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## **In Search of a Constitutional Identity: The Making of the Constitution of the Kingdom of the Netherlands of 1815**

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### **Abstract**

In the aftermath of the Napoleonic wars, the Congress of Vienna (1814-1815) created a new state: the Kingdom of the Netherlands. This kingdom consisted of the territory of the former Dutch Republic in the north, which had regained its independence from Napoleonic France in 1813 with William I (1772-1843) as its sovereign, and Belgium in the south. Although these territories shared a common history under the rule of the Habsburgs in the fifteenth and sixteenth centuries, the creation of the new kingdom was undoubtedly an audacious experiment. After all, the Dutch revolt in the second half of the sixteenth century had resulted in a separation, and since then, the north and the south had travelled different roads. This separation lasted several centuries and created profound differences in religion, language, and political culture. It was up to William I, who became the king of the enlarged state, to try to overcome these divisions and develop a common identity for the new kingdom. The first opportunity to give form and substance to that identity presented itself immediately in 1815, when a new constitution had to be drafted. After all, constitutions are not just organisational documents that regulate the institutions of a political entity and their competences, but they also have the integrative function of providing an identity for the polity.

This article aims to show that the quest for a new constitutional identity is quite challenging and that fundamental issues of identity are heavily contested. It was difficult to determine the name of the new state and its

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inhabitants, the location of the capital, and the symbols of the new state, such as an anthem and a flag. In this study, special attention will be devoted to the debates of the committee charged with drafting the constitution, which consisted of an equal number of delegates from the north and south. It will become apparent that, in particular, the northern members of the constitutional committee were reluctant to abandon their distinct traditions in favour of a new encompassing constitutional identity. Consequently, the Dutch *Grondwet* (constitution) of 1815 became a relatively sober document, failing to provide the newly created state with a coherent shared identity. This failure foreshadowed the revolt in Belgium, which took place only 15 years later and led to its secession from the kingdom.

## 1. Introduction

### 1.1. The creation of a new kingdom

In the aftermath of the Napoleonic wars, the Congress of Vienna (1814-1815) created a new state: the Kingdom of the Netherlands. This kingdom consisted of the territory of the former Dutch Republic in the north, which had regained its independence from Napoleonic France in 1813 with William I (1772-1843) as its sovereign and Belgium in the south. William I, a descendant of the House of Orange-Nassau, was the king of this enlarged state. The new kingdom existed only for a short period of time, from 1815 to 1830, but has nevertheless received much attention from historians.<sup>2)</sup> This is understandable, because the merging of the

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2) A selection of the literature of the last 40 years: N.C.F. van Sas, 'Het politieke bestel onder Koning Willem I' in: *Documentatieblad 18<sup>e</sup> eeuw* 49/50 (February 1981), 110-133. A.J. Vermeersch, 'De historische inhoud van het zogenaamde amalgaam van Noord en Zuid tijdens het bewind van Koning Willem I' in: *Acta van het colloquium over de geschiedenis van de Belgisch-Nederlandse betrekkingen tussen 1815 en 1945* (Ghent 1982), 1-7. C.A. Tamse/E. Witte (eds.), *Staats- en natievorming in Willem I's Koninkrijk (1815-1830)* (Brussels/Baarn 1992). L. Wils, 'Het Verenigd Koninkrijk van Koning Willem I (1815-1830) en de natievorming' in: *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden* 112 (1997), 502-516. G. Janssens/K. Steyaert (eds.), *Het onderwijs van het Nederlands in de Waalse provincies en Luxemburg onder Koning Willem I (1814-1830). Niets meer dan een boon in een brouwketel?* (Brussels 2008). J. Weijermars, *Stiefbroeders. Zuid-Nederlandse letteren en natievorming onder Willem I, 1814-1834* (Hilversum 2012). I. de Haan/P. den Hoed/H. te Velde (eds.), *Een nieuwe staat. Het begin van het Koninkrijk der Nederlanden* (Amsterdam 2014). R. Vosters/G. Janssens, *Sur la langue nationale. Taal en taalpolitiek in het Verenigd Koninkrijk der Nederlanden en het jonge België* (The Hague 2014). R. Aerts/G. Deneckere (eds.), *Het (on)verenigd Koninkrijk. Een politiek experiment in*

northern and southern territories was undoubtedly a daring experiment. Although these territories shared a common history under the reign of the Habsburgs such as King Philip I of Castile (1478-1506) and Emperor Charles V (1500-1555) in the fifteenth and sixteenth centuries, the Dutch revolt that broke out in the second half of the sixteenth century resulted in a separation. Since then, the north and the south have travelled different roads, causing profound differences in religion, language, and political culture. For example, many inhabitants of the south only spoke French, while the Dutch language developed into Flemish with its own vocabulary and pronunciation. The creation of the kingdom, therefore, raised interesting questions about the conditions and means for the successful transformation of different, previously sovereign communities into a new coherent state.

Some Dutch historians argued that the constituent parts were so different from each other that a merger was almost doomed to failure. In 1935, for example, Herman Theodoor Colenbrander (1871-1945) believed that the people of the northern Netherlands had become so singular that even the Flemish-speaking inhabitants of Belgium did not understand their forms of expression. For that reason, it had been instructed to try to 'assimilate the whole South, which was stronger in population, in faith, morals and memories, and even language, (...) if it did not choose to get lost in it'.<sup>3)</sup> However, Colenbrander was convinced that it was a hopeless venture. This view places him in the tradition of those who favoured the small Dutch solution, limiting the territory of the Dutch state to the northern provinces.<sup>4)</sup>

In the same period, another Dutch historian, Pieter Catharinus Arie Geijl (1887-1966), usually referred to as Geyl, opposed this defeatism.<sup>5)</sup> According to Geyl, national identity is not a fixed fact, but a phenomenon that is subject to constant change.<sup>6)</sup> He argued that we should therefore ask ourselves 'not so much

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*de Lage Landen, 1815-1830* (Rekkem 2015). W. Uiterhoeve, 'Een innige vereeniging'. *Naar een Koninkrijk van Nederland en België in 1815* (Nijmegen 2015).

3) H.T. Colenbrander, *Willem I, Koning der Nederlanden 2: 1815-1830* (Amsterdam 1935), 31.

4) E.H. Kossmann, *The Low Countries, 1780-1940* (Oxford 1978), 437. J. Tollebeek, *De toga van Fruin. Denken over geschiedenis in Nederland sinds 1860* (Amsterdam 1996), 150-151.

5) Kossmann, *The Low Countries*, 643-644. Tollebeek, *De toga van Fruin*, 325-332.

6) P. Geyl, 'De klein-Nederlandse traditie in onze historiografie' in: P. Geyl, *Noord en Zuid. Eenheid en tweeheid in de Lage Landen* (Utrecht/Antwerp 1960), 60-83 (61). See also P. Geyl, 'Hedendaagse beschouwingen over het Verenigd Koninkrijk van Willem I' in: Geyl, *Noord en Zuid*, 173-194 (173-179).

what a nation *is*, but how a nation is *made*'.<sup>7)</sup> He believed that people speaking the same language should form one nation and argued that the separation of the northern Netherlands and Flanders, the Dutch/Flemish-speaking part of Belgium, was a tragic accident. He, therefore, supported the emancipation of the Flemish speaking population of Belgium. He was probably even sympathetic to the Great Netherlands movement, which advocated the unification of the northern Netherlands and Flanders, but remained ambiguous on this issue in public statements.

The debate about the failure of the new kingdom as an experiment for nation-building has lost little of its topicality today, partly due to the pursuit of European integration, as it has developed since the 1950s. The European project is also concerned about whether a new political entity can be built from states that are different from each other in size, culture, and language.<sup>8)</sup> In this context, Dutch historian Remieg A.M. Aerts once again criticises the 'nationalist finalism' of Colenbrander and his colleagues.<sup>9)</sup> He points out that Germany and Italy, two nation-states created in the nineteenth century, were not inferior to the kingdom of William I in terms of the extent and nature of the differences between the constituent parts. The success of these two countries was mainly due to the conscious unification policy. He noted that there could also have been a future for a Kingdom of the Netherlands that included Belgium.<sup>10)</sup> He blames William I for a

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7) Geyl, 'De klein-Nederlandse traditie', 61: 'niet zozeer wat een natie *is*, als wel wat een natie *maakt*'. This view is in line with various studies dating from after World War II on the formation of nation states. See E. Weber, *Peasants into Frenchmen. The modernization of rural France 1870-1914* (Stanford 1976); E. Gellner, *Nations and nationalism* (London 1983); B. Anderson, *Imagined communities: reflections on the origin and spread of nationalism* (London/New York 1983).

8) Post-war developments in former states such as the Soviet Union, Yugoslavia and Czechoslovakia show that there is no lack of twentieth-century examples of failed nation building.

9) R. Aerts, *Het onverenigd Koninkrijk der Nederlanden. Een beschouwing en een pleidooi* (The Hague 2014), 60. R. Aerts, 'Over een mislukte staat, zonder nostalgie. Het Verenigd Koninkrijk van Willem I en de scheiding van 1830' in: *Ons erfdeel. Vlaams-Nederlands cultureel tijdschrift* 48/1 (2005), 5-20 (19).

10) Aerts, 'Over een mislukte staat', 19. See also N.C.F. van Sas, 'Het grote Nederland van Willem I: een schone slaapster die niet wakker wilde worden' in: Tamse/Witte, *Staats- en natievorming*, 171-185 (180-181 and 184-185); A. Labrie, 'Van Wenen naar Frankfurt, 1815-1848' in: L.H. M. Wessels/T. Bosch (eds.), *Nationalisme, naties en staten. Europa vanaf circa 1800 tot heden* (Nijmegen 2012), 158-281 (259-273).

lack of nation-building efforts.<sup>11)</sup> Aerts admits that William I made various attempts at unification and integration, particularly in the field of the economy and the (Dutch) language, but he also argues that the king could and should have done more. This criticism also applies to the king's cultural policy. Aerts praises the official attempt to elevate the common Habsburg past to the cultural-ideological basis of the new kingdom, but believes that it should have been propagated more effectively.<sup>12)</sup>

Dutch literary scholar Joseph Theodoor Leerssen is also critical of the flawed identity-forming politics of William I.<sup>13)</sup> According to Leerssen, a culture of remembrance was created as evidenced by the celebrations around the Battle of Waterloo, the struggle for the preservation of the Muiderslot castle, and the commemoration of Laurens Janszoon Coster, probably a fictitious person who was supposed to have lived in Haarlem in the fifteenth century, as the first book printer. He also notes the successful creation of a new national anthem based on a poem by Hendrik Tollens (1780-1856). However, Leerssen argues that most of these efforts were dominated by elements of a northern Dutch identity. He concludes that both the intellectuals and the governors of the northern Netherlands were 'unable to face the cultural diversity of the newly formed state'.<sup>14)</sup>

## 1.2. The integrative function of constitutions

Although much attention has been devoted to the attempts and failures of William I to transform the new state into a close-knit nation with its own overarching identity, the constitution that was adopted for the enlarged state in 1815 has hardly been considered in this context. This is curious because discussions on the Treaty for a Constitution for Europe clearly show that constitutions are essential for defining the communities to which they apply.<sup>15)</sup> When it became apparent that this treaty was presented as a European *constitution*, fierce debates arose regarding the identity of the community for which it was intended. Should there be a reference to the Judeo-Christian tradition of Europe in

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11) Aerts, 'Over een mislukte staat', 14.

12) Aerts, 'Over een mislukte staat', 13-14.

13) J. Leerssen, 'De Nederlandse natie' in: De Haan/Den Hoed/Te Velde (eds.), *Een nieuwe staat*, 319-339 and 400 (327-328 and 332-333).

14) Leerssen, 'De Nederlandse natie', 339.

15) P.A.J. van den Berg, 'The Integrative function of constitutions: a historical perspective' in: F. Amtenbrink/P.A.J. van den Berg (eds.), *The constitutional Integrity of the European Union* (The Hague 2010), 13-53 (17 and 49-51).

the preamble? Should symbols be enshrined in the constitution, such as a flag and an anthem? Obviously, a constitution not only determines how a state and the people that live there will be organised. It also defines this ‘people’ and provides it with a common identity. Constitutions are not just organisational documents, nor are they only vehicles for ever-increasing fundamental rights. Since their emergence at the end of the eighteenth century, they have also been part of the instruments that can be used to further integrate a political community.<sup>16)</sup>

A good example of such a constituent constitution is the first Dutch constitution, the *Staatsregeling* of 1798.<sup>17)</sup> The authors of this constitution were faced with the difficult task of transforming the Republic of the United Netherlands, a loose confederation of sovereign provinces, into a unified and integrated state. Therefore, various elements of nation building were included in this constitution. A new name was invented for the new state, the Batavian Republic, which was derived from the Batavians, a tribe that lived in the area during Roman times. The Batavian tribe was supposed to have been sovereign and attached to freedom. These elements served as building blocks of the constitutional identity of the ‘Batavian people’, as the political community for the Batavian Republic was called. The full name of the Constitution of 1798 was *Staatsregeling voor het Bataafse Volk* (Constitution for the Batavian People), and its preamble emphasised the sovereignty of the Batavian people and the importance of the fundamental rights of its members.<sup>18)</sup> In line with the political philosophy of Rousseau, the sovereign Batavian people was presented as ‘one and indivisible’, which provided for an excellent ideological basis for creating a unitary state. The importance of fundamental rights for constitutional identity was confirmed by the fact that the *Staatsregeling* of 1798 started with the establishment of these

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16) P.A.J. van den Berg, ‘Modern constitutionalism and patriotism in the Dutch Constitution of 1798’ in: *Osaka University Law Review* 59 (2012), 57-75 (58-60). P.A.J. van den Berg, ‘Liberalism, modern constitutionalism and nation building in the Belgian Constitution of 1831: a comparative perspective’ in: *Giornale di Storia Costituzionale/Journal of Constitutional History* 35/1 (2018), 49-68 (50).

17) See for the integrative function of the *Staatsregeling* of 1798: Van den Berg, ‘The Integrative function’, 22-47. P.A.J. van den Berg, ‘Een Europese Grondwet zoekt een “volk”. Over het concept “Volk van Nederland” tijdens de Bataafse Revolutie (1795-1796) en de lessen voor de discussie over de Europese Grondwet’ in: F. Amtenbrink/S.B. van Baalen, *Europa; eenheid in verscheidenheid? Groningse beschouwingen over de Europese Grondwet* (The Hague 2005), 1-31 (3-15).

18) Van den Berg, ‘The Integrative function’, 30-31.

rights.<sup>19)</sup> The narrative of the new republic naturally started with ‘Once upon a time, there was a people...’.

Another example that merits attention is the *Grondwet* of 1814, which was proclaimed for the resurrected Dutch state on 29 March 1814 as it served as a model for the *Grondwet* of 1815. It was largely the work of Gijsbert Karel van Hogendorp (1762-1834), the leader of the revolt against the French of November 1813 and a staunch supporter of the House of Orange-Nassau.<sup>20)</sup> The *Grondwet* of 1814 was titled *Grondwet voor de Verenigde Nederlanden* (Constitution for the United Netherlands), thereby explicitly referring to the *Republiek der Zeven Verenigde Nederlanden* (Republic of the Seven United Netherlands), as the Dutch state was frequently called before 1795.<sup>21)</sup> Obviously, the intended constitutional identity was anti-revolutionary as opposed to the *Staatsregeling* of 1798. In line with this, the Batavian people, with its connotations of popular sovereignty and freedom, lost its role, as did the fundamental rights. The *Grondwet* of 1814 included only three provisions that established fundamental freedoms.<sup>22)</sup> The dynastic principle became the new starting point for community identity. In the very first provision, the sovereignty of the United Netherlands was dedicated to William Frederick as the Prince of Orange-Nassau, followed by an extensive description of his position. This first chapter, titled ‘Of the sovereign prince’, consisted of no less than 51 out of 146 articles. With this emphasis on the House of Orange-Nassau, the story of the resurrected Netherlands started, thus, with the phrase ‘Once upon a time there was a monarch...’.

The absence of the *Grondwet* of 1815 in the debate on nation-building efforts

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19) The *Staatsregeling* 1798 consisted of three parts. The *Algemene Beginselen* (General Principles) and the *Burgerlijke en Staatkundige Grondregels* (Civil and Constitutional Fundamental Rules) counted 72 provisions of a general nature, including many fundamental rights. With the subsequent *Acte van Staatsregeling* (Act of Constitution), which included the organisational arrangements in more detail, the numbering started again at 1. It should be noted that the fundamental rights in the *Staatsregeling* were not presented as universal human rights but as rights granted by the constitution, which could therefore be limited in the interest of the community. Van den Berg, ‘Modern constitutionalism’, 66-68.

20) Kossmann, *The Low Countries*, 104-108. Van Hogendorp was a former pensionary of Rotterdam.

21) See P.J. Blok, *Geschiedenis van het Nederlandse volk* 4 (Leiden 1926), 195.

22) Article 101, establishing the principle of *habeas corpus*, and Articles 134 and 135 on freedom of religion. See C.J.H. Jansen, ‘Klassieke grondrechten. Achtergrond en ontwikkeling, 1795-1917’ in: N.C.F. van Sas/H. te Velde (eds.), *De eeuw van de Grondwet. Grondwet en politiek in Nederland, 1798-1917* (The Hague 1998), 97-112 (110, note 12).



in the Kingdom of the Netherlands could be explained by its somewhat dull appearance. Unlike in the *Staatsregeling* of 1798, the integrative elements do not immediately catch the eye.<sup>23)</sup> It does not start with a declaration of human rights, as in the French Constitution of 1789. Nor is there a preamble indicating the reasons for the constitution of the community, as in the Constitution of the United States of America, which begins with the iconic ‘We the people’. One will also look in vain for provisions in which the core values of the community are defined, such as the 1949 constitution of the Federal Republic of Germany. Article 20 of this constitution states that Germany is a ‘democratic and social federal state’ based on popular sovereignty. A historian recently concluded that the *Grondwet* of 1815 ‘could hardly be seen as an expression of the nation’.<sup>24)</sup>

However, we must not let the austere appearance of the *Grondwet* of 1815 deceive us.<sup>25)</sup> Since constitutions must define the political community, their drafters must look for elements that can serve to substantiate their common identity. This search is not always easy because, on the one hand, it is necessary to connect with the already existing identities, but at the same time, it is necessary to strive for a new overarching identity. This is especially true if the constitution is meant for a new state that is composed of previously sovereign entities. Constituent constitutions are always contested for the adoption of elements that define a common identity, such as symbols and stories, which necessarily

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23) In recent years, it has been suggested that the Dutch constitution should be provided with more normative elements. This has resulted in the adoption of a short preamble in 2022, which reads: ‘The constitution guarantees the fundamental rights and the democratic constitutional state’. *Staatsblad* 332 (30 August 2022). A. Rouvoet/J. Pot, ‘De versterking van de symbolische kracht van de Grondwet’ in: *Regelmaat* 26/2 (2011), 72-83 (77-79). R.J. B. Schutgens/J.J.J. Sillem, ‘Een preambule: splijtzam of gemeenplaats’ in: *Ars Aequi* 61 (2012), 215-216. W. Veraart, ‘Leeg en sober: land zonder preambule’ in: *Ars Aequi* 61 (2012), 217. J.W. Sap, ‘De grondwet wacht op licht, maar wij gaan in donkerheid’ in: *Ars Aequi* 63 (2014), 354-357. M. Adams/G.-J. Leenknecht, “‘Artikel nul’: een algemene bepaling over rechtsstaat, democratie en grondrechten in de Grondwet?” in: *Ars Aequi* 64 (2015), 207-214. P.A.J. van den Berg, ‘De Nederlandse Grondwet: hoofdgerecht of bijgerecht?’ in: *Ars Aequi* 60 (2011), 168-170 (170).

24) I. de Haan, ‘Een nieuwe staat’ in: De Haan/Den Hoed/Te Velde (eds.), *Een nieuwe staat*, 9-33 (30).

25) P.A.J. van den Berg, ‘De Grondwet van 1815: een grondwet zonder eigenschappen? Enige opmerkingen over de zoektocht naar een overkoepelende identiteit in de grondwet voor het ‘Verenigde’ Koninkrijk der Nederlanden onder Willem I (1815-1830)’ in: *Pro Memorie. Bijdragen tot de rechtsgeschiedenis der Nederlanden* 17/2 (2015), 194-227.

accompanied by exclusion.<sup>26)</sup> If the Christian tradition is accepted as a central part of the constitutional identity, adherents of other religions, agnostics, and atheists are not addressed.<sup>27)</sup> In this context, the legal scholar Upendra Baxi argues that ‘the making of a constitution is always an enactment of several orders of violence’.<sup>28)</sup>

Sometimes, it is too difficult to agree on common symbols and stories, and hence their omission can be agreed upon. The absence of integrative elements in a constitution can, therefore, say much about the problem of the identity of the new community. Moreover, it is unlikely that no integrative elements were included at all. After all, a constitution cannot avoid saying something about a community's intended identity. It must establish the community for which it is meant by defining citizenship and describing some characteristics of this community. This also applies to the *Grondwet* of 1815, despite its sober appearance. The purpose of this contribution is to investigate the extent to which attempts were made in the *Grondwet* of 1815 and some related legislation to include elements for an overarching identity, and to what extent these attempts were successful. To that end, I will take a closer look at this constitution and the debates about it in the constitutional committee. This committee was established by Decree of 22 April 1815 and initially consisted of 11 Dutch and 11 Belgian members. It met between 1 May 1815 and 13 July 1815.<sup>29)</sup> This was led by Van Hogendorp, who had also contributed considerably to the *Grondwet* of 1814.

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26) P.A.J. van den Berg/J. Hollander/J. Olthof/R.P.G. Peters, ‘Omstreden grondwetten: constitutionalisering in historisch perspectief’ in: R. Aerts/P. de Goede (eds.), *Omstreden democratie. Over de problemen van een succesverhaal* (Amsterdam 2013), 49-66 (51-52).

27) Religion still plays an ideological leading role in the constitutions of Israel and Saudi Arabia, among others. During the Convention charged with the preparation of a European constitution, mentioning the ‘Christian-Jewish tradition’ in the preamble was the subject of serious debate.

28) U. Baxi, ‘Constitutionalism as a site of state formative practices’ in: *Cardozo Law Review* 21 (2000), 1183-1210 (1191).

29) For the composition of the committee and biographical information regarding some members, see: H.T. Colenbrander, *Willem I, Koning der Nederlanden* 1: 1772-1815 (Amsterdam 1931), 335-340. H.T. Colenbrander, *Ontstaan der Grondwet* II (The Hague 1909), xxx-xxxv. H.T. Colenbrander, *Vestiging van het Koninkrijk (1813-1815)* (Amsterdam 1927), 257-261. See on the creation of the *Grondwet* of 1815 also J. Koch, *Koning Willem I, 1772-1843* (Amsterdam 2013), 304-317. G.W. Bannier, *Grondwetten van Nederland* (Zwolle 1936), 280-283.

## **2. The *Grondwet* of 1815: Building blocks for an identity**

A constitution has to create a community for which it is intended and thus resembles a story or narrative. The search for building blocks for an identity in the *Grondwet* of 1815 must therefore start with the name of the new community (§ 2.1). Subsequently, as with a story ('Once upon a time...'), the beginning of a constitution is crucial. Therefore, because the *Grondwet* of 1815 does not have a preamble, its first chapter will be examined next (§2.2). A constitutional identity does not exist in a void, and most narratives will, therefore, have some historical connotations. This role of history will be highlighted in §2.3. In the search for an identity, it may be necessary to conceal or even omit contested building blocks. This is especially true for symbolic measures such as a flag, a national anthem, and a capital. This practice deserves a closer look (§2.4). The last paragraph (§3) is devoted to the concluding remarks.

### **2.1. A name for the territory and its inhabitants**

A constitution must name the community for which it is intended; if it concerns a new community composed of previously separated territories, the preferred option will be a new name. This makes it possible for all inhabitants to start identifying themselves with the new political entity. Preferably, this is a name that had not been previously used for one of the composing territories in order to prevent old allegiances from continuing. Good examples are 'Germany' and 'Italy', used for newly constructed states in the nineteenth century. Although these names were not entirely new, they were not derived from one of the participating entities. In the same way, 'Europe' is an appropriate overarching term for the project of European integration, having the advantage that none of the member states already bears a name that resembles it. Agreeing on a new name can be a sensitive issue, because it usually implies the start of a legitimising story or narrative. The term 'Europe' is relatively neutral, for it refers to a story with a geographical core. However, the term 'Germany' is likely to be more contested, since it immediately refers to a community with a specific language and culture.

William I was aware that a new overarching name for his new state could contribute to integration. In the Proclamation of 16 March 1815, read out in the States General on the occasion of the acceptance of the throne, he declared that it would be called *Koninkrijk der Nederlanden* (Kingdom of the Netherlands), translated into French as 'Royaume des Pays-Bas', and stated that this name would guarantee the 'close and brotherly union that should exist between all the

subjects.’<sup>30)</sup> The name includes two elements that could serve as a starting point for building an identity. The word *Koninkrijk* (kingdom) refers to a monarchical element that can be elaborated upon by paying attention to the role of the ruling dynasty. Some efforts in this direction were undertaken, but this proved to be complicated, as will be shown later.

At first glance, the second starting point, the term *Nederlanden* (low countries, or Netherlands), seemed quite neutral, being a geographical reference to the territory at the estuaries of some important European rivers, such as the Rhine and the Meuse. However, it proved less useful as a building block for identity than might have been expected, as linguistic and historical connotations had become associated with it over time. The linguistic connotations are evident. The term *Nederlanden* (Netherlands) is connected to the Dutch language, which is in Dutch often referred to as *Nederlands*.<sup>31)</sup> The term could, therefore, be disturbing for French speakers in the kingdom, since it raises the question of whether the Dutch language would receive official status in the new kingdom. It is significant that the *Grondwet* of 1815 does not say anything about this issue, but soon after 1815, it became apparent that William I answered it in the affirmative. In the period 1815-1830, language policy was an important pillar of the monarch’s efforts to provide the kingdom with a common Dutch identity.<sup>32)</sup>

Historical connotations also made the use of the concept of *Nederlanden* more problematic than expected on the face of it, as historical developments had resulted in different meanings. During the reign of the Habsburgs, it was used to designate the territories of which the new state of William I consisted. William I

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30) Proclamation of 16 March 1815. *Handelingen der Staten-Generaal* (1814-1815), 226: ‘de naauwe en broederlijke verbindtenis, die tusschen alle Onze onderdanen plaats moet vinden’. The French text is printed in A. Delebecque, *Pasinomie, ou collection complète des lois, décrets, arrêtés et règlements généraux en vigueur en Belgique* 2<sup>nd</sup> series 1814-1830 (Brussels 1837), 5-6: ‘l’union intime et fraternelle qui doit régner parmi tous nos sujets’.

31) In 1815, William I still referred to the Dutch language as *Nederduits* (Lower Dutch), but in the years that followed, the official documents mainly used the words *Nederlandse taal* (Netherlands language). Colenbrander, *Ontstaan* II, 502. A. de Jonghe, ‘Onuitgegeven bronnen tot de studie der taalpolitiek van Koning Willem I in de Zuidelijke Nederlanden (1814-1830)’ in: *Bulletin de la Commission Royale d’Histoire* 95 (Brussels 1931), 234-317 (258, 260, 273, 276-279, 283, 291, 295, 298, 301 and 311).

32) A. de Jonghe, ‘Uit de eerste jaren van Koning Willem’s taalpolitiek’ in: *Bijdragen voor de Vaderlandsche Geschiedenis en Oudheidkunde* VII.3 (1933), 45-58 and 247-262. A. de Jonghe, *De taalpolitiek van Koning Willem I in de Zuidelijke Nederlanden (1814-1830)* (Brussels 1943).

relied on this meaning, as is evident from his speech accompanying the aforementioned Proclamation of 16 March 1815.<sup>33)</sup> In this speech, he argued that the territories of his new kingdom had already been united under one monarch during that period. To enable the use of the term *Nederlanden* as an overarching concept, William I had to find other names for the composing parts. He, therefore, referred to the inhabitants of the south as *ingezetenen der Belgische provinciën* (residents of the Belgian provinces), translated into French as ‘habitants des Provinces Beligiques’, and to the inhabitants of the north as *Hollanders* (inhabitants of Holland), translated into French as ‘Hollandais’. William I’s strategy of reserving the term *Nederlanden* exclusively for his new kingdom can already be observed in the Eight Articles of London, a secret treaty concluded on 21 June 1814, in which four great powers, United Kingdom, Prussia, Russia and Austria, agreed to create the new state. William I, who accepted the terms of this treaty on 21 July 1815, exerted substantial influence on its wording.<sup>34)</sup> The treaty presented the new state as a merger of ‘la Belgique’ and ‘la Hollande’, under the name of ‘les Pays-Bas’.<sup>35)</sup> The same strategy was followed in the agreement of 13 February 1815, which described the territorial arrangements. Article 21 of this agreement read: ‘Les provinces unies dont se compose la Hollande formeront conjointement avec les provinces belges (...) un seul royaume sous la dénomination de Royaume des Pays-Bas’ (The united provinces of which Holland is composed will form jointly with the Belgian provinces (...) a single kingdom under the denomination of Kingdom of the Netherlands).<sup>36)</sup> In the constitutional committee, which convened from May to July 1815, the names ‘Belgique’ and ‘Hollande’ were often used for the two constituent parts of the new kingdom.<sup>37)</sup>

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33) Speech of 16 March 1815, *Handelingen der Staten-Generaal* (1814-1815), 225.

34) Van Sas, ‘Het grote Nederland’, 177.

35) Colenbrander, *Vestiging*, 181-182. See for the French text of the Eight Articles: Colenbrander, *Ontstaan* II, 27-28. The protocol of the conference of 21 June 1814 also used the designations ‘Belgique’ and ‘Hollande’. Colenbrander, *Ontstaan* II, 32-33.

36) The text of Article 21 can be found in Colenbrander, *Vestiging*, 212-213. Interestingly, Article 65 of the Final Act of the Congress of Vienna of 9 June 1815, which was the equivalent of Article 21, did not mention Holland. It referred to ‘Les anciennes Provinces-Unies des Pays-Bas’, which was in accordance with the official name of the Netherlands in 1814. However, there was a reference to the ‘ancien territoire hollandais’ in Article 66 of the Final Act, which described the territorial borders of the merged state in detail. Moreover, Article 73 of the Final Act stipulated that the Eight Articles of London were included in the treaty.

37) Some examples out of many: Colenbrander, *Ontstaan* II, 108, 155 and 557.

However, history also caused William I's strategy of reserving the term *Nederlanden* exclusively for the new state to encounter formidable obstacles. As mentioned previously, during the *Ancien Régime*, the northern part of the new kingdom was not only referred to as the *Republiek der Zeven Verenigde Provinciën* (Republic of the Seven United Provinces) but also as the *Republiek der Zeven Verenigde Nederlanden* (Republic of the Seven United Netherlands). This happened over the course of approximately two centuries, so the term *Nederlanden* became increasingly associated with the north. It was fitting that the south had been called 'Belgium' for decades.<sup>38)</sup> After 1795, the use of the designation *Nederlanden* fell into abeyance in the north. The northern state, which had come under the influence of the French Republic, was first referred to as the 'Batavian Republic' and then, in 1806, renamed 'Kingdom of Holland'.

After regaining independence in 1813, the term *Nederlander* (Netherlander, or Dutchman) once again came to play an important role. The Proclamation of 2 December 1813, in which William I accepted sovereignty over the northern Netherlands, started with the words *Gij wilt het, Nederlanders* (You want it, Nederlanders (Dutchmen)).<sup>39)</sup> The constitution for the resurrected state that was proclaimed on 29 March 1814 carried the name *Grondwet voor de Verenigde Nederlanden* (Constitution for the United Netherlands). As mentioned previously, Van Hogendorp and the other drafters of this constitution explicitly referred to the name used for the Dutch state before the revolutionary era. From the perspective of the identity of the north, this was understandable. However, it was also somewhat inconvenient given the prospective enlargement with parts of Belgium, a case which William I argued passionately with the Allies in the beginning of 1814. After all, this name was at odds with the strategy of referring to the north as 'Holland' in light of this enlargement.

The problems with using the term *Nederlanden* for the state resulting from the merger became apparent in 1815, when a new constitution had to be created because of the enlargement. In accordance with the strategy followed in the Proclamation of 16 March 1815 and the accompanying speech, the title of the new constitution, promulgated on 24 August 1815 was *Grondwet voor het Koninkrijk der Nederlanden* (Constitution for the Kingdom of the Netherlands). However, in

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38) Kossmann, *The Low Countries*, 118-119.

39) H.T. Colenbrander, *Ontstaan der Grondwet I* (The Hague 1908), 26. Van Hogendorp also preferred to use the term *Nederlandse volk* (People of the Netherlands). See his letter to Wiselius of 30 November 1813. Colenbrander, *Ontstaan I*, 23.

the Act of 23 March 1815, concerning the deliberations by the States General on the new constitution, William I referred to the south as the *Belgische Provinciën* (Belgian Provinces) and used the term *Verenigde Nederlanden* (United Netherlands) for the north.<sup>40)</sup> The latter was, of course, in accordance with the terminology of the *Grondwet* of 1814 but at odds with the use of the term *Nederlanden* (the Netherlands) for the enlarged state.

A comparison of the Dutch text of the new constitution with the French version also showed that the use of the term *Nederlanden* was problematic. Sometimes, it was translated as ‘Pays-Bas’, for example in the title of the constitution and in the Articles 1, 12 and 120, which fitted the overall strategy. However, the French version also regularly deviated from the Dutch text whereby the term *Nederlanden* disappeared. There was obviously some discomfort about its use. In Article 175 *Grondwet* 1815, for example, a supreme court was established under the name of *Hoge Raad der Nederlanden* (Supreme Court of the Netherlands).<sup>41)</sup> In the French version, this became ‘Haute Cour’, without reference to the Netherlands. The same happened with Article 162 *Grondwet* 1815, which stated that justice *in de Nederlanden* (in the Netherlands) was done in the name of the king.<sup>42)</sup> Again, the French text was neutral, replacing *in de Nederlanden* with ‘dans toute l’étendue du Royaume’ (throughout the kingdom).<sup>43)</sup> A similar discrepancy existed between the two versions of the constitution with regard to the designation of the population. In a few cases, the term *Volk van Nederland* (People of the Netherlands) was translated as ‘Peuple des Pays-Bas’, for example in Articles 53-55 *Grondwet* 1815. This was in line with the state name. However, more often the reference to the term *Nederlander* was omitted in the translation, as for example with regard to Articles 9 and 66 *Grondwet* 1815. In article 9 the term *geboren Nederlanders* (born Nederlanders) was translated as ‘Naturels du Royaume’ (those born in the kingdom) and in Article 66 the term *Nederlander* (Nederland) was replaced by the more neutral ‘sujet du Roi’ (subject of the king).

The history of Article 77 *Grondwet* 1815 may be useful in explaining the

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40) Colenbrander, *Ontstaan* II, 68.

41) In Article 102 *Grondwet* 1814, the supreme court was named ‘Hoge Raad der Verenigde Nederlanden’.

42) This provision was the equivalent of Article 99 *Grondwet* 1814.

43) See also Article 67 *Grondwet* 1815, where *Hoge Raad der Nederlanden* (Supreme Court of the Netherlands) is translated as ‘Haute Cour du Royaume’ (Supreme Court of the Kingdom).



disappearance of the designations derived from the term *Nederlanden*. The Dutch version of this provision Article 77 *Grondwet* 1815 was taken verbatim from the *Grondwet* 1814 (Article 52), and read ‘*De Staten Generaal vertegenwoordigen het gehele Nederlandse Volk*’ (The States General represent the entire Netherlands people). However, the French version only said: ‘*Les États Généraux représentent la Nation*’ (The States General represent the nation), without translating the term *Nederlandse*. The official minutes of the constitutional committee remarked with respect to this provision that it had been necessary to amend it ‘in view of the new name of the Kingdom’. This remark can only be understood if it is realised that the *Grondwet* of 1814 served as a model for the new constitution. This was in line with Article 1 of the Eight Articles of London, which stipulated that the merged state would be governed by the constitution of Holland modified by mutual agreement according to the new circumstances.<sup>44)</sup> The *Grondwet* of 1814 was, of course, in Dutch, but the discussions in the constitutional committee were based on a French translation of it.<sup>45)</sup> Most Belgian members of this committee did not have sufficient command of the Dutch language. This was even true for those members who came from Flanders, because the elite there was also largely French-speaking. For this reason, the deliberations in the committee took place in French.<sup>46)</sup> In line with the original intention of the provision, the term *Nederlanden* was invariably translated as ‘les provinces unies des Pays-Bas’ (the united provinces of the Netherlands) in this French translation.<sup>47)</sup> Article 52 *Grondwet* 1814, for example, read in French: ‘*Les états généraux représentent la nation des provinces unies des Pays-Bas*’ (The States General represent the nation of the united provinces of the Netherlands). However, with this translation the designation ‘nation des provinces unies des Pays-Bas’ had become specific for the inhabitants of the north. Consequently, this name had to be removed from the provision that was to be included in the new constitution.

Since the constitutional committee carried out its work in French, the first draft

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44) Article 1 stipulated that a new state was created, ‘*régi par la constitution déjà établie en Hollande et qui sera modifiée d’un commun accord, d’après les nouvelles circonstances*’. Colenbrander, *Ontstaan* II, 27.

45) See Delebecque, *Pasinomie*, 308-318, who gives the French text: ‘*comme elle a servi de type à la loi fondamentale du Royaume des Pays-Bas*’ (as it served as a model for the constitution of the Kingdom of the Netherlands).

46) The comments of the Belgian members in the minutes of the constitutional committee that are reproduced in Dutch are, therefore, translations.

47) See, inter alia, the French translations of Articles 50, 99 and 102 *Grondwet* 1815.



of the *Grondwet* of 1815 was also in French. Only at the end of the deliberations, a Dutch version of it was prepared. This means that for the French-speaking members of the committee, the translation of terms *Nederlander* (Netherlander) and *Nederlands* (Netherlands) was not a problem for the simple reason that they did not occur in the French draft with which they worked.

The question remains why nobody proposed to translate *Nederlander* and *Nederlands* with the term 'Néerlandais'. After all, this term seemed available, since it had not been used in the French translation of the *Grondwet* of 1814. However, this term was already associated with the north, and would therefore also emphasise what was clear to most people, namely that Belgium was becoming part of an already existing Dutch state. As early as 1815, people in the south fulminated against the use of the term 'Néerlandais' to designate the whole kingdom.<sup>48)</sup>

Apparently, the search for a terminology acceptable to all that could serve as a basis for the new community had not been successful. Consequently, the *Grondwet* of 1815 did not systematically use a common encompassing term to designate the territory and population of the kingdom. In fact, it even lacked a French name to describe the whole kingdom. The Proclamation of 18 July 1815, announcing that the draft constitution for the new kingdom would be submitted to a meeting of notables in the south, shows how William I tried to deal with this shortcoming.<sup>49)</sup> In line with his original strategy, he still referred to the south as *België* (Belgium), translated into French as 'la Belgique', and the north as *Verenigde Nederlanden* (United Netherlands), translated into French as 'provinces-unies des Pays-Bas', or as 'Holland', which became 'Hollande' in French. However, although the Proclamation was primarily addressed to the inhabitants of the south, the population of the new state as a whole was also mentioned.<sup>50)</sup> Interestingly, it no longer used neutral terms to that end in the French version but the words 'Belges', or 'peuples de la Belgique', which were translated into Dutch as *Nederlanders/Nederlander*en (Netherlanders).<sup>51)</sup>

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48) J. Stengers, 'Le vocabulaire national dans le Royaume des Pays-Bas' in: *Acta van het colloquium*, 9-28 (14-15).

49) The Dutch text of the Proclamation of 18 July 1815 is printed in Colenbrander, *Ontstaan II*, 567-568. The French text is printed in Delebecque, *Pasinomie*, 275-276.

50) Colenbrander, *Vestiging*, 269.

51) Dissenting: Stengers, 'Le vocabulaire national', 11, who does not compare the French text with the Dutch translation. The original version of the proclamation was in French. Colenbrander, *Ontstaan II*, 560.

The Proclamation of 24 August 1815 promulgating the constitution showed the same ambivalence.<sup>52)</sup> In line with the old strategy, the name of the merged kingdom, *Koninkrijk der Nederlanden* (Kingdom of the Netherlands), was translated as ‘Royaume des Pays-Bas’. However, the term *Nederlanders* (Netherlanders) that was used to designate the population of this new kingdom was once again translated into French as ‘Belges’. Moreover, an attempt was made to overcome the exclusive connotation of the term ‘Belge’ with the south. The two territories of the new kingdom were no longer referred to as ‘Holland’ and ‘Belgium’, but as ‘northern provinces’ (*noordelijke provinciën*) and ‘southern provinces’, translated into French as ‘provinces septentrionales’ and ‘provinces méridionales’ respectively.

The speech of William I on the occasion of the first session of the States General of the new Kingdom, held in Dutch on 21 September 1815 in Brussels, was also inconsistent as to the designation of the territory and its inhabitants.<sup>53)</sup> Sometimes, the term *Nederlanden* (Netherlands) was translated into French as ‘Pays-Bas’. However, when the new state was referred to in Dutch as *de monarchie der Nederlanders* (the monarchy of the Netherlanders), or *de Nederlandsche monarchie* (the Netherlands monarchy), it became in French ‘monarchie Belgique’ and ‘monarchie des Belges’ respectively.<sup>54)</sup> And where the population was in Dutch designated as *het Nederlandsche Volk* (the Netherlands People), the French version used the words ‘Peuple Belge’.

From August 1815, the French version of other legislation used the terms ‘Belgique’ and ‘Belge’ to designate the new kingdom and its inhabitants on a regular basis. In a royal decree, issued on 29 September 1815, a high decoration was established called *Orde van de Nederlandsche Leeuw* (Order of the Netherlands Lion), which became in French ‘Ordre du Lion Belgique’.<sup>55)</sup> In 1822, a draft Civil code was submitted whereby in the context of the allocation of

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52) The Dutch text of the Proclamation of 24 August 1815 is printed in Colenbrander, *Ontstaan* II, 618-620. The French text can be found at Delebecque, *Pasinomie*, 345-347. As this is an official French version, the text has also been published in the *Journal Officiel du Gouvernement de la Belgique* 1815, volume 5, nr. 29, pp. 411-416.

53) The Dutch and French texts of the speech are printed in: *Handelingen der Staten-Generaal* (1815-1816), 3-4.

54) J.A. Bornewasser, ‘Het Koninkrijk der Nederlanden 1815-1830’ in: *Algemene Geschiedenis der Nederlanden* 11 (Weesp 1983), 223-278 (226 and 232).

55) The French text is printed in Delebecque, *Pasinomie*, 369-370. See also Stengers, ‘Le vocabulaire national’, 7. However, the term *Nederlanders* (Netherlanders) in Article 1 of this decree was translated neutrally as ‘tous ceux de nos sujets’ (all of our subjects).

nationality the term *Nederlander* (Netherlander, or Dutchman) was translated as 'Belge'.

The use of the term 'Belges' for the inhabitants of the new kingdom was consistent with the efforts of William I to place his new state in the tradition of the Habsburgs. Indeed, in the humanist tradition of the sixteenth century the population of the provinces of the Netherlands, both in the north and the south, was referred to as 'Belga'.<sup>56)</sup> Moreover, it seemed a suitable means to win over the inhabitants of the south, for it might make them believe that they took over the north.<sup>57)</sup> However, there were some snags in this strategy. As noted earlier, the term 'Belge' had been used for decades to specifically designate an inhabitant of the south. Moreover, it was highly doubtful whether the population of the north would accept being named 'Belgians'. After all, northerners saw themselves as the main suppliers of the identity of the new state. William I probably realised this, for he, in fact, did not use the term 'Belges' to provide the new Kingdom with a common identity. He did not use the proper Dutch translation of 'Belges', which would be *Belgen* (Belgians) but kept calling his inhabitants *Nederlanders* (Netherlanders) in Dutch. In the same manner, he did not name his kingdom *België* (Belgium), which would be the proper Dutch translation of 'Belgique', but *Nederland* (the Netherlands). In fact, no common term was used that covered both parts of the new state. On the contrary, two terms continued to exist side by side, thus perpetuating the distinction between the north and the south.

## 2.2. The first chapter of the constitution: looking for an all-embracing narrative

The name of a community will in most cases contain some indications about its identity but it does not determine it in detail. A preamble is an obvious place to elaborate on it and tell the inhabitants what the dominant story of the community is. It is therefore significant that the *Grondwet* of 1815, as the *Grondwet* of 1814, had to do without a preamble. As will be seen later, the Belgian members of the constitutional committee attempted to include a statement similar to a preamble

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56) Kossmann, *The Low Countries*, 118. After the successful revolt against the Spanish in the second half of the sixteenth century, the northern Netherlands became also known as 'Belgica Foederata', while the south, which remained under Spanish rule, was sometimes referred to as 'Belgica Regia'. After the south came under Austrian rule, it was also known as 'Belgium Austriacum'. The concept of 'Belgica' dates back to Roman times and was derived from a group of Celtic tribes referred to as 'Belgians'.

57) Stengers, 'Le vocabulaire national', 12-13, argues that the idea to use the term 'Belge' as an equivalent of *Nederlander* (*Netherlander*) originated in Belgium.

but their efforts were unsuccessful. However, omitting a preamble does not mean that the drafters of the constitution can escape formulating a narrative. In the absence of a preamble, the foundation of the all-encompassing story is laid in the first chapter.

### **2.2.1. Three possible narratives: the dynastic principle, fundamental rights, or a declaration of union**

In the *Grondwet* of 1814, the dynastic principle was taken as a starting point for the identity of the community. The name of the enlarged state that resulted from the merger in 1815 included the term ‘kingdom’ and, therefore, made it possible to continue the dynastic narrative of the *Grondwet* of 1814. However, the debates in the constitutional committee show that the southern members considered this inappropriate. This is understandable, for the House of Orange-Nassau was associated with the north. It is telling that Benoît Joseph Holvoet (1763-1838) pleaded in the constitutional committee for a larger number of Belgian representatives in the States-General with the argument that the king is a northerner, ‘and will therefore be more inclined to the inhabitants of Holland’.<sup>58)</sup> Moreover, the Protestant faith had become connected to the dynastic principle. Article 133 *Grondwet* 1814 stated that ‘The Christian reformed religion is that of the sovereign prince’, confirming that it was an important element of the northern Dutch constitutional identity. This provision might even have been included consciously in view of the expected unification with the southern territories.<sup>59)</sup>

On 23 June 1815, a draft provision was discussed, in which Article 133 *Grondwet* 1814 is clearly recognisable.<sup>60)</sup> Some members argued that this provision was essential to the population of the north, for it concerned the religion their forefathers had fought for against the Spanish.<sup>61)</sup> However, the Belgians made clear that including a provision requiring the king to adhere to the Protestant faith was unacceptable. Philippe Jean Michel d'Arschot Schoonhoven (1771-1846) remarked that the proposed Article could not remain, for ‘it would cause us to reject the constitution’.<sup>62)</sup> In the end, it was decided by majority that the new

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58) Colenbrander, *Ontstaan* II, 238 (session of 25 May 1815).

59) Colenbrander, *Ontstaan* I, 297.

60) Article 139 of the draft read: ‘La religion chrétienne réformée est celle du Roi’. Colenbrander, *Ontstaan* II, 449.

61) Colenbrander, *Ontstaan* II, 463 (session of 26 June 1815).

62) Colenbrander, *Ontstaan* II, 452 (session of 23 June 1815).

constitution would not include an equivalent of Article 133 *Grondwet* 1814.<sup>63)</sup> Less than two months later, it became apparent in the meeting of the States General of 14 August 1815 that leaving out the provision was still deeply regretted in the north.<sup>64)</sup> Once again, the attachment to this requirement was justified with a reference to the Eighty Years' War (1568-1648), the war of Netherlands independence from Spain. It was noted that this war was fought 'in defence of the free exercise of this faith' and had led to the 'flourishing of the country'.

The dynastic principle was, thus, rejected as the dominant narrative but what could serve as an alternative? The first possibility was a story about fundamental rights, which also played an important role in the first Dutch constitution of 1798, the *Staatsregeling des Bataafschen Volks* (Constitution of the Batavian People). However, the prospects that fundamental rights could serve as a dominant narrative for the enlarged kingdom of William I were not good. As mentioned previously, fundamental rights occupied a subordinate position in the *Grondwet* of 1814. The main purpose of that constitution was to secure the monarchical power of William I.<sup>65)</sup> The merger with Belgium changed the outlook somewhat. Some southern members of the constitutional committee were not happy with the virtually unlimited position of power of William I and wanted, therefore, to increase the number of fundamental rights. In reply to the objection by the northern members that such rights would not give guarantees, Holvoet remarked that they still had to be included, for 'they were essential to any constitution'.<sup>66)</sup>

It soon became apparent that at least some Belgian members of the committee favoured a declaration of these fundamental rights to be placed at the beginning of the constitution.<sup>67)</sup> In the meeting of 5 May 1815, Jean Joseph Raepsaet (1750-1832), who represented the south, argued that the constitution should be preceded by some 'droits généraux de la nation et de tout citoyen' (general rights of the nation and every citizen).<sup>68)</sup> However, it was decided not to enter into this discussion and start immediately with examining the draft constitution article-by-

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63) The decision was part of a compromise, for the proposed provision mentioning the importance of the Roman Catholic faith in the south (Article 140 of the draft) was also omitted. Bornewasser, 'Het Koninkrijk der Nederlanden', 231. See for the text of Article 140 of the draft: Colenbrander, *Ontstaan* II, 449.

64) Colenbrander, *Ontstaan* II, 608.

65) See J.A. Bornewasser, 'De zelfstandige eenheidsstaat in de Noordelijke Nederlanden gegrondvest 1813-1814' in: *Algemene Geschiedenis der Nederlanden* 11, 208-222 (220-222).

66) Colenbrander, *Ontstaan* II, 477 (session of 27 June 1815).

67) Jansen, 'Klassieke grondrechten', 101. Bornewasser, 'Het Koninkrijk der Nederlanden', 230.

68) Colenbrander, *Ontstaan* II, 89.

article. At the end of June, Olivier Leclercq (1760-1842), attorney general at the Court of Appeal of Liège, put the issue back on the table with a plan for a first chapter, titled ‘dispositions générales’.<sup>69)</sup> These ‘general provisions’ would include freedom of the press, right of petition, prohibition of tax privileges, freedom of religion and prohibition of expropriation without a proper reason. Interestingly, Leclercq was not only concerned with securing these rights for the citizen, but also with providing the constitution with a persuasive beginning. He believed that such a first chapter ‘would be popular and generate general approval’.<sup>70)</sup>

The attempts to use fundamental rights as core element of the constitutional identity of the enlarged kingdom were unsuccessful. Van Hogendorp stated that he was not in favour of a central position for fundamental rights, and without any further discussion it was decided that no separate chapter of general principles would be added to the constitution.<sup>71)</sup> However, the Belgian members managed to have a few new fundamental rights included in the *Grondwet* of 1815, such as the right to petition the government (Article 161) and freedom of the press (Article 227).<sup>72)</sup>

Raepsaet also suggested a second alternative narrative during the meeting of 5 May 1815. He argued that since the new state was basically the result of an agreement of the union of several territories, the constitution should include a declaration expressing this agreement.<sup>73)</sup> It was evident that he was mainly concerned about the consent of the south, since it had not been a party to the Final Act of the Congress of Vienna. In his view, this Congress could not decide for the south ‘sans y concourir de notre part’ (without contributing to it on our part), for there was not a single example in the history of the south of a ‘changement de dynastie sans notre consentement’ (a change of dynasty without our consent).<sup>74)</sup> He, therefore, proposed to insert a declaration in Article 1 that reads as follows: ‘les susdites Provinces-Unies des Pays-Bas, les provinces des Pays-Bas Autrichiens et le pays de Liège, voulant concourir (...) à un but si

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69) Colenbrander, *Ontstaan* II, 469-470 (session of 26 June 1815).

70) Colenbrander, *Ontstaan* II, 474 (session of 26 June 1815).

71) Colenbrander, *Ontstaan* II, 475 (session of 27 June 1815).

72) Jansen, ‘Klassieke grondrechten’, 100-102. See also the final report of the constitutional committee of 13 July 1815: Colenbrander, *Ontstaan* II, 551-552. It is noteworthy that these two rights were inconspicuously placed in Chapter 4 (On the Provincial Council) and Chapter 10 (On Education and the Administration of the Poor).

73) Colenbrander, *Ontstaan* II, 89: ‘que la déclaration ou l’acte de réunion devait être en tête du pacte de l’union’.

74) Colenbrander, *Ontstaan* II, 89.

désirable et nécessaire, ont déclaré (...) de se réunir en un seul et même état, sous le titre de royaume des Pays-Bas, et de reconnaître en commun S.A.R. Guillaume-Frédéric prince d'Orange-Nassau (...)’ (The aforesaid United Provinces of the Netherlands, the provinces of the Austrian Netherlands and the country of Liège, wishing to contribute (...) to a goal so desirable and necessary, have declared (...) to unite in one and the same state, under the title Kingdom of the Netherlands, and to recognise in common H.R.H William-Frederic Prince of Orange-Nassau (...)).<sup>75)</sup>

At the end of May, Jan Elias Nicolaas van Lynden van Hoevelaken (1766-1841), a northern member of the committee, also proposed to give the story about the alliance between the two territories a prominent place in the constitution. Van Lynden favoured the union and argued that the appropriate means to realise it was ‘l’assentiment volontaire d’une nation indépendante’ (the voluntary assent of an independent nation).<sup>76)</sup> Therefore, he suggested to declare expressly in Article 1 that both countries agreed as separate entities to the accession to the new union. According to Van Lynden, such a declaration would create a union, ‘qui sera solide, puisqu’elle n’est plus forcée, mais émane d’un mutuel consentement’ (which will be solid, since it is no longer forced, but emanates from a mutual consent). This alternative was also not pursued.

### 2.2.2. The final narrative: The territory

With the dynastic principle not being attractive to the Belgians and two alternative narratives discarded, the constitutional committee had to look for another story. At the end of June, Raepsaet provided such a story, proposing to begin the constitution with a description of the territory.<sup>77)</sup> The narrative about the enlarged kingdom would, thus, commence with ‘Once upon a time, there was a territory...’. On 3 July 1815, the committee decided to follow this suggestion.<sup>78)</sup> The first chapter of the Grondwet of 1815 was titled *Van het rijk en desselfs inwoners* (Of the kingdom and its inhabitants). Its Article 1 described the territory by listing all the provinces, thus focussing on geography as a starting point for constitutional identity.<sup>79)</sup> The dynastic principle was relegated to the second

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75) Colenbrander, *Ontstaan* II, xviii-xix. During the *Ancien Régime*, Belgium (without Liège) was also referred to as ‘Pays-Bas Autrichien’ (Austrian Netherlands).

76) All quotes in this paragraph can be found at Colenbrander, *Ontstaan* II, 206-207.

77) Colenbrander, *Ontstaan* II, xxxix.

78) Colenbrander, *Ontstaan* II, 497.

79) Interestingly, Article 1 of the Constitution of Belgium (1831) also describes the territory.



chapter, and lost the function as the dominant story it had in the *Grondwet* of 1814.<sup>80)</sup>

The French historian and philosopher Ernest Renan (1823-1892) has devoted some interesting considerations to the importance of geography in answering the question of what a nation is. On the one hand, he recognises that geography can play a role in the division of nations and in particular the phenomenon of natural boundaries. At the same time, he notes that nations are not solely determined by this. According to him, ‘Une nation est (...) une famille spirituelle, non un groupe déterminé par la configuration du sol’ (a nation is a spiritual family, not a group determined by the lay of the land).<sup>81)</sup> In line with this, it can be noted that the geographical proximity of the constituent parts is important for the formation of a nation, but that its territorial boundaries are ultimately determined by agreeing on them. In the case of new states in particular, delineating the territory of a political community is therefore an important part of establishing its identity. Only when its territorial boundaries are fixed, the process of creating attachment to it can begin.

Since the external borders of the enlarged kingdom were clearly defined by the treaties, embracing the geographical story as the dominant narrative seemed unproblematic. The only exception was the position of the Grand duchy of Luxembourg, which was only connected to the kingdom in a personal union.<sup>82)</sup> King William I was also Grand duke of Luxembourg. In addition, the Grand duchy had ties with the German Confederation. The Luxembourg question did indeed lead to some discussion in the constitutional committee, and also left traces in the *Grondwet* of 1815. William I wanted to fully integrate Luxembourg into his kingdom and, therefore, mentioned it in the list of provinces, as included in Article 1, stating that it was ‘placed under the same sovereignty as the Kingdom of the Netherlands’, and would have the same constitution.<sup>83)</sup> For the same reason,

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80) See I.J.H. Worst, ‘Koning Willem I. Het begin van “ons grondwettig volksbestaan”’ in: Tamse/Witte, *Staats- en natievorming*, 56-75 (61). The chapter was also reduced to 18 provisions out of a total of 234. Colenbrander, *Ontstaan II*, 497.

81) E. Renan, ‘Qu’est-ce qu’une nation?’ (1882) in: E. Renan, *Discours et conférences* (Paris s. a. [1919]), 277-310 (305).

82) See about this problem: J.C. Boogman, *Nederland en de Duitse Bond, 1815-1851 I: 1815-1848* (Groningen/Djakarta 1955); H. Maks, *Das Grossherzogtum Luxemburg im Kräftespiel der europäischen Politik, 1839-1872* (Amsterdam 1991). The overseas territories were not included in the description of the territory. See on this issue: P.A.J. van den Berg, *Colonialism and codification. A legal history of the Caribbean and the Americas* (The Hague 2022), 218.

83) Colenbrander, *Ontstaan II*, 79, 153 and 260.



Article 79 *Grondwet* 1815 provided that Luxembourg would be represented in the States General with four delegates.<sup>84)</sup>

However, the list of the constituent provinces included in Article 1 *Grondwet* 1815 was also relevant for the internal relations, especially since the northern provinces kept their names, and the southern provinces were restored to their historical names dating from before the Napoleonic era. Consequently, this geographical description entailed historical reminiscences, and could, therefore, give rise to controversies that could be traced back to clashing historical identities.

The *Grondwet* of 1814 also included a list of provinces, but only in its second chapter, as Article 53. Since this constitution was used as a starting point for the discussions in the constitutional committee, it was assumed that the new constitution would also have such a list, of course extended with the southern provinces. A committee was appointed to prepare the necessary amendments to Article 53. Since these amendments were supposed to concern mainly the southern provinces, it consisted of all southern members of the constitutional committee as well as Johan Hendrik Mollerus (1750-1834) and Willem Queysen (1754-1817).<sup>85)</sup> On 22 May 1815, Jean-François Gendebien (1753-1838), a lawyer from Mons (Belgium), reported on behalf of this committee to the plenary session of the constitutional committee.<sup>86)</sup> Although the territory had not been chosen as the dominant narrative yet, the report showed that establishing the list of provinces caused problems.

The Gendebien committee took the position that, in view of the ‘close and complete union between all the provinces’, the southern provinces should not be added to the list *en bloc*.<sup>87)</sup> Instead, it suggested that the southern and northern provinces, ‘as together forming one and the same state or kingdom’, should be intermixed without any distinction. However, there was disagreement as to the criterion to be used to establish the sequence. The majority of the committee opted for a classification in alphabetical order, which fitted well with the goal of a ‘close

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84) However, there was some discomfort in the constitutional committee about the strategy of King William I. Colenbrander, *Ontstaan* II, 238. See also Colenbrander, *Ontstaan* II, 77, 189 and 529. In 1840, it was recognised that the strategy towards Luxembourg had not worked. The Grand duchy was removed from the definition of the territory in Article 1 *Grondwet* 1840.

85) Colenbrander, *Ontstaan* II, 126, 129 and 190 (session of 10 May 1815).

86) The report is printed in Colenbrander, *Ontstaan* II, 191-194.

87) Colenbrander, *Ontstaan* II, 193. See also R. Reinsma, ‘Aardrijkskunde en geschiedenis als unificatiemiddelen tijdens de vereniging van België’ in: *Tijdschrift voor Geschiedenis* 80 (1967), 158-176 (170).

association'. Other members suggested to follow the sequence that was customary in the legislation of Charles V, where the title of the sovereign lord of the province was decisive. This criterion would also lead to mixing the northern and southern territories. Finally, some members, including Mollerus, wanted a sequence based on geography.<sup>88)</sup> Interestingly, such a geographical criterion seems to be at odds with the committee's stated goal of being a complete association. After all, its application would probably lead to the clustering of the provinces that are in close proximity to each other, which could in turn easily result in retaining the two former political entities.

As mentioned, a majority in the Gendebien committee favoured the alphabetical principle, and it, therefore, proposed a draft article to that effect.<sup>89)</sup> However, in the constitutional committee of 22 May 1815 a majority supported the geographical criterion. The voting ratio shows that there were only three Belgians among the twelve proponents of this criterion. The choice of some northerners was motivated by their hesitation to give up the identity of the north and to be completely absorbed in the new amalgam. Van Lynden, for example, clearly stated that he did not favour mentioning the provinces randomly, and proposed to simply place the southern provinces behind the northern ones.<sup>90)</sup> D'Arschot responded immediately, remarking 'why should we be the last? – one must make the reunion complete'.<sup>91)</sup> However, Van Lynden was not so much concerned with getting the northern provinces mentioned first, but rather to use the geographical criterion to maintain the northern part of the enlarged kingdom as an entity in the territorial description. In an illuminating memorandum, Van Lynden explained that in his view the geographical criterion necessitated retaining the old historical entities in the description.<sup>92)</sup>

First, Van Lynden elaborated on the concept of 'geography', which according to him was not limited to physical aspects, but also included historical events.<sup>93)</sup> Subsequently, he argued that the placement of the provinces of the former Republic of the United Provinces always respected the historical order. Van Lynden attached such an importance to preserving the memory of the Republic because of the glorious role that the Republic had played in Dutch history. In his

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88) Colenbrander, *Ontstaan* II, 194 and 201.

89) Colenbrander, *Ontstaan* II, 190 and 194.

90) Colenbrander, *Ontstaan* II, 202.

91) Colenbrander, *Ontstaan* II, 202.

92) Colenbrander, *Ontstaan* II, 206-207.

93) Colenbrander, *Ontstaan* II, 206-207.

opinion, this illustrious history should be kept in the listing of the provinces. As mentioned earlier, Van Lynden favoured including a declaration regarding the agreement on the union in the constitution. He believed this would create a union much more intimate than a 'confusion des noms' (mixing of names).

The issue was referred back to the Gendebien committee, which now had to use the geographical criterion to determine the sequence.<sup>94)</sup> However, the committee did not follow Van Lynden's proposal. Instead, it suggested that the ranking should begin with Luxembourg in the south-east, continue with the provinces in the northern direction, then turn to the west and subsequently descend to the south-western provinces.<sup>95)</sup> This seems to be an implementation of the geographical criterion as proposed by Mollerus. However, this solution also met with resistance in the constitutional committee. Van Hogendorp, who had voted in favour of the geographical criterion, opposed this proposal because it would result in 'all Dutch provinces [to] remain in the middle and together'.<sup>96)</sup> The Gendebien committee once again considered the issue of the sequence, but was not able to resolve it on the basis of the geographical criterion. At the end of June, it advised to use the alphabetical order.<sup>97)</sup> The majority of the constitutional committee, including Van Hogendorp, followed this advice.

However, this was not the end of the discussion, for William I also wanted to use the list of provinces to support an identity based on the past. He commanded that instead of the neutral alphabetical order, the ranking customary under the reign of Charles V should be maintained.<sup>98)</sup> The Gendebien committee of course amended Article 1 *Grondwet* 1815 and stated in its final report of 13 July 1815: 'Nous avons placé les provinces du royaume dans l'ordre qu'avaient adopté, avant leur séparation, les ordonnances de Charles-Quint' (We have placed the provinces of the kingdom in the order adopted, before their separation, by the ordonnances of Charles V).<sup>99)</sup> The States General resigned itself to this 'Habsburg solution', although a report drawn up by a committee of the members of the States General showed that this was still regretted in the north. This report, which was discussed during the meeting of the States General of 14 August 1815, noted with regard to the order in Article 1 that it was realised with displeasure that 'our oldest

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94) Colenbrander, *Ontstaan* II, 191.

95) Colenbrander, *Ontstaan* II, 232 and 238 (session of 25 May 1815).

96) Colenbrander, *Ontstaan* II, 201-202 and 238.

97) Colenbrander, *Ontstaan* II, 471-472 (session of 26 June 1815).

98) Colenbrander, *Ontstaan* II, 522 and 526 (session of 8 July 1815).

99) Colenbrander, *Ontstaan* II, 546 and 551.

provinces are placed lower on the list than would have happened according to long-standing custom'.<sup>100)</sup> However, it was understood that a new ranking was inevitable and declared, albeit reluctantly, that the present solution, which followed the sequence that was customary during the reign of Charles V, was 'probably the most preferable'.

### **2.3. Which role for history: the Pacification of Ghent (1576), or the Union of Utrecht (1579)?**

History inevitably plays a role in the search for a constitutional identity, for continuity with the past can legitimise it. With the name *Nederlanden* (*Netherlands*) a connection was made with the common Habsburg past, in particular with the reign of Emperor Charles V. William I regularly elaborated this connection, for example in the aforementioned claim upon the acceptance of the throne on 16 March 1815 and in the speech on the occasion of the first session of the States General on 21 September 1815.<sup>101)</sup> The Habsburg past was also used in determining the order in which the provinces were mentioned in Article 1 of the constitution.

The term *Nederlanden* also referred to the past of the northern provinces, which was of course not consistent with relying on the Habsburg past. However, the discussions about Article 121 *Grondwet* 1814, which regulated the militias, show that particularly the northern members of the constitutional committee found it difficult to stop building on the past of the north. Article 121 *Grondwet* 1814 stipulated that it was a duty of all residents to bear arms in defence of the country, in accordance with the customs and principles adopted in the Union of Utrecht of 1579. However, the Union of Utrecht was essentially an alliance between the northern provinces, and by referring to it the new state would be placed in the tradition of the northern Netherlands. Understandably, copying this provision into the *Grondwet* of 1815 led to some opposition in the constitutional committee.<sup>102)</sup> Théodore Dotrengé (1761-1836), although a southern member, supported the provision, remarking somewhat naively that it was 'such a beautiful era that arouses so much interest'. However, Holvoet, also from the south, immediately countered this with the remark: 'concedo, but the Union of Utrecht is strange to us'. Other southern members also objected to referring to the Union of Utrecht.

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100) Colenbrander, *Ontstaan* II, 605.

101) *Handelingen der Staten-Generaal* (1814-1815), 225. *Handelingen der Staten-Generaal* (1815-1816), 3.

102) Colenbrander, *Ontstaan* II, 296 (session of 2 June 1815).

Raepsaet and D'Arschot stated that it must be removed, for 'we do not need anything with that Union'.

According to Raepsaet's report of the meeting, Van Hogendorp then proposed to include a reference to the Pacification of Ghent, signed on 8 November 1576, 'comme une époque chère aux deux nations et rappelant leur ancienne union' (as a time dear to both nations and recalling their former union).<sup>103)</sup> The Pacification of Ghent was indeed a suitable point of reference for the new state, because in that document all the regions of the Netherlands, north and south, had joined together in a union against the Spaniards.<sup>104)</sup> Cornelis Felix van Maanen (1769-1849) reports that Van Hogendorp's intention was to replace the reference to the Union of Utrecht with a reference to the Pacification of Ghent.<sup>105)</sup> However, there seems to have been resistance to this from the northern side. It should be borne in mind that William I also did not want to let go of the Union of Utrecht as part of the narrative of the enlarged kingdom. This is evident from the fact that in 1814-1815 his court painter Joseph-Denis Odevaere (1775-1830), a Fleming born in Bruges, made a painting on his behalf depicting the offer of the Union of Utrecht to Prince William of Orange (1533-1584), in the north generally seen as the founder of the nation.<sup>106)</sup>

The discussions resulted in Article 203 *Grondwet* 1815, in which reference was made to both documents. However, retaining the reference to the Union of Utrecht was curious, for it replaced the Pacification of Ghent and was, therefore, inconsistent with the historical connotation of the latter document. The committee realised this, for it approved the provision with the remark that since the Union of Utrecht only affected the northern provinces, the Pacification of Ghent, which is common to all, was added.<sup>107)</sup>

#### 2.4. The art of concealment and omission

In the constitutional identity established by the *Staatsregeling* of 1798, 'the people' played a prominent role. In the *Grondwet* of 1814, the dynastic principle was the leading narrative, and 'the people' was granted a much more modest

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103) Colenbrander, *Ontstaan* II, 301.

104) See on the Pacification of Ghent: J.I. Israel, *The English Republic. Its rise, greatness, and fall, 1477-1806* (Oxford 1995), 184-196. L.J. Rogier, *Eenheid en scheiding. Geschiedenis der Nederlanden, 1477-1813* (Utrecht/Antwerp 1980), 85-96.

105) Colenbrander, *Ontstaan* II, 301.

106) Leerssen, 'De Nederlandse natie', 322.

107) Colenbrander, *Ontstaan* II, 292.

place. It was mentioned for the first time in the first two provisions of chapter two. Article 52 stated that the States General represented the Dutch People (*Het Nederlandse Volk*), and 53 defined this people as the inhabitants of the provinces that were subsequently listed.

The *Grondwet* of 1815 seemingly headed to a more prominent for ‘the people’, given the fact that its first chapter was titled ‘Of the kingdom and its inhabitants’. However, the emphasis came on the territory and not on the inhabitants. Article 1 *Grondwet* 1815 included a list of provinces, as did Article 53 *Grondwet* 1814, but the reference to the ‘Dutch people’ was omitted.<sup>108)</sup> It was only mentioned for the first time in the third chapter, in Article 77 *Grondwet* 1815, which was identical to Article 52 *Grondwet* 1814.

The subordinate position of the population in the *Grondwet* of 1815 was probably related to the fact that it proved difficult to present the population of the enlarged kingdom as a single coherent unity. In particular the fact that the population of the south was significantly larger than that of the north complicated this.<sup>109)</sup> It had required much discussion to adopt Article 79 *Grondwet* 1815, establishing the equal distribution of the 110 delegates to the *Tweede Kamer* (Second Chamber, or House of Representatives) between the north and the south.<sup>110)</sup> Leaning too much on the population as the basis of identity would probably have made these discussions even more difficult. The role of ‘the people’ was, therefore, concealed by only mentioning it for the first time in the third chapter.

If it proved difficult to find common ground for building blocks of an identity, omission could also be an apt strategy, although it did not always work. As mentioned above, religion as an element of identity was successfully discarded,

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108) Compare this with Article 1 of the draft constitution prepared for Germany by the Frankfurt Parliament, assembled in the St. Paul's Church in 1848, where in Article 1 immediately the term ‘German’ is introduced: ‘Jeder Deutsche hat das allgemeine Deutsche Staatsbürgerrecht. Die ihm Kraft dessen zustehenden Rechte kann er in jeden deutschen Lande ausüben’. A fierce debate then arose about who should be counted among them. See R.P.G. Peters, ‘History decides? Lessons from the constitutional debates in the Frankfurt Parliament of 1848’ in: Amtenbrink/Van den Berg (eds.), *The constitutional Integrity*, 55-72 (59-60).

109) In 1816, Belgium had about four million inhabitants, while the population of the Netherlands was a little over two million.

110) This provision was adopted by the constitution committee with a narrow majority. Only two southern members voting with the delegates from the north. Colenbrander, *Ontstaan II*, 325 (session of 7 June 1815).

but the strategy had not worked with Article 203 *Grondwet* 1815, concerning the militias. The importance of the art of omission for a constitution can also be demonstrated by looking at the presence or absence of symbols. After all, symbols such as flag, national anthem and capital are ideally suited to support a narrative.<sup>111)</sup>

The *Grondwet* of 1814 was not very rich of symbols. No mention was made of a flag or an anthem. This is understandable, since this constitution was not meant for a state that was created out of two previously separate entities, for which a joint narrative had to be found. This was different for the *Grondwet* of 1815, and the scarcity of symbols in this constitution is, therefore, striking.

Sometimes, there was a good reason for the absence of a symbol. The national anthem — at that time the *Wilhelmus* — was not mentioned, but that can be explained by the fact that it was decided to create a new anthem for the enlarged kingdom. To that end, a competition was organised which resulted in an anthem based on a poem by Tollens, a northern writer.<sup>112)</sup> However, its encompassing quality is doubtful. It was written in Dutch, and the first line was *Wien Neêrlands bloed in d'aders stroomt* (Who has Netherlands blood in his veins). It was adopted in 1816, but a French version did not appear until 1824.<sup>113)</sup> Unsurprisingly, the word *Neêrlands* (Netherlands) was not translated.

However, in other cases, the lack of symbols was caused by the resistance in the north to the creation of a new overarching identity. The intention of the northerners was that their symbols would simply apply to the enlarged kingdom. For example, the tricolour — red, white, blue — was both the flag of the Dutch state of 1813 and of the Kingdom of the Netherlands of 1815. However, the *Grondwet* of 1815 did not establish this. The strategy of omission had proved successful in this case.

Another example of the art of omission was the issue of the capital. Article 30 *Grondwet* 1814 stipulated, for the first time, that Amsterdam was the capital of the resurrected state, and that the inauguration of the monarch would take place there. Some Belgians opposed to copying this provision in the new constitution. Interestingly, they initially suggested to remove 'Amsterdam', and leave the place

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111) See for example Articles 125 (colours) and 126 (capital) of the Constitution of Belgium (1831) and Article 22 Section 1 (capital) and Section 2 (flag) of the Constitution of the Federal Republic of Germany (1949).

112) Leerssen, 'De Nederlandse natie', 332.

113) The Dutch and French versions can be found in Leerssen, 'De Nederlandse natie', 332 and 400.



of inauguration to the monarch, to ‘displease no one’.<sup>114)</sup> The Belgians were even prepared to recognise Amsterdam as the *de facto* capital.<sup>115)</sup> However, Van Hogendorp rejected the strategy of omission this time, and tried to downplay the importance of the issue.<sup>116)</sup> He stated that Amsterdam must remain the capital, and that this was not a disadvantage to anyone. After all, the city was not a residence for any governmental institution. However, the Belgians did not go along with Van Hogendorp’s attempt to brush away the symbolic value of the choice of Amsterdam as the capital. Patrice Charles Ghislain de Coninck (1770-1827) remarked matter-of-factly that in Belgium, ‘they will see this differently, and therefore reject the Constitution’.<sup>117)</sup>

A committee charged with solving the issue came up with the proposal to state in the constitution that the ‘inauguration would take place in Amsterdam or Brussels, as capitals’.<sup>118)</sup> This seems like a nice compromise, although from a rhetorical point of view there is an important objection to it. It does not offer an overarching symbol, while this is actually the purpose of having a capital. To this end, it should have been decided to develop an entirely new capital, as happened in Spain (Madrid) and Brazil (Brasilia). If one wanted an existing city, Maastricht or ’s-Hertogenbosch might have been a relatively neutral choice. The solution proposed by the committee in fact gave both parts of the kingdom their own capital and could, thus, even contribute to these parts becoming more alienated from each other. Hans Willem van Aylva (1751-1827) pointed out this danger, and opposed the proposal, finding in it ‘an idea of scission, or separation between northern and southern provinces’.<sup>119)</sup> However, even this compromise was not acceptable to the northern members who had advocated Amsterdam. The following discussion shows how far they were from striving for an overarching identity that would be acceptable to both parts.

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114) Colenbrander, *Ontstaan* II, 103 (session of 8 May 1815). See also Colenbrander, *Ontstaan* II, 100, 108-109, 117 and 152.

115) See Colenbrander, *Ontstaan der Grondwet* II, 104, 183 and 189. On 24 July 1815, Van Hogendorp reported to the king that De Coninck had said to him: ‘we will not tell it in Brussels, but Amsterdam is the capital’. Colenbrander, *Ontstaan* II, 570.

116) Colenbrander, *Ontstaan* II, 103-104. Elout used the same strategy. Colenbrander, *Ontstaan* II, 183 (session of 20 May 1815).

117) Colenbrander, *Ontstaan* II, 104.

118) Colenbrander, *Ontstaan* II, 182-183. Dotrengé had already remarked that the inauguration should alternate, then in Belgium, then in Holland. Colenbrander, *Ontstaan* II, 103.

119) Colenbrander, *Ontstaan* II, 183. Mollerus and Queysen supported him. Colenbrander, *Ontstaan* II, 183-184.



In response to the committee's proposal, the Belgians once again suggested to omit the word 'capital'. However, Van Maanen opposed this, arguing that Amsterdam could not be deprived of this right, for it is recognised in the constitution and by the King.<sup>120)</sup> He added that it was already a concession that Brussels was also mentioned. The Belgians rejected the appeal to *Grondwet* of 1814. Holvoet remarked that the right of Amsterdam does not affect us, for 'we are making a new constitution'.<sup>121)</sup> Van Maanen's reaction is illuminating, for it shows that the idea was to assimilate the south on the basis of the identity of the northern provinces. He opposed the idea that a new constitution had to be drawn up, for then, 'one would lose sight of the fact that we have been an established state for two centuries and the southern departments have not'. Van Maanen's vision is particularly important, because he had a great influence on William I. Van Maanen was his Minister of Justice for more than 25 years, from 1815 to 1842.

Raepsaet was clearly displeased with Van Maanen's attitude, and stated that 'Ghent must be the capital, it has always been. I protest against all the other capitals'.<sup>122)</sup> In the end, Van Hogendorp had little choice but to conclude with the majority 'that the article will not speak of a capital'.<sup>123)</sup> Article 52 *Grondwet* 1815, thus, only stipulated that the inauguration would take place 'alternately in Amsterdam and in one of the cities of the southern provinces'.<sup>124)</sup> It is noteworthy that Brussels was not mentioned.

The last example of concealment, or omission, is the pursuit of a new codification for the enlarged kingdom, as ordered by Article 163 *Grondwet* 1815. This provision was identical to Article 100 *Grondwet* 1814, which required that the law be laid down in general codes.<sup>125)</sup> The emphasis seemed to be on legal unity, as evidenced by the French version of Article 163 *Grondwet* 1815: 'Il y aura

120) Colenbrander, *Ontstaan* II, 183.

121) Colenbrander, *Ontstaan* II, 183. See also the earlier remark of Dotrengé that Amsterdam is no longer a capital, at least 'this has yet to be determined'. Colenbrander, *Ontstaan* II, 103.

122) Colenbrander, *Ontstaan* II, 183. See also Colenbrander, *Ontstaan* II, 184.

123) Colenbrander, *Ontstaan* II, 184. Kossmann, *The Low Countries*, 112.

124) It was not until the constitutional amendment of 1983 that Amsterdam was officially recognised as the capital. See Article 32 *Grondwet* 1983. The question had also been raised in the constitutional amendment of 1953, but it was downplayed by the minister, which led to the necessary indignation. P. Geyl, 'Gerretson over "het Volk" in november 1813' in: P. Geyl, *Verzamelde Opstellen* 2 (Utrecht/Antwerp 1978), 195-199 (195-196).

125) The first part of Article 100 *Grondwet* 1814 read: 'Er zal worden ingevoerd een algemeen wetboek van burgerlijk regt (...)'.

pour tout le Royaume un même Code civil’ (There will be the same civil code for the entire kingdom).<sup>126)</sup> The Belgians were probably not alarmed by this formulation, for both the southern and the northern provinces had been part of the French Empire until 1813, and in both territories the French *Code civil* of 1804 was still in force. Obviously, there was already legal unity between north and south, and Articles 100 *Grondwet* 1814 and 163 *Grondwet* 1815, therefore, seemed superfluous. However, in the northern provinces the civil code was no longer seen as merely a means to create legal unity but also as an expression of national identity.<sup>127)</sup> The code had, thus, become a national symbol.

This development was already noticeable as a reaction to the steady imposition of the French during the Kingdom of Holland, which was established in 1806 under King Louis Napoleon (1778-1846). Louis Napoleon was under great pressure from his brother Napoleon to adopt the French *Code civil* integrally, but nevertheless strove with some success to include some provisions specific to the Netherlands in the Civil code he introduced in 1809.<sup>128)</sup> After the resurrection of the Netherlands in 1813, anti-French sentiment had only grown stronger, and in this light Article 100 *Grondwet* 1814 must be interpreted. In particular Johan Melchior Kemper (1776-1824), a law professor at the University of Leiden, was convinced that French influence had to be reduced, and urged the monarch to replace the French *Code civil* by a truly Dutch code.<sup>129)</sup> In December 1814, William I decided that the new code should be based on the ‘own national law’, by which, of course, the law of the north was meant. It should become an

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126) A similar provision was already included in the *Staatsregeling* of 1798: Article 28 of the *Burgerlijke en Staatkundige Grondregels* (Civil and Constitutional Rules). The purpose of this provision was undoubtedly to achieve legal unity. P.A.J. van den Berg, *The politics of European codification. A history of the unification of law in France, Prussia, the Austrian Monarchy and the Netherlands* (Groningen 2007), 250. P.A.J. van den Berg, ‘La codification et la formation d’un État national sous le roi Louis’ in: A. Jourdan (ed.), *Louis Bonaparte. Roi de Hollande* (Paris 2010), 81-100 (83-84).

127) P.A.J. van den Berg, ‘Recht en nationale identiteit in de Bataafs-Franse periode’ in: F. Grijzenhout/N.C.F. van Sas/W. Velema (eds.), *Het Bataafse experiment. Politiek en cultuur rond 1800* (Nijmegen 2013), 103-123.

128) This was the *Wetboek Napoleon ingerigt voor het Koninkrijk Holland* (Code Napoleon adapted to the Kingdom of Holland, or *WNH*). F. Brandsma, “‘Een basterd Code Napoleon’? Het Wetboek Napoleon ingerigt voor het Koninkrijk Holland’ in: J. Hallebeek/A.J.B. Sirks (eds.), *Nederland in Franse schaduw. Recht en bestuur in het Koninkrijk Holland (1806-1810)* (Hilversum 2006), 221-247.

129) P.A.J. van den Berg, ‘De integratieve functie van het recht in het Verenigd Koninkrijk van Koning Willem I (1815-1830)’ in: *De negentiende eeuw* 36/4 (2012), 244-262 (246-253).

important symbol for the resurrected Netherlands.

Although this decision was understandable in view of the Napoleonic domination, it was awkward given the pursuit of unification with Belgium. After all, the Belgians could hardly be expected to be happy with the replacement of the *Code civil*. The new codification would not only deviate from the laws they were familiar with but also reflect the identity of the northern provinces. In the south, lawyers had studied French customary law from the seventeenth century onwards. The incorporation of Belgium into France in 1795 and the subsequent introduction of several French laws strengthened this influence.<sup>130)</sup> When the French *Code civil* was realised in 1804, it also went into force in Belgium. Although judges and the population initially opposed its introduction, they gradually came to accept it, albeit by dealing with it flexibly.<sup>131)</sup>

The insistence on the preparation of a code based on the laws of the north, even in the face of the merger with the south, was probably prompted by the desire to counter French influence in Belgium. According to the northerners, Belgium had been part of the French Empire for too long. However, the way William I and Kemper interpreted the provision on codification was never made explicit, in order to avoid the Belgians to be alerted. As mentioned, Article 163 *Grondwet* 1815 was identical to Article 100 *Grondwet* 1814.

### 3. Closing remarks

The formation of the enlarged Kingdom of the Netherlands under King William I in 1815 was a daring experiment, but it was not doomed to failure. Diversity was a feature of most European states in the nineteenth century, and a number of those states have nevertheless managed to maintain themselves. Moreover, some states that were created relatively late, such as Italy and Germany, more or less succeeded in creating an overarching identity. However, within twenty years after the establishment of the kingdom of William I, the southern provinces seceded. In order to find out what went wrong, it is useful to look at the efforts of the monarch to create an overarching identity for the new state. A

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130) P. Godding, 'De "l'ancien droit belgique" au Code civil de 1804: une rupture?' in: A. Wijffels (ed.), *Le Code civil entre ius commune et droit civil européen* (Brussels 2005), 585-610 (590-603).

131) D. Heirbaut, 'Napoleons trouwste onderdanen, of waarom de Code civil na tweehonderd jaar nog steeds overeind staat in België' in: D. Heirbaut/G. Martyn (eds.), *Napoleons nalatenschap. Tweehonderd jaar Burgerlijk Wetboek in België/Un héritage napoléonien. Bicentenaire du Code civil en Belgique* (Mechelen 2005), 77-95 (83).

constitution is an excellent place to examine such policies, because a constitution is a foundational document that cannot avoid describing the political community for which it is intended. It therefore inevitably reveals the building blocks for the identity of the polity. This applies *a fortiori* to the *Grondwet* of 1815, because that constitution was intended for a new community, composed of previously sovereign territories with a different past and a different identity. The question, therefore, is what elements for an identity had the drafters of this constitution in mind and what became of them.

William I certainly tried to create an overarching identity, for example by introducing a new name for the enlarged Kingdom and its inhabitants. However, it soon turned out that the name was contested, which prevented the pursuance of a consistent policy. This is evidenced by the fact that the terms *Nederlander* (Netherlander) and *Nederlands* (Netherlands) that were used in the Dutch version of the constitution had in many cases no equivalent in its French version but simply omitted. Soon after the proclamation of the constitution, it became clear that the attempt to create overarching name were abandoned. From that moment on the terms were translated with 'Belge' and 'Belgique', which in fact did not contain umbrella terms, but names that were traditionally referring to the southern provinces. Consequently, the northern and southern provinces remained separated by the names that they carried.

The lack of a consistent policy is also illustrated by the way in which the choice of 'the territory' as the all-encompassing narrative came about. Again, there was no preconceived plan for an overarching narrative. Rather, the intention seemed to simply adopt the identity of the *Grondwet* of 1814 for the new constitution. Initially, therefore, Article 1 of the latter was devoted to position of the Prince of Orange-Nassau, thus making the dynastic principle the all-encompassing narrative, as in the *Grondwet* of 1814. Gradually, it became clear that this dynastic principle was not attractive to the southern members of the constitutional committee. This was related to the fact that the House of Orange-Nassau was associated with the north, and, particularly, with the Protestant religion. The dynastic principle was, therefore, relegated to the second chapter, while the provision that the monarch had to adhere to the Protestant religion (Article 133 *Grondwet* 1814) even disappeared from the constitution.

The Belgians also suggested two alternative ways to start the constitution. The first proposal was to place a chapter in which the fundamental rights were set out at the start of the constitution. The second proposal was to provide the constitution with a preamble in which both parts of the enlarged state officially declared their

intention to merge. Neither of these proposals was adopted. In the end, it was decided to put a description of the territory at the beginning of the constitution. However, even this seemingly neutral compromise for a dominant narrative led to extensive discussions.

The use of history was also far from consistent. Once again, King William I tried to provide an overarching narrative, by referring to the common past under Emperor Charles V in his speeches and proclamations. He also ordered that in the enumeration of the provinces in Article 1, the order as was customary in the legislation of Charles V should be followed. However, in other cases the idea of extending the northern constitutional identity to the enlarged state won out. Many northern members of the constitutional committee showed an unwillingness to renounce their own historical identity. Characteristic is the discussion on Article 121 *Grondwet* 1814 concerning the militias, which included a reference to the Union of Utrecht (1579). Since this Union was specific to the north, there was some opposition to copying this reference to the equivalent Article 203 *Grondwet* 1815. To remedy this, it was decided to replace it by the Pacification of Ghent (1576), which indeed was overarching. After all, this Pacification was a union of all northern and southern provinces against Spanish rule. However, owing to opposition from northern members to removing the reference to the Union of Utrecht, mention was made of both documents in the final provision.

The strong adherence to the northern identity is confirmed by the frantic attempts of the northerners to establish Amsterdam as the capital in the *Grondwet* of 1815. The Belgian member's proposal to omit this was only accepted after a fierce debate. The same applies to the efforts it took to choose an order when listing the provinces in Article 1 that no longer showed the composition of the old Republic. Finally, it can also be pointed out that all kinds of symbols that are important for the constitutional identity, such as a flag, a capital, and a codification, were not mentioned, but that these were nevertheless filled in on the basis of the tradition of the northern provinces.

Although William I did try to create an overarching identity, he failed to sufficiently counter the attachment of many northern members of the constitutional committee to their own identity. There are several possible explanations for this. It must be assumed that he did not interfere intensively with what happened in the constitutional committee because in the same period the battle of Waterloo took place (16 - 18 June 1815). In addition, an overly energetic push for an overarching identity would undoubtedly have led to resistance in the north. Finally, William I's policy with regard to the Civil code and his language policy show that he was

probably in agreement with the northern members, in particular Van Maanen, to assimilate the south on the basis of the northern identity.

In conclusion, a consistent pursuit of a new overarching identity was lacking, while the strategy to extend the constitutional identity of the north to the south by more or less copying the *Grondwet* of 1814 was obviously unacceptable to the Belgians. The art of concealment and omission was, therefore, of crucial importance to the drafters of the constitution. As a result, the *Grondwet* of 1815 had a sober appearance. Nevertheless, it still included several building blocks for the constitutional identity. This can hardly be otherwise, because a constitution has to define the community for which it is intended.