

# Geschichte des Minderheitenschutzes



# Constitutional Identity in the 18<sup>th</sup> Century Austrian Low Countries: Count Goswin de Wynants's Viennese *Mémoires* (1730)

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## Abstract Deutsch

Goswin Arnould de Wynants (1661–1732) war einer der bedeutendsten Juristen in den österreichischen Niederlanden zu Beginn des 18. Jahrhunderts. Seine handschriftlichen *Mémoires contenant des notions générales de tout ce qui concerne le Gouvernement des Païs-Bas* bieten ein außergewöhnliches Zeugnis der institutionellen Organisation der „Regierung auf Distanz“ (K. Van Gelder) im Namen Kaiser Karls VI. von Habsburg. Wynants konstruiert das konstitutionelle und institutionelle System der verschiedenen Provinzen (Brabant, Flandern, Malines, Tournai, Hennegau, Namur, Luxemburg, Ober-Geldern) und der Räte des Generalgouverneurs in Brüssel aus einer historischen Perspektive und fügt zeitgenössische Anekdoten über seine eigenen Erfahrungen als *latere principis* in Wien und Prag hinzu. Dieser Beitrag hebt Wynants' Behandlung der Zustimmung zur Besteuerung und der Verfassungstradition in Brabant hervor, einem Herzogtum mit einer berühmten Charta (der *Joyeuse Entrée*) und selbstbewussten Ständen.

## Abstract English

Goswin Arnould de Wynants (1661–1732) was one of the most prominent lawyers in the Austrian Low Countries in early eighteenth century. His handwritten *Mémoires contenant des notions générales de tout ce qui concerne le Gouvernement des Païs-Bas* offer an exceptional testimony of the institutional organisation of the «government at a distance» (K. Van Gelder) in Emperor Charles VI of Habsburg's name. Wynants constructs the constitutional and institutional system of the various provinces (Brabant, Flanders, Malines, Tournai, Hainault, Namur, Luxemburg, Upper Guelders) and the governor-general's councils in Brussels from a historical perspective, adding contemporary anecdotes on his own experience as *latere principis* in Vienna and Prague. This contribution highlights Wynants's treatment of consent to taxation and the constitutional tradition in Brabant, a Duchy with a renowned charter (the *Joyeuse Entrée*) and assertive estates.

## Introduction

The *Mémoires contenant des notions générales de tout ce qui concerne le Gouvernement des Païs-Bas* of Goswin Arnould de Wynants (1730–1731) are regularly mentioned in older works of legal history<sup>2</sup>. Politicians and lawyers alike often

1 My thanks go to Vincenzo De Meulenaere for his remarks on an earlier draft, as well as to research student Senne De Kerpel for proofreading.

2 *Pierre Delsaerdt*, WYNANTS, Goswin Arnould de, in: *Nationaal Biografisch Woordenboek*, Brussel: Paleis der Academiën, XIV (1992), col. 782–790. Delsaerdt indi-

looked back to the Old Regime constitutional tradition to justify the separation of the United Kingdom of the Netherlands, where royal power had been perceived as excessive.<sup>3</sup> Proctor-general de Bavay of the Brussels Court of Appeal devoted his opening speech of the judicial year 1847–1848 to him.<sup>4</sup> De Bavay praised Wynants as a friend of the illustrious canon lawyer Zeger Bernhard Van Espen (1646–1728), professor at the University of Louvain, who had a famously tempestuous relationship with the ecclesiastical hierarchy.<sup>5</sup>

The author of the current paper was kindly invited by the curator of legal print at the City of Antwerp's Heritage Library to study a copy recently acquired at an auction in the Summer of 2020.<sup>6</sup> In view of the regular handwriting, the suggestion was made to subject the work of 432 pages on 266 folios to a transcription and HTR exercise.<sup>7</sup> The broad panorama of subjects in this 'encyclopaedia of the Southern Low Countries'<sup>8</sup> and their incisive treatment triggered my attention.

## 1. The Monarch's Erudite Councillor

'Comme il y a des antiquités, dont il convient d'avoir connaissance, j'en dirai quelque chose.'<sup>9</sup>

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cates that the original manuscript had no title, the *Mémoires...* having been added in copies.

- 3 *Els Witte*, Belgische Republikeinen. Radicalen tussen twee Revoluties (1830–1848), Antwerpen: Polis 2020.
- 4 *Charles de Bavay*, Goswin de Wynants, discours de M. le procureur général de Bavay, prononcé à l'audience solennelle de rentrée de la Cour d'appel de Bruxelles, tenue le vendredi 15 octobre 1847, sous la présidence de M. de Page, premier président, L'indépendance Belge, 17 October 1847, <https://uurl.kbr.be/1054271>. Charles de Bavay (1801–1875) was made deputy proctor-general at the Brussels Court of appeal on 1 November 1830 (relatively shortly after the Belgian Revolution). He rose to the rank of proctor-general in 1844 due to King Leopold I's patronage and exercised this high office until 1870 (see *Robert Warlomont*, 'BAVAY (Charles-Victor de)', in: Biographie Nationale 34, Bruxelles: Bruylants, (supplément, VI) 1967, col. 48–58: Digithemis, Base de données et répertoire des magistrats belges: <http://prosopo.sipr.ucl.ac.be:8080/prosopographie3/>). De Bavay also treated the Ancien Régime lawyers Stockmans and Van Espen, as well as the Council of Brabant's operations in his *Mercuriales*.
- 5 *Zeger Bernhard van Espen*, Opera quaecumque hactenus in lucem prodeunt omnia, Lovani: s.n. 1721; *Jan Van den Broeck*, De historiografie van het recht in de Zuidelijke Nederlanden tijdens de 18<sup>de</sup> eeuw, Brussel, KVAB 1990, 70–72. Van Espen posthumously gained the sympathy of the star of Belgian civil law, *François Laurent* (Van Espen: Etude historique sur l'église et l'état en Belgique, Bruxelles: Lacroix 1860).
- 6 I thank Dr. Marie-Charlotte Le Bailly for this suggestion. The manuscript (further: *Wynants*), which is probably a copy, can be consulted in open access: <https://anet.be/record/opacanet/c:lvd:15072816/N>.
- 7 I have been assisted in the process of transcribing a substantial part (62 folios or 124 pages) by research students Leen Elewaut and Max Van den Bosch in the month of April 2021. This script (with a CER of 3,5%) successfully transcribed the rest of the *Mémoires*.
- 8 *Delsaerdt* (n. 2), 786.
- 9 *Wynants* (n. 6), 148.

## 1.1. Precedent and Power



GOSWINUS COMES DE WYNANTS, In Supremo Consilio Belgico apud CAROLUM VI.  
Imperatorem Conciliarus; Belgian State Archives, Iconographic Atlas

Goswin Arnould de Wynants (1661–1732) was one of the most prominent lawyers and – if we may use the term – politicians or advisors to the prince in the early eighteenth century Austrian Low Countries. Pursuant to the Peace Treaties of Utrecht (11 April 1713), Rastatt (6 March 1714) and Baden (8 September 1714), Archduke Charles of Habsburg, who was elected and crowned Emperor of the Holy Roman Empire in 1711, was recognised as sovereign in the various principalities in the Southern Low Countries which had been under the rule of Charles II of Habsburg, the last ruler of the eldest branch of the family on the throne of Spain. The Barrier Treaty signed in Antwerp (15 November 1715) and revised in The Hague (22 December 1718) imposed restrictions on Charles VI's freedom as a ruler.<sup>10</sup>

10 Treaty between Charles VI, George I and the Dutch Republic, Antwerp, 15 November 1715, 29 CTS 333; Convention between Charles VI, George I and the Dutch Republic,

Wynants was called to the Supreme Council for the Low Countries in Vienna in April 1717<sup>11</sup>. According to Pierre Delsaerdt, Wynants had from then on become 'irreplacable' in Vienna.<sup>12</sup> In the 1680s, he had studied law at the University of Leuven, the sole university of the Southern Low Countries entitled to deliver this degree.<sup>13</sup> After a stint as lawyer, he became a councillor (judge) in the Council of Brabant, the sovereign court of law of the Duchy of Brabant (1695),<sup>14</sup> one of the main principalities of the Low Countries. From this exceptional position, Wynants wrote a pedagogical treatise for his third son Henri Guillaume (1698–1762).<sup>15</sup> Wynants conceived of his *Mémoires* as a shorter guide to the established source publications of (what we would today call) constitutional documents and case law.<sup>16</sup> Earlier, he had already written a private commentary on the Ordinance of 13 April 1604, which settled the procedure before the Council of Brabant, with the same pedagogical purpose.<sup>17</sup>

It is remarkable that Wynants attaches considerable attention to the wages and emoluments associated with the various governmental positions in the Southern Low Countries. The *Mémoires* are written for his son's career.<sup>18</sup> It is not a surprise either that Wynants attempts to settle personal accounts. He for instance reproached

The Hague, 22 December 1718, 30 CTS 485; *Klaas Van Gelder*; Regime Change at a Distance. Austria and the Southern Netherlands Following the War of the Spanish Succession (1716–1725), Leuven: Peeters 2016, 113–144.

- 11 Wynants (n. 6), 39. On the institution, see *Michel Baelde et René Vermeir*, *Hoge Raad voor de Nederlanden te Wenen*, in: Erik Aerts et al. (eds.), *De centrale overheidsinstellingen van de Habsburgse Nederlanden (1482–1795)*, Brussel: *Algemeen Rijksarchief* 1990, 116–123; *Van Gelder* (n. 10), 180–187.
- 12 Delsaerdt (n. 2) 784. See also *Joseph Cuvelier*, *Le commerce, l'industrie et l'administration des Pays-Bas autrichiens au commencement du XVIII<sup>e</sup> siècle. Enquête du comte de Wynants (1728)*, *Bulletin de la Commission royale d'Histoire*, LXXXI (1912), 27–52, DOI 10.3406/bcrh.1912.1911.
- 13 'de mon temps, en mars 1687 [sic]' (Wynants [n. 6], 348). Previous to 1668, Leuven had had the competition of Douai, but French conquest eliminated this competitor. Degrees from the universities of Bologna, where a historical tradition of a 'collège de la nation établi' existed and Cologne ('mère particulière de celle de Louvain') were exceptions (*Ibid.*, 346–347).
- 14 Wynants (n. 6), 65–97.
- 15 His eldest son, Pierre Melchior (1691–1727), had taken up his father's seat in the Council of Brabant, but died early. His younger brother Arnould Charles (1698–1762) also read law, became a canon of the Brussels Cathedral, but had to flee to the Dutch Republic in the *Unigenitus*-controversy around Jansenism (Delsaerdt [n. 2], 782–784).
- 16 E.g. Wynants' own *Traité des tailles, vingtièmes, et d'autres charges publiques, réelles, personnelles et mixte*, s.l.: s.n. 1701; *Supremæ curiæ Brabantiae decisiones recentiores*, Bruxellis: typis J. Moris 1732.
- 17 *De Bavay* (n. 4) and Wynants, *Remarques sur les ordonnances du Conseil de Brabant du treize avril 1604 touchant les procès criminels*, s.l.:s.n. 583 ff. A copy is kept at the manuscript department of the Ghent University Library, BHSL.HS.1580. See *Eddy Put*, 'Opinies. Beraadslaging en archiefvorming bij de Raad van Brabant (16<sup>de</sup>–18<sup>de</sup> eeuw)', in: Remco Van Rhee, Fred Stevens & Ernest Persoons (eds.), *Voortschrijdend procesrecht: een historische verkenning*, Leuven: Leuven University Press, 2001, 30 (deploring the non-published status of the treatise).
- 18 Delsaerdt (n. 2), 785.

Count Bergeyck (principal minister in the Spanish Low Countries, surnamed ‘*Le Colbert Belge*’)<sup>19</sup> to have deprived him of his *survivance* (hereditary claim) in the Council of Brabant in 1693.<sup>20</sup>

From 1717 on, Wynants logically interacted with Prince Eugene of Savoy, who was nominally governor-general of the Low Countries. Wynants prided himself on his political and legal erudition, and did not refrain from contradicting Eugene. Wynants proudly recalls that the famous *generalissimo*<sup>21</sup> asked for him during a stint in Prague of the imperial court. Eugene intended to appoint a new Secretary of State and War, an office created under Spanish rule in 1559.<sup>22</sup> The governor-general had destined the able and well-known lawyer of Irish descent Patrick Mac Neny for this appointment.<sup>23</sup> Wynants, however, was of the opinion that only the sovereign could do this. As Eugene stuck to his own interpretation (reserving this appointment for the governor-general), Wynants took the affair to the Supreme Council, which he managed to convince.

Eugene was obliged to seek a second opinion.<sup>24</sup> He was granted the special (and thus one-off) permission to appoint Neny, but had to insert this legal basis in the individual administrative act conferring the position, ‘*afin que ses successeurs apprisent et connussent par là que cette collation étoit du nombre des reserveés [sic]*’.<sup>25</sup> Similarly, although Eugene could rely on precedent to accept resignations (the reverse side of appointments) in his own name, Charles VI had the Supreme Court emphasise in an advice that the governor-general could only do this in the sovereign’s name, as the instructions at his appointment specifically prescribed this delegation.<sup>26</sup>

Wynants’s *Mémoires* give a concise but revealing insider’s view of the practice of administration and legal advice in the early eighteenth-century Habsburg monarchy. He complained that the two unclear situations above were a consequence of ill-drafted instructions for Eugene of Savoy at his appointment. The Austrian Habsburg’s rule in the Southern Low Countries was presented as a logical continuation of the Spanish branch’s tradition.<sup>27</sup> Logically, a request was sent from Vienna to

19 *Reginald De Schryver*, Jan van Brouchoven graaf van Bergeyck 1644–1725: een halve eeuw staatkunde in de Spaanse Nederlanden en in Europa, Brussel: Paleis der Academiën 1965.

20 *Wynants* (n. 6), 75; *Delsaerdt* (n. 2), 783.

21 *Wynants* (n. 6), 359. See *Derek McKay*, Prince Eugene of Savoy, London: Thames & Hudson 1977.

22 *Piet Lenders*, Secretarie van State en Oorlog, in: *Erik Aerts* et al. (eds.) (n. 11), 386–397.

23 *Bruno Bernard*, Patrice Mac Neny (1676–1745), Secrétaire d’État et de Guerre, in: *Hervé Hasquin & Roland Mortier* (dir.), *Études sur le XVIII<sup>e</sup> siècle. XII – une famille de hauts fonctionnaires: les Neny*, Bruxelles, ULB 1985, 7–78. Neny’s son Patrice François would marry Wynants’ daughter Albertine Isabelle in 1739 and would have published one of Wynants’ works on the case law of the Council of Brabant (*Delsaerdt* [n. 2], 782, 785).

24 *Wynants* (n. 6), 147.

25 *Ibid.*, 147.

26 *Ibid.*, 146.

27 *Virginia León Sanz*, Carlos VI. El Emperador que no pudo ser Rey de España, Madrid: Aguilar 2003.

Brussels, in order to procure the instructions of the preceding governors since 1531. Prié, Eugene of Savoy's Piemontese minister plenipotentiary, was accused of not having sent the original versions from Brussels, under the pretext '*qu'il ne pouvoit pas le[s] trouver*'.<sup>28</sup> Of course, Wynants asserted he easily retrieved the instructions for Archduke Albert of Austria, Cardinal-Infant Ferdinand of Austria, Count de Mello, Count Monterrey and the other 17<sup>th</sup> century governors, and surmised that Prié had only pretended that they could not be found, in order to avoid limitations on Eugene's power.<sup>29</sup>

## 1.2. Dealing with the Estates of Brabant

### 1.2.1. Resistance To the Absolutist Trend?

The tradition of representative assemblies, wherein the flourishing commercial centres of the Low Countries could oppose their prince and tie his or her hands for taxation, goes back to the Middle Ages.<sup>30</sup> The county of Flanders,<sup>31</sup> the duchy of Brabant and the county of Hainault<sup>32</sup> had the most important representative institutions, wherein subjects tried to safeguard their 'privileges, immunities and customs'. The word 'constitution' is rarely mentioned in the *Mémoires*. Yet, as the following pages will make clear, numerous synonyms existed for what we would today call a 'Constitution'.<sup>33</sup>

The major constitutional issue was the upholding of the privileges of the subjects of the Duchy of Brabant, as enshrined in the Joyous Entry, a constitutional document from 1356, to which the successive rulers pledged allegiance at their inauguration.<sup>34</sup> Although the County of Flanders claimed a similar tradition of restraint on the ruler's powers, a similar unique document was lacking.<sup>35</sup> Next to the provincial constitutional documents, collective charters granted to all provinces (e.g. the Grand

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28 Wynants (n. 6), 146.

29 *Ibid.*

30 Wim Blockmans, *Mede-zeggenschap: politieke participatie in Europa vóór 1800*, Amsterdam: Prometheus 2020.

31 Wynants (n. 6), 177–180; Jan Pieter Zaman, *Exposition des Trois Etats du Païs et Comté de Flandres, scavoir: du clergé, de la noblesse, & des communes*, s.l.: s.n., 1711.

32 Wynants (n. 6), 181–183; Marie Van Eeckenrode, *Les États de Hainaut sous le règne de Philippe le Bon (1427–1467)*, Heule: UGA 2011.

33 This should remind us of the pitfalls of over-simplifying the use of an HTR transcription of any kind of written source. It remains mandatory to read the text in full and contextualise the contents. Almost three centuries after its redaction, the thematic chapter structure applied by Wynants remains the surest guide throughout the manuscript.

34 See Valerie Vrancken, *De Blijde Inkomensten van de Brabantse hertogen. Macht, opstand en privileges in de vijftiende eeuw*, Brussel: ASP 2018.

35 Klaas Van Gelder (ed.), *More than mere spectacle: coronations and inaugurations in the Habsburg monarchy during the eighteenth and nineteenth centuries*, New York: Berghahn Books 2021.

Privilege of 1477)<sup>36</sup> and historical city charters could be invoked. Yet, for the latter, Wynants stated that the monarch was always at liberty to:

‘change, augment, restrict or interpret [...] since it is essential to the sovereign’s right to rule to have the power to make and undo a law, even if it bears the name of perpetual edict.’<sup>37</sup>

Wynants devotes the eighth chapter of his work to the provincial Estates of the Low Countries and the inaugurations of the sovereign. In his overview of Charles VI’s provinces, Wynants emphasised the ‘*diminutions*’ or losses suffered through the Eighty Years War (1568–1648) and at the Peace of Utrecht (1713), where parts of the Duchy of Limburg had been ceded to Prussia, the Elector Palatinate and the Dutch Republic. Of Guelders, ‘almost nothing remained’.<sup>38</sup>

The smaller principalities of Malines,<sup>39</sup> the Marquisate of the Holy Empire and the Duchy of Lothier<sup>40</sup> were not deemed worthy of Wynants’s attention, since they had been comprised by and ‘*enveloppées*’ in Brabant.<sup>41</sup> Conversely, although they were not formally recognised as a province, the City of Tournai and its surroundings (the *Tournaisis*), ceded by Louis XIV at the Peace of Utrecht, were governed by Estates.<sup>42</sup>

Wynants refers to foreign examples to underline that Estates ‘shared’ at least ‘a part of sovereignty’ with the ruler: Germany, England and ‘elsewhere’ are seen as illustrations. However, ‘England’ (sic) constituted the exception, with its parliament exercising ‘a considerable part of sovereignty’ since 1688, contrary to the other parts of Europe, where everything had ‘*grandement changé*’.<sup>43</sup>

As a shared characteristic, the estates of all provinces, save for Flanders and Guelders, were composed of ‘three classes’: clergy, nobility and the third estate, or the ‘cities and communities’.<sup>44</sup> The Flemish ‘exception’ had not always been one, as Zaman’s treatise informed Wynants of the past, where the three estates had been present.<sup>45</sup> Only the clergy and the main cities of Ghent and Bruges, as well as the

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36 Wim Blockmans, The Medieval Roots of the Constitution of the United Provinces, The Medieval Low Countries 2017, nr. 4, 215–248, DOI 10.1484/J.MLC.5.114820.

37 Wynants (n. 6), 399.

38 *Ibid.*, 152. For Guelders: *Ibid.*, 186–187.

39 Malines did not have an Estates assembly, but was governed solely by the city’s magistrate, council and heads of the *métiers* (guilds) (*Ibid.*, 191).

40 In practice, this concerned the territory around Genappe, 28 kilometres South of Brussels. The Chamber for Lothier had its seat here, and exercised competence over 36 villages, but its sentences could be challenged in appeal at the Council of Brabant (*Ibid.*, 175).

41 *Ibid.*, 153.

42 *Ibid.*, 191–193. Seven out of ten parishes in Tournai (facing Flanders), were under the bishop’s (ecclesiastical) jurisdiction, whereas the remaining three, facing Hainault, were under that of the Archbishop of Cambrai, which had been conquered by Louis XIV during the Dutch War (1672–1678) (*Ibid.*, 281). This complexity came on top of the ‘daily dissensions and tempests’ with lay judges (*Ibid.*, 317, 322–323).

43 *Ibid.*, 153.

44 *Ibid.*, 154.

45 *Ibid.*.

Franc of Bruges (a highly developed rural area around Bruges) composed the third estate. Ypres, which used to count among the ‘Members of Flanders’ had lost its status at its reincorporation into the Austrian Low Countries with the Peace of Rastatt. Charles VI considered these territories ‘*comme pays de conquête*’, which made a representation superfluous.<sup>46</sup>

In spite of the nobility’s seeming elimination from the Estates, a trial had still been pending before the Grand Council of Malines ‘since ninety years’ (!).<sup>47</sup> The members of Flanders had been sued by a representative of the nobility. ‘Political reasons’ explained the undecided status of the case.<sup>48</sup> The clergy, finally, had been ‘excluded for a long time’, but had managed to cause ‘such a great noise’ that it had managed to be readmitted under certain conditions, namely contributing proportionally to provincial taxation.<sup>49</sup>

### 1.2.2. Who Represents Brabant?

Who composed these ‘representative assemblies’? Wynants started with the Duchy of Brabant, which held the first rank. The clergy was represented by the Archbishop of Malines, but not – as one might expect – in his dignity as head of the Church in the Austrian Low Countries. He sat in the Estates as abbot of Affligem.<sup>50</sup> The bishop of Antwerp was a member as abbot of the wealthy abbey of St Bernard (Hemixem).<sup>51</sup> The secular clergy had tried to establish itself in the Estates ‘several times’, but had failed to be received: ‘*on l’a toujours éconduit*’.<sup>52</sup>

46 *Ibid.*, 154. *Michael-W. Serruys*, Ypres, la Flandre rétrécée et la politique de transit au XVIII<sup>e</sup> siècle, in: Olivier Ryckebusch/Rik Opsommer (dir.), Guerre, frontière, barrière et paix en Flandre, Ieper: Stadsarchief Ieper 2014, 187–231. Wynants reported to have debated the Emperor’s right to appoint a bishop in Ypres pursuant to the treaties of Utrecht and Rastatt, and stated he had finally gained the upper hand against ‘*la cour de Rome dure à l'éperon d'avouer son tort*’ (*Ibid.*, 283). This brings him closer to a possible Jansenist connection (*Delsaerdt* [n. 2], 787).

47 The Grand Council of Malines, created by Philip the Fair (Charles V’s father) in 1504 as successor to earlier Burgundian attempts at a Supreme Court, was established as the supreme court of law in the Low Countries. However, due to Brabant’s specific constitutional situation, it could not hear appeals against sentences of the Council of Brabant. Furthermore, as the Supreme Court was the sovereign’s court, its judgments could be appealed in his (or her) Secret Council. Only the *Chef-Président* of the Secret Council could use the grand seal of the sovereign (*Wynants* [n. 6], 52–65). Wynants – a former councillor in the Council of Brabant – thought that its authority was ‘much greater than that of the Grand Council’, (*Ibid.*, 65). He would have ambitioned the position of *Chef-Président* himself (*Delsaerdt* [n. 2], 784).

48 *Wynants* (n. 6), 155.

49 *Ibid.*

50 Benedictine abbey founded in 1062. The Archbishop received half of the abbey’s revenues (*Ibid.*, 277).

51 Cistercian abbey founded in 1236 (*Ibid.*, 277). In view of the political consequences, it is not surprising that only the sovereign could appoint the Archbishop of Malines and most abbots in Brabant, Flanders, as well as ‘many’ in Hainault, Limburg and Guelders (*Ibid.*, 148).

52 *Ibid.*, 159.

A seat on behalf of the nobility in Brabant required at least the title of ‘Baron’, a pedigree of at least four noble quarters, ‘*d’ancienne noblesse*’ and the income of at least 4 000 florins a year. Wynants explained that the corresponding noble title had to be tied to a fief in the Duchy. If a Duke or Prince only held a Barony in Brabant, he would then be restricted to this title only in the Estates.<sup>53</sup>

In principle, an ordinance from 1664 imposed a revenue of at least 6 000 florins to attribute the title of Baron in the Low Countries, 12 000 for Count or Marquess, and 24 000 for Dukes and Princes. Yet, «*cette ordonnance n’est pas reçue en usage*»: the sovereign granted titles as he or she pleased. The adagium *patere legem quam ipse fecisti* was not applicable to the sovereign.<sup>54</sup> Wynants added that ‘in my own notes for the Supreme Council [of the Low Countries in Vienna], I found that there are regulations on the quality and goods necessary for the title of Baron, Count &c’, but he admitted not having been able to retrieve them again.<sup>55</sup>

The Third Estate of Brabant consisted of the three main cities Leuven, Brussels and Antwerp.<sup>56</sup> Wynants followed the *Coutumes Generales de Brabant*.<sup>57</sup> He deplored the loss of Berg-op-Zoom (the former fourth main city). Earlier, no less than seven cities had directed the Third Estate, as Nivelles, Tirlemont (Tienen) and Léau (Zoutleeuw) had had this rank. Wynants deplored that it was not known when the latter had specifically lost membership of the Third Estate.

The highly complex nature of the corporatist concept of representation appears when Wynants explains how the delegates of Leuven, Brussels and Antwerp depended on the consent of their home town. Four members (whose unanimous consent was required) formed the collective will in Leuven (the city which held the historical ‘first rank’ in the Duchy):<sup>58</sup> the ordinary city magistrate (appointed by the sovereign among the local notables),<sup>59</sup> the council, the academy (the university) and the ‘*overdekens*’ or chief deans of the guilds. In Brussels, three members coexisted: the ordinary city magistrate (the mayor and seven aldermen), the councillors of the ‘*Breiden raedt*’ (large council) and the nine representatives of the city’s forty-seven guilds, whose deans were represented in the ‘*arrière-conseil*’. A ‘*machine difficile à émouvoir et à gouverner*’, Wynants sighed...

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53 *Ibid.*, 156, with reference to the Duke of Ursel, who could only claim his seat as Baron of Hoboken.

54 *Ibid.*, 157.

55 *Ibid.*

56 *Raymond van Uytven/Claude Bruneel/A.M. Koldeweij* (eds.), *Geschiedenis van Brabant: van het hertogdom tot heden*, Zwolle/Leuven/’s Hertogenbosch: Waanders/Davidsfonds/Stichting Colloquium de Brabantse Stad, 2011.

57 *Wynants* (n. 6), 159.

58 *Ibid.*, 163.

59 Although the sovereign (in practice the councils advising the governor-general) decided on appointments, this was still limited to the available local notables. At best, the sovereign could pick a side in part of the local elite. Wynants considered it an inconvenience to keep ‘*les longs magistrats*’ (*Ibid.*, 401) and advised to shake up the composition regularly. He reproached governor-general Maximilian Emmanuel of Bavaria (1698, 1699, 1700) and Prié (1717) that they could have prevented ‘*les émotions survenues*’ by doing so (*Ibid.*, 403).

Finally, in Antwerp, four members coexisted: firstly, the mayor and aldermen, secondly, the former aldermen, thirdly, the ‘*Weikmeesters*’ (quarter-masters) and, finally, the three chief nations (*Batteliers, merciers, drapiers*).<sup>60</sup> The Antwerp ‘*Weikmeesters*’ and chief nations were as difficult as the third member in Brussels! Wynants added that, in his own experience, the stubborn Antwerp members had been even ‘*beaucoup moins maniable*’, as the third and fourth members in Antwerp quarrelled with the second (the former aldermen), the latter being supported by the central government.

Wynants presented the ‘rights’, or ‘[...] *priviléges* [sic]’, which could be derived from the ‘*Jouieuses entrées* [sic]’. He first explains that these documents were very lengthy up until Charles V’s inauguration in 1514. The successive union of the XVII Provinces made too many variations problematic, as the ‘*harmonie du Gouvernement*’ required some unifications. The Emperor could not alter this *motu proprio*, but chose to debate this with his Estates, who agreed to modify the document for the second inauguration of Charles V and his son Philip II as successor in 1542. Wynants referred to the *Codex Belgicus* of Antonius Anselmo.<sup>61</sup>

Due to the union of Brabant and Limburg in the thirteenth century, a single inauguration covered both titles. For the occasion, the deputies from the latter joined the former, representing their ‘*committens*.’ As a consequence, the Estates and inhabitants of Limburg enjoyed the same rights and privileges of the Joyous Entries. This meant that inhabitants of Limburg could obtain public office in Brabant, and vice versa, as they were ‘*réputés conaturels*’ [sic].<sup>62</sup> For the first union of both Duchies, Wynants referred his son to the *Luyster van Brabant*, a book ‘suppressed in 1700’ by government order, of which several copies escaped search and seizure.<sup>63</sup> The second one could be found in the *Placcards de Brabant*.<sup>64</sup>

Most importantly, the union between Brabant and Limburg entailed advantages for the inhabitants of both principalities, allowed for a joint inauguration, but did not create a unified polity! For ‘*aides et subsidies, et autres subvention* [sic], Limburg and Brabant remained ‘*provinces indépendantes*’ [sic].<sup>65</sup> In other words, the mandatory consent for taxation had to be sought separately.<sup>66</sup> This was all the more

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60 *Ibid.*, 158.

61 *Antonius Anselmo, Codex Belgicus seu Ius edictale a principis Belgarum sancitum*, Antwerpen: Petrus Bellerus 1662.

62 *Wynants* (n. 6), 160–161. Otherwise, one would need a *lettre de Brabantisation*, a special form of letters of naturalisation, which the sovereign could only grant with the mandatory consent of the Estates (*Ibid.*, 83).

63 *Jean Baptiste Ansems, Den luyster ende glorie van het hertogdom van Brabant, herstelt door de genealogique beschryvinghe van desselfs souveryne princen, ende door het ontdecken van den schat der privilegien, ordonnantien, ende soo rechts, en staet-kundige, als oeconomique reglementen der stadt Brussel*, Brussel: t’Serstevens 1699.

64 *Hendrik Aertssens, Placcaeten ende ordonnantien vande Hertogen van Brabant princen van dese Neder-landen*, Antwerpen: Henderickx Aertssens 1648.

65 *Wynants* (n. 6), 161.

66 The joint meeting of the Estates of all provinces (in the Estates-General) had ceased in the seventeenth century, pursuant to the revolt against Philip II. Wynants explains this

logical due to the distinct economic situation of Limburg, more closely connected to the Prince-bishopric of Liège<sup>67</sup> and the Holy Roman Empire (situated in the present-day *Ostbelgien* and Dutch Limburg).<sup>68</sup>

## 2. Allegiance, Taxation and Consent

The Joyous Entry (Brabant) was unique to the provinces of the Austrian Low Countries: in no other province did the sovereign enter into a ‘*traité particulier*’ with the Estates as he (or she) did in Brabant. The Duke did not just promise to treat subjects ‘*en Bon prince*’, but also to respect all ‘*loix fondamentales*’<sup>69</sup>, old customs, charters and privileges. This essential condition guaranteed their obedience as ‘*bons et fidèles sujets*’.<sup>70</sup> Wynants recalled the inauguration of Charles VI as Duke of Brabant on 11 October 1717, ‘*à Grands frais* [sic]’, costing the treasury 190 000 florins.<sup>71</sup> Charles VI did not assist in person, nor did his governor-general Eugene of Savoy. The latter’s representative, minister plenipotentiary Prié, demanded ‘*une bonne somme*’ to cover his representation costs.<sup>72</sup> At occasions like these, where the sovereign was not present in person, the ceremony was usually held in Brussels.<sup>73</sup>

The ‘*plus grand droit*’, and the ‘true *loi fondamentale* of the country’, according to Wynants, was that ‘the sovereign cannot make any kind of imposition, nor charge his subjects without the Estates’ consent’.<sup>74</sup> This point, ‘undoubtedly limits the authority of the Prince’. Yet, Wynants argued that the Estates had to use their veto power wisely: ‘*on ne sauroit ni le renverser ni le detruire sans voir faire une injustice manifeste*’. The subjects had solemnly pledged allegiance to the Duke at his

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by the monarchs’ desire to ‘avoid the embarrassment’ of having this corpus assembled (*Ibid*, 194).

67 Liège was not a part of the Austrian Low Countries, hence the prince-bishop’s listing as ‘*Eveque* [sic] *étranger*’ with jurisdictional overlaps in Charles VI’s lands (*Ibid*, 286).

68 *Ibid*, 233: ‘*la belle fabrique de nos draps*’ would suffer too much from uniform tariffs. The ‘*nos*’ might betray that Wynants’ father had been pensionary of the Duchy of Limburg (*Delsaerdt* [n. 2], 782). See also *Carlo Lejeune* (Hrsg.), *Grenzerfahrungen: eine Geschichte der Deutschsprachigen Gemeinschaft Belgiens*. T. 2: Tuche, Töpfe, Theresianischer Kataster (1500–1794), Eupen: Grenz-Echo Verlag 2016.

69 Heinz Mohnhaupt, *Die Lehre von der ‘lex fundamentalis’ und die Haugsgesetzgebung europäischer Dynastien*: in Johannes Kunisch/Helmut Neuhaus (Hrsg.), *Der dynastische Fürstenstaat. Zur Bedeutung von Sukzessionsordnungen für die Entstehung des frühmodernen Staates*, Berlin: Duncker & Humblot 1982, 3–33.

70 *Wynants* (n. 6), 161.

71 As a comparison: the recurrent cost of Archduchess Maria Elisabeth’s household amounted to 560 000 florins (*Ibid*, 42).

72 *Ibid*, 162.

73 *Ibid*, 163. Wynants explains how he travelled from Vienna to Leuven to sound out the head deans and their first pensionary Van Besten on an inauguration in Leuven, offering to procure them an ‘*acte de non prejudice*’ [sic], which would allow the city to ‘*mieux justifier leur prétendu droit*’.

74 *Ibid*, 214–218.

inauguration, and had thus to use their power in good faith.<sup>75</sup> Conformably to this ideal of harmony, Wynants underlined that the ‘zeal and affection for the sovereign’ had always been present.

### 3. The Limits of Royal Authority: Philip II of Spain, A Foreign Prince?

Yet, if ‘*les Esprits se menagent [sic] aisement*’... the risk always existed that ‘*si on les Brusque*’, approval could turn into a stubborn refusal.<sup>76</sup> The clearest example had been the Estates’ refusal to consent to the taxes proposed by the Duke of Alva in the sixteenth century.<sup>77</sup> His conduct, and that of Philip II, had generated ‘the destruction of sovereignty itself’.<sup>78</sup> If only Margaret of Parma, Charles V’s illegitimate daughter (born in Oudenaarde in the County of Flanders), had been allowed to stay on as governor-general, Wynants surmised that the ‘*malheur*’ of the separation of the Low Countries would not have happened. Yet... ‘*Sed sic ita erat in fatis. quand on doit devenir aveugle, le mal prend par les yeux.*’<sup>79</sup>

If she would not have been replaced by Alva, Margaret would have continued her ‘infinitely wise’ father’s policy.<sup>80</sup> Charles V had been ‘born and brought up among us’, and had ruled according to laws and privileges. All orders of the state had served him with all their energy and devotion. Yet, Philip II, ‘educated in Spain, in the manners prevailing in that country’, had not provided his zealous subjects with the ‘*amour du prince*’ they were entitled to receive. Reserved and cold towards the ‘*Flamands*’, Philip, ‘gifted by God with great talents’, had committed the error to ‘rely too much on himself’. The revolt had been the logical ‘*triste suite d’un Grand Génie*'.<sup>81</sup> Wynants’s moralising reading of national history (through Cardinal Bentivoglio’s *Della guerra di Fiandra*) should not obscure the fundamental legal logic of his reasoning.<sup>82</sup> The prince committed himself to respecting customs and privileges. If he failed to live up to this commitment, his subjects were freed of their countervailing duty to obey.

Philip’s behaviour had been all too reckless, certainly if one considered that the ‘consent of the three Estates of Brabant had to be *uniforme de tous*’. The first (clergy), the second (nobility) and the third class (the three main cities, including all of their own ‘members’) had to agree. The slightest dissent could prevent the prince’s obtaining consent for taxation.<sup>83</sup> The first and second class, with the support of Leuven

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75 *Ibid.*, 164.

76 *Ibid.*

77 *Ibid.*, 165.

78 *Ibid.*

79 *Ibid.*

80 *Ibid.*

81 Wynants (n. 6), 166.

82 X, *Della guerra di Fiandra descritta dal cardinal Bentivoglio*, Venezia: Gabriel Hertz 1702.

83 Wynants (n. 6), 166.

and Brussels would have been powerless against a ‘*sentiment contraire*’ of Antwerp. Conversely, if the nations (guilds) in Brussels did not agree with the city’s magistrate and grand council, there would not be any kind of ‘*consentement compté*’ within the assembly of Estates.<sup>84</sup>

## 4. Consumption Taxes and Prudent 17<sup>th</sup> Century Rulers

### 4.1. Meat, Grain, Wine and Beer: the Brussels Guilds Revolt

The problem was more specific for Brussels. As Wynants was writing, Governor-General Maria Elisabeth argued that with the city magistrate, the greater council and four nations, a simple majority would be achieved in Brussels: six votes against five. Wynants accepted that this argument was based on an ordinance by Charles V (1545) and one of Archduke Albert and Infanta Isabella (1619).<sup>85</sup> Yet, he emphasised that disputes ought to be prevented. Unanimity was better than a majority vote, even if the former required a longer process. The first mayor (*Bourgemaitre*) and pensionary<sup>86</sup> of Brussels ought to be trusted with the city’s intricate internal politics.

The example of a ‘*tempête bien grande*’ in 1619 illustrates the prudent admonition given by Wynants. The ‘*caprice des nations*’ caused trouble when Albert and Isabella requested the Estates of Brabant’s consent for the continuation of indirect taxes on the consumption of the ‘four species’: meat, grain, beer and wine.<sup>87</sup> The sovereign has to request and obtain permission every six months for these. As the Chancellor of Brabant<sup>88</sup> had proposed this to the Estates, clergy and nobility agreed, followed by Leuven, Antwerp and Berg-op-Zoom. In Brussels, the first two members agreed for another six months, but most nations refused ‘*tout plat*’.

How did the sovereigns react? Wynants depicted Albert and Isabella as the ‘most benign and sweet princes on earth’. They appealed to the Chancellor and other min-

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84 *Ibid.*, 167.

85 *Ibid.* With reference to the ‘fourth book’ of the *Edits de Flandres*, which probably means *Bernaert van Zoomeren*, *Derden placaet-boeck van Vlaenderen*, inhoudende de placcaeten, ordonnancien, reglementen, tractaeten, alliancien, ende andere edicten, gheëmaneert van weghen de koninghen van Spagnien [...] ende van hunne [...] Graven van Vlaenderen, ende souveraine princer van dese Nederlanden, Gent: Jan vanden Kerkchove, 1685, the fourth book having only appeared in 1740, ten years after the manuscript was drafted, and covering the period after 1684.

86 Chosen by the city magistrate, with a seat in the Estates: ‘*Si le pensionnaire est sage et prudent, il contribue autant que le Bourgemaitre à la réussite des Subsides.*’ (Wynants [n. 6], 404).

87 *Ibid.*, 168.

88 President of the Council, and thus the Duchy’s top judge. He had the competence to appoint *procureurs* (proctors), but also had the *collation* (the right to propose a candidate) for vacant abbeys in Brabant and Limburg (*Ibid.*, 67). Only the sovereign could appoint the Chancellor of Brabant, the *Chef-Président* of the Secret Council, the President of the Grand Council of Malines, the Treasurer General, the members of the Council of State and the Privy Council (*Ibid.*, 143).

isters thought to hold any influence on the burghers of Brussels and mollify their hard heads, but to no avail. Consequently, the councils (Council of State,<sup>89</sup> Privy Council,<sup>90</sup> Council of Brabant) were asked for advice. Their unanimous suggestion was to skip the Brussels nations' refusal, and move to the act of acceptation, by which the Estates of Brabant would confirm their consent for consumption taxes.

This overt challenge of the nations' right to veto debates caused uproar.<sup>91</sup> Mutinous subjects gathered at the tax administration. Revenue collection officers were chased from their desks. The rebellious nations declared that consumption taxes could simply not be collected without their consent, upon which Albert and Isabella decided to leave the vociferous capital and withdraw to the castle of Mariemont.<sup>92</sup> The insult made to the sovereigns was so blatant, that all other consenting classes and the other cities of the Third Estate were irritated. They suggested that the consent of the recalcitrant nations in Brussels ought to be '*enveloppé [...] en flamand Vervanghen*' (swapped) by that of the others.<sup>93</sup>

Albert and Isabella's wrath became clear when Marquess Spinola appeared with 12 to 15 thousand men in Schaarbeek, a village situated to the North of the city. The mutinous guilds caught fear and sent out deputies to the sovereigns in Mariemont, headed by the first mayor of the city, van Busleiden. The offer of unconditional submission was however rejected by Albert and Isabella, who advised the guilds to turn to the military commander, who had been properly mandated to resolve the issue.<sup>94</sup> The 'wise and prudent' conduct of mayor van Busleiden had pleased the sovereigns, who issued new regulations on 29 October 1619. The 'culprits' of the mutiny received a generous general amnesty, except the 'six most mutinous' among them, and a seventh one, a lawyer and councillor named Cuyck Vanlinden. They were all banned from the Low Countries.<sup>95</sup>

Wynants prided himself on the rather lengthy digression, because he had been personally given the original archival documents during new uproar in 1698, 1699 and 1700.<sup>96</sup> The Council of Brabant, of which Wynants was a member at that time, had to finish off the crisis by pronouncing sentences, supported by an army corps of ten thousand men quartered in Brussels.

Moreover, Wynants had acted as councillor to minister plenipotentiary Prié during the crisis of 1717 and 1718, whereby the '*caprice*' of the populace in Brussels had been met with '*la justice soutenue par la force*'.<sup>97</sup> Unruly subjects had been brought back to their duty of obedience. Interestingly, Wynants suggested that '*le tout ayant presque passé par mes mains*', he would have been able to reconstruct

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89 *Ibid.* 5–11.

90 *Ibid.* 11–15.

91 *Ibid.* 169.

92 In Hainault, 47 kilometres from Brussels.

93 *Ibid.* 169.

94 *Ibid.*

95 *Wynants* (n. 6), 170.

96 *De Schryver* (n. 19), 199–215.

97 *Wynants* (n. 6), 171.

everything in detail, but he declined to do so in the instructions for his son. Delsaerdt signals that Wynants's house was threatened by plunderers.<sup>98</sup> This episode is well-known in Belgian historiography for the case of the decapitated dean Anneessens, whose statue in the city centre symbolises, in the famous historian Henri Pirenne's words the last of '*la sanglante série des bourgeois morts victimes de leur attachement aux libertés municipales*'.<sup>99</sup>

#### 4.2. Tax and International Trade: '*il n'y a que le provisoire qui dure*'

'Tout ce que je viens de dire, au sujet de cette dispute, est ignoré de la pluspart de ceux qui vivent aujourd'hui.' *Wynants* (1730)<sup>100</sup>

Interestingly, while Wynants turns away from the events he witnessed as contemporary, he does turn to another precedent, which took part 'under Archduke Leopold, after the Peace of Münster' (1647–1656).<sup>101</sup> Wynants' predilection for taxation resurfaced in the anecdote. The incoming and outgoing customs (*droits d'entrée et de sortie*) were introduced during the revolt as '*licence*'. It was coupled with a passport, which allowed the import or export of goods between the Spanish Low Countries and '*les pays ennemis, ou leurs Alliés*', as a derogation to the 'prohibitive Edicts', such as Philip II of Spain's, who forbade on 31 August 1597 to trade with the enemy.<sup>102</sup> The Estates had been powerless to oppose the monarch's decisions on the matter, or to refuse paying the duties.

Yet, after the Peace of Westphalia, the Estates started to question the legal basis of these *licences*, since they had been introduced in wartime without their consent. This was seen as a violation of the *loix fondamentales*. The Estates asked for the discontinuation of these exceptional wartime taxes and issued three declarations to this end (4, 19 July, 7 November 1648). Yet, Archduke Leopold informed King Philip IV of Spain that this measure would come to seriously hamper trade in the Low Countries, and even threatened to destroy it completely. France, England and Holland levied rights of entry and exit on all Spanish subjects and goods. If taxation in the Low Countries would be abolished, these rights would still remain, while foreign imports would come in for free!

98 *Delsaerdt* (n. 2), 783. See also *Van Gelder* (n. 10), 221–226.

99 *Henri Pirenne*, *Histoire de Belgique* t. V, Bruxelles: Lamertin 1926, 188; *Klaas Van Gelder*, *De markies van Prié en het Brusselse ooproer in 1717–1719*, *Tijdschrift voor Geschiedenis* CXXVII (2014), No. 3, 367–389.

100 *Wynants* (n. 6), 175.

101 Archduke Leopold was a son of Emperor Ferdinand II (1578–1637). The governor-general in the Spanish Low Countries usually was a scion of the ruling dynasty, either of the older (Spanish) or younger (Austrian branch). This conformed to a wish expressed by the provinces themselves at the Pacification of Ghent (1576). Wynants explained that Eugene of Savoy's appointment as governor-general was only possible after Charles VI had placed him in the 'sixth class' of his own succession, which amounted to a recognition as a '*prince du sang*' (*Ibid*, 130).

102 *Ibid*, 171.

Philip IV, acting ‘as a wise Prince and good father’, sought the advice of an assembly of fiscal councillors<sup>103</sup> and of all his governmental councils (including those in Madrid). They confirmed the King’s right to continue levying entry and exit rights, even if the Estates of Brabant failed to give their consent. This was met with anger by the latter. Clergy, nobility and Third Estate refused to consent to any subsidy requested by the King. This amounted to a clear invocation of the conditional nature of the subject’s obedience to the prince. As a consequence, the military could not be paid anymore! Archduke Leopold was forced to quarter soldiers in ‘*au plat Pays*’.

In the end, Philip IV used ‘means worthy of a great prince and a good father’, by referring the case to a court of law on 12 October 1654, just as Charles V had done in his quarrels with the abbots and abbesses of Brabant in 1521.<sup>104</sup> Awaiting the court’s decision, the King would remain ‘*en possession*’ of the right to levy entry and exit rights. However, when Wynants composed his *Mémoires* (1730), the Estates still had not accepted the sovereign’s officer. Wynants, as an experienced lawyer and judge, considered them to be ‘*réputés in morâ*’, which justified the ‘*possession continue*’ of the current sovereign, Emperor Charles VI, as Philip IV’s distant successor.<sup>105</sup>

Wynants devoted the full ninth chapter of his *Mémoires* to taxation, a subject worthy of any lawyer’s attention due to the constitutional implications sketched above.<sup>106</sup> The part devoted to rights of entry and exit emphasised the mercantilist objectives of customs. Wynants stated that all ‘Kingdoms, States and Provinces’ had adopted them, within as well as outside of Europe. If properly adapted to ‘time and circumstances’, taxation could boost trade, production and agricultural exports. If badly applied, irremediable damage could be inflicted on the land’s economy!<sup>107</sup> The fiscal weapon was likened to a razor blade, whose ‘*tranchant*’ generates admiration. Yet, if handled clumsily (*par une main mal habile*), this could cut into ‘*la chaire vive*’, and inflict wounds that would not heal.<sup>108</sup>

Sovereignty meant that every ruler was free to establish tariffs within his own domination, for goods entering or leaving, as well as for transit. Unless, of course, the sovereign had consented in a treaty of peace, commerce ‘or other’, and thus ‘tied and limited his own authority’.<sup>109</sup> Charles VI was reined in considerably at this level: the Emperor was heavily prejudiced by the Barrier Treaty of 1715, which had fixed a low limit of import duties for Britain and the Dutch Republic.<sup>110</sup>

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103 *Ibid.*, 173 to be read as councillors of the monarch (*fiscus* does not *per se* mean taxation here).

104 *Ibid.*, 174.

105 *Ibid.*, 175.

106 See also *Ibid.*, 254–255 on post revenues and the *maîtrise* of the prince of Thurn und Taxis.

107 *Ibid.*, 241.

108 *Ibid.*

109 *Ibid.*

110 *Ibid.*, 242, referring to the tariffs concluded by Charles II with England and the Dutch Republic in 1680, with – additionally – even lower rates for cloth, leather and other goods.

From 1706 to 1715, the Maritime Powers had controlled the major part of the Low Countries as ‘*negotiorum gestores Caroli*’, or as ‘caretakers’, at least in Wynants’ interpretation. In practice, the occupying powers had exercised wider powers than those associated with belligerent occupation since the Hague Conventions of 1899.<sup>111</sup> The transfer of factual control to Charles VI, who had been nominally designated sovereign from the outset of the war on, was tied with strict conditions. The Barrier Treaty (art. XXVI) foresaw the possibility of a renegotiation. But, alas, the Emperor had no means to compel the court of Saint James or the Estates-General to come to the table. As a consequence, he was only free to negotiate terms with France.

Moreover, the Treaty of Münster (art. XV) had obliged Charles VI to keep entry and exit rights in the ports and harbours of Flanders at the same level as those for the ‘*bouche de la riviere* [sic] de l’Escaut’, which was of course designed to prevent tariff competition with the Northern Low Countries. Ironically, in spite of the constitutional controversy on the origin of these duties, the income they generated... had been almost entirely absorbed by debt repayments to the Dutch Republic.<sup>112</sup>

His worries for the international trading position of the Low Countries are echoed in the tenth chapter, exclusively devoted to ‘trade’.<sup>113</sup> The recently established and successful Imperial East India Company in Ostend (1722) was cited as a key turning point. Capital from Ghent, Antwerp and Brussels was invested in ships bringing back (among others) tea and spices from the East Indies, breaking prices and thus competing with the earlier established Dutch and British companies. This huge success had ‘lightened up the depressing mood for trade and industry’, but almost triggered a general European war. Unfortunately for Wynants, Charles VI consented to the suppression of the Company in March 1731, and had in fact already suspended its charter under heavy international pressure in 1727.<sup>114</sup> Wynants reproached his sovereign to have been careless. Recalling the contractual and mutually dependent relationship between subjects and sovereign, Wynants indicated that Charles VI seemed to have neglected his Hobbesian responsibilities as ruler:

‘tout le courage des sujets des Pays-Bas se trouve tout d’un coup abattu [...] ils considèrent cet annéantissement [sic] comme un défaut de protection et de puissance dans le Prince, de qui ils doivent l’attendre.’<sup>115</sup>

The contrast was made even more clearly when Wynants discussed manufactures, which were necessary to create a viable exporting industry. The Austrian govern-

111 See *Hubert Van Houtte*, *Les occupations étrangères en Belgique sous l’Ancien Régime*, Gent: Van Rysselbergh & Rombaut 1930; *Augustus Johannes Veenendaal sr.*, *Het Engels-Nederlands Condominium in de Zuidelijke Nederlanden tijdens de Spaanse Successieoorlog*, Utrecht: Rijksuniversiteit Utrecht 1945.

112 Wynants (n. 6), 245–246.

113 *Ibid.*, 262–275. See also *Cuvelier* (n. 12).

114 *Frederik Dhondt*, *Delenda est haec Carthago: The Ostend Company As A Problem Of European Great Power Politics (1722–1727)*, *Revue Belge de Philologie et d’Histoire/ Belgisch Tijdschrift voor Filologie en Geschiedenis* XCIII (2015), No. 2, 397–437, DOI 10.3406/rbph.2015.8840.

115 Wynants (n. 6), 264.

ment was insufficiently creative. If exclusive charters were ruled out, alternatives existed: tax breaks (*exemptions, immunités, affranchissement à la Douane*) or delayed interest-free loans ... He deplored that:

‘on ne trouve pas partout de Colbert ni des Bergeyck.’<sup>116</sup>

## 5. Conclusion

Certain parts of Wynants’s treatise come across as surprisingly modern, but we should be aware of the fundamental differences separating the early eighteenth century from the era of liberal constitutionalism. Recent attention for the intricate link between property and sovereignty, or economic and political power, as in the works of Koskenniemi,<sup>117</sup> Rowlands,<sup>118</sup> Piketty<sup>119</sup> and Blaufarb,<sup>120</sup> allows us to illustrate this using a passage in the *Mémoires* concerning taxation.

In 1718, entry and exit duties had been given ‘*en Admodiation*’ to private contractors for a fixed sum of 1 750 000 florins, with only a deduction of 146 000 for ‘*fraix de régie*’ (tax collection costs).<sup>121</sup> The sum advanced by the private contractor then served to pay off the capital and interests of the Barrier Treaty debts.<sup>122</sup> This practice was frequent in the Old Regime, and allows to relativise clichés on the monarch’s sovereignty. Military obligations drove a push towards taxation and expansion of the state.<sup>123</sup> However, public power depended on a network of private finance, both for lending on long term and for short-term advances.<sup>124</sup>

Dependence of governments on debt and the rampant conflicts of interest, which allowed for the private purchase of governmental and judiciary office created an imbalance in the state to the benefit of a wider group of privileged individuals than

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116 *Ibid.* 267.

117 *Martti Koskenniemi*, What should international legal history become?, in: Stefan Kadelbach/Thomas Kleinlein/David Roth-Isigkeit (eds.), *System, Order, and International Law. The Early History of International Legal Thought from Machiavelli to Hegel*, Oxford: Oxford University Press 2017, 381–397.

118 *Guy Rowlands*, *Dangerous and Dishonest Men: the International Bankers of Louis XIV’s France*, London: Palgrave 2014.

119 *Thomas Piketty*, *Capital et Idéologie*, Paris: Seuil 2019.

120 *Rafe Blaufarb*, *The great demarcation: the French Revolution and the invention of modern property*, Oxford/New York: Oxford University Press 2016.

121 *Wynants* (n. 6), 243.

122 *Ibid.* 244. It is remarkable that Wynants does not refer to treaty collections, such as the *Corps Universel Diplomatique du Droit des Gens* edited by Jean Dumont and Jean Rousset de Missy (The Hague, 1726–1731), but to the *Placcards* of Brabant or to treaty texts printed by individual publishers as Frix (*Wynants* [n. 6], 245), for the ‘*Traité de la nouvelle Barrière*’). Dumont is only mentioned in connection with the discussion on the Circle of Burgundy, or the link between the Austrian Low Countries and the Holy Roman Empire (*Ibid.*, 420).

123 E.g. *John Brewer*, *The sinews of power: war, money and the English state, 1688–1793*, Boston: Routledge 1994.

124 *Daniel Dessert*, *L’argent du sel. Le sel de l’argent*, Paris: Fayard 2013.

merely the monarch and nobility. Wynants's treatise, which is ridden with hints on rewards for public office for his aspiring son, is a fine example of this.<sup>125</sup>

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125 E.g. *gage* of the *Chef-Président* of the Privy Council: 12 000 florins, decision of Charles VI (at the High Council in Vienna – ergo Wynant's own- request) to raise the emoluments of the councillors to 5 000 florins a year, to make sure they had 'assez de salaire, et de recompense [...] de quoi s'entretenir décemment en la Ville de Bruxelles, du produit de leur emploi' (Wynants [n. 6], 15).

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