil Privé*, and given a seal. The text was then printed and the council was responsible – via the secretary of State and Audience – for passing it on to regional and local governments.

In principle, a princely statute was only valid in a particular region if its council had correctly registered and published it, i.e. read it aloud in the consistory.[20] The Council of Brabant's *sui generis* practice has already been mentioned, but the other provincial councils usually distributed ordinances from Brussels without further ado – unless of course, they exercised their right to remonstrate regarding any legislation that they considered to be in conflict with regional privileges. If this happened, they could suspend publication and request that the *Conseil Privé* make adjustments. If a provincial council raised no issues, the new legislative act would be duly noted and registered. However, the printed copies dispatched to the regional and local sheriffs and bailiffs only stated that the text had effectively been published in the provincial council – 'Ghepubliceert in openbare consistorie vanden Raede in Vlaendren' – which was then followed by the date of publication. After the local authorities announced the new ordinance, the province's residents were then expected to know its contents and act accordingly.

However, provincial councils could also produce their own legislation, applicable, of course, only in their own region. This provincial legislation, as well as the necessary publication of princely laws by individual provincial councils, was a remnant of the sovereign character of the medieval principalities, such as the county of Flanders and the duchy of Brabant. Yet this does not appear to have been a frequent occurrence. Berkvens counted 85 laws drafted by the Sovereign Council of Roermond for Upper Guelders between 1665 and 1702, with at least 30 issued at the behest of the central government.[21] This means that, on average, the Council *motu proprio* promulgated barely one statute per year. However, the provincial councils *did* have the right to enact domestic legislation, and while the central government occasionally attempted to prevent them from doing so, it was often unsuccessful.[22] At the same time, the provincial council assumedly issued no laws without the *Conseil Privé*'s knowledge

20 Joke Verfaillie, *Au cœur de la Cour. Een analyse van de organisatie en het personeel van de griffie van de Raad van Vlaanderen, 1386–1795* (unpublished doctoral thesis Ghent University, 2014), vol. 1, 29, 33.

21 Berkvens, *Plakkatenlijst*, 146–7.

22 In particular, the Council of Brabant was the usual disputant with the central government, but the institution relied consistently and successfully upon the *Joyeuse Entrée* to counter these attacks on its prerogatives; see Gaillard, *Le Conseil de Brabant*, vol. 1, 223. In the end, nothing came of the ambition to turn over all of the legislative tasks to the *Conseil Privé*, as was expressed in the general instructions to the cardinal-infante as governor general (General instructions to Don Fernando as governor general of the Habsburg

or prior approval. Importantly, these regulations were often rules governing the provincial council's operation and internal order,[23] although they also did legislate on other matters.[24]

3 The Estates General and Legislation

But to return to this chapter's central question: did the representative institutions play a role in the legislative process? The Habsburg Netherlands's Estates General did not have its own, well-defined responsibilities, but acted similar to the provincial Estates at the regional level. Starting at the end of the fifteenth century, the Estates General emerged as the primary handler of the central government's subsidy requests, which granted the institution a great deal of influence, particularly in the areas of public finance, war and peace.[25] With no money of his own, the prince could not govern without the financial support of his subjects, and had to request ordinary and extraordinary subsidies at fixed times. In addition, the prince had to always justify his requests for funds, which led to regular discussions between the ruler and the relevant representative institution – the provincial Estates or the Estates General. Legislative matters could be raised within the context of this structured dialogue.

John Gilissen has highlighted some legislative interventions by the Estates General during the reign of Charles V. In 1531, the emperor – after extensively consulting with the Estates General and obtaining its agreement – promulgated a series of ordinances meant to reshape the Netherlands's central administration. On 1 October, he created the Collateral Councils and, on 7 October, followed this with a comprehensive ordinance covering various matters, such as the homologation of common law, notaries, bankruptcy, certain aspects of criminal law, and, in general terms, the relationship between the constituent regions of the Netherlands. According to Gilissen, this was the prince's first attempt at creating uniform legislation aimed at the entire area. He created these ordinances 'with the advice of the Estates of our lands in the Low Countries'

Netherlands, 19 October 1632: Archivo General de Simancas [henceforth AGS], Secretarías Provinciales, legajo 2569, fol. 35).

23 See, for example, the ordinance regarding the judicial procedures within the Council of Flanders, 20 April 1624 (AGR, OP0270).

24 See, for example, the Council of Flanders's ordinance on who could practice medicine in the county (18 November 1623; AGR, OP0010/019), or the prohibition against the distilation of brandy in Flanders (17 October 1661; AGR, OP0061/012).

25 John Gilissen, 'Les Etats-Généraux des Pays de Par Deça (1464–1632)', *Anciens pays et assemblées d'État*, 33 (1965) 261–321, 294.

and they were read aloud in their final form during the session of the Estates General that took place in Brussels during October of 1531.[26] At such an important juncture, in which political and administrative structures were laid out for years to come, the Estates General fully participated in the decision making process. This was also the case in 1549, when the Transaction of Augsburg and the Pragmatic Sanction included important constitutional arrangements. The Estates General spoke out again with regard to the 1598 Act of Cession, which required them to accept new sovereigns.[27]

But these were instances concerning both the nature of the state and the relationship between the ruler and his subjects. In the sixteenth century, the Estates General never became an actual partner of the prince in regard to legislation, as it remained, but for a few exceptions, his exclusive prerogative. At the same time, however, many legislative acts were the result of requests by cities, corporations and provincial Estates, and in this fashion, the prince's subjects could affect changes from below.[28]

The later history of the Habsburg Netherlands's Estates General is well known; its last gathering took place from 1632 to 1634.[29] Officials in Madrid retained a vivid memory of the revolutionary dynamic that this institution had set in motion during the course of the second half of the sixteenth century, and specifically for this reason, the ruler did all that he could to prevent a new gathering. Starting with the appointment of Archduke Albert as governor general of the Netherlands in 1595, it was always expressly stipulated in the governor's secret instructions that he could not convene an assembly without prior permission from Madrid – except when extraordinary circumstance rendered it unavoidable.[30] Such was the dread in Madrid of this institution's political influence, that a meeting of the Estates General had to be avoided at all costs. However, after a series of military defeats, and especially following the loss of Maestricht in August of 1632, the politically active groups in the Southern Netherlands – the third estate, clergy and nobility – decided to negotiate their own peace with the north, and organized a gathering of the Estates General. This was against the explicit wishes of Philip IV, who had no use for this

26 Gilissen, 'Les Etats-Généraux', 303–4.

27 Robert Wellens, 'Les Etats généraux de Bruxelles en 1598 et la cession des Pays-Bas aux Archiducs Albert et Isabelle', *Cahiers Bruxellois. Revue d'histoire urbaine*, 23 (1978) 23–34.

28 Gilissen, 'Les Etats-Généraux', 310.

29 René Vermeir, 'Le duc d'Arschot et les conséquences de la conspiration des nobles (1632–1640)', in Soly and Vermeir, *Beleid en bestuur in de oude Nederlanden*, 477–89.

30 Secret instructions to Archduke Albert, 2 August 1595 (AGR, Aud., no. 1223, fols. 139–46). See also Article 12 of the secret instructions to the cardinal-infante, dated 19 October 1632 (AGR, Aud., no. 1224, fols. 235–50).

'assembly, always injurious, in all times and in every monarchical state without exception'.[31]

The peace process was not the only matter at the centre of the debates in Brussels; the delegates also discussed the general state of affairs in the country, especially the major disruptions caused by the royal army in the Southern Netherlands. These problems were primarily a result of failures in military justice. In response, the Estates General carefully laid out the problem and demanded the promulgation of an edict that would allow the civil courts to punish crimes committed by military personnel. Unsurprisingly, the Estates General's demand was not wholeheartedly embraced by the central government and a great deal of wrangling ensued.

The Estates General reasoned that the crimes committed by soldiers were, after all, largely due to the fact that they were poorly paid. Thus, it announced that if such an edict was not issued, it would ensure the regular salaries by using the *beden* to cover the costs. Clearly, this would open the door to increasing interference by the Estates in the government's general policies. The central government determined that this had to be avoided, or the representative bodies would gain leverage against royal authority. In this instance, the Estates General did not hesitate to threaten to use its prerogative over the *beden* – a technique that Spanish officials described as 'extravagant'[32] – and got its way. The *Conseil Privé* issued the ordinance and it was published at the end of October in 1633.[33]

Undeniably, the Estates General was a powerful institution. The provincial Estates, when they worked in tandem to strengthen the combined political weight of the assembly, were far more effective in taking political action than when they operated alone. This is why the central government made every effort to avoid subsequent meetings of the Estates General, and it was entirely successful in doing so, as the gathering of 1632–1634 was the last of the Spanish Habsburg era.

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31 Note by Philip IV at the bottom of a *consulta* from the Council of State from 16 March 1634 (AGS, Estado, no. 2048, fol. 35).

32 The Estates General coupled the granting of an extraordinary subsidy to the creation of a new edict. Military chief Gonzalo Fernández de Córdoba described this demand as 'extravagant', but Roose, the president of the *Conseil Privé*, advised Isabella to allow it. Fernández de Córdoba to Isabella, 15 March 1633 (AGR, Conseil Privé espagnol, no. 1562, fol. 85).

33 'Placcart et ordonnance sur le redressement des desordres des gens de guerre', 31 October 1633 (Royal Library Brussels, CL 11.222 A 25).

4 The Provincial Estates and the Legislative Process

Yet, research has also established that the provincial Estates – particularly those of Flanders and Brabant – were individually in a position to steer the ruler's policies when necessary. What did this mean for princely legislation? When the Estates attempted to have their say, did the prince hear them out, or could they simply push legislation through? I will examine this with regard to the county of Flanders, for which there are two possible angles of investigation.

First, can it be determined from the ordinances' introductions whether they were the result of a request or a complaint by the Estates that had moved the prince to enact the law in question? The answer is yes. The preambles of some ordinances do indeed indicate that requests from the provincial Estates did initiate the legislative process. This was, for example, the case with a specific regulation pertaining to the duchy of Luxembourg that concerned abuses in tax collection, 'in connection with which the clergy, the nobility and the third estate of our duchy have asked us if it would please us to enact legislation and to ensure its careful compliance'.[34] Another example is the edict that placed a prohibition on the distillation of brandy in Flanders, which was enacted because the Clergy and the Four Members of Flanders had requested of the prince 'that we should promulgate an ordinance that would apply throughout Flanders'.[35] However, there are two issues with this approach. On the one hand, such entries do not occur systematically, and, on the other, the Estates's requests did not automatically result in an ordinance. Simply put, if the Estates failed to make its case, then there was no legislative initiative, and, thus, the extant ordinances may only provide us a glimpse of the Estates's ambitions.

The second way to determine whether the Estates of Flanders had legislative aspirations, and in what areas, is to conduct a systematic analysis of the sources that record its day-to-day activities. The resolution books present almost a complete record of both its internal communications and its interactions with outside forces, especially the central government and other provinces. These registers contain all of its decisions, copies of its correspondence, and the acts relating to its operations, thus making it possible to see what the Estates of Flanders were doing on a daily basis. Moreover, they also show what the Estates's daily concerns and aspirations were, and how it expressed them to the central government. Many of the Estates's proposals and requests were produced in the context of granting ordinary or extraordinary subsidies to the

34 28 August 1624 (AGR OP1045/039).

35 17 October 1661 (AGR OP0061/012).

prince. At the same time, indications regarding the negotiation of legislation appear in the conditions attached to the Estates's financial proposals, found in the so-called *actes van presentatie*, the 'acts of presentation'.

There are no less than 53 extant resolution books for the period spanning 1621 to 1665, each ranging in size from 150 to 400 pages of text. Happily, for the years leading up to 1656, they are accessible via the (albeit very brief) summaries in the calendars of each individual act published by Hubert Van Houtte and Jan Dhondt in their *Tafels van de Resolutieboeken der Staten van Vlaanderen.*[36] These calendars give a general idea of the content of each act, allowing researchers to quickly determine whether it is worth examining the relevant resolution book for further details. However, the *actes van presentatie* are often too summarily presented, making it necessary to consult the registers directly. Moreover, there are no calendars for the years 1656 to 1665, meaning that the thirteen resolution books from this period must be examined page by page.

5 The Concerns of the Provincial Estates

The analysis of the summaries, the *actes van presentatie*, and the resolution books for 1656–1665, has resulted in a list of several dozen instances in which the Estates of Flanders requested a new ordinance or the modification or abolition of an extant law during the forty-five years of Philip IV's reign. Broadly speaking, they can be split into three categories.

First, the Estates's primary concern under Philip IV was the regulations surrounding defence logistics and troop behaviour. In 1623, the Clergy and the Four Members of Flanders regularly discussed the creation and implementation of an ordinance regarding the military's movements – 'passages et repassages des gens de guerre' – an aspect of war that invariably wrecked great havoc across the countryside.[37] The resulting ordinance stipulated, among other things, that the Estates of Flanders would be involved in provisioning and quartering troops. The actual implementation of this logistical task implied steady communication,[38] and the regulations were repeatedly revised at

36 Hubert Van Houtte, *Tafels van de resolutieboeken der Staten van Vlaanderen, I (1580–1583) en 1614–1631)* (Brussels, 1937); Jan Dhondt, *Tafels van de resolutieboeken der Staten van Vlaanderen, II (1631–1656)* (Brussels, 1941).

37 *Placcaerten van Vlaenderen, Placcaert-boeck II* (Antwerp, 1662), 718.

38 See, among others, Van Houtte, *Tafels*, nos. 552, 553 and 573 (14 and 24 June, 7 December 1623).

the request of the Estates.[39] One constant worry was the problems caused by soldiers who either temporarily left their companies or deserted the army. The ordinance of 6 April 1634 sought to stem the tide,[40] but the Estates continued to show their concern by regularly insisting on republishing the relevant edicts and proposed adjustments to the texts.[41] Another typical issue was the *places volantes*, a common abusive practice in which army captains recruited fictional soldiers so that they could pocket the money earmarked for their maintenance and pay. To ensure that the requisite number of men appeared during audits, accomplices would travel from company to company, flying – as it were – from one inspection site to another. The Estates found this especially irksome given that a portion of the taxes they paid was lost to fraud. Moreover, actual troop numbers were less than those being reported, with obvious negative consequences for the defence of the county. Therefore, the Estates repeatedly urged compliance with the pertinent regulations.[42] Edicts were indeed issued, but their effectiveness clearly left something to be desired.[43] By far, the most important demand made by the Estates with regard to military matters was the aforementioned punishment of military personnel by civilian courts, an ordinance that the Estates General had forced through in 1633. That the provincial Estates placed a great deal of emphasis on this law is evident from their frequent requests that the text be reissued.[44] The local courts's ability to

39 See the new rules dated 21 February 1635 ('Ordre et reiglement qui se debvra observer ès logemens des gens de guerre'; AGR OP0060/079). See the *Acte van presentatie* dated 12 April 1636 (State Archives Ghent, Staten van Vlaanderen, Resolutieregister [henceforth SVV reg.] 128, fols. 92–6); idem, November 1636 (SVV reg. 129, fols. 28v-32); idem, 10 February 1637 (SVV reg. 129, fols. 51-2v); idem, November 1639 (SVV reg. 132, fols. 309v-23v); reply to *Acte van acceptatie*, 12 January 1640 (SVV reg. 132, fols. 345–49); *Acte van presentatie*, 20 March 1641 (SVV reg. 133, fols. 16–19); idem, 18 November 1641 (SVV reg. 133, fols. 103v-6); idem, 6 May 1642 (SVV reg. 133, fols. 159-61v); idem, 20 October 1642 (SVV reg. 134, fols. 32v-4v); idem, 13 December 1644 (SVV reg. 136, fols. 44v-8v).

40 Ordinances, 6 March and 6 April 1634 (*Placcaerten van Vlaenderen, Placcaert-boeck III* (Ghent, 1685), 1163; AGR OP0060/067).

41 *Acte van presentatie* for a subsidy of 110,000 florins for a term of six months, 21 November 1635 (SVV reg. 128, fols. 43–8).

42 *Acte van presentatie*, November 1636 (SVV reg. 129, fols. 28v-32); idem 23 March 1637 (SVV reg. 129, fols. 120-5v); idem November 1637 (SVV reg. 130, fols. 67-71v); idem April 1638 (SVV reg. 130, fols. 157-61v); idem March 1639 (SVV reg. 131, fols. 136–40); idem, 13 December 1644 (SVV reg. 136, fols. 44v-8v).

43 See, among others, 'Ordonnance [...] sur la forme de prendre les monstres [...]', 5 March 1631 (AGR OP0011/38).

44 *Acte van presentatie*, 8 May 1640 (SVV reg. 132, fols. 461–7); idem 1 August 1640 (SVV reg. 132, fols. 549-54v); idem 20 October 1642 (SVV reg. 134, fols. 32v-4v); idem 23 February 1645 (SVV reg. 136, fols. 77v-80v); idem 9 April 1645 (SVV reg. 136, fols. 116-7v).

act 'sans consulte et intervention des juges militaires' was seen as absolutely essential in tackling the worst of the military's abuses,[45] as soldiers were repeatedly accused of arson, robbery, rape, and other crimes, 'comme s'il n'y auroit ne Dieu, religion, foy ne loy'.[46]

Trade and industry formed the second important category in which the Estates of Flanders expressed their wish for legislation. They regularly asked for a ban on the export of raw materials, such as flax or raw linen, so as to neither jeopardize their own production, nor promote that of the enemy.[47] In the same protectionist spirit, Flanders joined Tournai in requesting a ban on the export of serge and camlet to the Dutch Republic.[48] Moreover, the Estates did not want necessary supplies to leave the country; in particular the export of grain had to be restricted in order to prevent shortages, with the central government issuing relevant legislation on this matter on several occasions.[49] For goods where import or export was desirable, the Estates requested the lowest possible rates on their respective duties,[50] and advocated for the freest possible trade with non-combatant countries.[51] The outbreak of conflict with France in 1635, and the subsequent boycott by Brussels of French products, such as wine, caused financial losses to many, including tax farmers.[52] Protests from the county of Flanders,[53] among others, led to the ordinance of 30 March 1636, which temporarily suspended the import ban.[54] The Estates also requested – and were granted – the right for merchants and tavern keepers to have more time to liquidate their stocks of French wine, just like those in Brabant.[55] The

45 *Acte van presentatie*, 26 January 1646 (SVV reg. 137, fols. 25v-28).

46 Request to governor general Castel-Rodrigo, 27 September 1646 (SVV reg. 137, fols. 95–6).

47 *Acte van presentatie,* 20 November 1621 (SVV reg. 117, fols. 515v-23); idem March 1635 (SVV reg. 127, fols. 151v-7v); idem March 1639 (SVV reg. 131, fols. 136–40). Commitment from the prince dated 7 and 12 May 1639 that an earlier edict on the export of flax and raw linnen would be reissued (SVV reg. 131, fols. 172v-4v and fols. 179–83). See, among others, the ordinance dated 9 June 1639 (*Placcaerten van Vlaenderen, Placcaert-boeck III*, 966). At the end of 1641, the Estates once again insisted on a clear reissuence of this ban (SVV reg. 133, fols. 112v-4v).

48 Decision of the Estates of Flanders, 18 April 1644 (SVV reg. 135, fol. 92v).

49 Request regarding the interpretation of the edict of 23 January 1638 (SVV reg. 130, fol. 87). For the text of the law, see: *Placcaerten van Vlaenderen, Placcaert-boeck III*, 932–3.

50 *Acte van presentatie*, 22 March 1634 (SVV reg. 126, fols. 438–43).

51 *Acte van presentatie*, November 1636 (SVV reg. 129, fols. 28v-32); idem 23 March 1637 (SVV reg. 129, fols. 120-5v).

52 See the edict dated 26 November 1635 in which the import of goods from France, including wine, was forbidden (Royal Library Brussels, CL 11.222 A 69).

53 Decision of the Estates of Flanders, 7 December 1635 (SVV reg. 128, fol. 52).

54 City Archives Ghent, Oude drukken reeks 1bis/3.

55 Decision of the Estates of Flanders, 26 January 1636 (reg. 128, fol. 64v).

distillation of brandy was a final economic matter that led to debates on regulations. The Estates opposed limiting the number of distilleries, as well as the imposition of an obligatory fee paid to Martin Rubens, who had obtained a licensing patent from the central government. These measures threatened Flanders's indirect tax income.[56] On 8 May 1664, governor general Caracena reported that he had acceded to the Estates's demands and withdrawn the edict of 14 August 1662.[57]

The third category of legislation comprises miscellaneous items, such as the Estates of Flanders's stubborn opposition to various facets of the edict on hunting from 31 August 1613,[58] and their particular irritation regarding a host of procedural obligations imposed on both defendants and convicts,[59] a later version of which met with great resistance.[60] There were protests against both the officers of hunting courts usurping authority, and the fact that appeals of their verdicts could only be issued by the *Conseil Privé*, which was so expensive and time-consuming that in effect there was no appeal possible. The Estates insisted that this could also be done via the Council of Flanders, but the *Conseil Privé* refused.[61] Finally, the Estates also made a few legislative requests regarding public health issues. In one case they asked the governor general to reissue the ordinance banning the importation of whale oil from 4 September 1623,[62] as its use had caused definite health problems.[63]

6 Accommodating Estates?

What can be concluded from the above study regarding the Estates of Flanders and the praxis of law-making in its county during the reign of Philip IV? To

56 Decisions of the Estates of Flanders, 22 September 1662, 2 February 1664, and 24 March 1664 (SVV reg. 155, fols. 6v-8r; SVV reg. 158, fols. 75 and 107–8); Edict dated 14 August 1662 (AGR OP0061/028).

57 The marquis of Caracena to the Estates of Flanders, 8 May 1664 (SVV reg. 158, fol. 140).

58 Regarding the hunting courts in the county of Flanders, see: Koen De Loy-Vermeulen, *De jacht, jachtwetgeving en jachtinstellingen in Vlaanderen (17de-18de eeuw). Casus: het Siège van de jacht in de twee steden en het Land van Aalst* (unpublished master's thesis Ghent University, 2001).

59 *Acte van presentatie,* November 1624 (SVV reg. 122, fols. 186v-92).

60 'Placcaert op 't stuck van de Jachte, in het Landt ende Graefschap van Vlaenderen', 22 March 1631 (AGR OP0011/040).

61 *Acte van presentatie* and reply by governor general don Fernando, November-December 1634 (SVV reg. 127, fols. 62–67).

62 Ordinance, 4 September 1623 (Royal Library Brussels, CL 11.222 A 227).

63 *Acte van presentatie,* 22 March 1634 (SVV reg. 126, fols. 438–43).

begin with, it is well worth noting that upon a detailed examination of the references in the calendars and resolution registers for this forty-year period, the Estates discussed legislation with the central government forty or fifty times, while only covering about twenty different topics. This roughly equates to approximately one issue every two years. The Estates did not really demonstrate any grand legal ambitions; the *condere leges* was clearly a matter for the central government, and was accepted as such. As long as traditional privileges and the application of ancient customary law was not compromised, the Estates did not, in principle, make demands regarding legislation. There were really only two areas in which the Estates sometimes demanded that their voices be heard.

To start with, the Estates of Flanders were quite explicitly concerned with mitigating the problems caused by the military stationed in the Southern Netherlands, and regularly insisted upon regulations that provided for greater control over them. Disturbances caused by these troops were definitely an ongoing problem, and the locals suffered heavily as a result. Thus, the Estates's demands that the soldier's transgressions top should have been expected, as this matter directly concerned both the welfare of Flanders's residents and the county's overall protection. Moreover, the Estates were increasingly covering the costs of its defence, and they expected value for their money. Secondly, the Estates wanted a say in both commercial matters and the related issue of falling trade and production, which caused a decline in its fiscal capacity. This also had a direct impact on life in the county and the size of the subsidies that the Estates could generate. Lastly, the Estates also raised concerns regarding two specific matters of interest. With their request pertaining to the ban on whale oil, the Estates appear to have been developing – however reluctantly – an interest in public health affairs, an aspect of governance that became increasingly important to them as time went on. During the seventeenth century, however, such consideration of this matter was rather exceptional. Furthermore their repeated complaints regarding the problematic procedures employed by the hunting courts demonstrate that the Estates of Flanders was also prepared to intrude on an exclusive princely domain: the organisation of the judiciary. These efforts amounted to little, though, as the *Conseil Privé* dismissed this request.

There remains, however, one last general remark that needs to be emphasized: the Estates of Flanders preferred reaction to action. It either resisted newly-issued edicts, or pushed for their amendment. Only rarely did it get involved in drafting or promulgating new regulations. Yet, the Estates's lesser involvement in the legislative process did not mean that the third estate, the social group that clearly dominated the provincial Estates during the

seventeenth century, stood to the side when rules were established and norms were determined.[64] For who populated princely institutions on both the regional and central levels? Members of the third estate. An analysis of those serving as delegates to the Estates of Flanders between 1598 and 1648 (comprising the delegates representing the so-called Four Members – Ghent, Bruges, Ypres, and the Liberty of Bruges – and the clergy of Flanders) demonstrates that members of the princely institutions were often very close to the Estates, as the familial connections were abundantly clear.[65]

If, for example, we consider those representing Ghent – twenty-three people for the period in question – we see that various deputies were the son, son-in-law, brother or even father of a member of the Council of Flanders, the most important princely institution in the county. We also find among them the son-in-law of a member of the Great Council of Mechelen, the son of a member of the *Conseil Privé*, the son-in-law of the president of the Council of Flanders, and so on. Ghent alderman Nicolas Triest, the town's deputy from 1616 to 1623, was the brother of both the famous bishop Antoine Triest and councillor Charles Triest, a member of the Council of Flanders. When looking at the deputies of Flanders's clergy, a similar picture emerges, although slightly less pronounced. Included is a son of a secretary to the *Conseil Privé*, a son of the president of the Council of Namur, and a brother of a member of the Council of Flanders. It is also highly significant that four clerics who served as Flemish clergy delegates were later appointed bishops: Antoine Triest, Nicolas Haudion, Georges Chamberlain, and Charles Van den Bosch. Their ascent through the church hierarchy indicates that their contacts in Brussels government circles were quite good.

In other words, the Estates, the very same group that according to the classic framework was intended to form a counterweight to the prince and his institutions, were extremely well-connected to those who made up the princely institutions at the provincial and central levels and participated in state government. It was these families of the third estate (including the recently created

64 See the research regarding the Estates of Flanders carried out under the aegis of Ghent University: Bart Bruylandt, *De Aartshertogen en de Staten van Vlaanderen* (unpublished master's thesis Ghent University, 2000); Marijn Follebout, *De politieke besluitvorming bij de Staten van Vlaanderen, 1670–1680* (unpublished master's thesis Ghent University, 2003); Stijn Quaghebeur, *De politieke rol van de Staten van Brabant, 1621–1648* (unpublished master's thesis Ghent University, 1998); Bert Vandemeerssche, *De politieke rol van de Staten van Vlaanderen, 1620–1648* (unpublished master's thesis Ghent University, 2004); Maarten Vandekerckhove, *De samenstelling van de Staten van Vlaanderen, 1598–1648* (unpublished master's thesis Ghent University, 2003).

65 Vandekerckhove, *De samenstelling,* passim.

lower nobility or *noblesse de robe*) who embodied the state. This could explain the absence of serious conflict or tension between the central government and the Estates. In the end, it formed a single social group with branches throughout the state apparatus. It represented an elite comprised of at most a few hundred families, interconnected by marriage ties, and in which a fairly large degree of consensus existed on a number of major political and military principles. This explains why the Estates were so cooperative in implementing policy in many areas, as well as their willingness to fund the central government. These elites explicitly identified with the Southern Netherlands Habsburg state and formed its core. The third estate, in fact, *was* the state.

Bibliography

Alexandre, Prosper. *Histoire du Conseil Privé*. Brussels, 1895.

Berkvens, Louis A.M.J.A. *Plakkatenlijst Overkwartier 1665–1794. Deel I: Spaans Gelre. Instellingen, territorium, wetgeving (1580–) 1665–1702*. Nijmegen, 1990.

Bruylandt, Bart. *De Aartshertogen en de Staten van Vlaanderen*. Unpublished master's thesis Ghent University, 2000.

Cauchies, Jean-Marie. 'L'essor d'une législation générale pour les Pays-Bas Bourguignons dans le dernier quart du XVe siècle: aperçu et questions'. In *Publication du Centre Européen d'Etudes Burgondo-Médianes*, Basel, 1981, 59–70.

Cauchies, Jean-Marie. *'Es plantar un mundo nuevo'. Légiférer aux anciens Pays-Bas, XIIe-XVIIIe siècle*. Brussels, 2019.

De Loy-Vermeulen, Koen. *De jacht, jachtwetgeving en jachtinstellingen in Vlaanderen (17de-18de eeuw). Casus: het Siège van de jacht in de twee steden en het Land van Aalst*. Unpublished master's thesis Ghent University, 2001.

De Schepper, Hugo and Jean-Marie Cauchies. 'Justicie, gracie en wetgeving. Juridische instrumenten van de landsheerlijke macht in de Nederlanden, 1200–1600'. In Hugo Soly and René Vermeir (eds.), *Beleid en bestuur in de Oude Nederlanden. Liber Amicorum prof. dr. M. Baelde*, Ghent, 1993, 53–95.

Dhondt, Jan. *Tafels van de resolutieboeken der Staten van Vlaanderen, II (1631–1656)*. Brussels, 1941.

Foisneau, Luc. 'Sovereignty and reason of state: Bodin, Botero, Richelieu and Hobbes'. In Howell A. Lloyd (ed.), *The Reception of Bodin*, Leiden/Boston, 2013, 326–8.

Follebout, Marijn. *De politieke besluitvorming bij de Staten van Vlaanderen, 1670–1680*. Unpublished master's thesis Ghent University, 2003.

Gachard, Louis Prosper. 'Notice sur l'usage, qui était particulier au Brabant, de promulguer les édits et ordonnances sous le sceau de cette province'. *Commission Royale pour la Publication des Anciennes Lois et Ordonnances de la Belgique*. 2 (1852) 167–97.

Gaillard, Arthur. *Le Conseil de Brabant*. 3 vols. Brussels, 1898.

Galesloot, Louis. 'Charles-Quint et les États de Brabant en 1549'. *Bulletin de la Commission Royale d'Histoire*. 52 (1882) 150–1.

Gilissen, John. 'Les Etats-Généraux des Pays de Par Deça (1464–1632)'. *Anciens pays et assemblées d'État*. 33 (1965) 261–321.

Parker, David. 'Sovereignty, absolutism and the function of the law in seventeenth-century France'. *Past and Present*. 122 (1989) 36–74.

Quaghebeur, Stijn. *De politieke rol van de Staten van Brabant, 1621–1648*. Unpublished master's thesis Ghent University, 1998.

Simon, Nicolas. *Quand légiférer, c'est communiquer. La dynamique de la décision gouvernementale dans les anciens Pays-Bas, ca. 1580–ca. 1610*. Unpublished doctoral thesis Université Saint-Louis Brussels, 2017.

Spitz, Jean-Fabien. *Bodin et la souveraineté*. Paris, 1998.

Vandekerckhove, Maarten. *De samenstelling van de Staten van Vlaanderen, 1598–1648*. Unpublished master's thesis Ghent University, 2003.

Vandemeerssche, Bert. *De politieke rol van de Staten van Vlaanderen, 1620–1648*. Unpublished master's thesis Ghent University, 2004.

Van Honacker, Karin. 'Un état fédéral'. In Paul Janssens (ed.), *La Belgique espagnole et la principauté de Liège, 1585–1715*, 2 vols, Brussels, 2006, 159–70.

Van Houtte, Hubert. *Tafels van de resolutieboeken der Staten van Vlaanderen, I (1580–1583) en 1614–1631)*. Brussels, 1937.

Van Peteghem, Paul. *De Raad van Vlaanderen en staatsvorming onder Karel V (1515–1555). Een publiekrechtelijk onderzoek naar centralisatiestreven in de XVII Provinciën*. Nijmegen, 1990.

Verfaillie, Joke. *Au cœur de la Cour. Een analyse van de organisatie en het personeel van de griffie van de Raad van Vlaanderen, 1386–1795*. Unpublished doctoral thesis Ghent University, 2014.

Vermeir, René. 'Le duc d'Arschot et les conséquences de la conspiration des nobles (1632–1640)'. In Hugo Soly and René Vermeir (eds.), *Beleid en bestuur in de Oude Nederlanden. Liber Amicorum prof. dr. M. Baelde*, Ghent, 1993, 477–89.

Vermeir, René. 'Combler les lacunes. L'édition des ordonnances de Philippe IV (1621–1665)'. *Bulletin de la Commission Royale pour la publication des anciennes lois et ordonnances de la Belgique*. 46 (2005) 39–50.

Vermeir, René. *En estado de guerra. Felipe IV y Flandes, 1629–1648*. Cordoba, 2006.

Wellens, Robert. 'Les Etats généraux de Bruxelles en 1598 et la cession des Pays-Bas aux Archiducs Albert et Isabelle'. *Cahiers Bruxellois. Revue d'histoire urbaine*. 23 (1978) 23–34.

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