

The Convention of The Hague and the Constitutional Debates in the Estates of Flanders and Brabant, 1790-1794

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Abstract

Following the Brabant Revolution and the declaration of independence of the Southern Netherlands, Vienna made a series of constitutional assurances to the rebels while at the same time preparing to recover the region by force. In December 1790, these promises culminated in the Convention of The Hague, in which Emperor Leopold II – under allied pressure – pledged to restore the ancient constitutions of the Southern Netherlands, which led to constitutional debates among the rebellious provinces. This article examines why the imperial commitments did not placate the estates of the leading provinces, Flanders and Brabant. The Flemish Estates grasped the opportunity to draft their own constitutional charter; Brabant primarily pursued additional safeguards to protect its charter, the Joyous Entry. I argue that these debates chiefly reflect the language of ancient constitutionalism and in essence served conservative goals even as actual circumstances compelled the estates to integrate innovative concepts in their reasoning. Moreover, these debates are very telling for the constitutional sensitivities in the separate Southern Netherlandish regions. Embedded as they were in specific regional constitutional traditions, these debates produced different outcomes in Flanders and Brabant.

Keywords: Southern Netherlands, Brabant Revolution, Austrian restorations, ancient constitutionalism, Convention of The Hague, Estates of Flanders and Brabant

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Introduction

On December 10, 1790, Emperor Leopold II signed the Convention of The Hague. In doing so, he pledged to leave the existing constitutional order of the Southern Netherlands untouched. Hardly one year earlier, these regions had divested Leopold's predecessor, Joseph II, and declared independence – events that form the core of what historians coin 'the Brabant Revolution'. Very quickly however, international politics and internal dissension made the survival of the confederacy of the *Etats belgiques unis/Verenigde Nederlandse Staten* that thus came into being, highly uncertain.² The Convention of The Hague was an important step in the Austrian recovery of the rebellious provinces. Therefore, at first glance, Leopold's indulgence towards the Southern Netherlanders seems a boon. But the Estates of Flanders and Brabant – the wealthiest and most influential of these regions – did not react entirely enthusiastically. Rather, the convention spurred a constitutional debate in the assemblies of both estates. What reasons did they have for dissatisfaction with the seemingly complete restoration of their sacrosanct constitutions?

To answer that question, we need to take a closer look at the context and content of the convention, analyze the ensuing Flemish and Brabant lobbying campaigns, and take into account the constitutional traditions of both regions.³ In the following sections, I demonstrate that the debates that emerged largely reflect the traditional framework of ancient

1 The author wishes to thank Brecht Deseure and the anonymous reviewers of the initial draft of this text for their suggestions and remarks, which have greatly enriched this paper.

2 In this article I consciously employ the French and/or Dutch terms, preferring them to the confusing English 'United States of Belgium'. They linguistically differentiate between the confederacy in 1790 and the Kingdom of Belgium that came into existence in 1830. The French expression contains the adjective *belgique* instead of *belge*, the former being used much more often during the 18th century and referring to the Netherlands, the latter commonly referring to post-1830 Belgium. The Dutch denomination even more clearly distinguishes between both polities – the adjective *Nederlands* literally signifies 'Netherlandish', and is thus a clear reference to the Austrian or Southern Netherlands that geographically did not entirely correspond to present-day Belgium. For the same reason, 'United Netherlandish States' seems preferable to 'United States of Belgium'. On the nomenclature, see Dubois, *L'invention*, 91-112.

3 For the reconstruction of the constitutions of the different regions: Poulet, *Les constitutions*.

constitutional thought: the estates connected with the ideology that had proven successful in restricting monarchical aspirations in the Low Countries for centuries. Moreover, I argue that the circumstances of the Austrian restoration offered the estates unexpected chances to do more than simply restore the constitutional status quo. Indeed, the estates eagerly seized the opportunity to buttress their position in the body politic. Without abandoning the essentials of the old constitutional ideology, they integrated innovative concepts in their reasoning. In addition, they adopted new political languages in close dialogue with local constitutional culture. As a result, the outcome of the constitutional debates in Flanders and Brabant was dissimilar.

Unfortunately, even though the historiography on the Brabant Revolution is vast, the two Austrian restorations in the Southern Netherlands (1790-1792; 1793-1795) have thus far largely escaped scholarly attention.⁴ Historians have too often downplayed them as the feudal system's final convulsions prior to the definitive introduction of modernity with the French occupation. But this narrative is dismissive of the arguments and ambitions of contemporaries. With the advantage of hindsight, we know the brevity of both restorations, but contemporaries could not have predicted the flow of events. Therefore, the closing years of the Austrian regime are in need of reevaluation. Indeed, scrutinizing their impact on the development of constitutional thought in the Southern Netherlands is one of the main objectives of this article.

Examining these discussions during the restorations is enlightening for the legal and political sensitivities in the separate regions. Geert Van den Bossche studied the arguments of the conservative and eventually triumphant 'Estatists' during the revolution and the brief interlude of the *Etats belgiques unis*. In their pamphlets and manifestos, the Estatists invoked the notion of the social contract to legitimize the revolution.⁵ Similarly, Johannes Koll characterized the dominant ideology of the estates as *ständisch-korporativer Patriotismus*, which views these bodies and the historical corporations as the legitimate and natural representatives of the nation and considers the relationship between prince and subjects contractual. The adherents of these ideas presented the traditional constitution as the best guardian for preventing princely despotic inclinations.⁶ In itself this was nothing new; the Estatists tapped a centuries-old body of thought that emphasized the shared sovereignty between prince and estates in the Low Countries. That ideology heavily relied upon what Brecht Deseure calls the 'old historicity regime': the past served as the supreme source

4 In a 1981 chapter, Luc Dhondt offers a very lucid synthesis on the Brabant Revolution and its wake, with a look at the older literature: Dhondt, 'Politiek'. At least as astute is Jan Craeybeckx's seminal article: Craeybeckx, 'The Brabant Revolution'. More recent publications are: Polasky, *Revolution*; Dhondt, *Verlichte monarchie*; Koll, *Die belgische Nation*; Judge, *Nation*. For the Brabant Revolution as part of a transnational revolutionary movement: Polasky, 'Revolutionaries'. The most detailed but somewhat outmoded accounts of the restoration periods are: Baeten, *De tweede Oostenrijkse restauratie*; Verhaegen, *La Belgique*; Zeissberg, *Zwei Jahre*; Zeissberg, *Belgien*.

5 Van den Bossche, *Enlightened Innovation*. Van den Bossche's analysis is crucial to our understanding of conservative constitutional thought prior to 1790. For a brief synthesis: Verschaffel, 'De traditie'. The best, albeit somewhat antiquated, study of the more progressive 'Vonckist' party remains: Tassier, *Les démocrates*. Besides the oppositional parties, several circles sympathized with and actually supported Joseph's case: Dhondt, 'La cabale'.

6 Koll, *Die belgische Nation*, 22, 202-216, 231-232, 343 and 355-359.

of authority, lending legitimacy to contemporary political decisions and legal claims by framing them as the return to a previous, less-corrupt situation. This equally applied to princely, regional and local administrations, the powers of which – and thus their mutual relationship – were based on age-old privileges. According to Deseure, this ancient constitutionalism was the point of reference *par excellence* for the political ideologies of the revolution.⁷

Martin van Gelderen and Catherine Secretan demonstrated that the 16th-century Netherlands also discussed the contract between prince and people. In the run-up to the divestiture of Philip II of Spain in 1581 – a precedent that lent legitimacy to the revolt against Joseph two centuries later – the rebels presented sovereignty as shared between prince and estates. It was the concern for liberty that evoked the development of the ideology of the estates, in which they – in collaboration with virtuous citizens – were the key guardians of liberty and the common good. As a result, they were the primary administrators of sovereignty.⁸ After the Spanish reconquered the Southern Netherlands, this contractual political thinking all but disappeared, remaining most tangible in the investiture ceremonies for a new prince. He or she had to swear to respect the existing laws and privileges of every province, and usually lengthy negotiations with the estates preceded the oath swearing.⁹ Nevertheless, it was only in the wake of Joseph II's radical reforms that the contract between prince and subjects formed the crux of a genuine pamphlet war to win public opinion. Van den Bossche argues that the participants in these debates innovatively adapted the notions of contract and sovereignty. The estatist party contended that the estates, and not the people as a whole, embodied sovereignty. As a consequence, they were in a position to rule without a monarch.¹⁰ While this was a conceptual innovation, it did signal a conservative goal: the maintenance of the existing constitutions and the estates's dominant position in the political system. This tension between 'enlightened innovation and ancient constitution', as Van den Bossche titled her study, was not resolved during the restorations. The estates remained the sovereign's indispensable partners in smooth governance. How then did they adapt the constitutional rhetoric to suit their objections to the convention and their pursuit of power?

An analysis of this kind requires a brief explanation of the concept 'constitution'. Today, this refers to a legal document containing the rules regarding the organization and exercise of sovereign authority and regulating the relationship between government and subjects. It encompasses citizens's civil and human rights, and is the supreme law, invalidating other sources of law. This notion, however, was only accepted during the late 18th-century revolutionary era, when the meaning of the concept of 'constitution' profoundly changed. Previously, when the term 'constitution' occurred in the context of state authority, it

7 Deseure, *Onhoudbaar verleden*, 43-126. See also Polasky, 'Revolutionaries'. On the gradual erosion of the historical justification of the Dutch Republic's constitution and its replacement with a discourse of reason and the will of political actors in the 18th century: Worst, 'Constitution', 155-169. For the concept of ancient constitutionalism in 17th-century England: Pocock, *The Ancient Constitution*.

8 Van Gelderen, *The Political Thought*; Secretan, 'Idéologies'. For the significance of the revolt against Philip II in 18th-century writings: Van den Bossche, *Enlightened Innovation*, 221-223.

9 Van Gelder, 'The Investiture'.

10 Van den Bossche, *Enlightened Innovation*, 123-218; Deseure, *Onhoudbaar verleden*, 69 and 84-86.

referred more generally to the government. It signified the corpus of laws, statutes, charters, privileges, customs and traditions jointly regulating state authority, usually by placing certain limitations upon it. While proponents presented it as a given, this amalgam was actually in constant development.¹¹ The aforementioned ancient constitutionalism is key to the estatist understanding of the relationship between prince and country. The Estatists believed that the well-being of the country and its inhabitants depended on this age-old body of ancestral privileges and customs. The actors covered in this article generally used 'constitution' in this broader sense, although both notions are present and overlap in the debates that are central here.

After concisely explaining the Brabant Revolution, the Convention of The Hague and its history, I will outline the debates in Flanders and then Brabant. By scrutinizing these discussions, I attempt to relate the constitutional culture during the Austrian restorations to the conflict of interests between prince and privileged classes. To this end, I consulted a corpus of archival sources, both manuscript and printed, which chiefly originate from the Estates of Flanders and Brabant. Thus far these materials have seldom been used, in part because of their chaotic conservation. The revolution and the military upheavals in the last years of the estates's existence brought about the interruption of many document series, but they remain an important addition to the pamphlets and treatises that historians have most often relied upon when investigating the Brabant Revolution and its ideological underpinnings.

Constitutional Promises: From Cobenzl's Mission to the Convention of The Hague

Before turning to the Flemish and Brabant discussions, it is necessary to succinctly cover the context of the Convention of The Hague and its contents, which Leopold quickly discovered were controversial. To explain his reasons for making such far-reaching concessions, we must begin with Joseph II's ecclesiastical, administrative and judicial reforms in the Austrian Netherlands in the 1780s. Among other things, he closed down contemplative monasteries, annulled dozens of courts and administrative institutions, and in the end even abolished the estates and Brabant's constitutional charter, the *Joyeuse Entrée/Blijde Inkomst*.¹² From 1787 onwards, these measures resulted in widespread opposition. Within this protest movement, historians have delineated different ideological trends and regional variations, but for the sake of convenience they usually refer to it as the 'Brabant Revolution'. However, this is merely a *pars pro toto*, named after the principality where the resistance was fiercest. At the end of 1789 and the beginning of 1790, collaboration

¹¹ Stourzh, 'Constitution', 35-54; Velema, 'Revolutie', 21-29; Schmale, 'Constitution', 31-63; Maddox, 'Constitution', 50-67. In the 18th century, philosophers and political thinkers, often with a legal background, frequently focused on the subject of constitutions. For an introductory outline of the doctrine on constitutions in the Western world: Müßig, *Die europäische Verfassungsdiskussion*.

¹² French: *Joyeuse Entrée*; Dutch: *Blijde Inkomst*. Regarding this constitutional charter, which every Duke of Brabant had to swear to respect since 1356: Van Dievoet, 'L'empereur'; Ibidem, 'De Blijde Inkomst'.

between the different oppositional movements and the recruitment of a patriot army led to the expulsion of the Austrian troops, Joseph II's divestiture, the declaration of sovereignty of the various Austrian Netherlandish regions with the exception of Luxembourg, and the conclusion of a Treaty of Union.

However, the republic or the confederacy of the *Etats belgiques unis* that thus came into being did not last long. During its ephemeral existence, its political leaders frenetically searched for foreign support to safeguard its survival. Usually, this support was conditional or granted off-the-record. London, Berlin and The Hague excelled in making vague promises and maintaining a non-committal attitude.¹³ This, in combination with internal divisions, made the future of the republic precarious, but in the meantime, its subsistence was real. At the end 1789, Joseph II realized that he had lost the battle for the Netherlands; the ongoing war with the Ottoman Empire, in particular, had hampered his efforts and prevented him from engaging more troops. He decided to wage a charm offensive in the hope of winning the rebels back through concessions. To that purpose, he sent his Vice-Chancellor, Philipp Count Cobenzl, as his plenipotentiary to the Southern Netherlands. Cobenzl had the authority to restore the old rights and privileges of these regions. But the patriots had already taken Brussels by the time he arrived in Luxembourg, and so Cobenzl's mission was doomed to failure.¹⁴

After Joseph died, his brother and successor – the more moderate Leopold II – followed a two-track policy.¹⁵ On the one hand, he maintained Joseph's appeasement strategy, and expressed his willingness to make far-reaching concessions to the estates early on. When Joseph's health rapidly deteriorated in February 1790, Leopold prepared a conciliatory declaration that his sister Maria Christina and her spouse, Albert of Saxony-Teschen – Governors-General in the Austrian Netherlands – were to publish immediately upon Joseph's death. Maria Christina and Albert advised him to adapt parts of the original version of February 17, so as not to put too many restrictions on princely authority.¹⁶ Some of the modifications are subtle. For example, in the definitive version of March 2, Leopold no longer formally 'confirmed' the *Joyeuse Entrée* and the privileges of each region, but 'offered their use'. This change signals two different views: the estates underlined that these privileges were fundamental and eternal laws, while Maria Christina tried to present them as positive law granted by previous princes. Other alterations are more striking. The clause stating that the regiments in the Netherlands would be disbanded and their officers replaced was completely left out of the adapted version. However, Leopold did hold out the prospect of estates's participation in making military appointments.

While moderating his degree of accommodation, Leopold explicitly declared that he would respect the *constitutions fondamentales* of the Southern Netherlands. He promised to reign according to them, and to proclaim no laws nor levy any taxes without the estates's consent. He did not even preclude a gathering of the estates-general on the estates's

13 Post, *De Driebond*.

14 Idem, 50-52; Judge, *Nation*, 245-246.

15 For Leopold's sympathy towards the estates and the principle of written constitutions: Wandruszka, *Leopold II.*, 202-212, 249-261 and 372-378.

16 Van Impe, *Marie-Christine*, 123-141.

initiative. Altogether, Leopold explicitly dissociated himself from the hated policies of his predecessor. But in spite of his conciliatory tone, the estatist party that had taken control in the independent republic greeted the manifesto with contempt. Its leaders distrusted the far-reaching princely indulgence, mainly because the more democratic ‘Vonckist’ party warmly welcomed the imperial proposition and thus threatened the Estatist’s foreign policy.¹⁷

At the same time, Leopold undertook diplomatic steps to strengthen the international position of the Habsburg Monarchy and end a jumble of wars and revolts. He made peace with Prussia via the Convention of Reichenbach on July 27, 1790; thereby also robbing Hungarian rebels of support. In addition, this convention, in fact a series of formal declarations with the maritime powers as guarantors, concluded a peace treaty with the Ottoman Empire. These developments meant that Austria’s armies were finally in a position to march on the Southern Netherlands. In exchange for Vienna’s rapprochement, the Triple Alliance promised to help restore the Habsburg regime in these provinces. With that prospect in mind, they organized a joint conference in The Hague later that year to discuss the conditions of the restoration.¹⁸

In conjunction with the Convention of Reichenbach, Leopold once more announced that he would respect the constitutions of the Southern Netherlands upon their return to Austrian rule.¹⁹ He repeated these intentions anew in his manifesto of October 14 – the so-called Declaration of Frankfurt. Just as in July, he promised an integral restoration of the old legal system and expressed his intention to reign according to the *constitutions, chartes et privilèges* as they were under Maria Theresa. He would undo all measures implemented under Joseph II that were against the spirit of these basic rights and privileges. Additionally, he urged for a cease-fire and vowed to grant a general pardon to those rebels who laid down their weapons before November 21 – the planned arrival date of Leopold’s regiments. It was on this footing that Leopold invited the Southern Netherlanders to accept his sovereignty and to swear the oath of fidelity.²⁰

Even though the October declarations were not as generous as the promises Leopold made in March, he still went to great lengths to convince the Southern Netherlands of his good intentions. The Convention of The Hague was the last stage in this process. Under pressure from the maritime powers, he promised to respect the constitutions, privileges and customs as they had stood under Charles VI and Maria Theresa, going one step further than the October declarations. He also extended the general pardon: the November

17 Idem, 192-199 with a parallel edition of both versions of Leopold’s manifesto; Judge, *Nation*, 255-260; Koll, *Die belgische Nation*, 346-347; 82-83; Tassier, ‘Léopold II’, 106-116. Judge notes that Leopold ‘most likely’ addressed this declaration to the estates. This is actually a certainty, for they embodied sovereignty in the confederacy and were therefore the obvious interlocutors.

18 Post, *De Driebond*, 81-96; Judge, *Nation*, 263-269; Van Impe, *Marie-Christine*, 141-144; Wandruszka, *Leopold II.*, 262-272.

19 For the edition of the declarations: Pribram, *Österreichische Staatsverträge*, 164-170. See Judge, *Nation*, 260-263.

20 Van Impe, *Marie-Christine*, 150. An authentic copy of the declaration of October 14 can be consulted in: Rijksarchief Anderlecht (State Archive Anderlecht, hereafter RAA), Staten van Brabant – Supplement (hereafter SVB – Supplement), 59.

21 deadline was scrapped, and only a very small number of persons would be excluded. Additionally, he pledged never to implement military conscription and to undo Joseph's ecclesiastical reforms and those regarding the University of Leuven. He also made several concessions, which, in the words of the convention, never belonged to the constitutions and privileges of the regions concerned. For example, he vowed to consult the estates when proclaiming new laws and even when changing the custom tariffs. He thus gave sanction to the parliamentary narrative that the Estatists promoted in their writings.²¹ However, to the dissatisfaction of both England and the Dutch Republic, Leopold II eventually refused to ratify the first article of the convention. This article stipulated that he recognize the constitutions and privileges in place at the start of the reigns of Charles VI and Maria Theresa. This demonstrates that once Leopold's position on the international chessboard improved, he was not willing to restrict his powers too much.²²

When the Convention of The Hague was eventually signed, the recovery of the Southern Netherlands was almost complete, and Leopold was actually in a position to subjugate the rebellious regions by right of reconquest. That he did not consider this shows that his ambitions abroad and at home were intertwined. Great Britain, Prussia and the Dutch Republic wanted the Netherlands to remain part of the distant Habsburg Monarchy. They did not want the installation of a strong government that could pose a threat to neighboring countries. Leopold partly acceded to their wishes, and at the same time tried to generate enough internal goodwill to make a success out of the Habsburg restoration. However, the reception of the convention by the Estates was not entirely positive. Much was at stake, and in the years that followed, the treaty text gave rise to debates reflecting fundamental interests and centuries-old tensions that were carried to extremes at the end of the Ancien Régime.

The Estates of Flanders and the Convention of The Hague: A Constitutional Chance

After the survival chances of the confederacy had significantly dwindled, the estates of Flanders recognized Leopold II as their count on December 6, the expiration of the imperial ultimatum notwithstanding. They did so on the terms of the Declaration of Frankfurt.²³ Baron Bender, commander-in-chief of the Austrian troops and the one responsible for reintegrating the Netherlands in the Habsburg Monarchy, accepted the Flemish subjection and allowed the estates to send a delegation to the diplomats negotiating in The Hague. Upon their arrival, the Flemish delegates delivered not only the official recognition of Leopold II but also a memorandum in response to the Frankfurt Declaration. Among other

21 For the text of the convention: Pribram, *Österreichische Staatsverträge*, 184-194 and Parry, *The Consolidated Treaty Series*, 71-79. See also Post, *De Driebond*, 120-127. For a printed version of the ratification: Rijksarchief Gent (State Archive Ghent, hereafter RAG), Staten van Vlaanderen (hereafter svv), 11368. On the estatist notions of legislative checks on the monarch: Van den Bossche, *Enlightened Innovation*, 194-196.

22 Post, *De Driebond*, 120-127; Pribram, *Österreichische Staatsverträge*, 181-184.

23 Documents in: RAG, svv, 11568. When reading the papers concerning the recognition of Leopold II, I received the impression that this decision was not taken wholeheartedly.

things, they demanded a permanent advisory presence in Vienna, community input in the composition of local and regional administrations, juridical sovereignty for the Council of Flanders, less authority for royal prosecutors in the province, and more local autonomy. Furthermore, the non-negotiable annual taxes, which Maria Theresa had imposed in 1754 to replace the negotiable *beden* or *aides*, had to be annulled.²⁴ However, the Austrian diplomat, Florimond Count de Mercy-Argenteau, was not prepared to grant these demands; they remained a dead letter.

The delegates's instructions broached an age-old and more structural issue: the Estates admitted that the Flemish 'constitution' consisted of a series of local charters and other such isolated documents. Their dispersal meant gaining familiarity with the constitution was difficult. As a consequence, the exact recording of the essentials of the Flemish constitution was considered indispensable – in the instruction, they used the notion *diplome inaugural*, a clear reference to the constitutional meaning the inaugurations bore (see below).²⁵ Even though it is unclear to what degree the delegates actually negotiated for this, the desire to have a Flemish constitutional charter persisted and Mercy-Argenteau gave permission to draft a note of all freedoms and favors they wanted to see recognized. The Flemish Estates grew increasingly concerned that all the basic laws, privileges and customs be restored once and for all, and they intended to compile a list of infringements without delay.²⁶

Meanwhile, the Austrian restoration and Leopold's assumption of power entailed planning for his formal inauguration. In the Habsburg Netherlands, these investiture ceremonies, with the mutual oath swearing between prince and estates at their core, never fell into abeyance.²⁷ In the wake of the Brabant Revolution and in the atmosphere of constitutional worries, these ceremonies even gained importance. The plan to draft a Flemish constitution and the organization of Leopold's inauguration became intertwined. More precisely, the estates wanted a constitutional text that could be used during the inauguration. On January 5, the standing committee of the estates sent a 'Project of Joyous Entry for Flanders' to all members. It was based on compilations of Flemish fundamental laws and drafted in French.²⁸ All members of the estates were entitled to comment before the composition of a definitive text. The project is entirely in line with the aforementioned ancient constitutionalism and completely neglects the democratic ideologies in the United States of America, France, or Vonckist circles.²⁹ The principles of legal equality of all citizens or

24 Recognition of Leopold II, 6 December; printed notification of Bender to the Estates of Flanders, 14 December; memorandum of the Estates of Flanders, signed by Van de Velde, De Deurwaerder, Hoobrouck de Mooreghem and De Grave, 17 December; printed report of their experiences in The Hague, 23 December: RAG, SVV, 11366. *Beden* (Dutch) and *aides* (French) are the usual names for the money given by the estates to the government in Brussels. The prince was not entitled to levy taxes without the estates's consent. This constituted the primary obstacle to absolutism in the Southern Netherlands.

25 Instructions of 8 December: RAG, SVV, 11366. On the constitutional insecurity in Flanders due to the lack of a single charter: Dhondt, *Verlichte monarchie*, vol. III, 27–32.

26 Estates of Flanders to the delegates in The Hague, 17 and 22 December 1790: RAG, SVV, 11366.

27 Van Gelder, 'The Investiture'; Van Gelder and Van Cauter, 'Een publieke ceremonie'.

28 'Projet de Joyeuse Entrée pour la Flandre'.

29 The declarations that the different provinces made divesting Joseph II and declaring independence, do show a strong influence of the American Declaration of Independence: Judge, 'Provincial Manifestes'. But then of course, these declarations had a propagandistic role: rallying public support for the rebels or for the leaders of

fundamental individual civil rights and freedoms are absent. *Habeas corpus* is expressly included, but the concepts of ‘citizen’ (*citoyen*) and ‘the Estates as representatives of the people’ (*les États comme représentants du peuple*) appear only once, and without being embedded in the new ideas on sovereignty and state power.

Mirroring Brabant’s Joyous Entry, the project’s fifty clauses were profoundly conservative. Indeed, this text confirmed and even strengthened the existing privileges of the upper classes. For example, it recognizes the nobility as a permanent member of the Flemish Estates – an institutional innovation from revolutionary circumstances of 1787 – and stipulates the annulment of the non-negotiable taxes that had replaced the *beden* since 1754. The promotion of a series of subaltern cities and castellanies to voting members in the estates – also from 1754 – is one of the few innovations that the authors wished to preserve, which was, of course, a masterful example of hypocrisy. Moreover, the estates proposed supervising legislation, customs tariffs and the Council of Flanders, as well as appointments to that body. Last but not least, the text stipulated that the new count or his plenipotentiary had to swear loyalty to all articles within a year of the death of his or her predecessor, an extra check on the prince’s autonomy.³⁰ Van den Bossche pointed out that in estatist thought, the Council of Brabant was gradually seen as a kind of constitutional Supreme Court, but the Flemish constitutional charter does not seem to grant such far-reaching competences to the Council of Flanders. Nevertheless, the estates did curtail the role of the royal prosecutors, and their legislative supervisory competences foreshadow a parliamentary monarchy. So even if the project does not explicitly mention Montesquieu’s *trias politica*, at least elements of the idea of the separation of powers filtered through to the constitutional charter – albeit with a conservative purpose.³¹

Despite every effort, the project did not progress as hoped. Even the strict deadline for listing the grievances was not met.³² Why remains unclear.³³ Many members of the estates did provide the draft with annotations, but it seems that it never came to a vote in the general assembly. As a result, no compromise text was handed over to the government in Brussels and when Albert of Saxony-Teschen, as the proxy of Leopold II, swore the oath

the struggling *Etats belgiques unis*. The primary objective of these projects for a constitution was to cement the position of the traditional powers. They were therefore more conservative in tone.

³⁰ The copies with the handwritten annotations from the different commenting administrations can be consulted in: RAG, SVV, 11569A. For a more detailed analysis: Dhondt, *Verlichte monarchie*, III, 32–38. For an attempt to reconstruct the pre-1786 history of the ideas in this text: Martyn and Burgelman, ‘Les États’. On p. 148, Martyn and Burgelman propose the former councilor of Flanders and then second *pensionaris* or the estates’s chief legal advisor, Charles-Joseph De Grave, as its author. Luc François, on the other hand, notes that Jan Jozef Raepsaet, lawyer and clerk of the Castellany of Audenarde and one of the most influential spokesmen of the conservative estatist party, took up the offer to create a constitutional charter but never handed in a text: François, ‘Jan Jozef Raepsaet’, 70–71. Dhondt eventually proved Raepsaet’s authorship (Dhondt, *Verlichte monarchie*, III, 29), but also refers to other constitutional propositions that were drafted in Flanders. The one year moratorium resembles the situation in the Kingdom of Hungary, also part of the Habsburg Monarchy, where, starting in 1791 every new king had to be crowned within the span of six months: Beke-Martos, ‘Elevating the Monarch’, 5.

³¹ Van den Bossche, *Enlightend Innovation*, 194–196.

³² Estates of Flanders to the Estates’s members, 13 and 24 January 1791: RAG, SVV, 11569A.

³³ It is very plausible that part of the estates’s archives were lost during the tumultuous closing years of the Austrian regime.

as Count of Flanders in Ghent on July 6, 1791, he did not need to do so on a Flemish constitutional charter.³⁴ The sources that I consulted do not reveal the reason for this failure. Considering the divisions that arose in the Estates of Flanders between 1787 and 1790 and the disagreement that I cover below, I presume that internal discord still hampered the capacity of the estates to make decisions during the restoration.³⁵

While the constitutional charter seems to have faded from view, discussions on the guarantees of the Declaration of Frankfurt and the Convention of The Hague continued.³⁶ However, from the advisory documents of twenty-three members of the estates, it appears that the majority saw nothing wrong with an inauguration that did not explicitly refer to the guarantees contained in the said declaration and convention. Only three administrations – the Land of Bornem, the *Ambacht* of Assenede and the *Ambacht* of Boekhoute, none of which carried much weight – continued to press for drafting a Flemish constitutional charter, though the project halted in January.³⁷

As the majority did not urge mentioning the declaration and convention, the estates's inclusion of them in a resolution caused complaints. The provisional committee of the princely Privy Council in Brussels, which deliberated on the inauguration, made reference to the disunity within the estates and noted that a majority was in favor of omitting the clause.³⁸ After having read the notes of the estates's members, this seems somewhat specious reasoning. Their omission does not necessarily preclude that the estates implicitly considered the texts the basis of the accord regarding the inauguration. The committee's decision was probably not without self-interest and constituted an attempt to restore Leopold's position. Until official correspondence between the estates and their members is found, or documents that can help to reconstruct their decision-making process, the exact nature of this outcome in relation to the inauguration preparations will remain unclear. In any case, a compromise seems to have eventually been reached; the majority of the estates's members no longer deemed a Flemish constitutional charter necessary. I can thus conclude that the project concerning the Flemish Joyous Entry was already torpedoed in 1791, and not during the French invasion of 1792-1793 as Georges Martyn and Luk Burgelman suggest.³⁹

In the meantime, several Flemish administrations continued to appeal to the Convention of The Hague. In May 1791, the *Collatie* in Ghent requested the emperor to reintroduce the negotiable *beden* and to abolish the office of *actuaris* of the estates by virtue of article I of the convention. The government had imposed these innovations against the city's will

34 *Relation de l'inauguration solennelle*.

35 Cf. Craeybeckx, 'The Brabant Revolution', 75-79.

36 Resolution Estates of Flanders, 17 May 1791: RAG, SVV, 11569B; F.D. Dhoop on behalf of the standing committee of the Estates of Flanders to Mercy-Argenteau, 17 and 19 May 1791: Brussels, Algemeen Rijksarchief (General State Archives, hereafter ARA), Geheime Raad – Oostenrijkse periode (hereafter GR), 10A: fol. 459-460v. and 10B: fol. 156-157v. Some weeks later, the convention still appears not to have been published in the county. Exactly which persons tried to hamper its implementation, remains to be discovered: city councils of Bruges and Ghent to the Estates of Flanders, 16 and 25 June 1791: RAG, SVV, 11370.

37 These documents can be consulted in: RAG, SVV, 11569B.

38 Advisory text of the provisional committee of the Privy Council, 4 July 1791: ARA, GR, 10B: fol. 87-91v.

39 Martyn and Burgelman, 'Les États', 150.

in 1754. The *actuaris* was a legal advisor that replaced the *pensionarissen* (legal advisors) of Ghent, Bruges and the Franc of Bruges, who had *ex officio* counseled the estates and strengthened these members's influence.⁴⁰ If their interpretation was accepted, the *Collatie* believed that the convention would be 'the happiness of the country'.⁴¹ Yet due to the sudden death of Leopold II in March 1792, another inauguration took place in July of that year, this time investing Leopold's eldest son, Francis II. The governors-general underlined that the new ceremony should not deviate from the previous one.⁴² Then, from November 1792 to March 1793, the country was held by French troops, whereupon a second Austrian restoration followed. Even in this period, the Estates of Flanders – or some of their members – continued to express their concern about the durability of their constitution, which was labeled the guardian of the safety and happiness of the country, and one of the pillars of the throne. To avoid future breaches, they desired princely approval for a new constitutional project: the 'Collection of constitutional points of the province of Flanders', which the prince would have to swear to uphold at his inauguration.⁴³

This 'Collection' does not significantly differ from the aforementioned Flemish Joyous Entry: the estates again claimed a say in the taxes, the maintenance of the nobility's vote in the general assemblies, and the continued membership of the subaltern cities and castellanies. The drafters also emphasized the legislative supervision of the estates. New, however, was their proclamation that the Council of Flanders was a sovereign court of justice, much like its Brabant counterpart, thereby causing it to resemble the model of a constitutional Supreme Court mentioned by Van den Bossche (cf. supra).⁴⁴ Another innovation was their demand to have assured representation in the Collateral Councils in Brussels consistent with the region's fiscal contribution, which would definitely strengthen the Flemish position.⁴⁵ The references to the charters and laws on which the articles were grounded are highly illuminating. These establish that the capitulation treaties from the War of the Spanish Succession and the ensuing Barrier Treaty were of considerable constitutional importance. Moreover, the author stressed that the Convention of The Hague promised these proposals.⁴⁶ Nevertheless, the government prohibited it.⁴⁷ But even so, the desire to have a constitutional charter remained alive until the French occupation in the course of 1794. This is apparent from the resolution of the estates's general assembly of June 12, 1794,

40 The abolition of the position of *actuaris* was also included in the project of Joyous Entry.

41 Printed resolution of the *Collatie* in Ghent, 14 May 1791: RAG, SVV, 11569A.

42 Maria Christina and Albert to the standing committee of the Estates of Flanders, 5 May 1792: RAG, SVV, 11574.

43 'Verzaemelynge der pointen constitutioneel der provincie van Vlaenderen'.

44 The Flemish delegates to Mercy-Argenteau in The Hague had also demanded this, in December 1790.

45 For a printed version of the 'Verzaemelynge': RAG, SVV, inv. nr. 11574. Undated minutes of a representation of the Estates of Flanders to the minister plenipotentiary during the term of office of Governor-General Charles: RAG, SVV, 11320.

46 According to Dhondt, Raepsaet again had a hand in the redaction of this text. Raepsaet had earlier stressed the importance of the Peace Treaty of Utrecht and the Barrier treaty for Flanders's constitutional order: Raepsaet to (presumably) the Estates of Flanders, 14 December 1790: RAG, SVV, 11361.

47 Dhondt, *Verlichte monarchie*, III, 32-38. Dhondt discovered a third Flemish constitutional project in the papers of Raepsaet and De Grave: Dhondt, *Verlichte monarchie*, VIII, 163-166. Its contents are similar to the Flemish Joyous Entry and the Collection, but it seems not to have been discussed in the estates's assemblies.

a few weeks before the implosion of the Austrian regime. At that time, the estates were still lobbying for a constitution with Minister Plenipotentiary Franz Georg Count Metternich-Winneburg, who promised to address the matter with the emperor.⁴⁸

*The Estates of Brabant and the Convention of The Hague:
The Constitution under Threat*

Brabant's reception of the Convention of The Hague was very different. Since the middle of the fourteenth century, Brabant had a constitutional charter containing an exhaustive list of the region's laws and privileges: the aforementioned Brabant Joyous Entry. At his or her inauguration, every new Duke of Brabant had to swear to respect its clauses before the subjects swore their loyalty and obedience. As such, in contrast to Flanders, the Convention of The Hague did not inspire a rush to draft a constitutional text. Instead, the Estates of Brabant focused on protecting the existing charter against infringements. At first glance, everything seemed to be well placed for the Austrian restoration. The Declaration of Reichenbach stipulated that the Joyous Entry and its clauses had to be respected. The Convention of The Hague enshrined these terms in an internationally guaranteed treaty. And yet, even in Brabant the convention gave rise to concern.

Just as Flanders had, Brabant sent delegates to The Hague in order to protect the region's interests during the negotiations between the Triple Alliance and Austria. The three Brabant delegates – Vander Linden Baron of Hoogvorst, Jean Dewael and Count de Baillet – demanded extra sureties because according to them, the Reichenbach Declaration contained insufficient guarantees. Alterations in the composition of the estates could not be excluded and the restoration of the privileges of Leuven's university remained uncertain. Mainly, however, they wanted to preclude future violations of the Joyous Entry. They wanted explicit measures counteracting incorrect interpretations – from their point of view – and the ensuing breaches, and that these should be incorporated in either a modified Joyous Entry or in a supplementary act.

With regard to the Convention of The Hague, they also descried risks. In their opinion, article III contained elements that were part of the Joyous Entry – but presented as a princely concession. This could set a dangerous precedent. Furthermore, the delegates questioned why some stipulations were restricted to the end of Maria Theresa's reign. Just as in Flanders, Brabant desired to restore the constitutional order under Maria Theresa's predecessor, Emperor Charles VI. This would enable them to reverse some of the unpopular reforms she had introduced. In stressing this chronology, the estates correctly identified the contradictory nature of some of the convention's clauses. They continued to lobby for accommodations until January 1790, but after the signing of the convention, the ministers of the Triple Alliance became less compliant. They considered their task completed and referred the lobbyists to Mercy-Argenteau.⁴⁹

⁴⁸ Resolution Estates of Flanders, 12 June 1794: RAG, SVV, 11585.

⁴⁹ Many documents from December 1790 and January 1791 regarding this mission to The Hague can be found in: RAA, Staten van Brabant – Kartons (hereafter SVB – Kartons), 150/6.

In any case, collaboration with Flanders or one of the other principalities seems to have been completely out of question, and that applies to the constitutional debates during the restorations in general. The testimony of Brabant's delegate Baillet is very telling in this regard. On his way to The Hague at the end of 1790, he met his colleagues from Hainaut in Gorcum – coincidentally, it seems – and by then he knew that Flanders had sent a delegation as well. This proves that there was no concerted approach to dealing with the Austrian diplomats. Moreover, Baillet writes that Hainaut and Flanders not only sent delegates in order to recognize Leopold II, but also to negotiate on *points particuliers*. He reasoned that vigilance had to be maintained because Flemish interests, certainly in commercial matters, could run counter to Brabant's interests.⁵⁰ There was no collaboration between the provinces, no united Belgian front, and distrust seems to have reigned. In that respect the growth of 'Belgianness', as Jane Judge describes it, seems overstated.⁵¹ The administrative records and official correspondences that I used cannot confirm this trend. It would be interesting to examine the same administrative sources for the *Etats belgiques unis*. This would permit verification of whether Belgianness was more than mere window-dressing for estates and other corporations pursuing a common political goal against a shared enemy.

Just as in Flanders, the first real test case was the upcoming inauguration of Leopold II, which took place on June 30, 1790. Unfortunately, there is even less documentation about its preparations than for Flanders. A letter by Mercy-Argenteau gives the impression that Brabant continued to fear that the ratification of the Convention of The Hague restricted the guarantees of the Joyous Entry. This certainly resulted from the imperial refusal to ratify the first article of the convention that reestablished the situation at the start of the reigns of Charles VI and Maria Theresa. In order to allay concerns, Mercy-Argenteau emphasized that the oath that Leopold was to swear did not deviate from that of his predecessors. He also declared that the ratification of the convention would not in any way harm the Brabant constitution. The Joyous Entry would remain in force in its entirety, just as under Maria Theresa and previous Dukes of Brabant.⁵² But worries continued to simmer. In November, the Council of Brabant even proposed that the prince formally declare that the Joyous Entry remained valid in every point.⁵³

The inauguration took place without major incidents, but the Brussels government and the Brabant Estates continued to wrangle. In December 1791, even though Maria Christina, Albert and the emperor disapproved, the estates sent a delegation to Vienna in order to make known their grievances. Their refusal to consent to a princely request for taxes and a series of unresolved dossiers constitute the background of the undertaking and subsequent fuss. I assume that these dossiers concerned the lingering negotiations regarding

50 Baillet to the Estates of Brabant, 12 December 1790: RAA, SVB – Kartons, 150/6.

51 Judge, *Nation*. Jan Roegiers also maintained that during the revolution, most Southern Netherlanders primarily considered their own principality as their nation, the development of a Belgian consciousness notwithstanding: Roegiers, 'Nederlandse vrijheden', 158. In a recent chapter, Judge seems to modify her initial stance, stating that, in spite of the seeds of national unity, 'the old provincial political divides remained': Judge, 'Provincial Manifestes', 134-138.

52 Mercy-Argenteau to the Estates of Brabant, 13 April 1791: ARA, GR, 8B: fol. 170-173v.

53 Council of Brabant to Maria Christina and Albert, 20 November 1791: ARA, GR, 8A: fol. 79-89v.

compensation for damages incurred during the Brabant Revolution. In their memorandum to Leopold, the first and second estates appealed to the Convention of The Hague. This convention allowed for the appointment of an arbiter in disputes between prince and estates. Moreover, the three estates of Brabant had accepted the convention by consenting to the inauguration, as a consequence of which it 'was an integral part of Your [His Majesty's] Joyous Entry'. However, they rejected mediation by the princely Council of Brabant and delayed consent to the *bede* to keep up the pressure.⁵⁴

This refusal of the *bede* is also the reason why the emperor did not grant the delegation, led by Count de Baillet, an audience. Two attempts to hand over Brabant's grievances to Vice-Chancellor Cobenzl were unsuccessful on the same grounds. The estates considered the refusal of tax propositions to be a right, but the emperor stood firm. His refusal to receive Baillet signals the latent tensions between the Brabant Estates and their duke. Immense public pressure was one of the primary reasons for refusing to consent to the *beden*. In February 1791, an assembled crowd even chased the estates's members from their meeting hall in Brussels. These members were trapped between a rock and a hard place because the government did not refrain from arresting members as a result of their resistance to juridical reforms. This in turn led to riots.⁵⁵ However, the premature death of Leopold II during Baillet's sojourn in Vienna opened up new opportunities for talks. Leopold's successor Francis was prepared to receive Baillet, albeit as a private person and not as representative of the recalcitrant Brabant Estates. Baillet could not deliver documents, nor could he make reference to his mission. Unsurprisingly, he did not achieve concrete results.⁵⁶

During both the first and the second Austrian restorations, complaints about princely violations of the sworn constitution were the order of the day. For example, in February 1792 the city of Antwerp complained about illegal house searches by the princely prosecutors attached to the Council of Brabant.⁵⁷ During the second restoration, a series of arbitrary arrests caused so much uproar that the government in Brussels publicly promised to respect the entirety of the Joyous Entry in the decree of November 15, 1793. In it, they stressed the clauses regarding the personal freedom of the inhabitants of Brabant.⁵⁸

Finally, the organization of Francis II's inauguration as Duke of Brabant also seemed to be dotted with obstacles. The ever controversial Convention of The Hague was central. Shortly after the new monarch's assumption of power, State Chancellor Kaunitz warned Minister Plenipotentiary Metternich that he should not accept the least infringement of Francis's sovereign authority during the occasion. Kaunitz forbade conditional clauses in the documents pertaining to this ceremony as well as expressions that violated the rights

54 Resolutions of the Estates of Brabant with attachments, 1 and 10 December 1791, Maria Christina and Albert to the Estates of Brabant, 3 December 1791: RAA, Staten van Brabant – Registers (hereafter SVB – Registers), 199/9.

55 Polasky, *Revolution*, 194-200; Duchesne, 'Mercy-Argenteau'.

56 Baillet to the standing committee of the Estates of Brabant, 27 February 1792, Resolution Estates of Brabant with numerous attachments, 17 April 1792: RAA, SVB – Registers, 99/10: fol. 192-253v. Baillet arrived in Vienna on January 10 and had audiences with the emperor on March 16 and 18.

57 City Council of Antwerp to the Estates of Brabant, 29 February 1792: RAA, SVB – Registers, 199/10: fol. 149-151.

58 Verhaegen, *La Belgique*, 291-292.

and prerogatives of the new sovereign. Under no circumstances was the Convention of The Hague to be mentioned, even when referring to its content.⁵⁹ When Governor-General Archduke Charles, in a letter to the Estates of Brabant in 1793, was so reckless or careless as to cite the convention, Vienna reacted with irritation. Ferdinand Prince Trauttmansdorff, Court Chancellor for the Netherlands and one of Vienna's hawks championing a more resolute attitude towards the estates, rejoined that Francis II was surprised that doubts still existed on the *retour a la constitution* and the maintenance of the Joyous Entry even though the emperor had explicitly showed respect for this charter.⁶⁰

Conclusion

The case studies of Flanders and Brabant allow for some reflections on the constitutional debates in the estates and on the constitutional culture and traditions behind it. This does not mean that the constitution was only discussed in the estates. It was one of the main topics of the pamphlet war raging since opposition first arose to Joseph's reforms. All sides of the political spectrum were involved, with progressives also delivering drafts of constitutions. The most famous names in that respect are Jan Frans Vonck – who advocated considerably broadening the representation in the estates – and Jan Baptist Verlooy – supporter of the separation of powers, elections on a census basis, and the abolishment of the partitions between the estates.⁶¹ During the first Austrian restoration, a *Société des Amis du Bien public* was established in Brussels, which also reflected on more general representation through elections.⁶² But in spite of the Vonckist participation in these debates, the estates and the estatist party maintained their dominant role in the state system under Leopold II and Francis II. While several authors have referred to Leopold's initial intention to include Vonckists in the government, this never materialized.⁶³ Leopold and his advisors in Brussels prioritized a compromise with the leaders of the *Etats belgiques unis*. This meant that they did not punish the conservative forces, with the exception of some leaders, and that the Estatists retained their influence in the government. Therefore, a separate analysis of the constitutional debates in their midst is justified, as is future research on the dialogue between the Estatists and other voices in public opinion.

59 Kaunitz to Metternich, 23 March 1792: ARA, GR, 6: fol. 319-320v. The Estates of Flanders, when consenting to the inauguration in Ghent, explicitly stated that this ceremony should not in any way invalidate the Convention of The Hague or the Declaration of Frankfurt: Dhoop on behalf of the standing committee of the Estates of Flanders to Mercy-Argenteau, 19 May 1791: ARA, GR, 10B: fol. 156-157v.

60 Trauttmansdorff to Metternich, 27 November 1793 (postscript to a lost letter): Vienna, Allgemeines Verwaltungsarchiv, Familienarchiv Trauttmansdorff, 284.

61 Koll, *Die belgische Nation*, 347-352; De Clerck, *Jean-François Vonck*, 67-68 and 158 (note 242); Van den Broeck, *J.B.C. Verlooy*, 309-339; Deseure, *Onhoudbaar verleden*, 89.

62 Polasky, *Revolution*, 183-192; Deseure, *Onhoudbaar verleden*, 90-93.

63 Zeissberg, *Zwei Jahre*, 48-60; Van Impe, *Marie-Christine*, 145-149; Koll, *Die belgische Nation*, 347-348. Polasky and Delsaerd and Roegiers refer to the increasing unpopularity of the restoration regimes in the Netherlands, which excelled in making promises to many groups but in the end disappointed both members of the estates and democrats: Polasky, *Revolution*, 183-200; Delsaerd and Roegiers, 'Brabant', 67-80.

The conservative character of the constitutional debates in the estates is not surprising. Van den Bossche, Koll and Deseure all pointed to the strength of the ancient constitutionalism in the estates throughout the revolutionary period, as I mentioned in the introduction. However, this did not preclude the estates from incorporating new constitutional discourses in their proposals. The Flemish attempts to replace their collection of basic laws with a unified constitutional charter are illustrative of this, and the notion of the separation of powers, however vaguely, seems to have inspired the constitutional proposals.⁶⁴ While this incorporation of new political concepts and language served conservative purposes, this was not a unique phenomenon. Jérôme Vercruysse demonstrated that Henri Van der Noot's *Manifeste du peuple brabançon*, which legitimized the dethronement of Joseph II, drew heavily on the writings of Baron d'Holbach. Van den Bossche highlighted the combination of domestic legal and historical traditions with natural law arguments in the estatist corpus of thought. Dutch conservative thinkers, such as Adriaan Kluit or Elie Luzac, also employed modern concepts to fortify their argumentation, and they were deeply embedded in the Enlightenment. Deseure refers to the attempts of the American revolutionaries and the Dutch Patriots to fuse ideas of natural law with the language of ancient constitutionalism, in order to make the new ideas usable. Radical democrats in the Brabant Revolution also opted for a dialogue with the history of the country.⁶⁵ More generally, historians have come to realize that conservatives were not strictly at odds with the Enlightenment.⁶⁶

The adoption of ideas from modern philosophy and natural law in Brabant and Flanders remained limited and was mainly implicit. In addition to this, the concept 'constitution' in essence retained its older meaning as a collection of written and unwritten rights, privileges and customs. To refer to a written constitutional text, the actors in this article usually used the term *Joyeuse Entrée/Blijde Inkomst* – even in Flanders, which emulated the Brabantine model in which this charter was a genuine sacred cow. Furthermore, constitutional thinking remained closely connected with the age-old inaugurations, which seem to have gained relevance in the post-revolutionary years considering how central they were to the constitutional debates. Neither in Brabant nor in Flanders can the constitution be unlinked from the ceremonial swearing in of the new prince. Even the terminology (*charte inaugurale/diplome inaugural*) hints at this. We should also not forget that the constitutional debates concerned corporate privileges, not the individual liberties that were proclaimed during the American and French Revolutions and became predominant in the 19th century.⁶⁷

And yet, the aforementioned continuities notwithstanding, the Austrian restorations should be considered a separate phase of constitutional awareness. Van den Bossche has explained how estatist writings developed from legitimizing an ancient constitution guaranteed by a monarchical government up until the end of 1789 towards the justification

⁶⁴ However, that was a great deal less modern than the simultaneous constitutional discussions in the Dutch and later Batavian Republics: Velema, 'Revolutie'.

⁶⁵ Vercruysse, 'Van der Noot'; Boom, *Een oude constitutie*; Velema, *Enlightenment and Conservatism*; Van den Bossche, *Enlightened Innovation*, chapter five. Deseure, *Onhoudbaar verleden*, 69 and 109–110.

⁶⁶ Velema, *Enlightenment and Conservatism*, 1–5.

⁶⁷ See Lamblot, 'Les Belges', 176.

of an end to the duke's powers following Joseph's divestiture.⁶⁸ After 1790, the restoration forced them to once again adapt their reasoning to changing circumstances. Revolution was replaced with pragmatic constitutional lobbying in order to check the powers of the new ruler and to restrict the potential for future princely breaches of the existing *modus vivendi*. The estates thus wanted to prevent a repetition of what had taken place under Joseph, but contemporary events also spurred on their efforts. The illegal arrests and the imperial resolve with respect to the Brabant *beden* certainly worried them. Discussing the constitution was much more than idle speculation, it mattered.

The case studies in this chapter justify some corrections to the historiography. The ways in which the estates lobbied in The Hague, Vienna and Brussels between 1790 and 1794 did not qualitatively differ from previous missions. Most importantly: they acted separately. Just as seventy-five years earlier, when the Estates of Brabant and Flanders joined forces to oppose the Barrier Treaty and simultaneously sent delegations to Vienna, in the end, their efforts were frustrated because of mistrust and the pursuit of their own interests.⁶⁹ This chapter also helps in delineating the survival of conservative constitutional traditions after the Brabant revolution – nor did they end with the restorations. The pleas for the restitution of the traditional constitutions upon the fall of Napoleon illustrate the perseverance of ancient constitutionalism.⁷⁰ Nevertheless, Deseure showed that by 1830-1831, the ancient constitution was invoked to anchor the new Belgian constitution in the past by stressing the underlying principles, rather than serving as a concrete model.⁷¹ Finally, it must be concluded that the constitutional traditions in Flanders and Brabant strongly shaped their respective reception of the Convention of The Hague. Brabant wanted to protect its constitutional charter; Flanders wanted to obtain such a charter. In spite of Brabant's criticism, the convention seems to have been seen as a constitutional opportunity in both regions – indeed, as a chance to solidify their constitutional foundations and the position of the estates *vis-à-vis* the prince.

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68 Van den Bossche, *Enlightened Innovation*, 188-223.

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