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**The Belgian Constitution of 1831:**

**The Citizen Burgher**

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## Vorwort

Diese Untersuchung ist Teil des Projektes *Begriffe von Bürgerschaft in Europa*. Das Projekt ging von der Hypothese aus, daß die Unionsbürgerschaft, falls sie je Realität wird, normativ-universalistischen Prinzipien folgen und auf dem Bewußtsein einer gemeinsamen Geschichte begründet sein muß. Belgien bietet sich in diesem Zusammenhang als Untersuchungsgegenstand an, denn die belgische Verfassung von 1831 veranschaulicht die Prozesse, die der Zusammenführung einer heterogenen Bevölkerung dienlich sein können.

Die Verfassung von 1831 orientierte sich sowohl an nationalen Traditionen als auch an zeitgenössischen ausländischen Verfassungen, in erster Linie der französischen und der niederländischen. Die Bevölkerung war an der Entstehung der Verfassung nicht beteiligt; sie war das Werk einer Gruppe von Intellektuellen, die stark von der amerikanischen Verfassung und der ihr angefügten Grundrechteerklärung beeinflusst waren. Die belgischen Verfassungsväter stellten Freiheit vor Gleichheit und bürgerliche Rechte vor politische Rechte, und sie wollten die Exzesse der französischen Revolution unter allen Umständen vermeiden. Sie trugen der speziellen Religions- und Kulturgeschichte Belgiens Rechnung, indem sie, der traditionellen belgischen Kompromißbereitschaft folgend, einen unitaristischen, dezentralisierten Staat schufen. Die bürgerlichen Rechte wurden nicht in einem getrennten Dokument festgelegt, sondern waren größtenteils in das Hauptwerk integriert und damit gesetzlich bindend. Ein wichtiger Aspekt war die Festschreibung der Vereinigungs- und Religionsfreiheit. Die belgische Verfassung hat sich als ungewöhnlich dauerhaft erwiesen: Bis in die 1970er Jahre gab es nur zwei Verfassungsänderungen, die beide die Ausweitung des Wahlrechts betrafen.

Die vorliegende Untersuchung beschäftigt sich zunächst mit Belgiens langer Geschichte linguistischer, politischer und sozialer Unterschiede sowie mit den politischen und sozialen Kräften, die hinter der belgischen Revolution standen. Danach wird die Frage behandelt, wie die bürgerschaftlichen Erfahrungen, die die Belgier in Vereinigungen und im kommunalpolitischen Bereich zur Zeit der Fürstentümer machten, sich auf die regionalen, religiösen, kulturellen und sozialen Identitäten im modernen Staatswesen übertragen haben.

Bremen, im Juli 1997

Edwige Lefebvre

## Abstract

This paper is a part of the project *Concepts, Foundation, and Limits of European Citizenship*, which proceeded under the hypothesis that Union Citizenship, if it comes about, will have to be normative universalistic, and based on an awareness of a common history. The study of Belgium is appropriate in that context; the Belgian Constitution of 1831 exemplifies the processes that serve to unify a diverse electorate.

The 1831 Constitution, which drew upon national traditions and contemporary foreign constitutions, especially the French and the Dutch, was achieved not by the masses, but by a group of intellectuals who, strongly influenced by the American Constitution and Bill of Rights, were concerned to preserve liberty over equality, civil rights over political rights and at all cost to avoid the French Revolutionary excesses. They took into consideration the unique religious and cultural history of the Belgian past when, using the Belgian tradition of compromise, they created a unitary, decentralized state. The constitution they created, rather than needing a separated document to declare the right of the citizenry, incorporated most of these rights into its main body, thus making them legally binding. An important feature was that the rights of association and freedom of religion were established. The Belgian Constitution has been remarkably durable, having been amended only twice until the 1970s, each time to extend the electorate franchise.

The present paper will first examine Belgium's long history of linguistic, political and social differences, the political and social forces behind the Belgian revolution. It also explores how the Belgian experience of citizenship in communities' associational life and political spheres of the principalities was translated into the regional, religious, cultural and social identities under modern statehood.

Bremen, July 1997

Edwige Lefebvre

## 1. Introduction

Napoleon believed a constitution should be brief and ambiguous; Edmund Burke said: "The nature of man is intricate: the objects of society are of the greatest possible complexity: and therefore no simple disposition or direction of power can be suitable either to man's nature, or to the quality of his affairs."<sup>1</sup>

The project *The Concept, Foundations, and Limits of European Citizenship* has proceeded under the hypothesis that the national traditions and conceptual particularities of the several Member States will have a major impact on the contours of an evolving concept of Union citizenship. Therefore, it is hardly conceivable that an institution as essential for the structure of a constitutional polity as citizenship could be constructed without borrowing of ideas from basic constitutional ideas of the constituent member States. Consequently it seems important to look at the Belgian Constitution of 1831 and its making. When Belgium seceded from Holland in 1830 to form a sovereign state, its National Congress worked out its Constitution and in 1831 created a parliamentary monarchy with a cabinet style government. Within the guidelines of this constitution Belgian political institutions developed, adapting themselves to new circumstances and requirements. The Constitution has proved remarkably flexible. Until the 1970s it was hardly altered, the principal amendments aiming at an extension of the electoral franchise.

In 1830 there existed a broad consensus in the governing class about the state form desirable for Belgium. A unitary and decentralized state was created, drawing upon national traditions and contemporary foreign constitutions like those of the French and the Dutch. The state created in 1830 followed the Napoleonic pattern of a strong executive branch, although at the regional level it recognized the territorial collectivities which had existed for centuries, the communes and nine provinces. These entities, although subject to state control, enjoyed a large degree of autonomy in the management of local and provincial matters.

In 1830, as in the 1789 Belgian Revolutions (Brabançonne and Liege), the men who became the leaders of the Brussels Revolution were strongly influenced by the American experience. Their concern was to preserve liberty over equality, civil rights over political rights, and to avoid at all cost the French

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1 Edmund Burke: *Reflexions on the Revolution in France and Other Essays*. New York: Everyman's Library (1971):59.

Revolutionary experience. This paper has two aims, first to unfold the political forces - behind the Revolution - which captured and controlled the Revolution, the founder of the Constitution.

The second aim is to analyze the Constitution in order to understand not only the concept of nationality and citizenship of its Founders but also their institutionalization of a political and religious compromise which permitted the survival as well of regional entities and identities. In Belgium the constitutional institutionalization of the roots of the concept of citizenship in communities, associational life and political spheres perpetuated the traditional multiple citizenship and identities (regional, religious, cultural and social) of the principalities under modern statehood. This investigation of the Constitution is intended to enlighten the contemporary cleavages and cohesion of Belgian society.

## **2. Waterloo's Consequence: Dutch Annexation of Belgium**

Waterloo, which would be the last battle fought on Belgian soil for a century, was of great significance for Belgians. When in the 16<sup>th</sup> century the United Provinces (Holland) were separated from the Catholic Lowerlands (Belgium), Belgium followed Spain in her steady decline. The Spanish Inquisition in Belgium drove out the Protestants and made the South Provinces homogeneously Catholic. An enlightened Austrian rule rejuvenated Belgium, and by the start of the Industrial Revolution the French occupation had unified the various principalities. Waterloo permitted Belgium and the Prince-bishopric of Liège to be absorbed into the Kingdom of the United Netherlands, reuniting the old Seventeen Provinces.

The Treaty of the Eight Articles which was signed in London in July of 1814 established the conditions creating the new state and required King William I to amalgamate Belgium and Holland, the two parts of his new kingdom. Belgium found itself in the mainstream of European industrial development with a stake in modern politics. This was clearly seen at the Congress of Vienna in 1815, an assembly which reorganized Europe after the Napoleonic wars.<sup>2</sup> During the Congress, Prussia, England, Austria and Russia favoured the creation of the Kingdom of The Netherlands. The final act of the Convention of Vienna on June 6, 1815 ratified the London Treaty and recognized Belgium as a part of the

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2 The Congress of Vienna began in September 1814, five months after Napoleon's first abdication, and completed its "Final Act" in June, 1815 shortly before the Waterloo campaign and the end of the One Hundred Days of Napoleon's return to power. The occupation lasted for over 40 years.

new United Kingdom of The Netherlands. The quadruple alliance designated this middle-sized buffer state to serve as the principal barrier for containing French expansionism.<sup>3</sup>

The plan of uniting Belgium and The Netherlands was not unrealistic. The Lowerlands possessed all the ingredients for accomplishing this objective: a thriving industry, extensive resources, the ready markets of a colonial empire, a large merchant marine, and stable political and social institutions. The most difficult problem facing the leadership of the new state was to resolve the subtle political and socio-cultural variations produced by two hundred years of separation. Existing in virtual isolation from each other, though contiguous, the Dutch and the Belgians had developed differences in their religion, language, and culture, differences which became disruptive influences in the new kingdom.

Through these two centuries the Northern Netherlands had evolved a fiercer spirit for independence and self reliance. Under the House of Orange, the North had become a major commercial and colonial power and it had built a powerful fleet. During the same time the South had remained the political possession of one of the principal European states: first Spain, then Austria, and finally France, although the individual Southern Provinces had resisted efforts by both Spain and Austria to obliterate their identity. Economically, however, for two centuries the Southern Netherlands had been incorporated into and formed a part of the system of a larger state, its industrial production growing to accommodate the increased markets provided by its occupiers. Until the French annexation the people of the area kept their political institutions, but during this period Belgian society underwent socio-economic and bureaucratic transformations not seen during the earlier foreign occupations. The new ruler, William I, King of The Netherlands (1772-1843), was faced with the task of assimilating two peoples who had strikingly contrasting customs, economic interests, ideas and above all, religions. In 1814 Holland was a Calvinist state with a Calvinist ruler and a minority of Roman Catholics; in the South Belgian society was mostly Roman Catholic with a part of the elite, entrepreneurs, lawyers, judges, journalists and academics, being Freemasons and promoting secular values.

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3      Mabile (1992):70-85.

### 3. Independence: A Revolutionary Context

#### 3.1. *The Dutch Fundamental Law*

Already proclaimed in 1814 sovereign Prince of the territory of which he had been previously Staatholder, William had presented a draft of the Constitution to the Dutch notables, and they had accepted it by an overwhelming majority. The Fundamental Law of 1814 retained many institutions of the French period and established a constitutional monarchy and centralized state with a single legislature, uniformity in the administration, justice, finance and the fiscal systems and legal equality for all recognized creeds. The one-chamber parliament kept the old name of States-General and was elected by indirect vote representing only the upper-middle classes. It had very limited rights and the sovereign bypassed it as much as possible and governed mainly by orders in council, as the ministers were responsible to him.<sup>4</sup>

When the Southern Netherlands were added to his dominion in 1815 and the kingly title conferred, William presented the same document, altered only to make it applicable to the Belgian or southern assembly of notables. On August 24, 1815, despite an adverse vote and many protests by the Belgian notables, he declared that the very existence of the new monarchy depended on its acceptance as it stood. By accounting for all non-voters (and there were many abstainers) as being in favor of the Fundamental Law he was able to assert that the Belgians had accepted it. The principles of the new law remained as firmly monarchical as those of 1814, with the difference that the parliamentary system became bicameral. The Estates-General was composed of two chambers, the First Chamber whose 40 to 60 members aged over 40 were nominated for life by the King and the Second Chamber whose members were over 30 and elected by the Provincial Estates for three years with annual elections for a third of the seats. The members of the Second Chamber were elected by three orders: the nobility, the town and the countryside, while the Church was excluded. At every level of the election the voters had to demonstrate tax-paying qualifications stipulated by the King. In 1824, the King decided to name the members of the Second Chamber for life, their successors to be elected after their death. Of the two chambers, only the Second could propose a law, but the King could accept or reject it. However, the proposition of law was most often

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4 Pasiomie de Collection Complète des Lois, Décrets, Arrêtés et Règlements Généraux qui peuvent être invoqués en Belgique. (1837) Deuxième série, 1814-1830. Mise en ordre et annotée par A. Delebecque, Avocat-Général près de la cour d'Appel de Bruxelles. Dédiée au Roi. Bruxelles: Société Typographique Belge, AD. Wahlen et Cie.:319-347.



the initiative of the King.<sup>5</sup> The States-General was to alternate yearly between The Hague and Brussels. In exchange for his hereditary territories in Germany, William received Luxembourg.<sup>6</sup>

The Dutch Constitution recognized religious liberty while giving the King, who was Dutch and Protestant, extremely wide power. The Dutch had to content themselves with a constitutional system of the narrow legitimist type. The Fundamental Law was granted by the King, not made by the people, and was revocable by him at his pleasure. He could legislate by decree; he could suspend guaranteed rights. There was a State Council and eventually ministerial departments, with the King naming and dismissing the members of each, the State Council and the Ministries had no legislative or executive powers, only a consultative function. "It is the King alone who decides and advises the State Council of his decisions."<sup>7</sup> Most of the regulatory activities were exercised by royal decree, so that the Dutch constitutionalist could rightly characterize William's government as the "Decree Government" in which the executive branch clearly prevailed. The government constantly rejected any control of the legality of its acts. It decided to define the limits of the competence of the judiciary itself, holding that in principle the judiciary had to declare itself incompetent whenever the dispute concerned an administrative act. The final decision as to what was to be seen as an administrative act was left to the King's decision.

Of special significance to the Belgians was the equal representation given to the Dutch and Belgians in the State-General, though the Belgian population was 3,500,000 and that of the Dutch provinces only 2,000,000. The Dutch mobilized most of the public offices.<sup>8</sup> The Fundamental Law accorded the equality to all creeds (with no established church) in matters of religion. The bishops and clergy of the Roman Catholic Church felt themselves unable to accept the religious clauses of the Fundamental Law while the unfair system of representation violated liberal principles. Thus opposition was thus both clerical and lib-

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5 The Fundamental Law, Section VI, Royal Prerogatives, Article 70. "The King can propose any law he deems proper to the Estates-General, and can accept or reject their proposed laws." *Pasinomie* (1857):325-326.

6 William proceeded to treat Luxembourg as a Dutch province. *Mabille* (1992):84.

7 The Fundamental Law, Section VII, State Council and Ministries, Article 71: "There is a State Council. This State-Council is composed of 24 members at the most chosen if possible from all the provinces; the King names and fires them as he pleases. The King is the head of the Council; if he pleases he can name a Secretary of State, Vice President." Article 75: "The King establishes Ministries, he names and fires their heads as he pleases; he can ask several of them to assist the State Council." *Pasinomie* (1857):325-326.

8 Furthermore, the army was staffed by some 2,000 officers, of whom only 288 were Belgians.

eral.<sup>9</sup>

The Dutch King faced a Belgian society which had gone through rapid social, ideological and economic changes under the French annexation. Belgium had experienced the earliest industrial revolution on the continent which created a new class of entrepreneurs and a concentration of industrial laborers in Wallonia and Ghent. The enforcement of French revolutionary and imperial policies - French as the official language of its Belgian *départements*, the abolition of privileges, and confiscation of Church properties - gave an impetus to the entrepreneurial groups. Secularization policies deprived the Church of its monopoly in important areas such as education, health care, relief assistance and administration, and created a new class of lawyers, judges and academics educated in French schools in the Belgian *départements* and in universities in France. This group was imbued with enlightened 18<sup>th</sup> and 19<sup>th</sup> century ideas but was also influenced by British economic liberalism of the 19<sup>th</sup> century.

### 3.2. *Linguistic Context*

Linguistic differences had existed in the Southern Provinces for centuries. While the burghers and the nobility had used French since the late Middle Ages, well over half of the people in the Belgian Netherlands spoke a dialect of Dutch. Flemish had never been organized into a cohesive grammatical system. The other half of the Belgian population spoke one of the dialects of Walloon, itself an unorganized form of French thought by some to be derived directly from Latin. These dialects were the language of daily life and of Catholic priests in Flemish rural areas. French was considered the language of culture, commerce and administration.

The French felt that linguistic unification offered a key to political amalgamation between France and the Austrian Netherlands and the principality of Liège, which had been occupied and annexed to France by force against the will of the Belgian people on October 1, 1795. Consequently the French government attempted to systematically root out the Dutch language. French became the official language of the army, the government, education, the judicial system, culture and all national affairs and steps were taken to ban the use of Dutch. It was not the annexation which introduced French nor which made it the language of government, commerce, and the upper class. This evolution had been occurring throughout the area for centuries. However, it was William who focused attention on the use of Dutch instead of French and made it an is-

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9 Rooney (1982):50.

sue.<sup>10</sup>

All the people of the Northern Provinces spoke Dutch; and since at least half of the people of the South spoke Flemish, a form of Dutch, seven-tenths of the people of The Netherlands spoke a language based upon Dutch. In 1819, William named Dutch the national language and advocated its use throughout his kingdom. By 1823 Dutch was to be used exclusively in the Northern Provinces as well as in East and West Flanders, Antwerp, and Brabant, except for the *subdivisions* of Nivelles and Louvain. French would be the language of administration and instruction in Luxembourg, Namur, Hainaut, Liège and the two districts of Brabant. All court cases were to be conducted in a language understood by the litigants no matter where they were tried.

The Government's intention was to gradually replace French with Dutch. This was immediately protested by the nobles, and by the growing Belgian entrepreneurial upper and middle classes, the *fransquillons*, whose cultural outlook was French and who traditionally sent their children to be educated in French-speaking schools in Belgium or in France. Journalists, lawyers, businessmen all those members of the polity who habitually used French felt culturally and personally menaced by the linguistic decrees. This was particularly true of the younger people educated in French. William's linguistic policy was also opposed by the Catholic hierarchy, who feared that the first step was being taken toward infiltration of Belgium by the Dutch Protestant Church. During the twenty years of French rule, the only language employed by educated men had been French. For centuries prior to 1794, custom had dictated the use of French. Now the King was decreeing its official abandonment. As will be seen, many of those men who became openly hostile to the government between 1828-1830 were young lawyers and journalists of French background.

### 3.3. *Religious Context*

Religion presented a complex problem. In 1815, in the European countries where a minority religion existed and was tolerated, it was permitted precisely for the reason that it was held by a minority and offered no threat to the religion of the majority. Equality of religion or parity of treatment was unknown. In 1814 Holland was a Calvinist State with a Calvinist ruler and a Catholic minority; in 1815 the Kingdom of The Netherlands (including Belgium) was a predominantly Roman Catholic state with a Calvinist King and a Calvinist minority. The former privileged majority had become a minority. Foreseeing the problem that this

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10      Rooney (1982):85.

change would create, the framers of the Treaty of the Eight Articles required the State to guarantee equal treatment to Calvinism and Roman Catholicism.<sup>11</sup>

The King, approving of the notion of equality and understanding it to mean parity, executed the religious provision of the Treaty. To acknowledge equality before the law meant to his Catholic subjects that they were called upon to accept Calvinism as an equally true religion, which in light of the 16<sup>th</sup> century *reconquista*, was an anathema to the Southern Provinces. Maurice de Broglie, Bishop of Ghent, in 1815 told the people of his diocese that they could not in conscience take an oath to support the Constitution; in 1820 William refused outright to grant Catholic bishops the right to enter into possession of their sees until they recognized that their authority - both temporal and spiritual - came at least in part from the King. Since Rome considered episcopal jurisdiction a theological question, the Papacy was unwilling to concede to a Calvinist king authority which it denied to Catholic sovereigns.<sup>12</sup>

William wanted the clergy to receive part of their education at a national seminary where loyalty to the head of state would be taught. The Constitution of the United Netherlands stipulated that William had the sole right to regulate education, an area in which the clergy had built up a considerable influence. William promoted the secularization of the school system. The three universities of Ghent, Louvain and Liège were placed under state control; secondary education was reorganized with a network of *athénées* (high schools) through the country; parochial schools were to be supervised by inspectors who could be either Protestant or Catholic. The most hostile reaction to William's policies came from the village priests in Flanders, for whom the very thought of Protestant inspectors for Catholic schools was an abomination.<sup>13</sup>

In 1827, the King negotiated a *Concordat* with the Pope that resolved most of the larger issues. The philosophical college of Louvain, intended as a national seminary, was suppressed; two new sees were created in Holland; the King could participate in the election of the bishops through a veto of any candidate who was offensive to him. However, the signing of the *Concordat* did not cause religious tensions to disappear.<sup>14</sup>

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11 Haag (1950):86.

12 Haag (195):120.

13 Haag (1950):86.

14 In the North the Calvinist clergy felt threatened and opposed it for fear that their position and influence would be lost in a Catholic state.

### 3.4. Social and Economic Context

Belgium was the first Continental European country to experience a rapid and early industrial revolution. Like its British progenitor, the Belgian Industrial Revolution centered in iron, coal and textiles. Apart from Belgium, in the period from 1760 to 1830 the Industrial Revolution was largely confined to Britain.<sup>15</sup> During the French annexation Belgian industrialization benefited by a series of political and administrative circumstances.<sup>16</sup>

Access to the French market during the different periods and to an even larger market at the apogee of the Empire favored the flow of goods. The French armies required supplies which the Belgian factories produced, such as cloth and weapons, a trade that had lasting effects on the Belgian economy.<sup>17</sup>

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15 Britain forbade the exportation of machinery, skilled workers and manufacturing techniques. The British monopoly could not last forever, especially since some Britons saw profitable industrial opportunities abroad while continental European businessmen sought to lure the British know-how to their country.

16 There was an interaction between the institutional and political changes and the Industrial Revolution in Belgium. The abolition of privileges and particularism, especially at the borders between the provinces, the unification of law and of the administrative and judicial structures, produced a more open economy and access to a larger market. Until 1830 Belgium had thought of transport in terms of canals. In keeping with the plan conceived during the Napoleonic era, Antwerp sought to develop connections with Cologne and Charleroi by means of waterways, the very short and narrow railways being no more than their tributaries. Therefore the infrastructure put in place by France for political reasons were also factors of development. The canal from Mons to Condé, opened in 1814, further facilitated commerce between Belgium and France. The Netherlands being occupied by France, Antwerp no longer suffered from a blockade and was further developed by the French, while the removal of the border between Liège and The Netherlands encouraged industry in the Liège region. The French Law of December 16, 1795 on mining regulations applied in the Belgian départements favored the creation of enterprises more important and better equipped than before. In 1812 the *département de l'Ourthe* possessed 140 coal-pits, 10 of them using steam engines employing more than half of the total labor force and producing more than half of Belgian commodities. The State created state enterprises such as La Fonderie impériale de canons in Herstal (Liège), which traditionally made weaponry.

17 During the Napoleonic period, wool became very important on the Continent because of the interruption of the supply of raw cotton from abroad and the sharp increase in the military demand for woolen cloth; this was important for Belgium. The first Belgian industrial poles were put in place: Ghent, Liège and Verviers. In 1798 Lievin Bawens, a Belgian entrepreneur who had fled to England in 1794, returned to Ghent. Bawens acquired "des biens nationaux" confiscated by the State and installed his workshops in Passy and then Ghent, where he mechanized the cotton industry. Two clothiers in 1799 brought William Cockerill (1759-1832), a British inventor and manufacturer, to Verviers, to build the first wool-carding and wool-spinning machines on the continent. Cockerill prospered and his youngest son John (1790-1840) took over his father's business.

William I foresaw the importance and the development of the mechanized industry and granted Cockerill the domain of Seraing (the property was the former summer residence of the Prince-Bishop of Liège) where he built a steel factory and workshops producing linen-

King William built on the Belgian industrial potential put in place during the French annexation. His industrial and economic policies were undeniably an economic success for the Southern Provinces. However, there too development of the economy had taken a very different course in the Northern and the Southern Provinces.

Since the 17<sup>th</sup> century the Northern Netherlands had been a major maritime power. The Dutch had founded colonies throughout the world and were engaged commercially in an extensive carrying trade. Amsterdam and Rotterdam had become principal ports of trade. Goods and raw materials from all over the world came into these centers and were subsequently shipped to their final markets from these ports. Belgium continued developing as a manufacturing center. Great Britain and Holland had closed Belgium's only port Antwerp. Napoleon reopened it. As we have seen, during the years of the empire the imperial government stimulated the economic development of the Southern Provinces, which developed an industry far in excess of their own needs, just as the Northern Provinces had developed a fleet and merchant marine far in excess of their own domestic requirements. In brief, the two areas presented complementary economic systems but systems which required years to mesh into a single mutually beneficial one.<sup>18</sup>

As a basic rule the northern merchants favored low tariffs and free trade; southern merchants saw things from a different perspective. Severed from their customers in France in 1814, and no longer protected by the continental system, these men found their products overpriced or without markets. In spite of the tariff of 1816 which raised duties from 8 to 10 percent, British competition remained too strong. English woolens were better and undersold the Belgian products in the markets of Ghent and Bruges. As early as 1814 a large number of factories closed and thousands of workers lost their jobs.<sup>19</sup>

To remedy the situation outlets must be developed in the Northern Provinces and in the colonies, but time and capital were necessary to expand these markets. To protect their investments Belgian industrialists favored protectionism, high tariffs on products entering the Kingdom, and advocated a total exclusion of British products from the colonies.<sup>20</sup> King William favored increas-

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spinning, wool-carding and wool-spinning machines and in 1823 the first blast-furnace. Liège, being along the river Meuse, was well chosen as an industrial site, in addition to being the center of the largest coalfield of the country at the time.

18 Demoulin (1938):120-140.

19 van Hentenryk and Stengers (1986).

20 William agreed, believing the country's limited capital and resources should be devoted to developing national industries that could compete on a world market and that commerce would naturally follow. He saw the Lowerlands as a single unit and believed that when united they

ing the production of Belgian industry, which would give the Dutch merchants and shipowners more goods to carry. By shifting dependence to nationally produced goods, William forced the state's economy to be less dependent upon outsiders. William instituted differential duties upon selected British manufactures to protect the southern industries.<sup>21</sup>

The King established in 1822 the *Société Générale*, a commercial bank charged with developing national industries and in aid of Dutch commerce, and on March 29, 1824 the *Société Générale de Commerce*, charged with developing all branches of export trade. The latter society used only ships of the national merchant marine and gave preference to Belgian manufactures in accepting consignments. In addition to these two societies the King chartered an American company to extend the export trade of The Netherlands to the Americas.<sup>22</sup>

Antwerp once again became a major port, benefiting by the opening of the river Scheldt to Belgian shipping.<sup>23</sup> Ghent, with its cotton-spinning industry, quickly earned a reputation as the "Manchester of the Low Countries." The manufacture of linen at Verviers and the coal-mining industry in the Liège and Hainaut districts attained an even greater prosperity than during the French annexation, while the Dutch colonies provided new export markets. Brussels, a major town of the French *département*, acquired a new life and a political vigor as the capital of the Southern Provinces.<sup>24</sup>

The Belgian Industrial Revolution developed under French occupation produced a new class of active merchants and entrepreneurs. These Flemish, Walloon or Brusseler industrial actors had adopted the French language and sent their children to be educated in French schools in Belgium or France; the French language thus became a symbol of financial success. This group formed an important force in Belgian society, part of the constituent power that would capture and control the Belgian Revolution in 1830.

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would possess a favorable economic base for competition with Britain. If France was his cultural and political enemy, Britain was his economic foe.

21 His plan also called for a partial exclusion of British products from The Netherlands and their total exclusion from the colonies.

22 As a final effort in his economic struggle with England William attempted to sever the route of British commerce headed for the interior of Europe, closing the Rhine by placing heavy duties on shipping that entered from the sea.

23 The King paid much attention to the transport system of the country and supported the schools of navigation in Ostend and Antwerp.

24 Demoulin Robert (1938):112.

### 3.5. *Opposition to William: The Way to Independence*

The King's authoritarian rule angered the two political groups of the South, the Liberals and the Catholics. The Liberals comprised the upper class of the urban entrepreneurs, factory owners, traders and the middle classes of the industrial district of Wallonia. Liberals were also numerous among academics of both the humanities and sciences as well as among journalists, lawyers and judges. They were inspired by 18<sup>th</sup> century rationalism, through the historical influence of Freemasonry among Belgian society, reinforced by French laïc education and secular ideology during the annexation. The Liberals advocated the complete independence of the civil authority and secular instruction in all grades of education, and the abolition of conscription by lot. They also advocated a free-trade policy advantageous to the cities. However, it was not in the interest of the Liberals as a whole to advocate much amelioration of the conditions of the laborers, for such a policy would have antagonized the Liberal factory owners.<sup>25</sup>

The Catholics were supported by nobles, landlords and a traditional economic and intellectual bourgeoisie from the cities and the Belgian Catholic Church.<sup>26</sup> Despite the conservative tendencies of the Belgian Catholic group reinforced by the French "persecution" and expropriation of Church properties, a veritable revolution in Belgian Catholic thought took place after 1820. An important liberal movement took place among young Catholics, in great part influenced by Hugues, Félécité Robert de Lamennais, (1782-1854) a French priest and philosophical and political writer, the most influential and controversial figure in the French Church.<sup>27</sup>

Lamennais appealed to the authority of tradition and the general reason of mankind in contrast to individual private judgment, attacked the Gallicanism of the bishops and the monarchy in France, and was ready to marry Catholicism with political liberalism.<sup>28</sup> His influence was important in Belgium, especially in

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25 The Liberal group since its origin showed a split which grew larger after independence, between progressive and doctrinaire wings united mainly by their secular approach to society. Liberals felt cramped by Calvinist orthodoxy and opposed King William's language policy.

26 Most of the Catholic hierarchy followed the ultramontane doctrine and spoke French. The mass of the peasants in Flanders were Catholic and spoke Flemish with their low clergy; at the time they had no influence in Catholic politics.

27 Haag (1950):136.

28 After the July Revolution in France, he advocated democratic principles, the separation of Church and State and freedom of education. He founded the "avant-garde" catholic parisian newspaper, L'Avenir. His collaborators were Henri Lacordaire, Charles de Montalembert and a group of enthusiastic liberal Catholic writers. Later condemned by the Pope and the Monarchy, Lamennais dedicated his work to the cause of the people, republicanism and so-



Flanders. In the 1820s these Liberal Catholics began a dialogue with the Liberals, which would have been impossible before and during French annexation.<sup>29</sup>

The union of Catholics and Liberals in common opposition to the King brought about an unusual coalition for European society of the 19<sup>th</sup> century; called *Unionism*, it would last until the consolidation of the Belgian State and would have a lasting influence on the *politique du compromis* specific to Belgian political life. The Liberals insisted on freedom of thought and of the press and the Catholics on freedom of worship, education and association.<sup>30</sup>

Liberal lawyers and judges saw themselves threatened by the return to customary law and by the end of jury trial; Liberal journalists associated Dutch rule with increasing infringement of the freedom of the press. The King drove them into an alliance against him, banishing the most troublesome journalists<sup>31</sup> and placing restrictions both on the freedom of the press and on the freedom of association. By 1828, the King was having serious difficulties with both Belgian Catholics and Belgian Liberals. On November 8, 1828 these two discontented groups united to form a quasi-political party. The rallying force came from the Liberal Louis de Potter, a journalist when he wrote: "Until now, we have pursued the Jesuits. Let us scoff at, let us shame, let us pursue the ministers!"<sup>32</sup>

Liberal journalists united with the Catholic newspapers and launched a national opposition campaign, speaking as with one voice.<sup>33</sup> The Belgians painstakingly listed their grievances and demanded the traditional *redressements des griefs du peuple*. Thus was born the Union of Opposites which endured until 1842. The Union's greatest effectiveness was felt as a voting bloc in the States-General.<sup>34</sup> The united front hoped to paralyze the government by withholding

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cialism. He died in Paris in 1854, refusing to be reconciled to the Church.

29 The Catholics opposed William's religious and educational policies, especially his influence in the education of priests and the appointment of bishops, which were viewed by the Catholic Church as an imposition of civil obedience upon the Church and an attempt to weaken the links between the southern Catholic hierarchy and Rome.

30 William wanted to rally the Catholics and Liberals, whether Flemish or Walloon. In linguistic reforms he needed the Catholic lower clergy, in educational reforms he needed the support of the Liberals and, most importantly, the willing support of the communes, who had to foot the bills for his reforms. However, the clergy could not accept King William's policy of equality for all religions or his support of public schools in the southern provinces. Mabilie (1992):87.

31 Banned journalists were on both sides, Louis de Potter was a Liberal, and Jules Barbels a Catholic.

32 *Courrier des Pays-Bas*, 8 November 1828.

33 Petitions poured into the Lower House of the Dutch Parliament (150 in the year 1829, containing more than 360,000 signatures).

34 Young Belgian Liberals were particularly angered over the King's linguistic and judicial poli-

appropriations until it had secured ministerial responsibility, immediate application of all the provisions of the Concordat, freedom from government interference in Catholic schools, the establishment of a high court in Brussels rather than in The Hague and the employment of more Belgians in the civil service, diplomatic corps and army. However, their main attack of the Union was to achieve ministerial responsibility, which had not been foreseen by the Fundamental Law. In the opposition's view, ministers were not only to hold consultative functions but were to be responsible to the Parliament and eventually to share executive powers with the King. The King, who believed that he alone was the government, viewed this proposal as an attack upon his prerogatives. The States-General voted two types of budget funding: long-range projects and an annual budget covering current administrative costs. In 1828 when the important decennial budget was presented it was rejected; when in the Fall of 1829 it was presented for a second time its passage was extremely doubtful. Continued opposition to the crown's educational objective and sustained Liberal opposition to the government's policies on the press and ministerial responsibility forged the union more tightly. Faced with a possible defeat of the budget, William went before the States on December 11, 1829 to deliver a message in which he outlined his views on the difficulties besetting The Netherlands.

For William, freedom of the press was the central issue. When a journalist wished to criticize the King or his policies, he attacked the minister who would have been responsible under a democratic regime. The King, under such an oblique journalistic attack, reacted by having his Minister of Justice prosecute the offenders. By 1830, Louis de Potter, Adolph Barbels and other offending journalists were in exile.<sup>35</sup> After this came the question of religious zeal and religious education. William believed that a large part of the opposition to his government's religious policies came from the Catholic lower clergy.<sup>36</sup> As for ministerial responsibility as practiced in England, in William's view it was unconstitutional in The Netherlands, since the Fundamental Law made the ministers responsible only to the King. Since a part of the question of ministerial responsibility involved the accessibility of the ministers to the chambers, and since the ministers did not sit in the States-General, the King declared that they would make themselves "unofficially" available to confer with legislators. This

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cies and allied with Catholics who opposed the King's educational and religious policies. The Liberals would not admit that the King had unlimited authority in matters of justice which might touch moral questions, nor would the Catholics admit that the State possessed an absolute monopoly on education.

35 Rooney (1982):92.

36 Addressing the Liberals, William declared that he was prepared to make concessions regarding the use of French language, however, he still regarded Dutch as the national language.

approach was rejected by all factions. Faced with an opposition which paralyzed his government, he made a series of carefully planned retreats, abolishing the Philosophical College, while the ministers introduced measures to ease strictures on the press. In early June, the government withdrew its demands to inspect Catholic schools. In June the King rescinded the linguistic decrees of 1824 and 1825, allowing the free use of French throughout the South. On June 7, William formally recognized the immovability of the judges. There remained only three unresolved issues: unequal employment of Belgians, the personal power of the King and the location of the permanent seat of justice. Government candidates won the July election, claiming a third of the seats in the Second Chamber.

Belgium's overextended industrial development was severely affected by the general European economic crisis of the years 1825-1829. Between 1815 and 1830, while Parliament was able to enact 381 laws, during the same period 1,700 royal decrees were issued.

The winter of 1829/30 had been exceptionally severe, and an economic crisis of unexpected proportions had swept the country. Factories had gone bankrupt and leading bankers had closed their doors.<sup>37</sup> Relief programs could not meet the demands for the simple necessities of life and a mass of unemployed were aimlessly roaming the streets of Brussels, Liège, Ghent, Verviers, and Antwerp.<sup>38</sup>

On July 27, 1830 Charles X of France left Paris and the Parisians used his absence to depose him in a three day revolution that put Louis-Philippe on the throne of France. This was not the direct cause of the revolution in Brussels a few weeks later, but it helped set it in motion.<sup>39</sup> William had planned special festivities to be held in Brussels on August 25, to mark the 15<sup>th</sup> anniversary of his ascent to the joint thrones of Holland and Belgium. A disturbance broke out

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37 In March and again in June the market of Verviers collapsed; bankers and industrialists declared bankruptcy. In April when William's Cockerill's creditors pressed him for payment of debts he responded by asking assistance of the government. At Liège in June strains on the economy chased silver coins from circulation. The large rug manufacturers of Tournai, such as Overman and Company, asked the government for aid.

38 Many workers, particularly those in the cities, lost their jobs, and large numbers in the southern provinces received public assistance. The town of Ghent was petitioning the Ministry of the Interior for a grant of two million florins to ease the lot of the unemployed and find them work.

39 French agents were active in Brussels and tempting invitations were issued to the Belgians to join the revolutionary process. However, in Brussels on August 20, 1830, in the offices of the *Courier des Pays-Bas*, a small intense group of young liberal lawyers and journalists met to consider launching a revolution in the Low Countries.

on August 25, after a performance of Auber's opera *La Muette de Portici*.<sup>40</sup> The notables formed a civil defence committee and declared a state of emergency, forming a militia to restore peace and order. A burghers' guard was organized<sup>41</sup> and took over the duties of the lawful authorities. The situation was brought quickly under control and Brussels found itself under the jurisdiction of its own military.<sup>42</sup> No one, however, contemplated the overthrow of the dynasty; all that was demanded at the time was the administrative separation of Belgium and the Dutch Provinces.<sup>43</sup>

While the King was summoning the States-General in The Hague, volunteers were flocking to the rebel cause in Brussels. Charles Rogiers arrived at the head of troops from Liège. French Republicans came; all constituted authority was abolished. William, who hoped to obtain support from the moderates, sent his second son, Frederick, to occupy the town. His troops entered Brussels on September 23 and were received by the population with a fusillade which checked their advance. After five days of heavy street fighting by the laborers (September 23-27: the September Days) the royal army withdrew, and the whole South, including all Limburg and Luxembourg, rose in arms. The volunteers and the burghers' guard pursued them to Antwerp. Meanwhile a provisional government was being formed on September 25, 1830. The Belgians had captured Antwerp, which Frederick had occupied on October 2.<sup>44</sup>

In evaluating the revolt in Brussels in 1830, what appears to have been the trigger was that there had been intense resentment of the King and his policies by four distinct elements in the South. It is important to identify these groups since they formed or influenced the Belgian Constituent Power which drew up the Belgian Constitution.

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40 The subject of the play, Masaniello's revolution in Naples, was seen as a provocation. On August 26-27 in Brussels and Liège, mobs rushed to pillage and loot and set fire to government buildings. The Dutch police and soldiers on orders of the King stood by impotently, seemingly allowing themselves to be disarmed, and the troops retired without resistance to the royal palace.

41 The Baron Emmanuel d'Hoogvorst was the commander of the burghers' guard.

42 Disturbances at once broke out in the provinces and the red, yellow and black flag of the revolt of 1789-1790 began to be shown. The notables attempted a dialogue with the King in order to obtain an administrative separation between Holland and Belgium, and the King vacillated.

43 The King sent his son to Brussels at the head of a small body of troops. He found the town prepared for resistance and did not dare risk a fight; after an unsuccessful parley the Prince left Brussels on September 3.

44 The Dutch general David Hendrick Chassé maintained his position in the citadel and bombarded the town from there. Belgian Revolution of 1830s, see: Mabilie (1992); Rooney (1982); Wils (1996) and Pirenne (1932).

First, there was the clergy of Flanders, originally led by Maurice de Broglie, Bishop of Ghent, who took exception to the constitutional provision that provided for the equality of all religions before the law. This, coupled with William's active campaign erecting public schools in Catholic Flanders, was seen by the parish clergy as an unwarranted intrusion into their domain. They led the petitioning and the campaign against the crown from 1829-1830.

The second large opposition group gathered its members from the legal profession. Drawn from the upper rank and the middle class of society and largely trained under the French regime, they resented the crown's reversion to customary law and the abolition of jury trials and were vocal in their opposition to the establishment of a permanent seat of justice at The Hague instead of Brussels. In the King's devotion to and support of his Minister of Justice the legal profession in the South saw gloomy days ahead, especially after the King began pressing for the use of Dutch in the courts, a language largely unknown to the "Francophone Flemish" lawyers.

The third opposition group was centered around the liberal press, surfacing in the trials of Louis de Potter and Adolph Barbels in 1829 and 1830 and related to the larger question of freedom of the press and the rights of the opposition to criticize the Crown and the its ministers.

The fourth element to trigger and sustain the July Revolution were the members of the lowest classes. The men who fought in the street and at the barricades of Brussels during the September Days were laborers, described by their elite contemporaries as "rabble." The majority of them were day laborers, reportedly half from Brussels and half from the provinces, most of them unemployed or displaced from their home regions by the economic crisis. The middle class liberals who had played an active role in the government in Brussels between August 25 and September 23, retired from actively fighting the royal armies during the September Days, but came back as soon as Brussels was freed, and "captured the revolution."

Throughout the process of Belgian independence and the period of constitutional foundation, there were such moments of seemingly unavoidable violence. For some revolutionary journalists and intellectuals such as Bartel, the notables who controlled the Revolution, created committees and successfully formed a provisional government, did so in undemocratic ways, stealing the product of the revolution from the mass of the people in order to become a part of the constituent power and to secure their own privileges in the drafting of a new constitution. For the notables, themselves, this undemocratic procedure was considered necessary to produce a democratic constitution which would preserve the freedom of the nation from the extreme revolutionary excesses seen in the French Revolution.

## 4. The Constituent Power

### 4.1. *The Founders*

The Belgian Constitution of 1831 was drafted by a commission hired by the Revolutionary Provisional Government, and the final version ratified by an elected National Congress. On September 11, 1830 a Commission of Public Safety was organized by the "Burgher Garde" and the Brussels Council retitled the Regency Counsel. The members of the Commission of Public Safety represented the Catholic aristocracy and the Liberal financiers and traders.<sup>45</sup> This Commission was dissolved on September 20, 1830, and replaced by an Administrative Committee set up on September 24;<sup>46</sup> on the 26th it became a Provisionary Government and announced the names of the new government's members: Charles Rogier, the Baron d'Hoogvorst, A-E. Jolly, J. Vanderlinden, the Baron de Coppin, Alexander Gendebien, the Conte Felix de Mérode, Sylvain Van de Meyer, J. Coghen, J. Nicolay, L. De Potter and J.-F. Tielemans, the last two, both journalists, banned by the King.

The Provisionary Government was an extraordinary body that while drafting a constitution, exercised the full range of political powers, which repealed and promulgated laws, dismissed magistrates and civil servants and nominating new ones. It proclaimed an impressive series of decrees such as freedom of the press, of expression, religion, association and education, and abolished censorship and the state police. The "Gouvernement Provisoire" was in fact a dictatorship. However it declared itself ready to handle its power over as quickly as possible to a legitimate authority representing the country. It obtained an advance on subsidies from the *Société Générale*, which agreed to freeze the funds of the Kingdom of The Netherlands in its possession and on October 4 declared Belgium an independent state calling for the speedy election of a "National Congress," where all the interests of the different provinces would be represented. The "National Congress," Belgium's Constituent Assembly, would then produce a final constitution which would apply throughout Belgium.<sup>47</sup> To

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45 The Prince of Ligne, the duc d'Ursel, F. de Merode and the baron de Secus represented the Catholic aristocracy.

F. Meeus (Governor of the *Société générale*), G. Gendebien, S. Van de Meyer and L. Rouppe represented the financiers and burghers. Mabilie (1992):89.

46 Its members were Charles Rogier, the Baron d'Hoogvorst, A-E. Jolly, J. Vanderlinden, the Baron de Coppin. Mabilie (1992):90.

47 Gilissen (1968).

that end it appointed a committee of young lawyers, to draw up a draft of the Constitution. They were supposed to represent the political and financial forces of both Catholic and Liberal tendencies as well as the different liberated provinces.<sup>48</sup> The Committee worked intensely for five days, from October 12 until the 16th. Its draft proposal was approved without substantial changes by the Provisional Government on October 27.

Two decrees (October 8 and 10, 1830) organized the elections for the National Congress. The first organized the communal elections: local mayors and municipal magistrates would be elected by direct vote, with a property qualification for suffrage. The decrees of the provisional Government dated October 11 and 16 created a procedure for electing the members of the National Congress; the election took place on November 3, by secret ballot and relative majority. Two electoral innovations were introduced in the election of the National Congress, they were due to the French influence of 1817 and 1830: direct election and voter qualification by education along with property qualification. The amount of property taxes paid under Dutch rule by male owners, required to be an elector, applied to the election to the National Congress.<sup>49</sup> The educational qualification was added by the young Liberals: everyone who had a university diploma - magistrates, lawyers, notaries or religious ministers - was entitled to vote, the legal age for voting was reduced to 25 years (from the Dutch: 30), to allow young members who drafted the Constitution to vote. However, universal suffrage was not even considered. For most liberal lawyers "freedom" and not "equality" had to be taken into consideration when electing a National Congress that would draw up the Belgian Constitution. Devaux, member of the Commission working on the draft, articulated this opinion:

Nous combattons le suffrage universel, bien qu'il soit quant à la forme le plus favorable à l'égalité parcequ'il est fatal à la liberté, quant aux résultats: en temps de passion, il mène à l'anarchie, qui est aujourd'hui le plus redoutable ennemi de la liberté; en temps ordinaire et à la longue mieux que tout autre système, il as-

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48 Secretary, J.B. Nothomb, Luxembourg, age 24, Liege University; Secretary, Paul Devaux, Bruges, age 29, Liege University and Paris Sorbonne; Emmanuel Balliu, Ghent, age 30, Gent University; Vice-President, Charles de Broukere, Limburg, age 34; Charles Zoude, Namur, age 36, Liege University; Joseph Lebeau, Liege, age 36, Liege University; President, Etienne de Gerlache, Liege, age 45, Faculté de droit de Paris; the following members of the commission were not present during the five day meeting of the commission: Tisleman age 31; Blargnies age 37; Dubus age 39; Tjorn 47; finally, Van Meenen, the oldest member at 58. Gilisen (1968).

49 The amount were 13 florins for the small towns of Luxembourg; 30 to 50 for middle towns through the country; 130 in Antwerp; 150 for Brussels. Under pressure these amount were reduced 50% by the decree of October 16, 1830.

sure l'influence exclusive de l'aristocratie et lui sacrifie la liberté du peuple.<sup>50</sup>

For the Authors of the Constitution egalitarian universal suffrage was put aside in the name of freedom.

In the three weeks between the decrees and the elections, there was no political campaign, as the provisional government was busy consolidating its authority. In the elections, out of a population of four million only 440,000 Belgian men were entitled to vote; of these, only 65 percent chose to cast their ballots. The result was the nomination of 299 moderately-minded traditionalist delegates.<sup>51</sup> This was a marked difference from the provisional government, where the Liberals were in the majority. In the National Congress the Catholics were in the majority, however the members did not split along ideological lines and respected the Union. The landowning classes and the prosperous entrepreneurs were well represented, and the deputies chosen were predominantly experienced in law and in administration, many having served in the States-General between 1815 and 1830.

On November 10, 1830 the Congress convened in the chambers of the former States-General. The seventy-seven-year-old Jean-François Gendebé presided, as he was the oldest man elected. Shortly afterward Baron Surlet de Chokier was elected President, a post to which he was re-elected each month until his election as regent.

Most of the members of the Provisional Government judged their position weakened since they had not been legitimated by a national election. Although they had served prior to the convening of the National Congress and although they had called for its election and prepared the draft Constitution, it was the Constitutional Congress which had the direct sanction of the electorate. Accordingly on November 12, all members of the congress offered their resignations. The National Congress accepted their resignations and then asked them to assume executive authority until a new executive under the Constitution would be created by Congress.<sup>52</sup>

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50 Just (1881):45.

51 Thirty-four former members of the States-General were elected to the National Congress, constituting 17 percent of the new body. Half of the deputies had legal training. One fourth were noblemen. In some provinces noble representation was strong: thirteen out of thirty in Hainaut, eleven out of seventeen in Limburg, eleven out of thirty-six in East Flanders. Thirty property owners, twenty-five bankers, and three physicians were the core of the middle class representation. The two Flanders elected thirteen clergymen. Ten percent of the deputies were under thirty, almost half were under forty and three-fourths were under fifty. One twentieth of the deputies were committed Orangists. The French party represented about 10 percent of the total. Mabilie (1992):91.

52 Gilissen (1958):81.



For De Potter, one of the newly elected congressmen, the Provisionary Government which had drafted the Constitution should have submitted it to the Belgians for approval. This was in his view the only legitimate way: the "nation's" approval of the constitutional process. The draft of the Constitution by a Provisionary Government and the debate and the promulgation of that draft by an elected National Congress was not sufficient; a direct national consultation should have been required, through however the same form of suffrage. He resigned.

From the beginning the National Congress assumed two distinctive roles: that of a national constituent assembly and that of a legislature. The Provisional Government, which retained its name, became the cabinet of the new state. Its members, who derived their authority as the elected representatives of the People, became the State's ministers. Once installed, the Congress had to resolve three important issues: independence, the form of the government, and its relationship with the House of Orange.

The Belgians had to find some constitutional arrangement which would be radical enough to satisfy their own liberal ideals but not so extreme that it would provoke the opposition of the great powers (England, Prussia, Russia and France). Thus, international claims were given precedence. In a major speech to the National Congress on November 19, 1830, J.B. Nothomb gave a public assurance of Belgium's respectful intentions:

When a revolution has achieved its purpose it must come to a standstill; if it continues to advance another revolution is in the making. By adopting the monarchy you will have needed the revolution....Separated from Holland there are two forms of existence open to Belgium, either she must seek to unite with France or she must set up a monarchy under a prince of her choosing even if at the last resort he has to be chosen amongst ourselves.<sup>53</sup>

On November 22 the Congress declared Belgium to be an hereditary monarchy. Beginning on December 4, 1830, the National Congress met for two and a half months in order to finalize the draft proposed by the committee. Only three questions mobilized the attention of the National Congress: the choice of the King, the composition of the Second Chamber of the Parliament, the Senate, and the Belgians and their rights (*Les Belges et leurs droits*), particularly those regarding religion and freedom of education. The advocates of a single chamber quoted Sieyès and Rousseau and the defense of democracy, fearing for a Senate which would be in the hand of an aristocratic class. Defacqz, one of the members of the Congress, declared: "C'est nier l'évidence que de méconnaître

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53 In Mabilie (1992):87.

l'impuissance, l'inutilité, le danger même d'une chambre démocratique."<sup>54</sup> The defenders of a bi-cameral legislature quoted history: on one hand, the longevity of the British and the America Republican system, and, on the other, the failure of all the French governments with a single chamber. Lebeau: "Sans l'adjonction de deux chambres au pouvoir executif vous êtes sans sauvegarde et sans défense contre la precipitation des deliberations."<sup>55</sup> In February 1831, the Constitution was formally promulgated by decree of the National Congress, and went into force on February 25. The National Congress worked out a constitution which manifested the liberal trends of the times. The ambiguity of its aims was expressed by one of the deputies, Viscount Vilain XIV: "Gentlemen, I shall declare myself in favor of a constitutional monarchy, but one which is founded on the most liberal, the most popular and the most republican principles." The majority decided on a bi-cameral system that had been worked on in December.

William had already appealed to the great powers to intervene, and in November at the proposal of Great Britain, a conference of ambassadors was called in London. Their main objective was to avert a European war. On December 20, the Conference imposed an armistice upon William and the Belgians, invited the Provisional Government to send a deputation and declared the dissolution of the unitary Kingdom of The Netherlands. A month later, on January 20, 1831, it was decided that Belgium should be an independent and perpetually neutral state under the guarantee of the great powers.

The new throne was first offered to the Duke of Nemours, son of Louis Philippe of France, who was opposed by Britain. It was then offered to Prince Leopold of Saxe-Colburg, a British subject since his marriage in 1816 to Princess Charlotte, daughter of George IV of England and heiress to the throne of England. She died the following year after giving birth to a still-born child. Leopold's position at the British court was strengthened when his sister, widow of the Prince of Leiningen, married the Duke of Kent. His relations were close with their daughter Victoria, whom he visited each year until his death in 1865. Leopold accepted the Belgian offer on the condition that the National Congress ratified the Treaty of Eighteen Articles prepared by the London conference defining the bases for separation between Holland and Belgium.

#### 4.2. *Constitutional Antecedents*

In 1915, A.V. Dicey who has extensively compared the British constitutional

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54 In Gilissen (1958):87.

55 Gilissen (1958):87.

system to the Belgian Constitution, noted that despite the fact that the British constitution system does not have a written document while the Belgian Constitution is a written document, similarities between both systems do exist.

The Belgian Constitution indeed comes very near to a written reproduction of the English Constitution, and the Constitution of England might easily be turned into an Act of Parliament without suffering any material transformation of character, provided only that the English Parliament retained - what the Belgian Parliament, by the way, does not possess - the unrestricted power of re-pealing or amending the constitutional code.<sup>56</sup>

John A. Hawgood states that:

Fortunate in the moment of its birth in the midst of the great reform debates in Britain and able to take advantage of recent constitutional changes in France, and in the juxtaposition of political forces in Belgium that produced substantial agreement upon its fundamentals, the Belgian Constitution does indeed possess many merits.<sup>57</sup>

The historian John Gilissen (1968) has analyzed the formal sources of the inspiration of the "Belgian Founding Fathers," indicating their borrowing from other Constitutions of the time.<sup>58</sup> He argues that the rules and the principles of the Belgian Constitution come in large part from British constitutional law and from the ideas of the first phase of the French Revolution (1789-1792). However, only very few of the dispositions of the Constitution were directly copied from British constitutional law. The constitutional provisions were taken from the French Constitution of 1791 and of 1830, and from The Netherlands Fundamental Law of 1815. Only about 10 percent of the constitutional provisions could actually be called new.

The way in which the various previous constitutional provisions were combined made the Belgian Constitution quite innovative in the eyes of other European countries. The Belgian system of parliamentary monarchy soon appealed to other nations of Europe, as they undertook institutional reforms. During the period from 1837 to 1866, the Belgian Constitution was more or less copied by other Constituent Assemblies in Spain (1837), Greece (1844 and 1864), Luxembourg (1848), Prussia (1850) and Roumania (1866).

The 1831 Belgian Constitution was first inspired by the 1791 French constitutional monarchy in that it established the rule of the ministerial countersignature. Article 64 stated that "No decree of the King can take effect unless it is

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56 Dicey (1982):38.

57 Hawgood (1939):140-141.

58 Gilissen (1968):107-141.

countersigned by a minister, who by that act alone, renders himself responsible for it." Having experienced the reign of King William I, the Belgian Constituent Assembly of 1830 set up a constitutional monarchy under which the King had no political responsibility, yet "the King can do no wrong." If Article 29 of the Constitution stipulated that: "The Executive power is vested in the King, subject to the Constitution." Article 64 quoted above delimited the action of the King requesting that he act under ministerial responsibility. Articles 63, 89 and 90 of the Constitution completed the responsibility of the ministers, holding them accountable to the legislative chambers. The role of the monarch was limited and the government clearly held the reins of political initiative and everyday administration.<sup>59</sup> As B. Mirkin-Guetzevitch argues:

..un type de monarchie parlementaire avec un pouvoir royal limité et le rôle décisif du Parlement, non seulement en ce qui concerne la législation mais surtout dans le choix du gouvernement c'est à dire dans le gouvernement lui-même. Le parlement qui gouverne, c'est la grande conquête de 1830.<sup>60</sup>

The Belgian Constitution was also influenced by the most recent constitutional instrument of the time, the charter accepted by Louis-Philippe on August 14, 1830. The Belgian Constitution listed the fundamental rights (*Droits de l'homme et du citoyen*) in its main text. It organized a hereditary monarchy while putting forth every effort to limit the power of the King. However, the Belgian Constitution was precise where the revised French charter of 1830 had remained vague, recognizing unequivocally the full sovereignty of the people. The power of the executive was curtailed in what was then an original way, by endowing it only with attributed powers. The Belgian King rules by no divine right and has no prerogatives, he is simply a person appointed to the leadership of the state as a King, to exercise prescribed powers given to him. As Article 78 stipulated, the Chief Executive (the King) had no other powers than those formally vested in him by the Constitution and by specific laws passed in æ-

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59 Article 63: The person of the king is inviolable; his ministers are responsible.

Article 89: In no case shall the verbal or written order of the King relieve a minister of his responsibility.

Article 90: The chamber of Representatives has the right to accuse ministers and to arraign them before the court of Cassation, which sitting in full bench alone has the right to judge them, except in such matters as shall be established by law respecting a civil suit by an aggrieved party and respecting crimes and misdemeanors committed by ministers when not in the performance of their duties.

The law shall determine the responsibility of ministers, the penalties to be inflicted on them and the method of proceeding against them, whether upon accusation accepted by the Chamber of Representatives or by prosecution by the agreed parties.

60 *Annales de l'Institut de droit comparé*, t.II (1936):95.

cordance with it.<sup>61</sup> Furthermore, Article 67 of the Constitution provided that the Chief Executive could issue only those regulations and orders necessary for the implementation of laws.<sup>62</sup>

The 1831 constitutional monarchy was, however, different from the Charter of the July Monarchy; it was not the result of a transaction between the National Congress and the King. When Leopold I, "King of the Belgians" (1790-1865) came into power on July 21, 1831, he swore to respect the Constitution which had been elaborated nearly six months earlier. To the members of the National Congress who solicited him to accept the Belgian Crown, Leopold I on April 20 declared: "Messieurs vous avez rudement traité la royauté qui n'était pas là pour se défendre."<sup>63</sup>

The Belgian Constitution borrowed from the Fundamental Law of The Netherlands a combination of technical dispositions concerning the judiciary and on the structure of the public finance. However, it differed from the Fundamental Law in that the judiciary was strengthened by making it a third power, independent from the Executive. According to the provisions of the Constitution, the judiciary had the power to judge all disputes about subjective rights and it was irrelevant whether one of the parties concerned was the administration (Articles 92-93).<sup>64</sup> In Article 106,<sup>65</sup> the highest court was now the Court of Cassation - no longer the King, as was the case under William I's reign. The Court of Cassation was formally charged with settling conflicts which might arise between an ordinary court and an administrative body or administrative jurisdictions.

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61 Article 78: The King has no other powers than those which the Constitution, and the special laws enacted under the Constitution, formally confer upon him.

62 Article 67: He issues all regulations and decrees necessary for the execution of the laws, without power to suspend the laws themselves, or to dispense with their execution.

63 Huytens, Voy. E. (1844) *Discussions du Congrès national*. t.I-V. Brussels: A Wahlen.

64 Article 92: Actions which involve questions of civil rights belong exclusively to the jurisdiction of the tribunals.

Article 93: Actions which involve questions of political rights belong to the jurisdictions of the tribunals, except as otherwise determined by law.

65 Article 106: The Court of Cassation shall decide conflicts of jurisdiction, according to the method prescribed by law.

## 5. The Belgian Constitution

### 5.1. *Outline of the Constitution*

The Belgian Constitution of 1831 was generally described by its contemporaries as liberal. Its guarantees of rights were comprehensive. Monarchical in a purely formal way, it established an elected bicameral legislature and carried the separation of powers to considerable lengths. However, it was undemocratic in that its voting franchise carried a fairly high property qualification. It could be amended, however, the constitutional process to do so was rigid. Until the 1960s there were few changes and those were lasting.

The Constitution's 139 articles were divided into eight sections: (1) the territory and its divisions ("Belgium is divided into provinces," are the opening words); (2) Belgian citizens and their rights; (3) concerning powers, beginning with "All powers emanate from the people,"; (4) those dealing with the legislature, the King, the ministers and the judiciary; (5) provincial and communal institutions; (6) finance, army and general provisions; (7) revision of the Constitution; and finally (8) transitional or temporary provisions.

### 5.2. *Fundamental Rights - Etat de Droit*

Belgian constitutionalists traditionally qualify Belgium as an "Etat de droit." This concept is more or less equivalent to the English "rule of law." It originally implied that citizens were no longer subject to arbitrary rules, that there were fixed, general, impersonal and predictable rules by which both citizens and rulers had to live. This was intended as a protection against excesses by the Executive, as experienced under King William, who had to act within the bounds set by the Constitution and by the Law.<sup>66</sup> The ultimate aim of these institutional principles was to provide guarantees for the fundamental rights and liberties of the citizens. The major sources of the rights and the liberties prevailing in Belgian law were outlined under Heading II of the Constitution's Articles 4-24, entitled *The Belgians and their Rights (Les Belges et leurs droits)* following a description of the territory of Belgium (*Du Territoire et de ses Divisions*) and preceding the provisions concerning the various powers. In this way the structure of the Constitution implied that all powers had to respect fundamental rights.

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66 Nowadays, it implies that the three Powers each within its own competence must respect the applicable legal rules, the Constitution being the overriding authority. This automatically entails a respect for the separation of powers and a respect for the hierarchy of legal rules.

The Belgian Constitution differed from the French and the American Constitutions in that it did not have a separate *Droits de l'homme et du citoyen* or Bill of Rights, but incorporated most of them into the main body of the Constitution. Other 19<sup>th</sup> century constitutions also contained notions of social and economic rights, implying a right to protection by the State based on the social contract. Several proposals to incorporate these rights into the Belgian Constitution were rejected in 1831 because it was believed these rights were mere declarations of intent on the part of the authorities, and could not be enforced like the classic liberal civil and political rights. In that aspect the Constitution of 1831 was quite innovative, since these classic rights and liberties were not laid down in a separate Bill of Rights enumerating philosophical principles, as in the French Constitution, but were incorporated into the text of the Constitution itself so as to make them legally binding. The Rights of the Citizens is similar in subject matter to the French declaration of rights of 1789, but it approaches the protection of rights from the more practical angle, simply forbidding (as had the American Constitution and its first ten amendments) acts interfering with the exercise of these rights, and giving an abstract statement of what they are. It differs most in content from the Declaration of 1789 in according the right of association (Article 20) and in its attitude toward religion.

### 5.2.1. *On Nationality*

According to Article 4<sup>67</sup> of the Constitution, Belgian nationality was acquired and retained in accordance with the rules laid down by civil law. Article 5<sup>68</sup> provides that naturalization is granted under the Code of Belgian Nationality by the legislative branch, which lays down the general rules and grants Belgian nationality through naturalization in individual cases. The acquisition, attribution, loss or recovery of Belgian nationality are governed by the Code of Belgian Nationality. The 1830-31 Belgian laws on nationality were extremely restrictive, mostly based on the traditional concept of *jus sanguini, paterni*, and familial national unity. Belgian laws concerning nationality differed from both the French and the German laws of the 19<sup>th</sup> century in that maternal nationality could not be transferred; a woman who married a foreigner lost her Belgian na-

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67 Article 4: Belgian citizenship is acquired, maintained and lost according to regulations established by the civil law.

The present Constitution and the other laws relating to political rights determine what other conditions are necessary for the exercise of these rights.

68 Article 5: Naturalization is granted by the legislative power.

Full naturalization alone admits foreigners to equality with Belgians in the exercise of political rights.

tionality and an unmarried mother could not give her Belgian nationality to her child, so that a male could recognize a child without the consent of the mother (this was abrogated only in 1984); nor was Belgian nationality granted to a child born on foreign soil and later adopted by Belgian parents. Belgian law did not recognize double nationality. The *Jus soli* concept became increasingly important during the 19<sup>th</sup> century but in a negative sense - in that it did not extend the Belgian nationality to children born inside of the Belgian borders from foreign parents - but it concerned Belgian nationals who had left the country for more than five years without returning who could be deprived of their nationality.

In 19<sup>th</sup> century Belgium the concept of nationality could not be confused with the concept of citizenship as it often is today. The majority of Belgian nationals did not have the right to vote, either because they did not meet the financial requirements laid down in Article 47 of the Constitution or because of gender. The Belgian "full naturalization" (including the right to vote) was during the 19<sup>th</sup> century given to wealthy foreign entrepreneurs or to professionals such as medical doctors and lawyers living in Belgium; the "limited naturalization" with restricted voting rights, was granted to lower-class professionals. Examples of the full and limited naturalization granted by the Provisional Government, the National Congress and later by the King were reported in *Pasinomie*<sup>69</sup> as well as in the Belgian Official Journal, *Le Moniteur Belge*.

### 5.2.2. *The Concept of Equality*

Article 6, directly drawn from the French Constitution of 1791, declared the principle of equality among Belgians and reaffirmed the end of the *Ancien régime* and its privileges and orders.<sup>70</sup> However, the National Congress had a limited conception of democracy, believing that only a restricted number of people were capable of participating in political life (Article 47). Liberals of the 19<sup>th</sup> century held that persons without means had in fact nothing to lose and had nothing to defend against the State. The electoral system of 1831 was based on a property assessment franchise and the result was that only persons paying a minimum tax were enfranchised.

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69 *Pasinomie de Collection Complète des Lois, Décrets, Arrêtés et Règlements Généraux qui peuvent être invoqués en Belgique. Troisième série, 1830-. Mise en ordre et annotée par A. Delebecque, Avocat-Général près de la cour d'Appel de Bruxelles. Dédiée au Roi. Bruxelles: Société Typographique Belge, AD. Wahlen et Cie. (date) Some examples: p.62-63, 91-92, 156-157, 211, 216-218.*

70 Article 6: There shall be no distinction of classes in the state.  
Belgian citizens are equal before the law; they alone are admissible to civil and military offices, with such exceptions as may be established by law for particular cases.



The principle of equality holds a singular position among the other rights guaranteed under Heading II of the 1831 Constitution. Traditional constitutional civil and political rights protected the individual against interference from the authorities and may be considered as an emanation of the 19<sup>th</sup> century liberal concept of society with a free market economy. In this context the idea of equality looks a bit out of place, even more so beginning at the end of the 19<sup>th</sup> and 20<sup>th</sup> century, when the emergence and development of socialist ideas added new dimensions to this concept. In the *compromis à la belge* the problem was how to reconcile freedom and equality, treated ambiguously in the 1831 Constitution.

### 5.2.3. *Compromise between Freemason-Liberals and Catholics*

#### 5.2.3.1. *Freedom of Religion, Education and Association*

In Articles 14, 15, 16, and 17, regarding freedom of religion, Liberals and Catholics agreed to compromise and officially recognized the Catholic, Protestant and Jewish religions.<sup>71</sup> The clergy of all faiths received state salaries, however there were few non-Catholic clergy.<sup>72</sup> State supported public schools were to be organized throughout the country, and even the marriage ceremony was altered (Article 16) to satisfy liberal opinion. This agreement between Catholics and Liberals was made possible by a common adversary: Dutch Protestantism. Furthermore, Belgium was still threatened by The Netherlands, William had not yet ratified the secession of Belgium, and Dutch troops were on the borders ready to intervene. The Belgo-Dutch treaty recognizing Bel-

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71 Article 14: Religious liberty and the freedom of public worship, as well as free expression of opinion in all matters, are guaranteed, unless crimes are committed in the use of these liberties.

Article 15: No one shall be compelled to join in any manner whatever in the forms or ceremonies of any religion, nor to observe its days of rest.

Article 16: The state shall not interfere either in the appointment or in the installation of the ministers of any religion whatever, nor shall it forbid them to correspond with their superiors or publish their proceedings, subject to the ordinary responsibility of the press and of public action.

Civil marriage shall always precede the religious ceremony except in cases established by law if found necessary.

Article 17: There shall be freedom of opinion in teaching; all measures preventing this are forbidden; the repression of offenses shall be regulated only by law.

Public instruction given at the expense of the state shall likewise be regulated by law.

72 Article 117: The salaries and pensions of the ministers of religion shall be paid by the state; the sums necessary to meet this expenditure shall be entered annually in the budget.

gium's existence and border would be signed only in 1838 after a successful Dutch military intervention caused Belgium to lose part of its territory, when acknowledgement of Belgian independence was forced upon the Dutch by the great powers. Also, the religious compromise between Catholics and Liberals was possible because between the extremes represented by dogmatic orthodox Catholics and hardcore liberal Freemasons, there was a large grey area inhabited by the less doctrinaire, who, whether Catholic or Liberal, did not base their political alliances on their attitude toward the Church.

#### 5.2.3.2. *The Catholic Context*

Belgian Catholic history is rooted in the religious wars of the 16<sup>th</sup> century, when its Protestant population had to decide whether to emigrate or accept the Spanish *reconquista*. Belgium was deeply affected by the Counter-Reformation and only a few islands of Protestantism survived these political events until the 20<sup>th</sup> century. During the mid 19<sup>th</sup> to 20<sup>th</sup> centuries Protestantism saw a modest revival. In the 1960s, the number of its adherents was estimated at about 75,000, living in 284 communities principally in Hainaut and Brabant.

During the 17<sup>th</sup> century, the Catholic Church was extremely powerful in Belgium. The Catholics had resented what they considered the persecution of the Church under the French annexation (1794-1814) and the later attempt by the Dutch King (1815-1830) to promote Protestantism in the school system as well as in the charity services. Under the Austrian, French and Dutch regimes, the Catholics were suspicious of political power, and its efforts to control the Church and education. The freedoms of religion, education, meeting and association were seen as a way to avoid the interference of the State in the Church's affairs.

Within this complex historical religious context, the Founders of the Constitution took much care in defining the relations of Church and State. Although no state religion was established, the Roman Catholic Church representatives who collaborated in the drafting secured most of the practical advantages for its priests, who while paid by the State remained entirely independent from it. No concessions were made by the Church in the matter of ecclesiastical appointments or Papal publications. Article 16 placed the Catholic Church on an equal footing with the other religions, but because the other religious groups were smaller the Roman Catholic religion was the principal gainer.

The schools were an essential element in the Catholic social system, education being a traditional task of the Church. Their role in education having been under attack by the preceding regime, the Catholics pushed successfully to secure not only the constitutional rights to freedom of education, association and free speech but also to provide for subsidies for the Church and Catholic edu-

cation. The attempts of the Dutch King to interfere with Catholic schools in Belgium is reflected in Article 17: "Private instruction shall not be restricted. All measures interfering with it are forbidden," which left the church schools in the most favorable position in any country where a church was not formally established. The State supported the Catholic University of Louvain, founded in 1425, which was and still is the largest and oldest Catholic university in the world.

Roman Catholicism was the religion of the overwhelming majority of Belgians, thus it was able to reap these considerable advantages from a declaration of rights that safeguarded religious liberty and the freedom of worship (Article 14) together with the freedom not to worship (Article 15). These constitutional provisions reflect the crossing and mingling for a brief period around 1830 of the Liberal and the Catholic streams of thought and endeavor in Belgium, and the suppression of differences for national and constitutional purposes. The coalition was effected in 1828, and Lamennais became for a moment both a liberal and a nationalist, but after the papal encyclical "Mirari Vos," published in 1832, such a compromise may not have been possible. The questions of the position of the Church and of religious instruction caused much controversy in Belgium, as will be analyzed in the third part of this paper. But the fact that there were no fundamental difficulties which might have wrecked the effort to frame a generally acceptable constitution in 1830 and 1831 was due in part to this temporary collaboration.

One of the main characteristics of Belgian Catholicism was the tendency to respond to problems through a network of associations. This inclination toward organization also explains the efficiency of Belgian Catholicism in the international sphere, in the Roman Catholic Church and the success of its missionary work. The Belgian institution applied itself assiduously during the 19<sup>th</sup> century to constructing a tight network of social institutions. A brief history of its place in the historical profile of religious and civil wars may help understand why during the 19<sup>th</sup> century no other institution could rival the Church's ubiquity and influence. The oldest element in its social network was probably the hospitals and clinics, which enabled the Church to express the concerns for the sick, the disabled and the handicapped. Dependent in the beginning on the monastic orders and the charity of the faithful, this network was compromised by the closing of such institutions under the Austrian and the French rules. A wide range of social problems were addressed by Church-sponsored "friendly societies" which appeared in the 18<sup>th</sup> century connected with patron saints and proliferated throughout the 19<sup>th</sup> century among farmers and workers, especially in Flanders.

### 5.2.3.3. *The Secular World/Belgian Freemasonry*

Belgian Liberals, both doctrinaire and progressive, were part of a large secularist movement that developed in the Western world from the 16<sup>th</sup> and 17<sup>th</sup> centuries onward. This movement looked outside the Church for answers and gave birth to science and technology through its effort to examine the mysteries of the universe by the light of reason and to look for improvement of the human lot through discovery and invention. Although it followed a basic trend it cannot be said that secularism in Belgium or anywhere else had a common basic doctrine. In Belgium during the 16<sup>th</sup> and 17<sup>th</sup> centuries the influence of the Church was dominant and uncontested. The first breach in Belgium's religious unanimity was made by Freemasonry, which arrived between 1720 and 1730. At first bearing the spirit of the Enlightenment, it later took on the coloration of contemporary political changes: Bonapartist following the French Revolution, Orangist during the Dutch Kingdom. Freemasonry, like the Catholic Church, was a pillar of the Belgian Kingdom. Belgian Freemasons who professed deism were not at its inception opposed to Catholicism (several of the Liege Prince-bishop were Freemasons).<sup>73</sup>

As previously stated, Freemasonry found support among the new Belgian entrepreneurs of the first Industrial Revolution, who became its firm supporters. It influenced the constituent power and supported the autonomy of the country. After independence its influence persisted; the Grand Lodge of Belgium was founded in 1833 under the auspices of Leopold I. In 1834 Theodore Verhaegen founded the Free University of Brussels (*Université Libre de Bruxelles*) which took an opposite course from the Catholic University of Louvain (*Université Catholique de Louvain*) by adopting the principle of free inquiry. The Free University became the intellectual guide of freethinkers, had links with Freemasonry and was liberal in its politics. To the Freemasons, the freedom to associate and freedom of speech and expression were so important that philosophical societies, philanthropic associations and leagues sprang up, all with rationalist humanist objectives. The Masonic-Liberal milieu flourished more strongly in Brussels and Wallonia, where French influence was strongest, than in Flanders where the Church maintained a firmer grip.

Provisions were made in the Belgian Constitution to accommodate Liberal demands. As mentioned above, if the right to worship was guaranteed the right not to worship was also. The civil marriage ceremony also satisfied liberal opinion (Article 16), as did the organization throughout the country of public

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73 They opposed clerical influences later. They were condemned by the Belgian episcopate in 1837. Belgian Freemasonry abandoned metaphysical references and dropped allusions to the Great Architect of the Universe and to immortality of the soul.

schools subsidized by the State.

#### 5.2.4. *Freedom of Speech and Liberty of the Press*

On August 26, 1791, the Declaration of the Rights of Man and Citizens of the French Constitution had proclaimed freedom of discussion and the liberty of the press in terms which embodied maxims of French jurisprudence. Articles 18 and 19 of the Belgian Constitution similarly treated the liberty of the press as a fundamental right, as well as the freedom to hold private meetings.<sup>74</sup> These provisions were strongly supported by both Liberal and Catholic lawyers and journalists drafting the Constitution. Generally, it provided adequate protection of these rights; it made notable contributions in dealing with the liberty of the press and in the expression of opinion when it declared in Article 18 clause 2: "Where the author is known and is domiciled in Belgium the publisher, printer or distributor cannot be prosecuted," a provision preventing abuses and restraints, as still exist in the press and libel laws of the United States and Britain, for example.

Brussels and Liège had for some centuries provided refuge for political opponents of French, German and Dutch regimes (Voltaire, Marx, and Proudhon, to cite only a few), as well as poets such as Beaudelaire. This had given Brussels and Liège a cosmopolitan reputation as cities where ideas were freely debated and books could be published. French and Dutch control over both association, speech and the press, as well as their expulsion of foreign political figures and Belgian journalists, had been abhorred in Belgium.

In the Belgian case, however, the protection given by Article 18 to the editor, printer or seller of a newspaper involved the recognition of special rights belonging to persons connected with the press. This was very different from and inconsistent with the general theory of English law. From Dicey's point of view it was hardly an exaggeration to say that freedom of the press was not assured in England.

In the French case, the Declaration of the Rights of Man and Citizens pro-

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74 Article 18: The press is free; no censorship shall ever be established; no caution money shall be extracted of writers, publishers or printers.

In case the writer is known and is a resident of Belgium, the publisher, printer or distributor can not be prosecuted.

Article 19: Belgian citizens have the right to assemble peaceably and without arms, when conforming to the laws which regulate this right, and without previous authorization.

This provision does not apply to assemblies in the open air, which remain entirely under the police laws.

claimed the right of every citizen to print his thoughts without their being submitted to any censorship or inspection prior to publication. But such proclamation has in practice been purely statutory as every French government has practiced some form of censorship from the 18<sup>th</sup> century up through the Algerian rebellion of the 1950s and 1960s.

#### 5.2.5. *Linguistic Provisions*

Article 23 stipulates the linguistic pluralism of Belgium, while concurrently establishing by law French as the official language.<sup>75</sup> The general laws and royal decrees were published in the *Moniteur* in French. They were then reprinted in a special collection with a Flemish translation for the communes using that tongue, but the French alone was the official text. In local administration the language of the district or community was used. These provisions reflected the dominant position of French in the Belgian political and economic life of that time.

It must be remembered that the elites who drafted the Constitution and would hold a monopoly on power through the new electoral system were French speaking, although the lower class throughout Belgium belonged to two linguistic communities. Thus, in order to assure the linguistic freedom they did not always enjoy during the annexations, the framers of the Constitution embedded Belgium's linguistic conflict in it.

The constitutional principle that the use of the language spoken in Belgium be free and that it may only be regulated by law for acts of public authority and in judicial proceedings must be seen again as a reaction against William's unsuccessful attempt to stamp out the French influence. For the National Congress it was more or less obvious that the way was open for a future statutory instrument to impose the exclusive use of the French language. The provisional decree of November 16, made French the sole official language, and it is not until 1967 that an authentic Dutch version of the Constitution was produced. However there was some extension of the franchise through the 19<sup>th</sup> century: in criminal (1873) and administrative matters (1878) as well as education (1883). The Equal Treatment Law of April 18, 1898, under which Acts of Parliament were voted on, asserted, promulgated and published in French and in Dutch, was the first of a series of important victories for the growing Flemish Movement.

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75 Article 23: The use of the languages spoken in Belgium is optional. This may be regulated only by law and only by acts of public authority and for judicial proceedings.

### 5.2.6. *Legal Enforcement of Fundamental Rights*

The Belgian National Congress endowed the legislature and the judiciary with the power to enforce these rights and liberties, giving the legislature the power to establish them, while the judiciary was explicitly entitled and even obliged to refuse to apply any general, provincial or local regulations or orders violating them (Article 107)<sup>76</sup> and could order the unlawfully-acting authority to make monetary restitution for its unlawful act (Article 1382 of the Civil Code).

Although the legislature had always been obliged to respect the fundamental rights guaranteed by the Constitution, there had been until then no means of controlling or imposing this in the Legislature, as Belgian law had traditionally rejected any judicial review of the constitutionality of legislation by courts or tribunals or by a specialized constitutional court.

Dicey holds that the Belgian Constitution restricts the action of the Parliament. But it is at least doubtful whether Belgian constitutionalists provided any means for invalidating laws which diminish or do away with the rights (e.g. freedom of speech) guaranteed to Belgian citizens. The jurists of Belgium maintain in theory at least that an Act of Parliament opposed to any article of the Constitution ought to be treated by the Court as void. But according to Allen,<sup>77</sup> during the whole period of Belgian independence no tribunal pronounced a judgment upon the constitutionality of an Act of Parliament.

Summarizing, it may be said that Belgium as an *Etat de droit* guarantees its citizens fundamental rights and provides remedies in the case of their infringement. The basic idea underlying the various constitutional provisions dealing with the organization of the institutions is to secure these fundamental rights; the cornerstone of these provisions is the principle of the separation of powers à la Montesquieu.

### 5.3. *Division of Powers*

The division of powers between the two houses of the legislature was strictly carried out and the members of both houses were elected by the same voters in the various provinces. The senators were required to be of a higher minimum age and tax-paying qualification than the deputies. The senate was half as numerous as the lower house and its members were elected for eight years. Each

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76 Article 107: The courts and tribunals shall enforce executive decrees and ordinances, whether general, provincial or local, only so far as they shall conform to the laws.

77 Allen (1992):110.

house was allowed to initiate legislation and the consent of both was necessary for all legislation.<sup>78</sup> The house of representatives tended to dominate. With the introduction of a parliamentary regime, ministers responsible to the house introduced government bills; the royal veto was never exercised; and the courts were unable to declare legislation unconstitutional. The Senate came to accept a subordinate position.<sup>79</sup>

As stated previously, the National Congress had a limited conception of democracy, believing that only a restricted number of people were capable of participating in political life. Article 47 stipulated that: "the deputies be elected directly by citizens paying direct taxes not less than 20 florins nor more than 100 florins." Article 50 stipulated the conditions required to be a voter: "To enjoy civil and political rights; to have reached the age of twenty-five years; to be resident of Belgium; no other condition of eligibility shall be required." The electoral system of 1831 was based on a property assessment franchise and the result was that only persons paying a minimum of tax were enfranchised. The electorate was later extended by reducing the minimum tax rate until 1893, when no further decreases were possible without revising the Constitution, and a reform movement arose.

The movement for the reform of the franchise was connected as in Britain with the workings of the parliamentary system and with party politics. Political strikes organized by the Belgian Socialist movement and the prevailing revolutionary mood in Europe, eventually led to the belief that a constitutional reform was unavoidable. In the words of the Catholic Prime Minister of the time, Beer-naert, "It is better to frame the Constitution than to undergo it."<sup>80</sup> The compromise which was reached in order to appease the working class, made voting compulsory for males of 25 years of age. At the same time the Constitution was modified so that the upper middle class maintained its control over political life by giving up to two extra votes to persons (1) having a certain wealth (based on property or tax rates); and/or (2) having had a higher education; and/or (3) having held certain offices.

This extended suffrage based on ability and property assessment opened up possibilities for manipulating tax laws in view of forthcoming elections, and was rejected by the working class, who wanted more political influence. After World War I, the Socialist party participated in a coalition Government, the Government of National Unity, and the principle of "one man, one vote" could

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78      Though until 1921 the initiative was reserved to the lower house on matters of state revenue expenditure and army contingents.

79      Hawgood (1939):144.

80      Allen (1992):4.



no longer be ignored. In 1919, a law was passed organizing the first post-war general elections according to that principle; in 1920-21 a constitutional revision ratified the *de facto* situation by introducing universal male adult suffrage; the Constitution explicitly provided that the franchise could be extended to women by a law to be passed with two-thirds of the majority in the Parliament. This was done only after World War II, in 1948. In both constitutional reforms the composition of the rather elitist Senate would gradually be further democratized.

#### 5.4. *A Constitutional Monarchy*

The Provisional Government and the Constituent Assembly opted almost unanimously for a monarchy rather than for a republic, so as not to offend the great powers. For the Catholic Founding Fathers, the monarchy was considered the living symbol of the continuity of the Nation, rather than the representatives of the Nation. In order to ensure the continuity of the monarchy the person of the King was held to be inviolable at the civil, penal and political level; only his ministers were accountable (Article 63). Under Article 64, however, no act of the King having direct or indirect political repercussions is effective unless a minister assumes political responsibility for it in the Parliament. There are no exceptions to this rule.<sup>81</sup> The King also has the power to dissolve the Parliament (Article 71), a power conferred on the King so as to give him a means of settling conflicts arising between the Parliament and the Government.

The King may initiate some development or warn against some consequences, a role that may be more important than in other constitutional monarchies. Because the electoral system is based on proportional representation, it is virtually impossible for a single party to form a government, which means that since 1921 Belgium has almost always had coalition governments. A second reason has to do with the cultural, political and economic differences between Belgium's linguistic communities. Because of his neutrality, the King has filled

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81 Does this imply that the Belgian King has purely a representative function? Certainly not. Belgian Kings did in fact wield great power in certain areas. King Leopold I, whose second wife was the daughter of the Louis-Philippe of France, almost autonomously determined his government's foreign policy. His privileged contacts with the courts and with influential foreign political circles of the day were vital for the survival of the Belgian State. As long as there were no strong political parties with a well-defined program, the King could also determine the composition of 'his' Government. As political parties emerged and developed the King's power to appoint and dismiss Ministers (Article 65) was limited by the need to respect the parliamentary majority. This ended the adversarial relationship between Parliament and Government, who became each other's allies, as the former was now a reflection of the parliamentary majority.

an important unifying role as *mediator*. His role is most apparent to outsiders when a new government is being formed, but the King also exercises influence when there is no government crisis. Nowadays, this influence has become very discreet, as both the King and the government are bound by constitutional secrecy, so as not to "uncover the crown."

The Belgian Constitution of 1831 completed the formalization of the monarchy, and by reducing the sphere of the King to functions prescribed by the Constitution and performed through ministers responsible to a popular elected legislature, succeeded in reconciling in a satisfactory and logical way the continued existence of monarchical institutions with the full recognition of the sovereignty of the people.

### 5.5. *National Sovereignty*

The cornerstone of Belgian democracy is the provision that all powers stem from the nation (Article 25), as it refers to the concept of national sovereignty. Sovereignty refers to the supreme authority within the State, with the State having the power to determine its form of government, its constitutional system. In Belgium, this authority is exercised by the "Nation": an abstract, invisible collective made up of citizens of the past, the present and the future. The Constituent Power may only act as "representative" of the Nation, in the name and on behalf of the Nation. They are indeed not sovereign (i.e. parliamentary sovereignty as in England) because they cannot set the limits to their authority by themselves, being subordinated to the Constitution. The sovereignty of the Nation is exclusive, as no other power was delegated by the Nation under the Constitution, which may claim to exercise any sovereignty. "Sovereignty is indivisible, inalienable and not subject to any limitation." Fundamentally, sovereignty belongs to the Nation as such, which may always change it through a revision of the Constitution. The provision that powers must be exercised in the manner laid down by the Constitution (Article 25), implies that the various powers are not entitled to delegate the core of their functions to the other powers. The national sovereignty doctrine must be seen as a reaction against previous constitutional systems which did not offer sufficient safeguards for the fundamental rights of citizens, as was the case under the rule of the Dutch monarchy. As the State could no longer be identified with the King, who was now only a constitutional component of the state, this concept implies that the King has no powers other than those vested in him by the Constitution and that his acts are subject to the rule of law.

Furthermore, the sovereignty of the Nation based on Sieyès' ideas must be distinguished from a constitutional system under which all powers stem from the people. Sovereignty of the people implies that each citizen wields part of the

collective power, either directly by way of a referendum or indirectly by way of orders given to the parliamentary representative he elects. The 1831 National Congress did not have a broad view of democracy such as Rousseau's concept of the "sovereignty of the people" entails. The Constituent Assembly did not consider the franchise to be a right, but rather a function which had to be exercised in the interest of the Nation.

According to liberal political philosophy, only the people who had to defend their interests against the State were in fact entitled to exercise this right: the landless, having no property, had nothing to defend. The Constitution further ensures the interest of the Nation by protecting it from the transitory interests of the electorate. Parliamentarians are indeed not representatives of the voters of the people, but of the Nation: they decide freely. The electorate thus cannot give orders to its representatives in Parliament (although with the emergence of political parties, there is a tendency to do so) and any form of direct democracy is excluded by the Belgian Constitution. There is, however, an irrefutable constitutional presumption that the decisions reached by the Parliament reflect the will of the Nation. Thus, the decisions reached by Parliament may not be challenged by way of a referendum.

Although "the representatives of the sovereign Nation" cannot turn themselves into "sovereign representatives of the Nation" and must act within the limits set by the Constitution, it should be stressed that the Legislature's interpretation of the Constitution carries great weight. Unlike the Executive, the Legislative branch has only very recently been subject to a limited review of the constitutionality of its acts. On the basis of its residual powers, the legislature has also more than once filled certain lacunae in the Constitution. A specific feature of Article 32, the principle holds that "The members of both Chambers represent the nation, and not solely the province or the subdivision of the province that elected them." This provision is a reaction against the "regionalism" that had been one of the important causes of the failure of a previous attempt of 1789 during the "Revolution brabançonne" to set up a Belgian State in a revolution against the Austrian Emperor Joseph II. The representatives are therefore urged to bear in mind that the interests of the Nation, rather than their own constituency, should be the ground of their decisions.

Thonissen,<sup>82</sup> a 19<sup>th</sup> century Belgian constitutionalist in his analysis of Article 32 shows the difference in the role of the political representatives in the classical Republic and in the 19<sup>th</sup> century Belgian independent state, keeping in mind the long regional independence of the Belgian principalities before 1795. He points out that in the classical republic, the magistrates in charge of maintaining the

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82 Thonissen (1876):129-130.

rights of the people were directly elected by the Nation, meeting in a general assembly. This method is in his view no longer valid because of the spread and the importance of modern associations. It has become necessary to divide the voters into a number of colleges, each of which is to send its representative to the legislative chambers. Each deputy holds his mandate directly from a subdivision of a province determined by law. The Constitution requires that all members of both chambers be considered the representatives not only of the electoral districts from which they hold their mandates, but of the nation as a whole.

The deputy should not forget the aspirations and the needs of the district which elected him directly, but he must never forget that when a regional interest is in opposition to the general interest of the country, the Nation must prevail over the province, even more so over the subdivision of the province and the commune. It is evident that the Article is irreconcilable with the "imperative" mandate, since the deputy represents the Nation as a whole. If each member of the national representation came to the chamber with an "imperative" mandate, the national unity would be disregarded among all these demands. Thonissen pointed out that Article 32 of the Belgian Constitution states Article 52 of the French Constitution of L'An III:

Les membres du corps législatif ne sont pas les représentants du département qui les a nommés, mais de la nation entière, et ils ne peuvent leur être donné aucun mandat.<sup>83</sup>

As Alen (1992) rightly points out, federalization of the Belgian state has supplanted Article 32, as the elected members of both Houses of Parliament are now divided into French and Dutch linguistic groups (Article 32 bis of the Constitution):

For the adoption of special-majority laws, Members of Parliament are both representatives of the Belgian Nation as a whole and their specific linguistic group. Most of the Members of the national Parliament are in that capacity also members of the Parliaments of the Federal entities (the Councils of the Communities and the regions) of their linguistic group. As such, they are above all representatives of their linguistic community.<sup>84</sup>

## 5.6. *Judicial System*

The law in Belgium remained French in its basis and spirit and in the *Code Napoleon* which completely superseded older Belgian law during the French an-

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83 Thonissen (1876):130

84 Alen (1992):12.

nexation, becoming the Belgian civil code with the addition of a certain amount of Dutch law, notably in the commercial sphere. The independence of the judiciary was secured and appointments were for life. However, neither the power to interpret the Constitution given to judges, in the United States, nor the power to interpret individual laws exercised by the British judges was given to Belgian judges. There was no comprehensive system of administrative law and administrative tribunals such as existed in France, to remove from the sphere of the ordinary courts and judges the responsibility of officials and the relations between the citizen and the state. The weakness of the Belgian judicial system was a tendency to waver between British law and the French recognition of *droit administratif*. The loophole left by the wording of Articles 92 and 93 tended to reduce the effectiveness of the citizen's remedy against abuses of his rights. For John Hawgood (1939) "this was a time when the French lawyers had not digested the full significance of the principle introduced by Bonaparte in the Constitution of l'An VIII article 75, and long before the British lawyers had been able to put the rule of law in a clear light and the Belgian Constitution makers appear to have thought it possible to have the best of both worlds by making one the rule by retaining the other for application in exceptional circumstances."<sup>85</sup>

The result was that the court could not refuse to apply a law on the grounds of its unconstitutionality, but could refuse to apply orders or regulations of the central executive, or of provincial or local authority, which it considered out of conformity with the law; officials could be sued in ordinary courts without restriction but the uncertainty of the situation made the courts reluctant to claim jurisdiction where official acts were concerned despite the absence of competing administrative courts.

### 5.7. *Provisions for Constitutional Reforms: Compromis à la Belge*

The Constitution of 1831 could be amended by the two houses of the legislature. Each must accept a proposed amendment by a simple majority. Then by the fact of having accepted the amendment or amendments, the houses were automatically dissolved. Articles 130 and 131, in an interesting sort of sophism, stipulated that a constitutional government (which exists in virtue of the Constitution) could not abolish the Constitution without violating the laws of its own existence. Thus, Articles 131 and 71 open the possibility, albeit a rigid one, of changing the Constitution. The Belgian Constitution rejected the principle of parliamentary sovereignty in that the Parliament cannot change the Con-

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85 Hawgood (1939):146-147.

stitution; it is a legislative, not a constituent body. It has the task to expose the reason for changing a particular constitutional provision. But having done so, it must be dissolved and followed by a new election held within forty days. The new chambers must each pass the proposed amendments by two-thirds majority. It was the task of the new Parliament to change the constitutional article which had been declared subject to change.<sup>86</sup> Less cumbersome than a similar amendment in the United States, this was nevertheless no easy process and the fact that any legislature accepting the proposal for amendment *ipso facto* terminated its existence was not an encouragement.

Only twice in the century after its creation was this process carried through to its consummation, in the group of ten amendments to existing articles adopted in 1892, and in the related group of fourteen amendments and two new articles carried through between 1919 and 1921. In 1892 Articles I (to allow for the annexation of the Congo State), 36 (exempting ministers from the need for re-election to the legislature upon appointment), 47 (giving manhood suffrage at the age of 25 and introducing a system of plural voting), 48 (providing for compulsory voting at elections), 52 (giving salaries in addition to expenses to members of the lower house), and 53-58 (altering the composition of the senate) were enacted. Thus the principal amendments have been in the franchise and in the composition of the upper house, both being in the direction of democratization. These amendments were won with difficulty, since they took place just after periods of strikes and unsettled conditions (the strikes of 1892, World War I and German occupation of 1914-1918). The movement for extension of the franchise has been connected with the workings of the parliamentary

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86 Article 130: The Constitution cannot be suspended, either in whole or in part.

Article 131: The Legislative power has the right to declare that a revision of such constitutional provisions as it shall designate, is in order.

After this declaration, the two Chambers are *ipso facto* dissolved.

The two chambers shall then be summoned, in conformity with article 71.

These Chambers, with the approval of the King, shall then act upon the points submitted for revision.

In this case the Chambers cannot deliberate unless at least two-thirds of the members of each are present, and no amendment can be adopted unless it is sustained by at least two-thirds of the votes.

Article 71: The King has the right to dissolve the Chamber either simultaneously or separately. The act of dissolution shall order a new election within forty days, and summon the Chambers within two months.

"Un gouvernement constitutionnel cesse de droit d'exister aussitôt que la Constitution n'existe plus, et une constitution n'existe plus dès qu'elle est violée. Le gouvernement qui la viole déchire son titre. A dater de cet instant, il peut bien subsister par la force, mais il ne subsiste plus la Constitution." Benjamin Constant, *Esquisse d'une Constitution*. p.373.

system and with party politics. If conditions made it difficult to modify the Constitution, they still permitted the elaboration of Belgian political pluralism, and that peaceful institutionalization of Belgian conflicts: the *compromis à la belge*.

How can we describe the unique characteristics of the *compromis à la belge*? As explained in the foregoing historical profile of Belgium, Belgium has a long experience as a group of dependent territories and through the centuries local leaders had learned to achieve their goals more often through compromise than wars. Regional leaders also learned to deal with distant foreign leaders in order to protect their interests and their constituencies. In a Europe repeatedly disturbed by the Great Powers' wars, compromise was a tool for survival of these small principalities.

The Founders of the Constitution represented the union of opposites. They were able to draw up a Constitution which accommodated the demands of the Catholics and the Liberals. To the Catholics they secured freedom of association and of education; to the Liberals freedom of the press and speech and, most important for them, the freedom of religion and the separation of Church and State. However, this last extremely important point suited the Liberal Catholics who, with Lammenais believed in a radical separation of Church and State, leaving to the Church the role of spiritual supervision of society, its position since the beginning of the 17<sup>th</sup> century. Thus Belgium during the 19<sup>th</sup> century did not experience the violent confrontation between Catholics and Republicans and between Church and State that France witnessed. The impact of the Kulturkampf in Germany was not felt in Belgium, and the Belgians did not engage in destructive disputes or internal breaks over the issue of Vatican I as did other European countries.

The Belgian Liberal Catholics, who read *l'Avenir*, were well informed of the ideas of Lammenais, which guided their break with the past. For Lammenais, who remained an *intransigent* Catholic,<sup>87</sup> the liberal principles were a pragmatic claim, not a doctrinal orientation. The final goal remained the Catholic unity of the Nation, but it had become illusory to want to reach this unity by force or power. By 1830, apart from the Freemasons some of whom were also Catholic, the Catholic unity of Belgium was a fact. Lammenais favored neither an absolute royalist nor a republican system, a position familiar to the Belgians. *La révolution brabançonne* of 1789 and the Revolution of 1830 proceeded from the union of opposites and were directed against enlightened foreign despots (coming a few weeks after the French Revolutions of 1789 and 1830). They sought a third way, neither republican nor royalist, since either, according to

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87 On intransigent Catholicism, see Berger (1987) and Lefebvre (1993).

Lammenais, would weaken Church control of the spiritual domain.

In his article "La Belgique telle qu'elle s'ignore,"<sup>88</sup> Lacrosse disregards the centuries-long compromise of the principalities. He gives another explanation, in my opinion complementary to why in 1830 Belgium chose the way of the *compromis à la belge*, emphasizing the religious factors which encourage or facilitate it; it is important to note that Lacrosse's analysis disregards the impact of social/industrial factors on that compromise. In his analysis he uses a comparison of French and American Republicanism to point out the specificity of the Belgian way.

La République française, une et indivisible, procède d'une véritable religion de l'unité politique seule à même, dans la conception française, d'assurer au corps social une prise efficace sur lui même.<sup>89</sup>

The American republic, while also one and infinitely divisible, stands both on a political force and on an infinite multiplicity of interests and identities which have to be taken into account in the federal construction. In contrast, the Belgian union had nothing to do with a political unity. In 1830-1831 the secret of Belgian unity was that there was an anthropological, cultural and (nearly) religious unity among the elites.<sup>90</sup> Consequently the search for a political unity was unnecessary. On the political level the *compromis à la belge* was a pragmatic search for a consensus more than a unity resulting from a general will.

*Le compromis à la belge* had two sides as the history of the 19<sup>th</sup> and 20<sup>th</sup> centuries demonstrates. It reduced social, religious and linguistic conflicts, which never reached the peaks they did in France and in Germany.<sup>91</sup> The Belgian compromise was more directed toward harmony than unity, befitting a society that had for centuries to compromise with foreign sovereigns in defense of its regional and local constitutions and customs.

On the other side, the Belgians did not tend toward unity but tended to solve problems by separation, creating what scholars on Belgium such as Lijphart

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88 Lacrosse (1997).

89 Lacrosse (1997):21.

90 The emphasis on the elite is mine. Lacrosse generalizes the religious unity of the Belgians. In the 19th century most of the workers on the industrial sites were dechristianized and the Church until *Rerum Novarum* had little interest for the hated modernity and its consequence, the creation of a working class. The working class was considered sordid by the Catholic hierarchy and left without religious guidance.

91 In France both the republican and the imperial anti-working class policy resulted in the killing and deportation of thousands of individuals in 1848 and 1871, not to mention the deaths caused during local strikes. The period between the two World Wars saw the "granting" of social rights to the workers but again in intense violence. The creation of a Labor party in France was opposed vehemently by the Republicans.



(1981; 1984) calls "families" or "pillars", terms that indicate societal clusters well adapted to discuss and compromise with other such clusters. The Constitution of 1830 created a stable representation which had to deal with 19<sup>th</sup> century "social question" and to integrate social classes, to "accept their entry into democracy" and through compromise to make room for their leaders in the Belgian political system. These changes had been made largely through demonstrations and discussions leading to compromises, the greatest Belgian outbursts of the 19<sup>th</sup> century, the strikes of 1886 and 1893, both demanded universal male suffrage, causing about 30 and 12 deaths, respectively.<sup>92</sup>

A striking example of the compromise that was achieved between the "pillars" or "families" is the linguistic problem. Although French became the official language in 1831, Article 23 was explicit in establishing freedom of language and gave ample room for legal maneuvers to the Flemish movements' linguistic demands. The Flemish movement advanced its demands until 1970 without the need for an amendment of the Constitution; the Belgian Constitution of 1831 thus has been amended only twice in 150 years.

The Belgian pillars (Catholic, Socialist and Liberal) and the conflicts and cleavages (religious, linguistic, socio-economic) they engendered as well as how these were dealt with will be analyzed in the part of this study, which will pose the question of the possible end of this *compromis à la belge* and the possible breakdown of the Belgian state, based upon our understanding of the two Belgian concepts of citizenship existing today and rooted in Belgian history, the Constitution and the particular structure of these "pillars" and "families".

## 6. Conclusion

The study of the 1831 Constitution illustrated Belgium's 19<sup>th</sup> century citizenship, identities and practices, and also located and reconstructed the source of the political culture and rights that emerged in the social and linguistic movements and the process of democratization that would take place at the end of the 19<sup>th</sup> and in the 20<sup>th</sup> centuries.

The next chapter will analyze the pillars of Belgian political culture as well as the social and linguistic movements in the two communities of Wallonia and

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92 Through the policy of compromise on April 18, 1893 an amendment to the Constitution permitted universal male suffrage, tempered by plural voting (Article 47 revised of the Constitution). In 1919, after World War I, universal male suffrage, one man one vote, was passed and went into effect immediately (Article 47 revised of the Constitution was enacted on February 7, 1921).

Flanders. It will also look at the two different conceptions of citizenship of both communities and their institutionalization and relationships.

## Bibliography

### *I. Primary sources*

Le Moniteur Belge: Journal Officiel, Staatsblad.

Pasinomie de collection complétée des Lois, Décrets, Arrêtés et Règlements généraux qui peuvent être invoqués en Belgique. Dédiée au Roi, Bruxelles: Société Typographique Belge, Ad. Wahlen et Cie. Partie Jurisprudence.

### *II. Books and Monographs*

Alen, André. (ed.) (1992) *Treatise on Belgian Constitutional Law*. Deventer, Netherlands: Kluwer Law and Taxation Publishers.

Arendt, Hanna. ([1963] 1982) *On Revolution* 69. New-York: Greenwood Press.

Bodin, Jean. (1992) *On Sovereignty: Four Chapters from the Six Books on the Commonwealth*. Translated by Julian Franklin, New York: Cambridge University Press.

Boland, André. (1977) *Le Procès de la révolution belge: Aldoph Bartels (1802-1962)*. Namur: Presses Universitaires.

Boudart, Marina, Michel Boudart and Michel Bryssinck. (eds.) (1990) *Modern Belgium*. Palo Alto California: Society for the Promotion of Science and Scholarship.

*Constitution Belge (la)*. (1985) Louvain-La-Neuve: Cabay, Libraire-éditeur.

Craenen J.G. (1991) *The Constitution of the Kingdom of Belgium*. Leuven: Acco.

Dalh, R.A. (ed.) (1966) *Political Opposition in Western Democracy*. New Haven: Yale University Press.

Delpérée, Francis. (1996) *La Constitution Belge et ses lois d'application*. Bruxelles: Bruylant.

Delpérée, Francis, Marc Verdussen et Karine Biver. (eds.) (1994) *Receuil des constitutions européennes*. Bruxelles: Bruylant.

Demoulin, Robert. (1975) *Histoire économique contemporaine. Notes de cours*. Liège: Librairie Universitaire.

Dicey, A.V. ([1915] 1982) *Introduction to the Study of the Law of the Constitution*. Indianapolis: Liberty Classical.

Dumont, Georges Henri. (1995) *Histoire de la Belgique*. Bruxelles: Le CRI.

Dumont, Hugues. (1996) *Le Pluralisme idéologique et l'autonomie culturelle en droit publique belge. Volume 1: de 1830 à 1970*. Bruxelles: Bruylant.

Gilissen, John. (1958) *Le régime représentatif en Belgique depuis 1790*. Bruxelles: Renaissance du livre.

Giddens, Anthony. ([1972] 1992) *Emile Durkheim: Selected Writings*. New York: Cambridge Press.

- Gray, Ann and Jim McGuigan. (eds.) (1993) *Studying Culture: An Introductory Reader*. London, New York: Edward Arnold.
- Greenberg, Douglas, Stanley N. Katz, Melanie Beth Oliviero and Steven C. Wheatley. (eds.) (1993) *Constitutionalism and Democracy: Transitions in the Contemporary World*. Oxford: Oxford University Press.
- Greenfeld, Liah. (1992) *Nationalism: Five Roads to Modernity*. Cambridge, Mass: Harvard University Press.
- Günther, Franz. (1975) *Staatsverfassungen*. Darmstadt: Wissenschaftliche Buchgesellschaft.
- Haag, Henri. (1950) *Les origines du catholicisme libéral en Belgique, 1789-1839*. Louvain: Presses Universitaires.
- Habermas, Jürgen. ([1962] 1989) *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Translated by Thomas Burger and Frederick Lawrence, Cambridge: MIT Press.
- Hentenryk van, Kurgan and Stengers, Jean. (1986) *L'innovation technologique: Facteur de changements, 19ème et 20ème siècles, études*. Brussels: Editions de l'Université Libre de Bruxelles.
- Hasquin, Hervé. (1996) *Historiographie et politique en Belgique*. Institut Jules Destrée, Gilly: J. Bonivert.
- Hawgood, John A. (1939) *Modern Constitutions since 1787*. New York: Van Nostrand Company.
- Hayt, Franz et Denise Galloy. (1993) *La Belgique des tribus gauloises à l'état fédéral*. Bruxelles: DeBoek.
- Hirschman, Albert O. (ed.) (1995) *A Propensity to Self-Subversion*. Cambridge, Mass.: Harvard University Press.
- Hobul, Robert. (1991) *Jürgen Habermas: Critic in the Public Sphere*. New York: Routledge.
- Jaune, Lucien. (1989) *Le discours jacobin et la démocratie*. Paris: Fayard.
- Jeunesse Ouvrière Chrétienne (la): Wallonie, Bruxelles: 1912-1957*. (1990) 2 Vol., Bruxelles: Vie Ouvrière.
- Jordan, Bill. (1989) *The Common Good: Citizenship, Morality and Self-Interest*. Oxford: Basil Blackwell.
- Juste, Théodore. (1881) *Paul Devaux, Membre du Congrès National, etc.*. Bruxelles: Librairie C. Muquardt.
- Kossmann, E.H. (1978) *The Low Countries 1780-1940*. Oxford: University Press.
- Jardin, André and André-Jean Tudesq. (1983) *Restoration and Reaction: 1815-1848*. Cambridge: Cambridge University Press.
- Lebrun, P., M. Bruwier, J. Dhondt et G. Hansotte. (1979) *Essai sur la révolution industrielle en Belgique, 1770-1847*. II, 1, Bruxelles. Académie royale de Belgique.
- Lefebvre-Leclercq, Edwige. (1993) *Tiers-Mondisme: Bridge Building and the Creation of the New Left in French Politics*. Doctorate Thesis, Massachusetts Institute of Technology.
- Liebman, Marcel. (1979) *Histoire du mouvement ouvrier en Belgique III. Les socialistes belges 1885-1914, la révolte et l'organisation*. Bruxelles: Vie ouvrière.

- Lijphart, Arend. (ed.) (1981) *Conflict and Coexistence in Belgium. The Dynamics of a Culturally Divided Society*. Research Series No.46, Berkeley: Institute of International Studies, University of California.
- Mabille, Xavier. (1992) *Histoire politique de la Belgique. Facteurs et acteurs de changement*. Brussels: CRISP.
- Marshall, TH. and Tom Bottomore. ([1950] 1992) *Citizenship and Social Class*. London: Pluto Press.
- Meuwissen, Eric. (1994) *Les Grandes fortunes du Brabant. Seigneurs de la terre et capitaines de l'industrie*. Bruxelles: Quorum.
- Moreau, Paul-Émile, de. (1929) *Histoire de la Belgique Catholique*. Bruxelles: de Witt.
- Mott, Stephen Charles. (1993) *A Christian Perspective on Political Thought*. Oxford: Oxford University Press.
- Namer, Gérard. (1979) *Le Système social de Rousseau. De l'inégalité économique à l'inégalité politique*. Paris: Editions Anthropos.
- Neuville, Jean. (1979) *Histoire du mouvement ouvrier en Belgique VIII. Naissance et croissance du syndicalisme. Tome 1. L'origine des premiers syndicats*. Bruxelles: Vie ouvrière.
- Pirenne, Henri. (1937) *La formation de la nation belge*. Bruxelles: Mertens.
- Pirenne, Henri. (1908-1920) *Histoire de Belgique*. Bruxelles: Lamertin.
- Pirenne, Henri. (1906) *Les origines de l'Etat belge*. Liège: Desoer.
- Pirenne, Henri. (1893) *Bibliographie de l'histoire de Belgique. Catalogue méthodique et chronologique des sources et des ouvrages principaux relatifs à l'histoire de tous les Pays-Bas jusqu'en 1598, et à l'histoire de Belgique jusqu'en 1830*. Gand: Engelcke.
- Poggi, Gianfranco. (1978) *The Development of the Modern State. A Sociological Introduction*. Stanford: University Press.
- Renan, Ernest. (1992) *Qu'est-ce qu'une nation? Et autres essais politiques*. Textes choisis et présentés par Joël Roman, England: Cox & Wyman Ltd. Press Pocket.
- Reinhard, Wolfgang. (1996) *Power Elites and State Building*. Oxford: European Science Foundation Clarendon Press.
- Rooney, John, Jr. (1982) *Revolt in The Netherlands: Brussels 1830*. Coronado Press.
- Rosenfeld, Michel. (ed.) (1994) *Constitutionalism, Identity, Difference and Legitimacy*. Duke: University Press.
- Sewell, William H., Jr. (1994) *A Rhetoric of Bourgeois Revolution: The Abbé Sieyès and What is the Third Estate?* Duke: University Press.
- Sieyès, Emmanuel-Joseph. ([1789] 1963) *What is the Third Estate?* S.E. Finer (ed.) & M. Blondel.
- Smith, Anthony. (1991) *National Identity*. Reno: University of Nevada Press.
- Social Contract: Locke, Hume Rousseau*. (1947) Introduction by Sir Ernest Barker, Oxford: Oxford University Press.
- Spinner, Jeff. (1994) *The Boundaries of Citizenship: Race, Ethnicity, and Nationality in the Liberal State*. Baltimore: Johns Hopkins University Press.
- Stengers, Jean. (1992) *L'action du Roi en Belgique depuis 1831: Pouvoir et influence*.

- Bruxelles: Duculot.
- Stones, Geoffrey, Richard Epstein and R. Sunstein. (eds.) (1992) *The Bill of Rights in the Modern State*. Chicago: University of Chicago Press.
- Terlinden, Charles. (1944) *La Révolution de 1830 racontée par les affiches*. Bruxelles: Éditions Universitaires.
- Thonissen J.-J. (1876) *La Constitution belge annotée*. Bruxelles: Bruylant-Christophe & Cie.
- Tilly, Charles. (1975) *The Formation of National States in Western Europe*. Princeton: Princeton University Press.
- Tocqueville, Alexis, de. ([1856] 1983) *The Old Regime and the French Revolution*. Translated by Stuart Gilbert, New York: Anchor Books Doubleday.
- Waleffe, Bernard. (1971) "*Le Roi nomme et révoque ses ministres*" *La formation et la démission des gouvernements en Belgique depuis 1944*. Bruxelles: Bruylant.
- Weber, Max. ([1924] 1964) *The Social Theory of Social and Economic Organization*. Translated by A.M. Henderson and Talcott Parsons, London, New York: Collier Macmillan.
- Weber, Max. ([1921] 1964) *The Sociology of Religion*. Translated by Talcott Parsons, Boston: Beacon Press.
- Weber, Max. ([1901] 1991) *The Protestant Ethic and the Spirit of Capitalism*. Translated by Talcott Parsons, London: Harper Collins Academic.
- Wilmotte, Maurice. (1937) *La Belgique morale et politique (1830-1900)*. Paris: Armand Colin.
- Wilmotte, Maurice (1902) *Le Libéralisme et son devoir présent*. Bruxelles: Weissenbruch.
- Wils, Leo. (1996) *Histoire des nations belges*. Traduction: Chantal Krsteloot, Bruxelles: Quorum.
- Witte, Els et Jan Craeybeckx. (1987) *La Belgique politique de 1830 à nos jours*. Translated by Serge Govaert, Bruxelles: Editions Labor.

### III. Specific Articles

- Berger, Suzanne. (1987) "Religious Transformation and the Future of Politics", in *Changing Boundaries of the Political: Essays on the Balance Between the State and Society, Public and Private in Europe*, Charles S. Maier (ed.), Cambridge, England: Cambridge University Press.
- Cohen, Joshua. (1996) "Procedure and substance in Deliberative Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, Seyla Benhabib (ed.), Princeton: Princeton University Press:95-119.
- Delpérée, Francis. (1980) "La vie de la constitution," in *Annales de droit*:123-133.
- Demoulin, R. (Septembre 1985) "La révolution belge de 1830", in *Programme d'histoire; Contributions scientifiques*, Bruxelles: Ministère de l'Éducation nationale, organisation des Etudes.
- Ganshof van der Meersch, W.J. and Vanwelkenhuzen, A. (1972) "La Constitution Belge", in *Corpus Constitutionnel*, Union Académique internationale, Académie des Sciences morales et politiques, Leiden, EJ. Brill (ed.), Tome I - fascicule

3:569-621.

- Gellner, E. (1991) "Le Nationalisme et les deux formes de la cohésion dans les sociétés complexes", in *Théorie du nationalisme*, Delannoï G. et Taguieff P-A. (eds.) Paris: Kimé.
- Gilissen, John. (1968) "La Constitution Belge de 1831: ses sources, son influence", in *Res Publica*:107-141.
- Habakkuk, H.J and M.Postan. (1978) "The Industrial Revolutions and After: Incomes, Population and Technological Changes," in *The Cambridge Economic History of Europe*. Cambridge: University Press, Vol VI, No.I.
- Hasquin Hervé. (1989a) "Quelle Révolution en 1830", in "A l'enseigne de la Belgique nouvelle", in *Revue de l'Université*. Bruxelles: Editions de l'Université de Bruxelles, No.3-4:35-41.
- Lacrosse, Jean-Marie. (1997) "La Belgique telle qu'elle s'ignore", in *Le débat*, No 94:12-41.
- Lorwin, Val. (1960) "Belgium: Religion, Class, and Language in National Politics," in *Political Opposition in Western Democracies*, Robert Dahl (ed.), New Haven: Yale University Press:147-187.
- Lorwin, Val. (1971) "Segmented Pluralism: Ideological Cleavages and Political Cohesion in the Smaller European Democracies," in *Comparative Politics* No.3,2:141-175.
- Mast A. (1970) "L'interprétation de la Constitution", in *Rapport belge au VIIe CIDC*. Brussels: Bruylant:521-553.
- Mast, A. (1957) "Une Constitution du temps de Louis-Philippe", in *RDP*:987-1030.
- Mortier, Roland et Hervé Hasquin. (1989) "Deux aspects contestés de la politique révolutionnaire en Belgique: Langue et Culte", in *Etudes sur le 18ème siècle*, Vol.16.
- Polasky, Janet. (1996) "Les démocrates bruxellois", in *Etudes sur le 18ème siècle*, Vol.24:55-64.
- Preuß, Ulrich. (1993b) "Constitutional Powermaking For the New Polity: Some Deliberations Between Constituent Power and the Constitution," in *Cardozo Law Review*, Vol.14:639-660.
- Preuß, Ulrich. (1991) "The Politics of Constitution Making: Transforming Politics into Constitutions," in *Law and Policy*, Vol.13, No.2:107-123.
- Rao, Anna Maria and Steinar Supphellen. (1996) "Power Elites and Dependent Territories," in *Power Elites and State Building*, Reinhard, Wolfgang (ed.), Oxford: European Science Foundation Clarendon Press:207-235.
- Renan, Ernest. (1987) "Une nation est une âme", in *Communications*, No.45 (Paris: Le Seuil).
- Rousseaux, Xavier. (1993) "Le personnel judiciaire en Belgique à l'époque des Révolutions 1780-1832", in *Anciens Pays et Assemblées d'Etats*, Vol.96:13-40.
- Senelle, R. (1974) "The Belgian Constitution. Commentary", *Memo from Belgium - Views and Surveys*, Ministry of Foreign Affairs, External Trade and Cooperation for Development, Bruxelles, No.166.
- Stengers, Jean. (1981) "L'Eglise en Belgique: Doctrine et pratique", in *Histoire de la laïcité: principalement en Belgique et en France*, Hervé Hasquin (ed.), Bruxelles: Editions de l'Université de Bruxelles.

Vanwelken-Huyzen, André. "La séparation des pouvoirs, 1831-1881", in *De Grondwet Honerdvijftig Jaar, 7 Februari 1981*, Verslagboek, Katholieke Universiteit Leuven, Brussel: Bruylant.