

# National Sovereignty in the Belgian Constitution of 1831. On the Meaning(s) of Article 25

**Brecht Deseure**

**Abstract** Article 25 of the Belgian Constitution of 1831 specifies that all powers emanate from the nation, but fails to define who or what the nation is. This chapter aims at reconstructing the underdetermined meaning of national sovereignty by looking into a wide array of sources concerning the genesis and reception of the Belgian Constitution. It argues, firstly, that ‘nation’ and ‘King’ were conceptually differentiated notions, revealing a concern on the part of the Belgian National Congress to substitute the popular principle for the monarchical one. By vesting the origin of sovereignty exclusively in the nation, it relegated the monarch to the position of a constituted power. Secondly, it refutes the widely accepted definition of national sovereignty as the counterpart of popular sovereignty. The debates of the constituent assembly prove that the antithesis between the concepts ‘nation’ and ‘people’, supposedly originating in two rivalling political-theoretical traditions, is a false one. Not only were both terms used as synonyms, the Congress delegates themselves plainly proclaimed the sovereignty of the people. However, this did not imply the establishment of universal suffrage, since political participation was limited to the propertied classes. The revolutionary press generally endorsed the popular principle, too, without necessarily agreeing to the form it was given in practice. The legitimacy of the National Congress’s claim to speak in the name of the people was challenged both by the conservative press, which rejected the sovereignty of the people, and by the radical newspapers, which considered popular sovereignty invalidated by the instatement of census suffrage.

**Keywords** Belgian Constitution • Belgian Revolution • Belgian National Congress • National sovereignty • Popular sovereignty • King • Nation

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B. Deseure (✉)

University of Passau and Vrije Universiteit Brussel, Passau, Germany

e-mail: [brecht.deseure@uni-passau.de](mailto:brecht.deseure@uni-passau.de); [brecht.deseure@vub.ac.be](mailto:brecht.deseure@vub.ac.be)

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## 1 Introduction

On 27 October 1830 the Constitutional Commission, instated by the Belgian Provisional Government, finished its activities.<sup>1</sup> The creation of the Commission had been announced on 6 October, 2 days after the Provisional Government officially proclaimed Belgian independence.<sup>2</sup> The Commission's main task was to draw up a draft Constitution for the new country, which would then be discussed by the National Congress, Belgium's constituent assembly.<sup>3</sup> The publication of the draft Constitution immediately sparked up public discussions about the basic features of the new state.<sup>4</sup> F. Grenier, an otherwise unknown author, was only one of many Belgian citizens who took to the press to express his views on the draft Constitution. In his *Examen du projet de constitution de la Belgique et idées sur une nouvelle forme de gouvernement* ("Examination of the draft Constitution for Belgium and ideas for a new form of government"), Grenier staged a passionate defence for the sovereignty of the nation:

Je conçois la possibilité de rendre permanente, dans notre patrie, l'action de la souveraineté nationale, de manière à ne plus revoir les effroyables désordres des bouleversements politiques. Nous savons maintenant que toute monarchie tempérée est un conflit presque continu des deux éléments de puissance souveraine. L'institution du Congrès et le simple raisonnement font comprendre que la souveraineté est déplacée quand elle est ailleurs que dans la nation, et que toute division quelconque dans la souveraineté est la source des commotions sociales, toujours si dangereuses.<sup>5</sup>

The battle cry of the Belgian revolutionaries was 'liberty for everyone in everything'.<sup>6</sup> According to Grenier, this implied the victory of the democratic principle over the monarchical one. The nation no longer wished to share sovereignty with a monarchical power, he contended, because the perpetual combat between the two elements undermined the order of the state. Therefore, only the delegates of the sovereign nation, united in the Chamber of Representatives, were to make laws under the new Constitution. Grenier criticised the draft Constitution for being

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<sup>1</sup> Van den Steene, *De Belgische grondwetscommissie (oktober–november 1830): tekst van haar notulen en ontstaan van de Belgische grondwet*, 40.

<sup>2</sup> *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 5, p. 13, 10/10/1830.

<sup>3</sup> Huyttens, *Discussions*, vol. 4, p. 43–49.

<sup>4</sup> Magits, *De Volksraad en de opstelling van de Belgische grondwet*, 352; Nothomb, *Essai historique et politique sur la révolution belge*, 98.

<sup>5</sup> "I can imagine a possibility to render the operation of national sovereignty in our fatherland permanent, in such a way as to avoid the terrible disorders of political upheaval. We now know that every tempered monarchy is an almost continuous conflict between the two elements of supreme power. The institution of the Congress as well as simple reasoning learn that sovereignty is out of place when it is anywhere else than in the nation, and that every division of sovereignty is the source of dangerous social commotion". Grenier, *Examen du projet de constitution de la Belgique et idées sur une nouvelle forme de gouvernement*.

<sup>6</sup> Hymans, *Le Congrès national de 1830 et la Constitution de 1831*; Nothomb, *Essai*. Demoulin attributes this motto to De Lamennais. Demoulin, *Le courant libéral à l'époque de royaume des Pays-Bas et dans la Révolution de 1830*, 32.

ambiguous on this point, and for including a Senate which, being composed of hereditary members, would infringe on the free exercise of power by the sovereign nation. He especially warned against the vague definition of ‘nation’ in the draft Constitution, which allowed for diverging readings:

L’art. 4 du projet déclare que tous les pouvoirs (ceux politiques sans doute), émanent de la nation. Prenant pour accordé que les pouvoirs ne sont rien que par elle; c’est à elle qu’il appartient de les instituer. La souveraineté nationale doit rester au-dessus de tout pouvoir ordinaire; mais il faut que la constitution définisse ce que c’est que la nation. Il importe de savoir quels sont les individus qui forment la nation. Les termes qui n’ont pas de valeur convenue obscurcissent les idées, enfantent les aberrations. L’art. 80 dit que les députés représentent la nation, ce qui autorise de croire que le sénat ne la représente pas. L’art. 79 dit que les députés sont élus directement par les citoyens; le projet ne dit pas ce que c’est qu’un citoyen.<sup>7</sup>

As it turned out, Grenier cried in the wilderness. Article 4 of the draft Constitution was literally copied in the final Belgian Constitution of 1831. Up to this day, article 25 of the Constitution reads: “Tous les pouvoirs émanent de la nation. Ils sont exercés de la manière établie par la Constitution” (“All the powers emanate from the nation. They are exercised in the manner established by the Constitution”). Grenier was right about the ambiguousness of the formulation. It is therefore all the more striking that the National Congress adopted the article virtually unanimously and without debate, on 3 January 1831. One single dissenting voice was heard, as the priest Vander Linden pleaded the cause of divine sovereignty as the only legitimate source of law.<sup>8</sup> He received no support from the benches, not even from the side of the ultramontane Catholic delegates. The formulation of article 25 apparently suited the needs of all parties in the great compromise that was being forged between Catholic and liberal elites over the new Constitution.

As the Constitution was not preceded by a preamble specifying its great underlying principles, the concept of national sovereignty remained as vague as Grenier had feared. The underdetermined meaning of national sovereignty in the Belgian Constitution of 1831 is the subject of this contribution. The meaning(s) of the term will be reconstructed by looking into a variety of sources that shed light on the context of the constitutional formation process as well as on its reception. Central to this investigation are the debates of the National Congress, which allow to gauge the ideas and intentions of the members of the Belgian constituent assembly. On the reception side, evidence is provided by pamphlet literature, newspapers and constitutional manuals. The first section of this chapter goes into the meaning of national sovereignty from the point of view of the balance of power between King and

<sup>7</sup>“Article 4 of the draft declares that all the powers (the political ones, that probably is) emanate from the nation. Taking for granted that the powers are nothing without her, it is she who is entitled to instate them. National sovereignty must remain superior to ordinary power; but the Constitution must define what the nation is. It is important to know which individuals make up the nation. Terms without a fixed meaning obscure the ideas and produce aberrations. Article 80 states that the delegates represent the nation, suggesting that the Senate does not. Article 79 states that the delegates are directly elected by the citizens; the draft does not specify what a citizen is”.

<sup>8</sup>Huytens, *Discussions*, vol. 2, p. 14, 03/01/1831. See also: Magits, *De Volksraad*, 8.

Parliament. In the second section, the implications of article 25 for the distinction between national and popular sovereignty will be examined. Finally, the findings of the first two sections will be tested against the evidence provided by the debates in contemporary society as reflected by the press. The focus will be on the understanding of national sovereignty at the time of the Constitution's genesis, i.e. on the intended meaning of the term. Its application in practice by successive generations of Belgian politicians falls outside of this chapter's scope.

## 2 Parliament Versus King

### 2.1 Parliament as the Sole Representative of the Nation

Like most of the articles of the Belgian Constitution, article 25 was not newly invented.<sup>9</sup> Article 3 of the *Déclaration des Droits de l'Homme et du Citoyen* of 1789, which served as preamble to the French Constitution of 1791, reads: "Le principe de toute souveraineté réside essentiellement dans la nation".<sup>10</sup> Similar formulations figure in the Cádiz Constitution of 1812, the Portuguese Constitution of 1822 and the declaration of the First Chamber of the French Parliament of 1830.<sup>11</sup> In their haste to confection of a draft Constitution for the new country, the members of the Constitutional Commission did not care for originality.<sup>12</sup> The Commission's president, Etienne de Gerlache, commented:

On a choisi dans les constitutions existantes, et particulièrement dans la charte française actuelle, les dispositions qui ont paru s'approprier le mieux à notre pays; et on y en a ajouté beaucoup d'autres qui sont désirées par les meilleurs publicistes européens. (...) Il ne renferme rien ou presque rien de nouveau; et c'est ce qui en fait, selon moi, le mérite. Il ne faut rien donner à l'aventure quand il s'agit des institutions d'un pays. Et personne de nous n'a été assez osé pour improviser des nouveautés.<sup>13</sup>

Indeed, 90% of the articles of the Belgian Constitution of 1831, which closely followed the Commission's draft, were textually copied from older examples.<sup>14</sup> The articles of the draft Constitution mainly derived from the French Constitution of

<sup>9</sup>Descamps, *La mosaïque constitutionnelle. Essai sur les sources du texte de la Constitution belge*.

<sup>10</sup>"The principle of all sovereignty resides essentially in the people".

<sup>11</sup>Harris, *European Liberalism in the Nineteenth Century*, 506.

<sup>12</sup>Descamps, *La mosaïque constitutionnelle*, 51; Van den Steene, *De grondwetscommissie*, 60.

<sup>13</sup>"From the existing constitutions, and particularly from the present French *Charte*, we have selected those dispositions that seemed best suited to our country; and we have added many others that are desired by the best publicists in Europe. (...) It contains nothing or almost nothing new; and that I consider its merit. When the institutions of a country are concerned, adventures are out of place. And none of us have been daring enough to improvise novelties". Huyttens, *Discussions*, vol. 1, p. 324, 25/11/1830. For De Gerlache, see: Demoulin, Gerlache (Etienne-Constantin, baron de); Van den Steene, *De Belgische grondwetscommissie*, 14–16.

<sup>14</sup>Gilissen, *Die belgische Verfassung von 1831. Ihr Ursprung und ihr Einfluss*, 60.

1791, the *Charte* of 1814/1830 and the Dutch Fundamental Law of 1815. All except one of the Commission members were jurists, who had either been trained at French institutions or at the universities of the Kingdom of the Netherlands, which heavily relied on the French legal tradition.<sup>15</sup> Nonetheless, in its totality, the Belgian Constitution of 1831 offered something new, as contemporaries were quick to realise.<sup>16</sup>

As David Harris remarks, the dropping of the qualification ‘essentially’ is significant in this respect.<sup>17</sup> The sovereignty of nation acquired a more radical quality, which has often been described as a turn towards a definite break with the monarchical principle.<sup>18</sup> Article 32 of the Constitution, specifying the modalities of the exercise of the sovereign power, points in the same direction: “Les membres des deux Chambres représentent la Nation, et non uniquement la province ou la subdivision de province qui les a nommés”.<sup>19</sup> Equally derived from the French Constitution of 1791 (and later copied in its successors of the year III and 1848), this provision had originally been conceived as a turn away from the imperative mandate of the Old Regime Estates General, which was deemed incompatible with the unitary concept of nation consecrated by the French Revolution.<sup>20</sup> Its inclusion in the Belgian Constitution was partly inspired by a desire to stave off a repetition of the fate of the United Belgian Provinces.<sup>21</sup> This short-lived Belgian republic, born from the Brabant Revolt against the rule of the Austrian Emperor Joseph II in 1789-’90, had partly failed due to its excessively regionalist inner structure.<sup>22</sup>

More important to our present goal, the first section of the article unambiguously designated the members of Parliament as the exclusive representatives of the sovereign nation. In another move away from tradition, the Congress discarded both

<sup>15</sup> Idem, 59; Van den Steene, *De Belgische grondwetscommissie*.

<sup>16</sup> De Smaele, *Ecclectisch en toch nieuw. De uitvinding van het Belgisch parlement*; Descamps, *La mosaïque*, 90; Van den Steene, *De Belgische grondwetscommissie*, 62.

<sup>17</sup> Harris, *European Liberalism in the Nineteenth Century*, 506.

<sup>18</sup> L’article 25 de la constitution proclame que la souveraineté réside dans la nation elle-même. La nation ne délègue que l’exercice des pouvoirs: de là résulte qu’elle peut révoquer tout mandat donné et que les mandataires ne peuvent gouverner que d’après sa volonté. Une semblable disposition n’est que la négation théorique du principe des théocraties, des monarchies et des aristocraties”. Tempels, *Droit constitutionnel*, 440. Other authors consider it rather as an expression of the compromise, in the sense of their cohabitation, between royal sovereignty of Old Regime origin and popular sovereignty born from the Revolution: Müßig, *L’ouverture du mouvement constitutionnel après 1830: à la recherche d’un équilibre entre la souveraineté monarchique et la souveraineté populaire*. Pierre Wiginy rejects this thesis on the ground of the Nation’s initial consent to the monarch’s mandate, which can at any time be retracted: Wiginy, *Droit constitutionnel. Principe et droit positif*, 222.

<sup>19</sup> “The members of the two chambers represent the Nation, and not only the province or the subdivision of a province which has elected them”.

<sup>20</sup> Lefebvre, *The Belgian Constitution of 1831: the Citizen Burgher*, 90; Roels, *Le concept de représentation politique au dix-huitième siècle français*, 122.

<sup>21</sup> Alen, *Treatise on Belgian Constitutional Law*, 12.

<sup>22</sup> Defoort, *Particularisme en eenheidsstreven. De Verenigde Nederlandse Staten. For the Brabant Revolt*, see: Polasky, *Revolution in Brussels*.

heredity and monarchical prerogative for the appointment of the senators.<sup>23</sup> The members of both chambers were designated via direct election and by the same electorate (art. 47, 53). In this light it cannot be maintained that the conception of sovereignty in the Belgian Constitution bore the marks of the monarchical principle. A constitutional manual published immediately after the proclamation of the Constitution indeed attributed article 32 to ‘the triumph of popular sovereignty’.<sup>24</sup>

The structure of the constitutional document mirrors this interpretation. The powers were discussed in the third title, after the territory and the personal liberties. Within this title, the chambers were discussed first, then the King and his ministers and then the judiciary.<sup>25</sup> This order of precedence is especially revealing when compared to the Dutch Fundamental Law of 1815, the first chapter of which was entitled “On the sovereign monarch”. A lengthy catalogue of royal prerogatives preceded the chapter on the Estates General, thus exemplifying the underlying monarchical principle.<sup>26</sup> A comparison of the preambles of both documents is just as revealing. The absence of a proper preamble in the Belgian Constitution is remarkable in itself. Nonetheless, the preceding formula in the act of proclamation, which came closest to a preamble, was programmatic: “Au nom du peuple belge, le Congrès national décrète” (“In the name of the Belgian people, the National Congress decrees”). It could not contrast more with the opening lines of the preamble of the Fundamental Law: “We, William, by the grace of God”. Despite not technically being a *charte octroyée*, the Fundamental Law was a typical product of Restoration constitutionalism.<sup>27</sup> The Belgian Constitution of 1831 may rightly be read as a counter-reaction against the political order under William I enshrined by it, or, in Niek van Sas’ words, as its “grammatical indictment”.<sup>28</sup>

As a result of the frustration of the Belgian opposition with William I’s autocratic style of government, the new Constitution expressed the distrust of royal power

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<sup>23</sup>De Smaele, *Ecclectisch en toch nieuw*; Stevens, *Een belangrijke faze in de wordingsgeschiedenis van de Belgische grondwet: de optie voor een tweekamerstelsel*.

<sup>24</sup>N.N., *Manuel constitutionnel de la Belgique contenant le portrait, la vie et la nomination de M. le régent, la Constitution et la loi électorale de la Belgique, expliquées et conférées avec l’ancienne loi fondamentale*, p. 46: “La crainte du despotisme et l’esprit de parti, le triomphe de la souveraineté du peuple, a porté la majorité du Congrès national à cette disposition. En France (Charte, art. 23), la nomination des sénateurs ou des pairs appartient au Roi; leur nombre est illimité; il peut en varier les dignités, les nommer à vie ou les rendre héréditaires, selon sa volonté. Les Belges usent d’une initiative qui peut devenir dangereuse”.

<sup>25</sup>Koll, *Belgien*, 495. The structure of the Belgian Constitution closely followed the French Constitution of 1791: Descamps, *La mosaïque*.

<sup>26</sup>De Gerlache, *Histoire du Royaume des Pays-Bas depuis 1814 jusqu’en 1830*, 316; Koch, *Le Roi décide seul/de Koning alleen besluit. Het ‘systeem Willem I’*; Marteel, *Inventing the Belgian Revolution. Politics and Political Thought in the United Kingdom of the Netherlands (1814-1830)*, 31.

<sup>27</sup>Mirkine-Guetzévitch, *L’histoire constitutionnelle comparée*, 93.

<sup>28</sup>Marteel, *Inventing the Belgian Revolution*, 411; Van Sas, *Het politiek bestel onder koning Willem I*, 434.

which prevailed both in the Congress and in public opinion.<sup>29</sup> The keystone of the system of national sovereignty instated in 1831 was article 78: “Le Roi n’a d’autres pouvoirs que ceux que lui attribuent formellement la Constitution et les lois particulières portées en vertu de la Constitution même”.<sup>30</sup> Here too, the sovereignty arrangement of the Fundamental Law was reversed so as to become its exact opposite. Under the Fundamental Law, the Estates General had only possessed attributed powers, whereas all residual powers fell to the King. The Belgian Constitution of 1831 created the opposite constellation.<sup>31</sup> A very precise list of royal prerogatives was followed by the formal limitation of royal power by article 78.<sup>32</sup> This highly original prescription marked the end of the monarchical principle.<sup>33</sup> All residual powers were henceforward legally assumed by the representatives of the nation united in Parliament.

The articles 25, 32 and 78 combined in an arrangement where sovereignty no longer worked top down but bottom up. The origin of sovereign power was exclusively popular. Parliament moreover disposed of effective means to control and, if necessary, to blow the whistle over the executive, by the yearly vote over the budget (art. 115).<sup>34</sup> Although sovereignty emanated from the nation, it was constitutionally made sure that the latter did not exercise it in its entirety. Parliamentary despotism was precluded by a clear separation of powers. Or rather, in André Alen’s words, a division of powers.<sup>35</sup> The English system of checks and balances, as it had been interpreted by Montesquieu and, above all, by Benjamin Constant, was the great example followed by the members of the Belgian constituent assembly.<sup>36</sup> The three powers were thus organised to influence and counterbalance each other. Therefore, the legislative power was shared between both chambers and the King, who also headed the executive.<sup>37</sup>

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<sup>29</sup> Senelle, *Le monarque constitutionnel en Belgique*; Van den Steene, *De Belgische grondwetscommissie*, 53.

<sup>30</sup> “The King has no other powers than those formally attributed to him by the Constitutions and by the ordinary laws established under the Constitution”.

<sup>31</sup> Lefebvre, *The Belgian Constitution*, 25. Errera stresses the omnipotence of Parliament within the boundaries of the Constitution, providing it with a dominant position vis-à-vis the other powers: “il [le parlement] est virtuellement omnipotent dans les limites constitutionnelles; il occupe une place prépondérante à l’égard des autres pouvoirs de l’Etat. Ainsi en est-il en Belgique. Seule la Constitution restreint sa compétence, par l’établissement des autres pouvoirs et par la garantie des libertés individuelles”. Errera, *Traité du droit public belge*, 121.

<sup>32</sup> Errera, *Traité du droit public belge*, 19.

<sup>33</sup> Alen, *Treatise on Belgian Constitutional Law*, 4.

<sup>34</sup> Senelle, *Le monarque constitutionnel en Belgique*, 55.

<sup>35</sup> Alen, *Treatise on Belgian Constitutional Law*, 9.

<sup>36</sup> De Smaele, *Ecclectisch en toch nieuw*, 410; Lefebvre, *The Belgian Constitution of 1831*; Marteel, *Polemieken over natievorming in het Verenigd Koninkrijk der Nederlanden. Een blik op de intellectuele wortels van het Belgisch nationalisme*, 2012; Van den Steene, *De Belgische grondwetscommissie*, 63.

<sup>37</sup> Vile, *Constitutionalism and the Separation of Powers*, 72.

## 2.2 Congress as the Sole Constituting Power

Given the genesis of the Belgian Constitution of 1831, anything less than a popular origin of sovereignty would have come as a surprise. Contrary to the Fundamental Law of 1815 and the French Charters of 1814 and 1830, the Belgian Constitution was not the result of a negotiation between a national representation and a monarch. At the time of the National Congress, royal authority had come to an end due to the Belgian Revolution. The executive power was exercised by a collective Provisional Government, whereas the legislative and constituent powers were entirely in the hands of the National Congress. The Congress acted as the sole representative of the Belgian people. It was thus the only and omnipotent *pouvoir constituant*. The formula ‘omnipotence of Congress’ was literally used in the debates.<sup>38</sup>

The Congress members were designated through direct elections on 3 November 1830.<sup>39</sup> The electorate consisted of about 30,000 male citizens,<sup>40</sup> representing around 0.7% of the population.<sup>41</sup> Census franchise was combined with capacity franchise, giving the vote to all holders of university degrees (as well as certain intellectual professions) and clerics.<sup>42</sup> Capacity suffrage and direct elections (as opposed to the complicated indirect system under the Kingdom of the Netherlands) were innovations introduced so as to fulfil the Provisional Government’s intention to create “the most popular election method possible”.<sup>43</sup> Jean-Baptiste Nothomb, secretary to the Constitutional Commission (which was also responsible for the electoral regulations) commented: “Jamais assemblée nationale n’a dérivé plus directement de la masse de la nation”.<sup>44</sup>

The Congress members were fully aware of their quality of representatives of the people, in whose name they spoke and acted. President Jean-François Gendebien

<sup>38</sup> Huyttens, *Discussions*, vol. 2, p. 502, 11/02/1831.

<sup>39</sup> *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 12, p. 14, 25/10/1830.

<sup>40</sup> Of the 46,099 citizens who had the right to vote, 28,766 participated in the elections for the Congress: Magits, *De Volksraad*, 408.

<sup>41</sup> Gilissen, *Le régime représentatif en Belgique depuis 1790*, 84; Magits, *De Volksraad*, 408.

<sup>42</sup> Van den Steene, *De Belgische grondwetscommissie*, 30; Magits, *De Volksraad*, 33.

<sup>43</sup> As declared in its proclamation of 6 October 1830: “Elle [la Commission] s’occupera, avant tout autre chose, du nouveau mode d’élection qui sera le plus populaire possible”. *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 5, p. 13, 10/10/1830. See also: Van den Steene, *De Belgische grondwetscommissie*, 32. In its proclamation of 10 October, the Provisional Government had announced: “Considérant que le congrès appelé à décider des intérêts de la Belgique doit être une véritable représentation nationale, qu’il est donc nécessaire d’adopter, dès à présent, un système d’élection directe et libérale” (“Considering that the Congress, called upon to decide on the interest of Belgium, must be a true national representation, and that it is thus necessary to adopt, from the present moment on, a direct and liberal electoral system”). *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 7, p. 5, 16/10/1830.

<sup>44</sup> “Never has a national assembly been derived more directly from the mass of the nation”. National Archives of Belgium, Papiers Nothomb, ‘Note sur la Constitution belge’. See also: Van den Steene, *De Belgische grondwetscommissie*, 32. For Nothomb, see: De Borchgrave, Nothomb (Jean-Baptiste, baron) and Van den Steene, *De Belgische grondwetscommissie*, 25–26.

opened the first session of the Congress in the Palace of the Nation in Brussels on 10 November 1830 with the words: “Le congrès national s’installe au nom du peuple belge”.<sup>45</sup> Its decrees, as well as the Constitution, were likewise issued in the name of the Belgian people. The newspaper *Le Courrier* wrote:

(...) la décision du congrès constituera pour tous une loi souveraine, un arrêt sans appel. C’est au congrès que la nation a délégué l’exercice de ses pleins pouvoirs; tout ce qui émane du congrès est censé émaner de la nation elle-même. Sa décision sera donc obligatoire pour tous et la moindre tentative de violation dirigée contre elle, serait un crime de rébellion contre la loi.<sup>46</sup>

The Congress jealously guarded its position as the only legitimate authority on the grounds of its direct election by the people. It didn’t tolerate any other source of power, as its distrustful attitude towards the Provisional Government proves.<sup>47</sup> The issue immediately came to the fore when, at the start of the opening session, delegate De Gerlache proposed to officially inform the Provisional Government of the Congress’s reunion and to invite it to attend. De Mûelenaere objected that delegating a group of Congress members to convey this message would degrade the Congress, since, on the grounds of its election by the people, it didn’t recognise any authority higher than its own:

Je crois qu’un tel mode serait contraire à la dignité du congrès nommé directement par le peuple belge qu’il représente. Le congrès se constitue de son propre mouvement et ne paraît pas devoir être installé par aucune autre autorité, puisqu’il ne reconnaît aucun pouvoir constitué supérieur au sien. En conséquence, je suis d’avis que le gouvernement provisoire soit averti par un de messieurs les membres du bureau ou par un des huissiers.<sup>48</sup>

The Provisional Government had been created in the midst of revolutionary confusion to assure public order after the collapse of the Dutch government. It had grown out of the *Commission administrative* that had been established in Brussels on 24 September 1830 to replace the existing urban administration.<sup>49</sup> In a quick

<sup>45</sup>“The Congress installs itself in the name of the Belgian people”. Huyttens, *Discussions*, vol. 1, p. 99, 10/11/1830.

<sup>46</sup>“(…) the Congress’s decision will constitute for us a sovereign law, a decree without appeal. The nation has delegated the exercise of its full powers to the Congress. All that emanates from the Congress must be considered to emanate from the nation itself. Its decision will therefore be obligatory for everyone. The slightest attempt of violation against it, will be a crime of rebellion against the law”. *Le Courrier* no. 35, 04/02/1831. For *Le Courrier* and its predecessor, the *Courrier des Pays-Bas*, see footnote 211.

<sup>47</sup>Gilissen, *Le caractère collégial des premières formes de gouvernement et d’administration de l’Etat Belge (1830-1831)*, 621.

<sup>48</sup>“I believe that to act in such a way would run counter to the dignity of the Congress, directly elected by the Belgian people which it represents. The Congress constitutes itself and it does so of its own accord. It mustn’t seem to have to be installed by any other authority, because it doesn’t recognise any other constituted power superior to its own. Consequently, I think that the Provisional Government must be informed by one of the gentlemen of the bureau or by one of the ushers”. Huyttens, *Discussions*, vol. 1, p. 100, 10/11/1830.

<sup>49</sup>Gilissen, *Le caractère collégial*, 611; Huyttens, *Discussions*, vol. 4, p. 2; Witte, *De constructie van België, 1828–1847*, 63.

succession of events, it succeeded in extending its authority over the whole Belgian territory.<sup>50</sup> Within this body, power was in the hand of the five-strong *Comité Central*.<sup>51</sup> It was this organ which, by its proclamation of the 4th of October, declared Belgian independence from the Kingdom of the Netherlands and convened the National Congress.<sup>52</sup> Although it spoke and acted in the name of the Belgian people, the powers of the Provisional Government did not rest on a democratic mandate. It exercised both legislative and executive power, while at the same time intervening in the judiciary sphere by appointing and dismissing magistrates.<sup>53</sup> In one of its first resolutions, it decreed the expiration of its mandate as soon as “worthier hands” would be ready to take over.<sup>54</sup> The underlying justification was that, in the power vacuum between the ending of Dutch authority and the election of the people’s representatives, the circumstances had forced it to exercise sovereignty in the name of the Belgian people.<sup>55</sup>

The Congress followed this reasoning. Despite De Mûelenaere’s objections, the members of the government were invited into the meeting hall and met with enthusiastic applause. The eldest member, the journalist and revolutionary hero Louis de Potter, delivered a speech in which he justified the coming to power of the Provisional Government by its endeavours to protect the Belgian Revolution as well as by the consent of the people.<sup>56</sup> Bringing to mind the revolt against the Dutch government, he said:

Le fruit de cette victoire était l’indépendance. Le peuple l’a déclarée par notre organe. Interprète de ses vœux, le gouvernement provisoire vous a appelés, messieurs, vous, les hommes choisis par la nation belge, pour constituer cette indépendance et pour la consolider à jamais. Mais, en attendant que vous puissiez venir remplir cette tâche, un centre d’action était nécessaire pour pourvoir aux premiers, aux plus urgents besoins de l’Etat. Un gouvernement provisoire s’est établi, et il a suppléé temporairement à l’absence de tout pouvoir. La nécessité d’un gouvernement quelconque justifiait sa mission; l’assentiment du peuple confirma son mandat.<sup>57</sup>

<sup>50</sup> Gilissen, *Le régime représentatif*, 80.

<sup>51</sup> *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 1, p. 6, 01/10/1830.

<sup>52</sup> *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 4, p. 3, 08/10/1830.

<sup>53</sup> Gilissen, *Le régime représentatif*, 79; Witte, *De constructie*, 64.

<sup>54</sup> *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 1, p. 3, 01/10/1830.

<sup>55</sup> “Il tenait son mandat de la nécessité. Lorsqu’un ordre de choses périt, il y a, entre le passé qui n’est plus et l’avenir qui n’est pas encore, un interrègne où le pouvoir appartient momentanément à qui le prend; si la lacune n’était pas remplie, la société elle-même serait et resterait dissoute; il faut bien que quelqu’un vienne prononcer le *fiat* tout-puissant qui doit la maintenir et la réorganiser. C’est là une légitimité incontestable”. Nothomb, *Essai historique*, 75.

<sup>56</sup> For De Potter, see: De Potter et. al., *Louis de Potter, révolutionnaire belge en 1830*; Juste, *Louis de Potter: membre du gouvernement provisoire. D’après des documents inédits*.

<sup>57</sup> “The fruit of this victory was independence. The people has declared it via us. Interpreter of its wishes, the Provisional Government has called upon you, the men chosen by the Belgian Nation, to constitute this independence and to consolidate it forever. But, in anticipation of your being able to come and fulfil this task, a centre of action was needed to foresee in the first, the most urgent needs of state. A Provisional Government has been created to temporarily make up for the absence of all power. The need for any kind of government justified its mission; the approval of the people

Acting as “the interpreter of the people’s wishes”, the Provisional Government had met the most urgent needs of the State until the moment the people’s representatives convened in Congress. De Potter didn’t proceed to officially lay down the powers of the Provisional Government however, causing alarm among some of the delegates.<sup>58</sup> In the third session, De Foere intervened to demand urgent clarification with regard to the mission of the Provisional Government. Although he agreed that the Government had legitimately held provisional power in the interest of the nation, he insisted that its mission had ended at the first meeting of the Congress:

(...) les gouvernements se constituent de deux manières: d’abord, dans des temps ordinaires, par l’assentiment librement exprimé des nations; ensuite, dans des temps extraordinaires, par leur assentiment tacite. J’appelle des temps extraordinaires ces transitions violentes par lesquelles les États passent d’une forme d’existence à une autre, et pendant lesquelles les nations ont recours à l’impérieuse loi de la nécessité pour établir l’ordre et la sécurité, pour garantir les États contre les horreurs de l’anarchie. Tous les publicistes admettent cette loi de la nécessité comme principe provisoirement constitutif des États anarchiques. Les jurisconsultes la rangent parmi les causes des exemptions légales, et les moralistes l’adoptent comme raison suffisante de se croire dispensé de l’observance des devoirs qui nous sont imposés par des lois humaines. Mais cette loi de la nécessité, de l’aveu de tous, a ses règles et ses bornes. Il est généralement admis que cette loi, recevant son existence de la nécessité, rentre dans le néant par la cessation de cette nécessité même. Il est incontestable que notre gouvernement provisoire se soit établi sur cette loi de la nécessité, incontestable encore qu’il ait reçu son mandat de l’assentiment tacite de la nation belge; mais aussi il me semble qu’il n’est pas moins évident que cette loi a cessé par la cessation de sa cause, et que, depuis la vérification des pouvoirs des membres du congrès national, l’assentiment tacite, par lequel la nation belge avait conféré l’administration de ses intérêts communs au gouvernement provisoire, reste désormais sans application. Il résulte de ces principes, messieurs, que le pouvoir du gouvernement provisoire est expiré.<sup>59</sup>

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confirms its mandate”. Huyttens, *Discussions*, vol. 1, p. 101, 10/11/1830. Thonissen in his authoritative constitutional manual approved of this legitimation by “the force of circumstances and the approval of the nation”. Thonissen, *La Constitution belge annotée, offrant sous chaque article l’état de la doctrine de la jurisprudence et de la législation*, 335.

<sup>58</sup>The delay effectively reflected the Provisional Government’s reluctance to release power. Especially De Potter feared that this move would thwart his plans for the foundation of a Belgian Republic, with himself as its first president. De Mulder, *De republikeinse beweging*, 14.

<sup>59</sup>“(…) governments are generally constituted in two ways. Firstly, in ordinary times, by the freely expressed approval of nations. Secondly, in extraordinary times, by their tacit approval. I call extraordinary times those violent transitions when states pass from one form of existence to another, and during which nations take recourse to the imperious law of necessity for establishing order and security, for safeguarding states against the horrors of anarchy. All the publicists admit this law of necessity as the provisionally constitutive principle of anarchic states. The jurists categorise it under the causes of legal exemptions, and the moralists accept it as a sufficient reason to consider one exempted from the obligations imposed by human laws. But this law of necessity has its rules and its limits, as all will agree. It is generally accepted that this law, originating from necessity, is nullified as soon as this necessity ceases to exist. It is an uncontested truth that our Provisional Government has been established under this law of necessity. It is equally true that it has received its mandate from the tacit approval of the Belgian Nation. But I consider it no less evident that this law has ceased to exist by the disappearance of its cause and that, since the moment of the verification of the powers of the members of the National Congress, the tacit approval by which the Belgian Nation had conferred the administration of its common interest to

The extraordinary circumstances which had legitimised the Provisional Government's mission having ceased, its very right of existence had ended. The anxieties of De Foere and others were soon quelled, when during the very same session the Provisional Government delegated Jean-Baptiste Nothomb to lay down its powers in the hands of the Congress.<sup>60</sup> The Congress responded by rendering thanks to the Provisional Government for its services and by charging it with the continued exercise of the executive power until the definite settlement of the state organisation.

However, the question of legitimacy continued to produce bouts of distrust towards the Provisional Government on the part of the National Congress. Tellingly, it refused to accept the draft Constitution drawn up by the Constitutional Commission.<sup>61</sup> Since the Commission had been convened by the Provisional Government before the election of the Congress, the draft could not be said to emanate from the will of the nation. Joseph Forgeur, himself the author of another constitutional proposal, protested:

Le projet de constitution doit émaner du congrès lui-même: non que je veuille diminuer le mérite du projet imprimé qui est le fruit de consciencieuses études, mais il n'est pas convenable que le congrès donne la priorité à un projet quelconque rédigé hors de son sein.<sup>62</sup>

Joseph Lebeau, member of the Constitutional Commission, protested that the draft had received the approval of the nation by the election of its authors to the Congress. The Commission's president De Gerlache finally submitted the proposal in his own name, so as to strip it from its connection to the Provisional Government and make it "emanate from the Congress itself".<sup>63</sup>

After being accepted, the Commission's draft was in effect used as the guiding document for the debates of the constituent assembly. Preliminary discussions over each individual article took place in ten committees or 'sections' composed of 20 delegates each, who reported to a Central Section.<sup>64</sup> The reports drawn up by the latter served as the starting point for the subsequent plenary debates in Congress.<sup>65</sup> In the end, 80 % of the articles of the Commission's draft were included in the final

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the Provisional Government, is now void. As a result of these principles, gentlemen, the powers of the Provisional Government have expired". Huyttens, *Discussions*, vol. 1, p. 117, 12/11/1830.

<sup>60</sup> *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 31, p. 7, 18/11/1830.

<sup>61</sup> Huyttens, *Discussions*, vol. 1, p. 325, 25/11/1830; Gilissen, *Le caractère collégial*, 621; Van den Steene, *De Belgische grondwetscommissie*, 47.

<sup>62</sup> "The draft Constitution must emanate from the Congress itself: not that I wish to diminish the merits of the printed draft, which is the result of conscientious study, but it is not appropriate for the Congress to give priority to any draft drawn up outside of its bosom". Huyttens, *Discussions*, vol. 1, p. 324, 25/11/1830. For Forgeur, see: Caulier-Mathy, *Forgeur, Joseph; Heptia, Joseph Forgeur*.

<sup>63</sup> Huyttens, *Discussions*, vol. 1, p. 325, 25/11/1830. For Lebeau, see: Devillers, *Lebeau (Joseph) and Van den Steene, De Belgische grondwetscommissie*, 24–25.

<sup>64</sup> Ganshof Van der Meersch and Vanwelkenhuyzen, *La constitution belge*, 575.

<sup>65</sup> Magit, *De Volksraad*, Van den Steene, *De Belgische grondwetscommissie*.

Constitution.<sup>66</sup> Its basic features were generally respected, with the arrangement for the Senate as the main exception.<sup>67</sup> At least 20 other constitutional drafts, of divergent quality and ideological persuasion, were offered to the Congress in this period.<sup>68</sup> Of these, only the one by the delegates Forgeur, Barbanson, Fleussu and Liedts seems to have received any attention.<sup>69</sup> Its major innovation, unicameralism, was however not adopted.

Out of the same concern of safeguarding its position as the sole representative of the nation, the Congress rejected the idea of submitting the new Constitution, or parts of it, to popular referendum.<sup>70</sup> The proposal of the democratic delegates Alexandre de Robaulx and Pierre-Guillaume Seron to let the people sanction the decision over the form of state was subsequently not supported.<sup>71</sup> Forgeur reacted furiously to De Robaulx's proposal, accusing him of calling into question the Congress's constituent mandate:

On a cherché un appui hors de cette enceinte (...) on vous a contesté votre mandat; on a refusé de vous reconnaître comme pouvoir constituant.<sup>72</sup>

This line of reasoning was continued in the new Constitution. Article 25 stated that all the powers must be exercised "in the manner established by the Constitution". This provision ruled out the option of lawmaking by way of referendum. Since the legislative power was exclusively exercised by the chambers and the King, the electorate was not allowed to directly intervene in the legislative process. Additionally, as we have seen above, article 32 excluded the imperative mandate, whereas article 43 forbade to personally present petitions to the chambers. The representatives of the nation were considered to decide freely and without pressure by the electorate.<sup>73</sup>

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<sup>66</sup> Gilissen, *Le caractère collégial*, 86.

<sup>67</sup> Van den Steene, *De Belgische grondwetscommissie*, 57.

<sup>68</sup> Magits, *De Volksraad*.

<sup>69</sup> 'Projet de constitution présenté par MM. Forgeur, Barbanson, Fleussu et Liedts, dans la séance du 25 novembre 1830', Huyttens, *Discussions*, vol. 4, p. 50–55; Gilissen, *Le régime représentatif*, 86.

<sup>70</sup> Magit, *De Volksraad*, 397.

<sup>71</sup> Huyttens, *Discussions*, vol. 1, p. 253–260, 20/11/1830. Delegate François Pirson made a similar proposal in the discussion over national independence, Huyttens, *Discussions*, vol. 1, p. 161, 17/11/1830. In addition, several draft constitutions submitted to the Congress, by authors of diverging political persuasions, proposed to submit the Constitution to popular referendum. See: National Archives of Belgium, Gouv. Prov. I, no. 197: Un patriote belge, 'Projet de constitution'; *Courrier de la Meuse* no. 260, 27/10/1830: 'De notre nouveau pacte fondamental'.

<sup>72</sup> "One has looked for support outside of this assembly. (...) one has contested your mandate; one has refused to acknowledge you as constituent power". Huyttens, *Discussions*, vol. 1, p. 229, 20/11/1830.

<sup>73</sup> Lefebvre, *The Belgian Constitution*, 38.

### 2.3 *The Legitimacy of the Senate*

A similar concern for the free expression of the will of the nation influenced the debate over the Senate. The Constitutional Commission had proposed a bicameral system, with a Senate appointed by the King. As to the senators' term of office, it left the choice between hereditary peerage and appointment for life. The proposal was a source of much controversy.<sup>74</sup> Many feared that a Senate appointed by the monarch would confer too much power to the latter, while putting political power in the hands of a hereditary peerage was seen as a violation of the principle of equality before the law. The newspaper *Den Antwerpenaer* wrote: "Het is eene zottigheid, want dit riekt al te veel nae het oud voorrecht van leenstelsel".<sup>75</sup> Supporters of the Senate saw it as a necessary institution for moderating the impetuous democratic forces of the elected Chamber and as an intermediary between the latter and the monarch.<sup>76</sup>

In the republican political club *Reunion Centrale*,<sup>77</sup> a speech against the Senate and the royal veto was delivered by Joseph-Ferdinand Toussaint, a clerk of the Provisional Government with Saint-Simonian sympathies.<sup>78</sup> According to Toussaint, the concept of a Senate so contravened the principle of national sovereignty that, should it become reality, a new revolution would be unavoidable:

Unissons tous nos efforts pour constituer une représentation nationale vraie, réelle, hors de l'influence des privilèges et des cours, une représentation qui, expression de vos besoins, et de tous les intérêts, soit nombreuse et digne de notre confiance. Qu'à elle seule appartienne la puissance législative; qu'à la volonté générale, dont elle est l'organe, obéissent religieusement tous les volontés particulières; et que la loi soit l'objet d'un culte sacré. Nous assurerons ainsi la liberté et le bonheur de la patrie, en restant fidèle à notre principe fondamental: la souveraineté réside dans la nation.<sup>79</sup>

<sup>74</sup>Magits, *De Volksraad*; Stevens, Een belangrijke faze; Van den Steene, *De Belgische grondwetscommissie*.

<sup>75</sup>"This is a folly because it reeks too much of the old privilege of feudalism". *Den Antwerpenaer* no. 98, 23/11/1830. *Den Antwerpenaer* was a popular, democratic oppositional journal from Antwerp, expressing a liberal Catholic point of view. De Borger, *Bijdrage tot de geschiedenis van de Antwerpse pers. Repertorium, 1794–1914*, 157–159; Witte, Het natiebegrip in het Zuidelijk krantendiscours aan de vooravond van de Belgische opstand (augustus 1829-juni 1830), 225.

<sup>76</sup>Stevens, Een belangrijke faze.

<sup>77</sup>Leconte, La Réunion Centrale, club patriotique, révolutionnaire et républicain; Witte, De Belgische radicalen: brugfiguren in de democratische beweging (1830–1850), 16.

<sup>78</sup>Geldhof, Een orangistisch rivaal van Alexander Rodenbach. Jozef-Ferdinand Toussaint: Meulebeke 1806-Elsene 1885; Goffin, Toussaint (Joseph-Ferdinand).

<sup>79</sup>"Let us unite all our efforts to constitute a real, true, national representation, free from the influence of privileges and courts, a representation which, expressing your needs and every interest, is numerous and worthy of our trust. To it exclusively must the legislative power belong; all the particular wills must religiously obey the general will in whose name it speaks; and the law must be the object of a sacred cult. Thus will we be able to guarantee the liberty and happiness of the fatherland and be faithful to our fundamental principle: sovereignty resides in the nation". Toussaint, *Discours sur le Sénat et le veto du chef de l'état, prononcé à la réunion patriotique de Bruxelles*.

Within the Congress too, the proposed Senate met with fierce resistance. Unicameralism was one of the most conspicuous elements of the counterproposal launched by Joseph Forgeur and his associates.<sup>80</sup> Especially those delegates whose political ideals were rooted in the tradition of French republicanism considered an appointed Senate as a dangerous threat for the national sovereignty, as illustrated by the speech by Van Snick. Stating that legislative power was an inalienable and indivisible attribute of sovereignty, he argued that it should exclusively belong to the delegates of the nation:

Chez nous, depuis notre régénération politique, la souveraineté est reconnue émaner de la nation exclusivement; la puissance législative est un des attributs essentiels, inaliénables de cette souveraineté; partager cet attribut, qui doit être exclusif à cette souveraineté, entre les délégués de la nation et les délégués de celui aux mains duquel elle aurait confié le pouvoir exécutif, me semble un acte attentatoire à cette souveraineté: c'est la détruire au moment où on la proclame.<sup>81</sup>

The Congress finally opted for an elected Senate which, due to the very high property requirements for eligibility, would automatically take on an aristocratic character. This original choice reflected its concern to safeguard the operation of national sovereignty, unhindered by privilege or the intervention of a power of non-popular origin, while simultaneously building a conservative element into the national representation.

## 2.4 *Nation Versus King*

The debates of the Congress time and again pointed at a conception of sovereignty where the nation governs itself through its representatives. The delegates were regularly reminded that they took their mandate from 'the Belgian people'. The question of sovereignty most explicitly surfaced in the debate over the form of state. At this occasion, Jean-Baptiste Nothomb, secretary to the Constitutional Commission and future prime minister, declared:

L'hérédité et l'inviolabilité sont deux fictions politiques, deux nécessités publiques, deux exceptions dans l'ordre social. En face de ces fictions apparaît, toujours menaçante, la

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<sup>80</sup> Gilissen, *Le régime représentatif*; Magits, *De Volksraad*; Nandrin, *Le bicaméralisme belge et le Sénat en 1830–1831: fondements doctrinaux*.

<sup>81</sup> "Since the moment of our political regeneration, it is recognised that sovereignty emanates from the nation exclusively; the legislative power is one of the essential, inalienable attributes of that sovereignty; to subdivide this attribute, which must exclusively belong to that sovereignty, between the delegates of the nation and the delegates of him to whom the executive power is entrusted, is in my opinion an attack on that sovereignty; it is to proclaim and to destroy it in the same instant". Huytens, *Discussions*, vol. 1, p. 404, 13/12/1830. See also: De Smale, *Omdat we uwe vrienden zijn. Religie en partij-identificatie, 1884–1914*, 19.

souveraineté du peuple, qui, dans les cas extrêmes, vient infailliblement les briser. En dernier résultat, c'est toujours le pays qui l'emporte.<sup>82</sup>

Nothomb almost literally referred to sovereignty as a last resort, and placed it in the hands of the people. His words contained an implicit legitimation of the Belgian Revolution. Royalty, according to Nothomb, was nothing but a 'necessary political fiction'. The people legally held the right to revolt against it in defence of their sovereignty. William I had forfeited his rights to the throne for having infringed on the sovereignty of the people, which was the utter source of legitimacy.

Congress delegates systematically used the terms 'nation' and 'king' or 'head of state' in opposition to each other. Both were treated as mutually exclusive entities. In the report of the Central Section on the discussion on the powers of the head of state, delegate Joseph-Jean Raikem wrote:

On a pensé que le droit de déclarer la guerre devait rester au chef de l'Etat; que la nation avait une garantie suffisante dans le refus des subsides qui aurait lieu de la part des chambres dans le cas d'une guerre injuste.<sup>83</sup>

The citation indicates that only the chambers were considered to represent the nation, and that the latter was conceptually different from the head of state. Also, it confirms the interpretation of the nation as a last resort, since the chambers were, by their control over the budget, able to block any unwanted initiative of the executive, even when it stemmed from the royal prerogatives. In the discussion over the form of state, De Robaulx proclaimed:

Je ne veux pas de monarchie, parce que sous elles les fonctionnaires s'habituent à croire qu'ils ne tiennent leurs places que du maître et non de la nation.<sup>84</sup>

Again, the nation and the King were treated as opposites, and the nation was recognised as the source of all powers.<sup>85</sup>

Article 80 stated that the King only takes function after having sworn loyalty to the Constitution in the presence of the united chambers. Since the King was only vested with his constitutional powers on the moment of taking the oath, periods of interregnum occurred every time between the death of the reigning monarch and the taking of the oath by his successor.<sup>86</sup> In the meantime, the monarch's constitutional powers were exercised by the Council of Ministers, under their responsibility (art.

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<sup>82</sup>“Heredité and inviolabilité are two political fictions, two political necessities, two exceptions in the social order. Opposite these fictions appears, ever menacing, the sovereignty of the people which, in extreme cases, comes and destroys them. In the end, the country always wins”. Huyttens, *Discussions*, vol. 1, p. 193, 19/11/1830.

<sup>83</sup>“It is our opinion that the right to declare war must stay with the head of state; the nation has a sufficient guarantee in the refusal of the subsidies to which the chambers will resort in case of an unjust war”. Huyttens, *Discussions*, vol. 4, p. 84.

<sup>84</sup>“I don't want a monarchy, because it makes the functionaries believe that they hold their place from the master and not from the nation”. Huyttens, *Discussions*, vol. 1, p. 255, 22/11/1830.

<sup>85</sup>Van den Steene, *De Belgische grondwetscommissie*, 63.

<sup>86</sup>Ganshof Van der Meersch, *Des rapports*, 182.

79). Delegate Beyts, insisting on the importance of establishing a contract with the King as a precondition of his taking power, said:

Je n'admets guère (...) le principe admis en France: Le roi est mort, vive le roi! Je ne crie pas, Vive le roi, s'il n'a pas juré.<sup>87</sup>

As with the French citizen-king who had come to power the previous summer, the royal style was 'King of the Belgians', not 'of Belgium', indicating that the monarch or the dynasty was not entitled to claim rights of possession on the territory.<sup>88</sup> Royalty in the Belgian Constitution was, indeed, merely a constituted power.<sup>89</sup> In a speech aimed at stressing the importance of the monarch's full acceptance of the Constitution, delegate Pierre Van Meenen – who had been one of the main theorists of the constitutional resistance against William I – provided an accurate yet rather unmajestic description of the monarch's position.<sup>90</sup> He compared it to the obligation on the part of an employee to fully subscribe the contract offered to him by his future employer as a condition for his entering in function:

On a dit qu'elle [la Constitution] ne serait arrêtée définitivement que par l'acceptation du chef de l'État. Il est vrai qu'il se forme un contrat entre lui et la nation, mais la constitution ne forme pas la matière de ce contrat, c'est l'acceptation du mandat que lui confère la nation. Le mandant est ici un être collectif de la nation constituée. L'acceptation ne peut mettre en question toutes les parties du contrat. S'il en était autrement, chaque employé n'aurait qu'à dire, en entrant en fonctions, qu'il n'accepte que sauf des modifications à faire aux lois qu'il est appelé à exécuter.<sup>91</sup>

The same reasoning underlies De Robaulx's heated intervention in the debate of 6 February 1831 on article 7 of the transitory dispositions, concerning the timing of the convening of the first elected Parliament. Upon Osy's remark that the future King might possibly not agree to these regulations, De Robaulx exclaimed: "S'il n'accepte pas nos conditions, il ne sera pas roi", sparking applause from the benches

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<sup>87</sup>"I hardly agree to the principle allowed in France: the King is dead, long live the King! I will not cry 'Long live the King' if he hasn't sworn the oath". Huytens, *Discussions*, vol. 2, p. 487, 07/02/1831. On the absence of this principle in the Belgian Constitution: Errera, *Traité du droit public*, 198.

<sup>88</sup>Errera, *Traité du droit public*, 195; Koll, *Belgien*, 493; Witte, *De constructie*, 95.

<sup>89</sup>Alen, *Treatise on Belgian Constitutional Law*, 4; Molitor, *Réflexions sur la fonction royale*, 16; Müßig, *L'ouverture du mouvement constitutionnel*, 495.

<sup>90</sup>For Van Meenen, see: Van den Steene, *De Belgische grondwetscommissie*, 17–19; Le Roy, Meenen, Pierre-François Van.

<sup>91</sup>"It has been said that the Constitution will only become definite upon its acceptance by the head of state. It is true that a contract is established between him and the nation, but the Constitution is not the subject matter of that contract, it is the acceptance of the mandate conferred to him by the nation. The mandator here is the collective being of the constituted nation. The acceptance cannot call into question the parts of the contract. Otherwise, every employee could simply refuse, when entering into function, to accept, unless modifications were made to the laws he was called upon to execute". Huytens, *Discussions*, vol. 2, p. 492, 08/02/1831.

and the galleries.<sup>92</sup> The Catholic newspaper *Courrier de la Meuse* wrote, in reaction to article 4 of the draft Constitution (the later article 25):

Si tous les pouvoirs émanent de la nation, celui du prince en émane certainement aussi; et dans ce cas, ce pouvoir ne serait qu'une délégation, qu'une commission; et c'est bien ainsi qu'on l'entend.<sup>93</sup>

In short, royal power was to be exercised on the terms dictated by the nation.

## 2.5 *The Royal Veto and the National Will*

However, this interpretation seems to be invalidated by the establishment of the absolute royal veto. Article 69 stated that the King sanctions and promulgates the laws. Since he cannot be forced to sign the laws presented to him by the chambers, this arrangement amounts to the absolute royal veto in legislative matters.<sup>94</sup> At first sight, the article contradicts the free exercise of national sovereignty by the nation's representatives, since it provides the King with the power to block the legislative process. The Congress debates shed a different light on the question. The veto was not being discussed as a reinforcement of royal power, but as a safeguard of the will of the nation. Due to the representative system, it was possible that the chambers did not correctly reflect the nation's opinion. In that case the monarch was called upon to guarantee that opinion by vetoing the proposed law or by calling new elections (via the royal right to dissolve the chambers under article 71), as the report of the Central Section on the powers of the head of state makes clear:

Les résolutions des chambres doivent être l'expression du vœu de la nation qu'elles représentent. Mais il peut arriver que l'élection ait pour résultat d'y appeler les hommes d'un parti, et non ceux du peuple qui les élit. Dans ce cas, la marche du chef de l'Etat serait entravée, ou bien il se trouverait obligé d'agir dans un sens contraire à l'intérêt général. Il

<sup>92</sup>"If he doesn't accept our conditions, he will not be King". Huytens, *Discussions*, vol. 2, p. 484, 06/02/1831.

<sup>93</sup>"If it is true that all powers emanate from the nation, those of the prince surely do so too; and if that be the case, his power would be nothing but a delegation or a commission; and this is precisely what is proposed". *Courrier de la Meuse* no. 266, 04/11/1830. The reactionary *Courrier de la Meuse* deplored this arrangement because the *Courrier* favored a strong position for the monarch. The newspaper represented the conservative, Catholic opposition in Liège. Among its collaborators was Etienne-Constantin de Gerlache. See: Capitaine, *Bibliographie liégeoise. Recherches historiques sur les journaux et les écrits périodiques liégeois*, 166–172; Cordewiener, *Etude de la presse liégeoise de 1830 à 1850 et répertoire général*; Harsin, *Essai sur l'opinion publique en Belgique de 1815 à 1830*, 34; Van den Steene, *De Belgische grondwetscommissie*, 15.

<sup>94</sup>Bivort, *Constitution Belge expliquée et interprétée par les discussions du Pouvoir Législatif, les arrêts des cours supérieures de Belgique et les opinions des jurisconsultes*, 14; Errera, *Traité du droit public belge*, 120; Senelle, *La Constitution belge commentée*, 246; Tempels, *Droit constitutionnel*, 453. Koll's assertion that the King did not have the right of veto cannot be supported. Koll, 'Belgien', 495.

doit donc avoir le droit de faire un appel à l'opinion du pays par la dissolution des chambres.<sup>95</sup>

Or, in Nothomb's words:

(...) les deux chambres se contrôlant réciproquement, le roi réserve son veto pour les cas rares où toutes les deux ont erré.<sup>96</sup>

Instead of being tools to increase the power of the monarch, allowing him to pursue his own policies, the royal veto and the right of dissolution were meant to guarantee the correct expression of the will of the nation. When he thought that the legislative work of the chambers did not reflect the wish of the majority of the people, it was the monarch's duty to intervene on their behalf. In the terms of the debates, he had to make an "appeal to the nation",<sup>97</sup> so as to ensure that the chambers correctly represented "the country's opinion" ("l'opinion du pays").<sup>98</sup> In the draft Constitution, only the Chamber of Representatives was subject to the royal right of dissolution, since the senators were to be appointed by the King. Upon the Congress's decision to make the Senate elective, the right of dissolution was extended to both chambers, because both now were supposed to represent the national will.

Remarkably little attention was devoted to the choice between an absolute and a suspensive veto. Although the suspensive veto was well known from earlier modern constitutions (such as the French Constitution of 1791), the option counted only a few supporters among the delegates. The issue had been raised in two out of ten sections, but failed to obtain a majority in the Central Section. During the plenary debates, only delegates Wannaar and Henry spoke in favour of the suspensive veto. Henry referred to the constitutional project proposed by Forgeur, Barbanson, Fleussu and Liedts in response to the Constitutional Commission's more conservative draft Constitution. The proposal allowed Parliament to overrule the royal veto when the succeeding legislature passed the same bill with a three-quarters majority.<sup>99</sup> Henry elaborated on the issue by warning his fellow delegates against the threat

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<sup>95</sup>"The decisions of the chambers must express the will of the nation which they represent. But it is possible that an election results in men being called to them who are of a party and not of the people which elects them. In that case, the course of the head of state will be hindered, or else he will be obliged to act in a sense contrary to the general interest. He must therefore have the right to make an appeal to the opinion of the country by dissolving the chambers". Huyttens, *Discussions*, vol. 4, p. 85.

<sup>96</sup>"(...) since the two chambers mutually control each other, the King reserves his veto for those rare cases when both have erred". Huyttens, *Discussions*, vol. 1, p. 426, 14/12/1830.

<sup>97</sup>Delegate Henry, in his intervention in favour of the suspensive royal veto, spoke of an appeal "to the sovereign nation", implying yet again that the latter did not include the King. Huyttens, *Discussions*, vol. 2, p. 79, 10/01/1831. For the concept of the appeal to the nation, see: Bacot, *Carré de Malberg et l'origine de la distinction entre souveraineté du peuple et souveraineté nationale*, 72; Baker, *Constitution*, 467; Roels, *Le concept de représentation*, 94.

<sup>98</sup>Huyttens, *Discussions*, vol. 4, p. 85.

<sup>99</sup>Art. 40: "Il [le Roi] sanctionne et promulgue la loi, ou y appose son veto. Ce veto est suspensif. Il cesse et la sanction est obligée, si la même loi est reproduite et adoptée à la législature subséquente par la majorité des trois quarts". Huyttens, *Discussions*, vol. 4, p. 52.

of royal despotism inherent in the absolute veto. According to him, granting the absolute royal veto equaled turning the King into the sole legislator and relegating Parliament to the status of a consultative body.<sup>100</sup> The interventions by Henry and Wannaar failed to stir up any debate however, and finally they were the only ones to vote in favour of their amendments.

Clearly, the majority in Congress was satisfied with the reasoning developed by Raikem in the report of the Central Section on the powers of the head of state. The report spoke of the “grave inconveniences” caused by the introduction of the suspensive veto. By making the veto suspensive, the monarch would in effect be deprived of his share in the legislative power, thus turning it into the exclusive terrain of the chambers. Such an arrangement was dangerous for the constitutional powers of the monarch, the report warned:

(...) de cette manière les chambres pourraient aller jusqu’au point de faire des lois qui porteraient atteinte aux pouvoirs constitutionnels du chef de l’état: celui-ce se trouverait sans défense; car, entre les chambres et lui, qui serait le juge de la question?<sup>101</sup>

In other words, the veto needed to be absolute so as to prevent a Parliament hostile to royal power from attacking the monarch’s position. This consideration bespeaks a concern for balancing the constituted powers typical for the Belgian Constitution. The delegates may have had the example of the French Constitution of 1791 in mind, when continual constitutional conflicts had resulted from parliamentary attacks on a weak royal power, finally leading to the downfall of both the Constitution and the monarchy.

Errera in his 1918 constitutional treatise commented that the Congress had foreseen the impossibility for the King to use his veto under a parliamentary regime. He interestingly suggests that, under these circumstances, a suspensive veto would have provided him with a much more important political influence.<sup>102</sup> Since the absolute veto was clearly intended for exceptional use only, it was of little consequence in practice. Although the Constitution did not technically contain sufficient guarantees for parliamentary government (cfr. *infra*), Errera is right in asserting that the King was not supposed to use the veto against Parliament, that is, against the will of the nation. The report of the Central Section reveals that such a use would go directly against the spirit of the Constitution.

It is nevertheless striking that the restrictions imposed on the use of the veto were not made explicit in the constitutional text. The Congress delegates did not stop to consider the most extreme consequence of the constitutional system they created. For in the event of the monarch blocking the legislative through his use of the absolute veto, and Parliament paralysing the executive through its rejection of the budget,

<sup>100</sup> Huyttens, *Discussions*, vol. 2, p. 79, 10/01/1831.

<sup>101</sup> “(...) in this way, the Chamber could get to the point of making laws which would harm the constitutional powers of the head of state: the latter would find himself without defense, because who could judge the question between him and the chambers?”. Huyttens, *Discussions*, vol. 4, p. 84.

<sup>102</sup> Errera, *Traité du droit public belge*, 121.

complete deadlock would be at hand.<sup>103</sup> Writing about the situation at the beginning of the twentieth century, Errera remarked that the royal veto had fallen in complete disuse, and considered its application by the monarch “unimaginable”. Even though the King was constitutionally entitled to do so, his use of the veto would not be tolerated by public opinion, and would therefore lead straight to a popular uprising. The same argument against the monarch’s overstepping of his constitutional mandate was regularly used in the Congress. In the citation above, Nothomb mentioned the “ever threatening sovereignty of the people”, standing ready to break royal power in the case of an extreme occurrence. Similar references to the revolutionary power of the people, faced with irresponsible or unconstitutional government, abound.

Despite this apparent weakness in the constitutional construction, political practice after 1831 neatly conformed to the Congress’s intentions. In the course of the nineteenth century, the royal veto was used on merely three occasions (1842, 1845, 1884).<sup>104</sup> Each time the King took care not to simply refuse his sanction but to issue a Royal Decree, thus bringing his royal prerogative under ministerial responsibility. On all three occasions, the veto had been debated in the Council of Ministers beforehand and was motivated by a turnout in the political balance.<sup>105</sup> As the project of law concerned was no longer supported by the new majority, letting it pass would go counter to the will of the chambers. Vetoing it came down to applying the solution provided for by the Constitution against the introduction of laws which did not correctly express the will of the nation.

## 2.6 *Republican Monarchism*

The popular origin of sovereignty was most clearly epitomised by the choice of a monarch. To be sure, many delegates recognised that a people can most truly be said to govern itself when the office of head of state is not hereditary but eligible. The Constitutional Commission had in its draft Constitution opted for the monarchy.<sup>106</sup> It did however yield to popular republican sentiments by using the neutral term

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<sup>103</sup> Tempels plays down the importance of the absolute veto since its persistent use could only lead to anarchy. Tempels, *Droit constitutionnel*, 453.

<sup>104</sup> Errera, *Traité du droit public belge*, 121; Ganshof Van der Meersch and Vanwelkenhuyzen, *La constitution belge*, 583. Lefebvre’s assertion that the royal veto has never been used is not supported by the facts. Lefebvre, *The Belgian Constitution of 1831*, 26.

<sup>105</sup> Errera, *Traité du droit public belge*, 121.

<sup>106</sup> Only one member of the Commission, Tielemans, voted for the republic. Tielemans was an ally of the republican revolutionary leader Louis de Potter. When his colleagues voted for the monarchy, he resigned from the Commission. Hymans, *Le Congrès national de 1830 et la Constitution de 1831*, 19; Van den Steene, *De Belgische grondwetscommissie*, 35. Two other members, Van Meenen and Nothomb, voted with the majority although they were of the opinion that the choice between a monarch and a republic should on principle be left to the Congress. Nothomb, *Essai historique*, 77.

'head of state' instead of 'king', hinting that the matter had not been definitively settled yet.<sup>107</sup> Between 19 and 22 November 1830 a heated debate, with interventions by over thirty delegates, was held over the question of the form of state.<sup>108</sup> The intensity of the debate is somewhat surprising given the prevailing international political situation. The great European powers, assembled at the London Conference, had made it sufficiently clear that they would not under any circumstances accept a republic. Since the young state depended entirely on the support of the powers for its survival, many delegates adopted a pragmatic attitude towards the matter.<sup>109</sup>

Nevertheless, all the classical arguments of political theory were brought to bear. Montesquieu was omnipresent in the arguments of both camps, turning the question into a debate over the character of the Belgians and its compatibility to either form of state. Interestingly, both parties agreed that the question of hereditary leadership was a fairly technical one. Above all, the Constitution needed to make sure that the nation governed itself. The arguments used in the debate were mainly of a practical nature and centered on the question which form of state would most benefit the nation's interests as well as befit the character of its inhabitants.<sup>110</sup> They did not, however, touch on the underlying principles of the Constitution.

These principles were, many speakers agreed, republican.<sup>111</sup> This meant, according to their own terminology: far-reaching personal liberties, self-government (in the sense of lawmaking by the representatives of the people) and the responsibility of government to Parliament.<sup>112</sup> To this end it was considered essential that all powers rest on the agreement of the people. In other words, as in the quote by Nothomb, the people was considered sovereign. There was a consensus in the Congress that the new Constitution needed to contain all the elements which had for so long been called for by the Belgian opposition against William I, and which would ensure the government's subordination to the will of the people: ministerial responsibility, inviolability, countersignature, the yearly voting of the budget, etcetera.<sup>113</sup>

Moreover, republican and monarchist speakers alike conceded that, except for inviolability and ministerial responsibility, this system could work under a monarch as well as under a president.<sup>114</sup> In his influential treatise on royal power of 1830, later member of the Constitutional Commission and prime minister Joseph Lebeau

<sup>107</sup> Gilissen, *Le caractère collégial*, 88; Nothomb, *Essai*, 78.

<sup>108</sup> Huyttens, *Discussions*, vol. 1, 184–260.

<sup>109</sup> Hymans, *Le congrès national*, 34; Magits, *De Volksraad*; Molitor, *La fonction royale en Belgique*, 16.

<sup>110</sup> De Dijn, In overeenstemming met onze zeden en gewoonten. De intellectuele context van de eerste Belgische constitutie (1815–1830).

<sup>111</sup> Nothomb, *Essai*, 306; 428.

<sup>112</sup> Banning defines self-government as "le gouvernement du pays par ses mandataires directs", identifying it with the legislative work of the chambers. Banning, *Histoire parlementaire depuis 1830*, 475.

<sup>113</sup> De Smaele, *Eclectisch en toch nieuw*, 409; Van den Steene, *De Belgische grondwetscommissie*, 61.

<sup>114</sup> Barthélemy, *Des gouvernements passés et du gouvernement à créer*; Harris, *European Liberalism*, 512; Jennings, *Conceptions of England and its Constitution in Nineteenth-century*

had already remarked that only heredity and inviolability distinguished kingship from presidency.<sup>115</sup> What counted for Lebeau was that the political order enshrined liberty, regardless of the exact form that order took. He considered the English monarchs the only ones to have fully understood this, since, discarding any non-constitutional legitimation of their power, they fully bowed to the will of the nation.

The republican priest Désiré de Haerne admonished his fellow delegates that a constitutional monarchy was nothing but a republic in disguise. It would prove unstable, since a monarch would not sit easy with the sovereignty of the people upon which the system was based. He found it wiser therefore to declare a republic straight away:

(...) il ne s'agit pas de balancer les avantages et les désavantages des deux systèmes de gouvernement; il s'agit de savoir si nous pouvons nous tenir à une monarchie constitutionnelle représentative, qui n'est qu'une république déguisée, puisqu'elle est basée sur la souveraineté du peuple. (...) Un roi inviolable est un souverain en présence du peuple souverain.<sup>116</sup>

Many speakers agreed that the days of the European monarchies were numbered. In time, they expected the republican form of state to gain all of them, including Belgium. However, such times were not believed to be yet upon them.<sup>117</sup>

Whereas the republican delegates warned against the struggle for power that was to result from the cohabitation of popular sovereignty and monarchy, the majority believed that the two could coexist in harmony. Since sovereignty was safely vested in the nation, a hereditary head of the executive did not threaten the 'republican' essence of the Constitution. Indeed, the expression 'republican monarchy', attributed to Lafayette, was repeatedly used to describe the compromise:

Wannaar: "Alors nous aurons les formes républicaines compatibles avec l'hérédité du chef; tous l'ont dit à cette tribune; ce sera la monarchie républicaine".<sup>118</sup>

Alexandre Rodenbach: "Je vote en faveur d'une monarchie républicaine (...), parce que sous un pareil gouvernement le peuple marche avec sécurité entre deux précipices, l'abus du pouvoir et l'excès de la liberté".<sup>119</sup>

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French Political Thought, 72; Nicolet, *L'idée républicaine en France. Essai d'histoire critique*, 407; Stengers, *L'action du Roi*, 14.

<sup>115</sup> Lebeau, *Observations sur le pouvoir royal ou examen de quelques questions relatives aux droits de la couronne dans les Pays Bas*, 9.

<sup>116</sup> "(...) this is not about balancing the advantages and disadvantages of the two systems of government; this is about knowing whether we can stick to a constitutional, representative monarchy, which is nothing but a republic in disguise, because it is based on the sovereignty of the people. (...) An inviolable King is a sovereign in the presence of the sovereign people". Huyttens, *Discussions*, vol. 1, p. 216, 20/11/1830.

<sup>117</sup> De Dijn, In overeenstemming met onze zeden; De Lichtervelde, Introduction, 12.

<sup>118</sup> "Thus, the republican forms will be made compatible with the heredity of the chief; all present have reiterated this: it will be a republican monarchy". Huyttens, *Discussions*, vol. 1, p. 222, 20/11/1830.

<sup>119</sup> "I vote for a republican monarchy (...), because under such a government the people safely navigates between two abysses: abuse of power and excess of liberty". Huyttens, *Discussions*, vol. 1, p. 248, 22/11/1830.

Charles Vilain XIII: “Je me prononcerai, messieurs, en faveur de la monarchie constitutionnelle, mais assise sur les bases les plus libérales, les plus populaires, les plus républicaines. Je rejette la république, parce que, rêve des âmes généreuses, elle me semble impraticable. Une république devrait être composée d’anges, et la société de l’an 1830 ne me paraît pas encore arrivée à la perfection angélique”.<sup>120</sup>

In the end “la monarchie constitutionnelle représentative, sous un chef héréditaire” (“constitutional, representative monarchy, under a hereditary chief”) was adopted by an overwhelming majority of 174 against 13.<sup>121</sup>

Constitutional monarchy was credited with the immense advantage of guaranteeing ‘republican’ liberty without the accompanying instability. As Wyvekens put it:

(...) il me paraît (...) démontré que sous la garantie d’une bonne constitution qui assure les droits et les devoirs de tous, nous jouirons de tous les avantages du système républicain sans avoir à craindre son instabilité.<sup>122</sup>

Devaux, too, appreciated the combination of republican liberty with the advantages of stability and order, which he believed would result in an even greater degree of liberty:

La monarchie constitutionnelle représentative, telle que je l’entends, c’est la liberté de la république, avec un peu d’égalité de moins dans les formes, si l’on veut; mais aussi avec une immense garantie d’ordre, de stabilité, et par conséquent, en réalité, de liberté de plus dans les résultats.<sup>123</sup>

A republican system, it was feared, would entail continual power struggles between parties and ambitious individuals. Presidential elections especially were dreaded. Monarchist delegates depicted them as recurring moments of profound crisis. The passions and rivalries they unleashed threatened to undermine the state in its very existence. The choice for a hereditary head of state would prevent these disorders, on the condition that its powers were clearly circumscribed by the Constitution. In Destriveaux’ words:

Dans le pacte qui nous unira, rédigeons en lois de précaution les prévisions contre les dangers de l’hérédité, élevons un roi sur un trône national, donnons-lui d’une main la couronne et de l’autre l’acte qui enferme les conditions de son pouvoir et les garanties de nos libertés.<sup>124</sup>

<sup>120</sup>“Gentlemen, I will pronounce in favor of the constitutional monarchy, but based upon the most liberal, popular, republican foundations. I reject the republic, that dream of generous minds, because I think it is impracticable. A republic would need to be composed of angels, and society in 1830 has not yet, I think, reached such angelic perfection”. Huyttens, *Discussions*, vol. 1, p. 199, 19/11/1830.

<sup>121</sup> Huyttens, *Discussions*, vol. 1, p. 259, 22/11/1830.

<sup>122</sup>“(…) I think (...) it has been proven that, under the protection of a good Constitution guaranteeing the rights and duties of all, we will enjoy all the advantages of a republican system without having to fear its instability”. Huyttens, *Discussions*, vol. 1, p. 185, 19/11/1830.

<sup>123</sup>“Constitutional, representative monarchy as I understand it, means the liberty of the republic, with a little less equality in its forms maybe, but with an immense guarantee of order and stability, and consequently, with more liberty in its results”. Huyttens, *Discussions*, vol. 1, p. 213, 20/11/1830.

<sup>124</sup>“Let us, in the pact that will unite us, formulate the measures against the dangers of heredity as precautionary laws, let us raise a King on a national throne, let us give him in one hand the crown

The proof of the republican foundations was that the monarch received his mandate from the people via its representatives in Congress. According to the monarchist delegate Leclercq, the essence of the system consisted in the people making its own laws, and in the power of the monarch as the head of the executive being clearly circumscribed by the Constitution and being subject to ministerial responsibility:

Qui fait les lois dans une monarchie constitutionnelle représentative? Des hommes élus par tous les citoyens que leur position sociale intéresse au maintien et aux progrès de l'ordre et de la prospérité générale; des hommes qui représentent tous les intérêts, et par eux la nation; des hommes qu'enchaînent des principes consacrés par la Constitution. (...) Qui exécute les lois sous ce gouvernement? Un chef héréditaire il est vrai, et ce chef peut être vicieux; mais de combien de barrières ses vices ne seront-ils pas entourés?<sup>125</sup>

Even when the head of state proved vicious, his vices were safely surrounded by unshakeable constitutional barriers. Another description of the system was provided by Viscount Hippolyte Vilain XIII in a brochure he published shortly before the meeting of the Congress, to which he was subsequently elected. For Vilain XIII, constitutional monarchies were characterised by their combination of republican customs and monarchical calm. The vigilance of the Belgian people would make sure to remind the future monarch of his duties laid down in the Constitution. Being the cornerstone of the whole edifice, it established a contract between the sovereign people and himself:

La monarchie constitutionnelle est là pour remplir ce but admirable, institution des sociétés modernes qui concilie la force des mœurs républicaines avec le calme et l'élégance des habitudes monarchiques, surtout quand par un pacte consacrant la souveraineté du peuple, celui-ci trouve la garantie du contrat, non dans les serments du chef héréditaire, mais dans la ligne impérieuse des devoirs que le souverain doit suivre, et dans l'énergie toujours prompte, toujours active des citoyens à la lui faire observer. (...) Le congrès national sera appelé avant tout à poser cette pierre angulaire de l'édifice; ce n'est qu'après la confection de la charte qu'on procèdera à l'élection du chef (...). Toute souveraineté émane du peuple; ce principe doit être l'intitulé de la nouvelle loi, plus de droit divin, plus de loi octroyée, plus de légitimité en dehors de la volonté nationale. Tel est le pacte constitutio[n]nel ainsi que nous le concevons entre le peuple Belge et son futur souverain.<sup>126</sup>

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and in the other the charter containing the conditions of his power and the guarantees of our liberty". Huyttens, *Discussions*, vol. 1, p. 199, 19/11/1830.

<sup>125</sup>“Who makes the laws in a constitutional, representative monarchy? Men elected by all the citizens whose social position gives them an interest in the maintenance and the progress of order and in general prosperity; men who represent all interests, and by these the nation; men who are bound by the principles consecrated by the Constitution. (...) Who executes the laws under such a government? A hereditary chief, it is true, and this chief may be vicious; but think of all the barriers that will surround his vices!” Huyttens, *Discussions*, vol. 1, p. 185, 19/11/1830.

<sup>126</sup>“Constitutional monarchy is there to fulfil that admirable goal, that institution of modern societies which reconciles the power of republican manners with the calm and elegance of monarchical customs. Especially so when, by a pact consecrating the sovereignty of the people, the latter finds the guarantee of the contract not in the oath taken by the hereditary chief, but in the imperious line of duties which the monarch must follow, and in the ever prompt and active energy of the citizens to make him respect it. (...) The National Congress will, before anything else, be called upon to lay this cornerstone of the building; only after the confection of the charter will we proceed to elect a chief (...). All sovereignty emanates from the people, this principle must be the title of the new

## 2.7 *The King-Magistrate*

Once the choice for the form of state was made, a candidate for the throne needed to be found. The quest for a king was harder than foreseen. Contrary to most of its constituent deliberations, the Congress's choice for a monarch heavily depended on the opinion of the European powers.<sup>127</sup> Initially, the Prince of Orange seemed to stand a good chance. However, due to the growing animosity against the House of Nassau, the Congress voted the perpetual exclusion of that dynasty.<sup>128</sup> In early February 1831, it presented the Belgian crown to the Duke of Nemours, a son of Louis-Philippe.<sup>129</sup> The latter declined the offer under the pressure of international diplomacy, which agitated against an expansion of France's sphere of influence.<sup>130</sup> The Constitution had in the meantime been adopted on the 7th of February<sup>131</sup> and proclaimed on the 11th, with the name of the future King provisionally left blank.<sup>132</sup>

The function of head of state was entrusted to a Regent in the person of Baron Erasme-Louis Surllet de Chokier, who had until that time acted as president of the Congress.<sup>133</sup> The Constitution came into force on 25 February, the day of the Regent's taking of the constitutional oath.<sup>134</sup> Surllet de Chokier prudently respected his pledge of allegiance to the representatives of the nation, up to the point of being accused of indecisiveness.<sup>135</sup> Just like the laws issued by the National Congress, his decrees were promulgated 'in the name of the Belgian people'. He regularly stressed that all the powers he held emanated from the 'sovereign Congress', as in a proclamation of 6 July 1831:

Elle [l'assemblée] seule représente la nation; elle seule a le droit de donner des lois au pays. C'est du Congrès que je tiens mes pouvoirs, et je ne les ai reçus que pour faire exécuter les lois. Si je manquais à ce devoir, je violerais et mon mandat et mes sermens.<sup>136</sup>

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law, no more divine right, no more granted law, no more legitimacy outside of the national will". Such is the constitutional pact, as we conceive it, between the Belgian people and its future sovereign". Vilain XIII, *Appel au Congrès, par un ami de la patrie*. For the author, see: Van Kalken, Vilain XIII (Charles-Hippolyte, vicomte).

<sup>127</sup> Magits, *De Volksraad*, xxxii; Witte, *De constructie*, 79.

<sup>128</sup> Huyttens, *Discussions*, vol. 1, p. 319, 23/11/1830.

<sup>129</sup> Huyttens, *Discussions*, vol. 2, p. 455, 03/02/1831.

<sup>130</sup> Fishman, *Diplomacy and Revolution. The London Conference of 1830 and the Belgian Revolt*, 105; Witte, *De constructie*, 79.

<sup>131</sup> Huyttens, *Discussions*, vol. 2, p. 488, 07/02/1831; *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 14, p. 175, 07/02/1831.

<sup>132</sup> Huyttens, *Discussions*, vol. 2, p. 502, 07/02/1831.

<sup>133</sup> François, Surllet de Chokier, Erasme, Louis.

<sup>134</sup> Huyttens, *Discussions*, vol. 2, p. 592, 25/02/1831; *Bulletin des arrêtés et actes du Gouvernement Provisoire de la Belgique* no. 16, p. 228, 25/02/1831. Except the legislative and constituent powers and the competence to appoint the head of state, which remained in the hands of the Congress.

<sup>135</sup> Witte, *De Belgische radicalen*, 17.

<sup>136</sup> "(...) Only she [the assembly] represents the Nation; only she has the right to give laws to the land. I hold my powers from the Congress and I have only received them to execute its laws. If I

Thus, the Constitution was fully operative several months before Leopold of Saxe-Coburg was elected King. His candidature was agreed to on the condition of his full acceptance of the Constitution drawn up by the Congress. *Le Courier* commented:

Pour porter tous les fruits que nous avons droit d'en attendre, notre révolution doit monter sur le trône du premier roi des Belges, et s'y asseoir intacte à côté de lui.<sup>137</sup>

Newspapers tellingly referred to the monarch as the “King-magistrate” or “the supreme magistrate”.<sup>138</sup> Some even feared that it would be hard to find a candidate for the throne who was willing to accept so many limitations to royal power, especially when he descended from any of the ancient royal dynasties:

Le rejeton d'une famille souveraine qui règne par le droit de naissance, à travers une longue série de générations, serait mal assis sur un trône grossièrement refaçonné par les mains révolutionnaires du peuple<sup>139</sup>; Qui sait si un roi est possible dans la vaste démocratie que le congrès organise? (...) Qui sait si un prince quelconque se soutiendra sur le trône nominal que le congrès lui élève?<sup>140</sup>

Leopold indeed only grudgingly accepted the Constitution. To the Congress delegation that came to offer him the crown, he replied:

Messieurs, vous avez rudement traité la royauté, qui n'était pas là pour se défendre. Votre charte est bien démocratique; cependant, je crois qu'en y mettant de la bonne volonté de part et d'autre, on peut encore marcher.<sup>141</sup>

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would fail to meet this duty, I would violate both my mandate and my oaths”. *Courrier de la Meuse* no. 161, 07/07/1831.

<sup>137</sup>“In order to bear all the fruits that we are entitled to expect from it, our revolution must mount the throne of the first King of the Belgians, and take its seat there, next to him, undamaged”. *Le Courier* no. 120, 20/04/1831.

<sup>138</sup>*Courrier de la Meuse* no. 310, 25/12/1830; *Courrier des Pays-Bas* no. 343, 09/12/1830; *Le Courier* no. 104, 01/05/1831. In the French Constitution of 1791, the term ‘premier fonctionnaire public’ was used. Wigny, *Droit constitutionnel*, 222.

<sup>139</sup>“The scion of a sovereign family that has reigned by right of birth, through a long series of generations, would sit uneasily on a throne so grossly refashioned by the hands of a revolutionary people”. *Le Courier* no. 25, 25/01/1831.

<sup>140</sup>“Who knows whether a King is possible in the vast democracy organised by the Congress? (...) Who knows whether a prince will sustain himself on the nominal throne erected for him by the Congress?” *Le Courier* no. 15, 15/01/1831. See also *Le Courier de la Meuse* no. 310, 25/12/1830: “La crainte du despotisme des rois (...) fera triompher la république dans toutes les institutions importantes. La monarchie ne sera qu'un mot, et la république sera un fait. Et par conséquent, on pourra se demander aujourd'hui si l'on trouvera pour un pareil royaume un prince grande propriétaire et généralement respecté? A bien envisager la chose, cette dignité, quoique déclarée héréditaire, ne doit pas tenter beaucoup; car cette prétendue hérédité n'aveuglera aucun homme sensé”.

<sup>141</sup>“Gentlemen, you have rudely treated royalty, which was not there to defend itself. Your charter is democratic indeed; nonetheless, I think that, with some goodwill on both sides, it can still work”. Molitor, *Réflexions sur la fonction royale*, 14. It seems that these initial hopes were soon dissipated, for in 1842 he wrote to his niece, Queen Victoria: “A herd of mad democrats, in the absence of anything or anyone representing a government, fabricated in 1830 a Constitution in which they collected every means hitherto invented to render government, whatever be its name, next to impossible”. Stengers, *L'action du Roi*, 26.

Leopold, who on a later occasion called the Belgian institutions “quasi-republican”, fully realised that the Constitution was not based on the monarchical principle.<sup>142</sup> The inauguration ceremony on the Brussels Place Royale on 21 July 1831 was organised around Leopold’s public taking of the oath. Upon his arrival in Brussels, he was greeted by mayor Nicolas Rouppe as the “elect of the nation” and reminded of his due respect for the Constitution:

Elu de la nation, prince magnanime, venez prendre possession du trône où vous appellent les acclamations unanimes d’un peuple libre. Vous maintiendrez, Sire, notre charte et nos immunités.<sup>143</sup>

In his inaugural speech, Leopold emphasised the popular origin of the Constitution and the power which had created it:

Cette constitution émane entièrement de vous, et cette circonstance, due à la position où s’est trouvé le pays, me paraît heureuse. Elle a éloigné des collisions qui pouvaient s’élever entre divers pouvoirs et altérer l’harmonie qui doit régner entre eux.<sup>144</sup>

After Leopold’s taking of the oath in the hands of the president of the Congress, the delegates retreated to their assembly hall in order to conclude their final session. In his closing speech, president De Gerlache stressed the popular origin of the power held by the newly appointed King:

Vous avez une charte, un gouvernement régulier, un roi, un roi légitime de par le peuple, et certes il est permis de croire qu’ici la voix du peuple est encore la voix de Dieu!<sup>145</sup>

De Gerlache’s formulation of the voice of the people as the ultimate source of legitimacy was quoted in the article covering the events of 21 July in the official newspaper *Moniteur belge*. Leopold was not only said to have recognised the principles of the Belgian Revolution, but also to incarnate it in his person:

La Révolution avait adopté Léopold; Léopold adopte à son tour la révolution; il n’en renie aucun principe, aucune conséquence. Elle s’est faite homme en lui. Il n’y a là ni droit divin, ni quasi-légitimité; toutes les fictions tombent devant la réalité.<sup>146</sup>

<sup>142</sup> Stengers, *L’action du Roi*, 28.

<sup>143</sup> “Elect of the nation, magnanimous prince, come and take possession of the throne to which you are called by the unanimous acclamations of a free people. You will, Sire, maintain our charter and our immunities”. Huyttens, *Discussions*, vol. 3, p. 615, 21/07/1831.

<sup>144</sup> “This Constitution emanates entirely from you, and this circumstance, which is due to the position in which the country found itself, is, I think, a happy one. It has averted potential collisions between the various powers which would alter the harmony that must reign between them”. Huyttens, *Discussions*, vol. 3, p. 619, 21/07/1831.

<sup>145</sup> “You have a Constitution, a regular government, a King; a King who is legitimate because of the people, and it can certainly be imagined that in this, the voice of the people is the voice of God!” Huyttens, *Discussions*, vol. 3, p. 622, 21/07/1831.

<sup>146</sup> “The Revolution had adopted Leopold; Leopold in turn adopts the Revolution; he renounces neither its principle nor its consequences. In him, it takes form. There is neither divine right, nor quasi-legitimacy; all these fictions succumb before reality”. *Moniteur belge* no. 37, 22/07/1831. The *Moniteur* was created as official newspaper on 16 June 1831. Els Witte, *De Moniteur belge, de regering en het parlement tijdens het unionisme, 1831–1845*.

On Leopold's arrival in Belgium, *Le Courrier* wrote:

Que Léopold, en mettant le pied sur le rivage de sa nouvelle patrie, se dépouille de ce qui pourrait rester encore au fond de ses souvenirs de préjugés gothiques, d'influences étrangères: qu'il prenne la ferme résolution de ne jamais renier son origine, le peuple, qui seul l'a fait roi. (...) Qu'il se rappelle surtout qu'en se rendant en Belgique, il vient sanctionner une révolution.<sup>147</sup>

*Le Belge* wrote:

(...) il faut aussi que le prince, que le choix du congrès appela à régner sur nous, se pénètre de la grande vérité si souvent répétée et presque toujours inutilement: les rois sont faits pour les peuples, et non les peuples pour les rois.<sup>148</sup>

## 2.8 *The Constitutional Powers of the King*

Given the arguments above, it can safely be said that 'nation' in article 25 of the Belgian Constitution does not refer to any kind of compromise between royal and popular power, but instead expresses the exclusively popular origin of sovereignty. The mandate of the King rested on the popular will, thus relegating his role in the Belgian constitutional edifice to that of a *pouvoir constitué*. However, article 25 clearly distinguishes the origin of sovereignty from its exercise: "They [the powers] are exercised in the manner established by the Constitution". Although the Nation is the sole source of sovereignty, it does not exercise it in its entirety. The sovereign powers are delegated to a series of bodies which exercise them in the way established by the Constitution. The question of the constitutional powers of the King must therefore be distinguished from their origin.

The role and functions of the monarch were extensively debated in the Congress when the issue of the form of state came to the fore. The debates were strongly pervaded by the spirit of Benjamin Constant. Paraphrasing the second chapter of his *Principes de politique*, monarchist speakers described the monarch as a neutral power, whose task it was to moderate between the other powers so as to guarantee their harmonious collaboration. To be sure, the delegates reinterpreted Constant's

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<sup>147</sup> "May Leopold, on setting foot on the shores of his new fatherland, shake off every trace that could possibly remain in the depths of his memories of those gothic prejudices, of foreign influences; may he take the firm resolution never to renounce his origin: the people, which alone has made him King. (...) May he particularly remember that, in coming to Belgium, he comes to sanction a Revolution". *Le Courrier* no. 197, 16/07/1831.

<sup>148</sup> "(...) the Prince, called to reign over us by the choice of the Congress, must enshrine this great truth, which has so many times been repeated, but almost always in vain: Kings are made for the people, and not the other way around". Pinheiro-Ferreira traces the quote back to Vattel: Vattel and Pinheiro-Ferreira, *Le droit des gens*, p. 480. *Le Belge* no. 288, 15/10/1830. *Le Belge* was a liberal oppositional newspaper with radical tendencies, based in Brussels. Its editor, Adolphe Levae, was a sympathizer of Louis de Potter, who also published in it. Harsin, *Essai sur l'opinion publique*, 29, Witte, *Het natiebegrip*, 225; Wouters, *De Brusselse radikale pers in de eerste roes van de onafhankelijkheid (1830–1844)*, 141.

theory rather freely, since he himself had intended his neutral monarch as a fourth power, ‘floating above the others’, whilst the executive power was entrusted to a separate body.<sup>149</sup>

While the delegates saw no wrong in putting both the executive and ‘neutral’ powers in the hands of the King, they strongly insisted on his moderating role.<sup>150</sup> He was not to act on any power of his own, but he had to intervene in the actions of the other powers when the interests of the nation required it. For him to be able to do so, the heredity principle was considered an essential prerequisite. It was often repeated that, in order to survive, every state organisation must contain elements of both movement and stability. The permanent character of royal power was necessary to counterbalance the volatility and changeability of the elected chambers, since instability was harmful to the State. The most comprehensive argumentation of this kind was provided by Nothomb:

Il y a stabilité dès qu’il existe au centre de l’ordre politique un pouvoir qui se perpétue de lui-même et qui échappe à toutes les vicissitudes humaines. (...) Le pouvoir qui se maintient par l’hérédité et l’inviolabilité n’est qu’un pouvoir modérateur. La souveraineté se compose de la volonté et de l’exécution. La volonté est placée dans la représentation nationale, l’exécution dans le ministère. Le pouvoir permanent influe sur la volonté par l’initiative et le veto, et par la dissolution de la chambre élective; sur l’exécution par le choix des ministres et par le droit de grâce. Il n’a pas d’action proprement dite, mais il provoque ou empêche l’action de tous les autres pouvoirs qui, autour de lui, se créent ou se renouvellent par l’élection.<sup>151</sup>

Defining ‘will’ and ‘execution’ as the component parts of sovereignty, Nothomb placed the first in the Parliament and the second in the ministry. The King or ‘permanent power’ was in a position to influence both via his prerogatives, without however having a terrain of action of his own. Thus, the monarch was granted a share in sovereignty, but exclusively by delegation, and on the conditions stipulated by the nation and listed in the Constitution. The same idea underlies the intervention of De Theux de Meylandt, who spoke of:

(...) une dynastie qui sera de notre choix, qui ne sera appelée à la souveraineté que lorsque nous aurons établi une constitution éminemment libérale, et lorsque nous aurons complété toutes les lois organiques de cette constitution.<sup>152</sup>

<sup>149</sup> Constant, *Principes de politique*, 40.

<sup>150</sup> E.g. the intervention by Forgeur: “Le chef de l’État n’aura qu’un pouvoir neutre; il rectifiera l’action de tous les pouvoirs. L’exécution sera dans le ministère; si le ministère est inhabile, il sera privé des moyens de gouvernement”. Huyttens, *Discussions*, vol. 1, p. 226, 20/11/1830.

<sup>151</sup> “There is stability when in the center of the political order exists a power which perpetuates itself and which escapes all human vicissitudes. (...) The power which maintains itself through heredity and inviolability is only a moderating power. Sovereignty is composed of will and action. The will is placed in the national representation, the execution in the ministry. The permanent power influences the will through the initiative and the veto, and through the dissolution of the elected Chamber; the execution through the choice of the ministers and the right of pardon. He doesn’t really act himself, but he provokes or prevents the action of the other powers around him which are created or renewed via election”. Huyttens, *Discussions*, vol. 1, p. 193, 19/11/1830.

<sup>152</sup> “(...) a dynasty which will be of our own choice, and which will only be called to sovereignty after we will have established an eminently liberal Constitution, and after we will have completed all the organic laws of this Constitution”. Huyttens, *Discussions*, vol. 1, p. 224, 20/11/1830.

Nonetheless, the monarch's constitutional powers were extensive. Alongside being part of the legislative power (art. 26), heading the executive (art. 29) and disposing of the absolute legislative veto (art. 69) and the right to dissolve Parliament (art. 71), his prerogatives included the command of the armed forces, the rights to declare war and conclude treaties and the rights of pardon and coinage (art. 68). He furthermore appointed the ministers as well as a range of civil servants and judges (art. 65, 66, 99, 101) and created nobility (art. 75). Moreover, the Constitution granted the King a share in constituent sovereignty in the case of constitutional revision (art. 131). When the sitting chambers declared a number of articles subject to revision, Parliament was dissolved and new elections ensued. The new chambers decided on the revision in common agreement with the King.<sup>153</sup> This arrangement is consistent with the argumentation of the Central Section concerning the royal veto for normal legislation. If it was feared that a Parliament hostile to the King might attempt to threaten the latter's constitutional position through legislative initiatives, the same was a fortiori true for a constituent assembly.

It was however impossible for the monarch to use these powers autonomously. Except for the 'passive' use of the royal veto and the appointment and dismissal of ministers, all of his actions were subject to ministerial responsibility through the obligatory countersign. As Lebeau put it:

La royauté, en effet, n'est pas, à proprement parler, un pouvoir. Comment dire qu'il y ait pouvoir, lorsque toute faculté d'agir est interdite sans l'assentiment d'autrui? Telle est la position de la couronne, assujettie qu'elle est par le contreseing à la volonté du conseil.<sup>154</sup>

Lebeau went on to say that the Council of Ministers itself was controlled by the Parliament. Even if few speakers went as far as Lebeau, it is clear from the debates that the King was expected to act in accordance with the will of Parliament. For the delegates, the ultimate guarantee for aligning the monarch's conduct with the national will was the yearly vote over the budget. Time and again they testified to their belief that the budget was Parliament's key to controlling the government. Lebeau for example used the argument to cut down the discussion over the royal prerogatives. To Van Meenen's insistent demand for a constitutional clause forbidding the monarch to conclude treaties that risked to financially burden the State, Lebeau replied:

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<sup>153</sup> Pierre Wigny's objection that the King cannot really refuse to sanction a constitutional revision rests on evidence provided by Belgian political custom rather than by the provisions of the Constitution itself: Wigny, *Droit constitutionnel*, 223; 618.

<sup>154</sup> "Indeed, royalty doesn't really have any power. How can one say that it has power, when its every faculty of action is forbidden without the approval of someone else? That is the position of the Crown, subjected as it is, by the countersign, to the will of the council". Huyttens, *Discussions*, vol. 1, p. 208, 20/11/1830.

C'est inutile, parce que les chambres votent le budget, et que par conséquent on ne peut grever l'État sans leur assentiment; et quand le roi reconnaîtrait une dette de vingt millions, il ne pourrait en grever l'État, parce qu'on lui refuserait les subsides.<sup>155</sup>

A similar remark was made by the Count d'Arschot in reply to Le Bègue's proposal to abolish the royal prerogative to declare war. Le Bègue found this a too dangerous prerogative because it gave the monarch the right to put the people's lives at risk. D'Arschot reminded him "that the vote over the army is annual, and that the King consequently disposes as little of our lives as he disposes of our pennies".<sup>156</sup>

Lebeau predicted a parliamentary system in which the vote over the budget came down to a vote of confidence over the cabinet:

La chambre, une fois composée, confirme, modifie ou renvoie le ministère, selon le degré de confiance ou de défiance qu'il lui inspire. La chambre élective, ouvrant et fermant à volonté la bourse des contribuables, tient dans sa main la destinée du cabinet; elle impose à la couronne ses exclusions et ses choix; elle élit donc en réalité, quoique indirectement, le ministère tout entier. Or, le ministère, ainsi élu ou confirmé, ne peut vivre qu'à la condition d'administrer selon le vœu de la majorité de la chambre; c'est-à-dire selon le vœu du pays qu'elle est censée représenter.<sup>157</sup>

The monarch's only real action was the choice of ministers, but even that was imposed on him by the chambers.

One cannot fail to remark that the keystone of the system described by Lebeau, the political responsibility of ministers to Parliament, was missing from the Constitution.<sup>158</sup> Although the question wasn't explicitly discussed, it is clear from Lebeau's account that he considered it an unnecessary measure. In his view, the control over the budget sufficed to force the King to take his ministers out of the parliamentary majority. By not inscribing the political responsibility of ministers

<sup>155</sup> "It is useless, because the chambers vote the budget, and consequently one cannot burden the State without their consent; and when the King would contract a debt of 20 million, he could not burden the State with it, because one would refuse to vote his subsidies". Huyttens, *Discussions*, vol. 2, p. 77, 10/01/1831.

<sup>156</sup> "(...) le comte d'Arschot rappelle que le vote sur l'armée est annuel et que, par conséquent, le roi ne dispose pas plus de nos vies que de nos écus". Huyttens, *Discussions*, vol. 2, p. 77, 10/01/1831.

<sup>157</sup> "Once it will have been composed, the Chamber will confirm, modify or dismiss the ministry, according to the degree of confidence or distrust it inspires in it. The elective Chamber, opening or closing the taxpayers' purse at will, holds the cabinet's destiny in its hands. It imposes its exclusions and its choices on the King; so that in reality it elects the whole ministry, be it indirectly. The ministry, being elected or confirmed in this way, can only live on the condition of administering according to the will of the majority of the Chamber; in other words, according to the will of the country it must represent". Huyttens, *Discussions*, vol. 1, p. 208, 20/11/1830.

<sup>158</sup> Ganshof Van der Meersch, *Des rapports entre le Chef de l'Etat et le gouvernement en droit constitutionnel belge*, 183; Gilissen, *Die belgische Verfassung von 1831*, 62; Koll, *Belgien*, 499. Articles 63 and 64 stipulated the juridical responsibility of ministers, but not their political responsibility to Parliament. See: Müßig, *L'ouverture du mouvement constitutionnel*, 499; Van Velzen, *De ongekende ministeriële verantwoordelijkheid. Theorie en praktijk, 1813-1840*. This fact tends to be overlooked in accounts that attribute a pivotal position to the Belgian Constitution in the turn from constitutional to parliamentary government. See for example: Luyten and Magnette, *Het parlementarisme in België*; Mirkine-Guetzévitch, *L'histoire constitutionnelle comparée*.

into the Constitution, the Congress did however create ambiguity. Even if the limitation of royal power in favour of the representatives of the people certainly was one of the Congress's guiding principles, the debates do not allow to assess to what extent Lebeau's vision on parliamentary government was shared by his colleagues. Further research is therefore needed. It is however certain that the realisation of this vision in practice came only much later.

Contrary to what some authors have concluded with hindsight on developments in the second half of the nineteenth century, parliamentary government didn't materialise in the first decades after the Constitution's promulgation.<sup>159</sup> True, from a very early stage Leopold I took care to appoint ministers who enjoyed parliamentary support. As soon as 1833, after using his prerogative to dissolve the Chamber of Representatives because it proved unable to form a government, Leopold stipulated by decree that governments could only function when being supported by stable parliamentary majorities.<sup>160</sup> Nonetheless, the first decades of Leopold's reign have been characterised as "a semi-parliamentary system with a monarchical counterpart"<sup>161</sup> or even a "monarchical constitutionalism with precedence for Parliament".<sup>162</sup> Due to the unionist composition of cabinets (i.e. composed of ministers from both rivalling political blocs, Catholic and liberal, alike) and the absence of formal party organisations in this period, it was not exactly clear which parliamentary majority they actually represented.<sup>163</sup> Belgium's first King used the advantage to strengthen his position vis-à-vis the Parliament and to keep a firm grip on the executive.<sup>164</sup> Only after 1857, when the last unionist alliance shattered, did the King's influence on the government diminish.<sup>165</sup> Thus, the exact balance of powers in the Belgian political order bore the mark of political custom as much as of constitutional provisions.<sup>166</sup>

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<sup>159</sup> For examples of such accounts, see: Böckenförde, *Der Verfassungstyp der deutschen konstitutionellen Monarchie im 19. Jahrhundert*; Fusilier, *Les monarchies parlementaires. Etudes sur les systèmes de gouvernement*, 360; Mirkine-Guetzévitch, 1830 dans l'histoire constitutionnelle de l'Europe.

<sup>160</sup> Gilissen, *Le régime représentatif*, 114.

<sup>161</sup> Witte, *De evolutie van de rol der partijen in het Belgische parlementaire regeringssysteem*, 96.

<sup>162</sup> Kirsch, *Monarch und Parlament im 19. Jahrhundert: der monarchische Konstitutionalismus als europäischer Verfassungstyp - Frankreich im Vergleich*, 190. In 1918, Errera remarked that the form of state inscribed in the Constitution did not conform to political practice any more: "La monarchie belge est strictement parlementaire et non point seulement constitutionnelle et représentative". Errera, *Traité du droit public belge*, 116. Parliamentarism developed over time, resting on political custom as much as on constitutional provisions. See also: Müßig, *L'ouverture du mouvement constitutionnel*, 515.

<sup>163</sup> De Smaele, *Politieke partijen in de Kamer, 1830–1914*.

<sup>164</sup> Senelle judges that Leopold, despite faithfully respecting the letter of the Constitution, manifestly overstepped the limits of the role intended for him by the Congress. Senelle, *Le monarque constitutionnel en Belgique*, 56.

<sup>165</sup> Van den Wijngaert et al., *België en zijn koningen. Monarchie & macht*, 165.

<sup>166</sup> For the evolution of this balance over time, see: Stengers, *L'action du Roi en Belgique depuis 1831: pouvoir et influence*; Van den Wijngaert et al., *België en zijn koningen*.

### 3 National or Popular Sovereignty?

#### 3.1 A False Opposition

In spite of its underdetermined formulation, article 25 can thus safely be said to proclaim national sovereignty in the sense of sovereignty from below.<sup>167</sup> This did not, however, avert the dangerous ambiguity pointed at by Grenier at the beginning of this chapter. Although it may have been clear to all that the nation was the ultimate source of legitimacy and that the members of Parliament represented it (at the exclusion of the King), the article did not specify of whom the sovereign nation was composed, nor who was entitled to membership. Grenier's warning bespeaks his fear of a narrow, elitist interpretation of the concept of nation, as foreshadowed by the composition of the Congress itself:

(...) le Congrès ne représente que ceux qui l'ont nommé; c'est-à-dire, la propriété notable, quelques professions libérales et le corps du clergé. Il s'ensuit que le Congrès, bien qu'il n'agisse entièrement que dans l'intérêt de la nation, ne représente point la nation, mais les notabilités seulement. Tous les citoyens n'ont pas concouru à son élection.<sup>168</sup>

With his remark, Grenier laid bare the thorny issue of the distinction between popular and national sovereignty. It is surprising how little attention has been given to this semantic question, especially given the almost complete lack of debate in the Congress over article 25. At no point in its lengthy deliberations did the Congress take care to define the central concept on which it grounded the legitimacy of its existence as well as of its primary legacy, the Constitution. Whether the undisputed acceptance of this notion must be seen as a sign of a commonly shared understanding about its meaning among the delegates, or whether the vagueness of the term conveniently cloaked fundamental disagreement, or whether the pressing circumstances of the Revolution simply did not allow enough time for profound theoretical reflection, remains a matter of debate. What is sure is that it has facilitated the development of diverging interpretations over time.

Today's constitutional manuals are unambiguous over the meaning of 'nation' in the Belgian Constitution. For André Alen, it is: "an abstract, indivisible collectivity comprising the citizens of the past, the present and the future".<sup>169</sup> John Gilissen, while admitting that the term didn't have a fixed meaning in the political science of the time, defines it as "a community of people who want to live together" but not coinciding with the members of that community.<sup>170</sup> Pierre Wigny calls it "collective being to which a political organisation has given a juridical unity which expresses

<sup>167</sup> De Smaele, *Omdat we uwe vrienden zijn*, 30.

<sup>168</sup> "The Congress represents only those who have constituted it; in other words: landed property, some liberal professions and the clergy. It follows that the Congress, although it entirely acts in the interest of the nation, doesn't represent the nation but only the notables. Not all citizens have contributed to its election". Grenier, *Examen du projet de constitution*.

<sup>169</sup> Alen, *Treatise on Belgian Constitutional Law*, 11.

<sup>170</sup> Gilissen, *Le régime représentatif*, 13.

itself by a personality distinct from the one of each of its members”.<sup>171</sup> In every case the nation is defined as a collective, abstract being transcending the concrete community of people. Their unanimity is deceiving however, for the cited definitions are of much later origin than the Constitution. Upon careful inspection, they cannot be traced back to the time of the Constitution’s formation or to the years immediately following it. Constitutional manuals and comments from the first decades after the Constitution’s promulgation offer very diverging interpretations of the meaning of article 25.

The oldest constitutional manual, the *Manuel constitutionnel de la Belgique* published in April 1831, proclaimed:

(...) cet article établit la souveraineté du peuple que la République française proclama la première (...). La *légitimité divine* (la grâce de Dieu) des rois a disparu devant la *volonté*, la *force* et l’*union* des peuples.<sup>172</sup>

The liberal university professor Antoine Becart wrote in 1848:

Le peuple est souverain, car il est l’objet de la souveraineté, mais s’il est la raison de tout ce qui se fait, il ne doit pas en être l’auteur lui-même: tout doit se faire pour lui mais non par lui. Donc la souveraineté ne réside pas réellement dans le peuple.<sup>173</sup>

Jean Stecher in his *Onpartydige volkshistorie des Belgische grondwet* (“Impartial national history of the Belgian Constitution”) of 1851 wrote:

Het Bestuer bezit geene andere magte dan diegene, welke het Volk hem heeft toevertrouwd. Het Volk, als soeverein, is de oorsprong aller staetsmagten. In den maetschappelyken kring is de volksmagt boven alles – behalve boven God.<sup>174</sup>

The same stance was taken in a liberally inspired article published in the Catholic *Journal historique et littéraire* in 1852. It called the people sovereign and defined the nation as:

l’ensemble des membres dont la société se compose dans un Etat, c’est la réunion de tous les individus. Les individus meurent et sont remplacés par d’autres individus; la nation ne meurt pas, elle ne fait que se renouveler sans cesse.<sup>175</sup>

<sup>171</sup> Wigny, *Droit constitutionnel*, 224.

<sup>172</sup>“(…) this article established the sovereignty of the people, first proclaimed by the French Republic (...). The divine legitimacy (the grace of God) of kings has disappeared before the will, the power and the union of the people”. N.N., *Manuel constitutionnel de la Belgique*, 40.

<sup>173</sup>“The people is sovereign because it is the object of sovereignty. But, despite being the reason of all that is done, it mustn’t itself be the author of it: all must be done for it but not by it. So sovereignty doesn’t really reside in the people”. *Le Progrès belge* no. 8, 23/07/1848.

<sup>174</sup>“The Government has no other powers than those it has been entrusted with by the people. The people, being the sovereign, is the source of all powers of state. In society, the power of the people is superior to everything except God”. Stecher, *Onpartydige volkshistorie des Belgische grondwet*, 15.

<sup>175</sup>“(…) the whole of all the members of which society is composed in a State; it is the reunion of all individuals. The individuals die and are replaced by other individuals; the nation doesn’t die, it perpetually rejuvenates itself”. Kersten, *De la Constitution belge et de l’influence qu’elle exerce sur l’esprit et les mœurs*, 86.

A somewhat less popular interpretation was defended by Hippolyte-Jérôme Wyvekens, who in his *Notions élémentaires sur la Constitution belge et les lois politiques et administratives* (“Elementary notions on the Belgian Constitution and the political and administrative laws”) of 1854, wrote:

Le gouvernement de la Belgique est constitutionnel, monarchique, représentatif. La souveraineté y est partagée entre le Roi, les représentants du peuple et les tribunaux, de la manière fixée par la Constitution. (...) Tous les pouvoirs émanent de la nation: l'exercice en est conféré au Roi, aux représentants du peuple et aux tribunaux.<sup>176</sup>

In his *Manuel des institutions constitutionnelles & administratives, des droits et des devoirs des belges* of 1856, the historian A. Docquier defined the Nation as:

(...) la totalité des hommes réunis en un même Etat (...). Ils forment un peuple lorsqu'ils ont la même origine ou la même langue.<sup>177</sup>

Docquier continued by calling Belgium's Constitution a mixed government because it contained element of democracy, monarchy and oligarchy. Later in the century, a very different sound was heard in the work of Masson and Wiliquet (1883):

Le gouvernement de la Belgique est essentiellement démocratique, la Constitution le déclare nettement: tous les pouvoirs émanent de la nation (Const. 25). L'institution de la royauté elle-même, qui n'a conservé de la royauté d'autrefois que la majesté, le respect, la grandeur, est essentiellement populaire: c'est la nation qui a conféré l'autorité royale à Leopold de Saxe-Cobourg; c'est par sa volonté solennellement proclamée en 1831, que cette autorité est héréditaire.<sup>178</sup>

The cited works can hardly be said to be unanimous about the meaning of nation and national sovereignty. More importantly, many other constitutional manuals and comments simply chose not to define these concepts at all, confining themselves to repeating the vague formula of article 25. Clearly, the nineteenth-century interpreters of the Belgian Constitution could not fall back on a generally accepted standard formula of national sovereignty. The diversity of their writings disclaims the existence of a common theoretical concept of nation shared by all the parties involved,

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<sup>176</sup>“The Belgian government is constitutional, monarchical, representative. Sovereignty is divided between the King, the representatives of the people and the tribunals, in the way fixed by the Constitution. (...) All the powers emanate from the nation: their exercise is attributed to the King, the representative of the people and the tribunals”. Wyvekens, *Notions élémentaires sur la Constitution belge et les lois politiques et administratives, à l'usage des athénées, des écoles moyennes et primaires et des aspirants aux emplois civils*, 14–15.

<sup>177</sup>“(...) the totality of all men united in the same State (...). They constitute a people when they share the same origin and the same language”. Docquier, *Manuel des institutions constitutionnelles & administratives, des droits et des devoirs des belges, ou principes du droit public et privé de la Belgique*, 10.

<sup>178</sup>“The Belgian government is essentially democratic, the Constitution straightforwardly declares it: all the powers emanate from the Nation (Const. 25). The institution of royalty itself, which of the royalty of former times has only conserved its majesty, its respect, its grandeur, is essentially popular: it is the nation which has conferred royal authority to Leopold of Saxe-Coburg; this authority is hereditary by its own will, solemnly proclaimed in 1831”. Masson and Wiliquet, *Manuel de droit constitutionnel*, 39.

such as the one that is accepted by the leading constitutional manuals of today. The meaning of article 25 has, instead, been a battlefield where authors of diverging political persuasions met in an effort to ascertain who was entitled to membership of the nation and, more importantly, to the exercise of political rights.

More is therefore at stake than simply a question of definitions. Henk de Smaele has shown that the presently accepted interpretation of national sovereignty in the Belgian Constitution was only developed *post factum*. It goes back to Carré de Malberg's classical distinction between national and popular sovereignty in his *Contribution à la théorie générale de l'État* (1920–22). De Smaele follows the lead of Guillaume Bacot in arguing against the validity of this distinction when applied to the end of the eighteenth and the beginning of the nineteenth century.<sup>179</sup> Carré de Malberg distinguished between two mutually exclusive conceptions of sovereignty and traced them back to the works of Rousseau and Sieyès respectively.<sup>180</sup> Hence the well-known binary opposition still associated with these thinkers and concepts today: the sovereignty of the concrete, physical people versus the sovereignty of an abstract, transcendent and ahistorical nation; political participation as a right versus a function; universal versus limited suffrage; the French Constitution of 1793 versus the one of 1791.<sup>181</sup>

Bacot argues that Carré de Malberg exaggerated the antithesis between the ideas of Rousseau and Sieyès.<sup>182</sup> According to him, the meaning of the terms 'nation' and 'people' was not at all fixed in this period. Both were often used as synonyms, which counters the importance usually attributed to the choice of words in the Constitutions of 1791 and 1793. Rousseau's and Sieyès' conceptions of sovereignty are furthermore obscured by the internal paradoxes characterising the writings of both thinkers. It is not the aim of this chapter to take a stance in the debate. Bacot's observations do prove helpful however for coming to terms with the underdetermined character of national sovereignty in the Belgian Constitution.

What is striking about the constitutional manuals and commentaries cited above, is that many explicitly identified national sovereignty with the sovereignty of the people. In this they were consistent with the language employed in the National Congress. When used in combination with 'sovereignty', the meaning of the terms 'nation' and 'people' was interchangeable. Often both were alternately used by the same speaker, without entailing a change of meaning. Tellingly, in the official Dutch version of the Constitution, which had no legal force, 'nation' was translated as 'people'. Article 25 thus read: "Alle gezag komt van het volk" ("All the powers

<sup>179</sup> Bacot, *Carré de Malberg*; De Smaele, *Omdat we uwe vrienden zijn*. Roels too, despite his otherwise faithful adherence to Carré de Malberg, recognises that the latter exaggerated this distinction. Roels, *Le concept de représentation*, 97.

<sup>180</sup> Bacot, *Carré de Malberg*, 7.

<sup>181</sup> Space does not allow to do justice to this complicated subject matter here. For more comprehensive accounts, read: Baker, *Constitution*; Baker, *Souveraineté*; Brunet, *Vouloir pour la nation. Le concept de représentation dans la théorie de l'Etat*; Roels, *Le concept de représentation*; Deinet, *The Development of the Constitutional Concepts in the First Part of 19th Century France*.

<sup>182</sup> Bacot, *Carré de Malberg*.

emanate from the people”).<sup>183</sup> This use of language indicates that the creators of the Constitution of 1831 did not presuppose a theoretical difference between national and popular sovereignty. In fact, they did not hesitate to call popular sovereignty the guiding principle of the new constitutional system. When the priest Vander Linden intervened against the proposed formulation of article 25, his arguments were tellingly directed against the sovereignty of the people.<sup>184</sup> None of his colleagues contradicted him.

Equally indicative is Etienne de Gerlache’s brochure *Essai sur le mouvement des partis en Belgique* (“Essay on the movement of parties in Belgium”) of 1852, in which he fulminated against the popular sovereignty enshrined in the Belgian Constitution. De Gerlache was not just anybody. He had been president of both the Constitutional Commission and the National Congress. His brochure was aimed against the new tendency of one party governments that put an end to almost two decades of unionism in Belgian politics. Most Catholics deplored this evolution. They saw parliamentarism as a threat to national unity and to the preservation of conservatism.<sup>185</sup> De Gerlache’s critique on popular sovereignty was meant to discredit republicanism in the French tradition:

Le dogme de la souveraineté du peuple, sur lequel reposent toutes nos théories constitutionnelles, est gros de révolutions, inconciliable avec l’ordre et la paix, et avec tout Gouvernement régulier. C’est la plus détestable flatterie, le plus insigne mensonge que les démagogues aient jamais pu jeter aux masses”.<sup>186</sup>

Although his feelings about it had visibly changed, De Gerlache thus recognised popular sovereignty as the basis of the Belgian institutions, just as he had done in the closing speech he delivered in the Congress’s final session. In this speech, cited above, he insisted on the “voice of the people” as the Constitution’s ultimate source of legitimacy. Marnix Beyen’s research into the use of political languages in Parliament has furthermore shown that the reality of the principle of popular sovereignty was generally accepted by the Belgian political parties in the nineteenth century. In parliamentary debates, the concept was referred to in a positive way, lending legitimacy to the arguments it was associated to.<sup>187</sup> All of this is rather hard to

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<sup>183</sup> *Recueil des décrets du Congrès national de la Belgique et des arrêtés du pouvoir exécutif*, 4th series, vol. 2, 135. Likewise, the French name of the Congress’s assembly hall, *Palais de la Nation* (“Palace of the Nation”), was translated into Dutch as *Volkshuys* (“House of the People”).

<sup>184</sup> Huyttens, *Discussions*, vol. 2, p. 14, 03/01/1831.

<sup>185</sup> De Smaele, *Politieke partijen in de Kamer*, 147; Witte, *De evolutie van de rol der partijen in het Belgische parlementaire regeringssysteem*; Van den Wijngaert, *België en zijn koningen*, 162.

<sup>186</sup> “The dogma of popular sovereignty, on which all our constitutional theories rest, is full of revolutions and irreconcilable with order and peace, and with every regular government. It is the most detestable, the most extraordinary lie ever thrown at the masses by the demagogues”. De Gerlache, *Essai sur le mouvement des partis depuis 1830 jusqu’à ce jour*, 65. In his history of the Kingdom of the Netherlands of 1859 he wrote that the Belgian Constitution, as opposed to the Dutch Fundamental Law, was dominated by “the popular principle”. De Gerlache, *Histoire du Royaume des Pays-Bas depuis 1814 jusqu’en 1830*, 317.

<sup>187</sup> In the debates of the Dutch Estates General, the opposite was true. Beyen and Te Velde, *Modern Parliaments in the Low Countries*.

reconcile with the antithesis between national and popular sovereignty that is supposed to have existed at the time of the Constitution's creation.

### 3.2 *The Limitation of Political Participation*

De Smaele classifies the application of the absolute distinction between popular and national sovereignty to the Constitution of 1831 as part of the 'liberal myth' by which liberal politicians have, later in the nineteenth century, canonised their reinterpretation of article 25.<sup>188</sup> As they grew conscious of the radical potential of the formulation of the article and its roots in the French republican tradition, they theorised a concept of national sovereignty distinct from the idea of popular sovereignty. In doing so, they relied heavily on the works of the French doctrinal liberals, who had successfully developed a liberal interpretation of sovereignty that precluded popular political participation.<sup>189</sup> Liberty, according to this tradition, mainly consisted of personal, administrative liberties without automatically supposing political rights.<sup>190</sup>

The Belgian Constitution was indeed famed for the 'catalogue of liberties' it contained and which were an important object of political propaganda fostered by the political elites.<sup>191</sup> Political rights were presented as a different thing altogether. Since the nation was conceived of as impersonal and trans-historical, citizenship by no means automatically implied entitlement to political participation.<sup>192</sup> The function of representing the nation could safely be delegated to that part of the population which by its socioeconomic situation was most suited to the task. The exact turning point in the constitutional interpretations is as yet unascertained, but it must in all likelihood be sought in the second half of the nineteenth century and possibly even towards the end of the century.<sup>193</sup> In any case, our analysis confirms that applying Carré de Malberg's 'liberal' definition of national sovereignty to the Constitution of 1831 amounts to an anachronistic reading of it.

In the National Congress there was no trace of a theoretical distinction between both kinds of sovereignty. However, counting few disciples of Rousseau, the assembly evidently shared Sieyès' concern for the limitation of political participation.

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<sup>188</sup> De Smaele, *Eclectisch en toch nieuw*.

<sup>189</sup> Demoulin, *Le courant libéral*.

<sup>190</sup> Bacot, *Carré de Malberg*, 131; Brunet, *Vouloir pour la nation*, 33; Collins, *Liberalism in Nineteenth-century Europe*, 8; Jennings, *Conceptions of England*; Marteel, *Inventing the Belgian Revolution*, 151.

<sup>191</sup> Huygebaert, *Les quatres libertés cardinales. De iconologie van pers, onderwijs, vereniging en geloof in België, als uitdrukking van een populariserende grondwetscultus vanaf 1848*; Janssens, *De Belgische natie viert. De Belgische nationale feesten, 1830–1914*; Marteel, *Inventing the Belgian Revolution*.

<sup>192</sup> Brunet, *Vouloir pour la nation*, 31.

<sup>193</sup> De Smaele, *Eclectisch en toch nieuw*, 413.

Along with Montesquieu, the political scientist most cited in its midst was Benjamin Constant, who himself was influenced by Sieyès.<sup>194</sup> His ‘English’ system, with its checks and balances, its limited suffrage and pluralistic vision of politics, appealed greatly to the founders of the Belgian Constitution.<sup>195</sup> Nevertheless, Constant explicitly recognised that the French *Acte Additionnel* of 1815 was based, and could only be based, on the sovereignty of the people:

Notre Constitution actuelle reconnaît formellement le principe de la souveraineté du peuple, c’est-à-dire la suprématie de la volonté générale sur toute volonté particulière.<sup>196</sup>

At the same time, Constant agreed with Sieyès that the people must by necessity delegate the exercise of sovereignty to its representatives, so that direct democracy was out of the question.<sup>197</sup> Also, both considered the restriction of suffrage to a part of the population as an obvious necessity.

In other words, in the language of political theory of the day, and contrary to later interpretations, popular sovereignty did not equate to universal suffrage. The same is evidently true for the Belgian National Congress. It seems logical to assume that the lack of debate over the theoretical nature of sovereignty in the Congress reflected, among other things, a tacit common opinion over its practical manifestation. After all, article 25 merely indicated the nation as the *source* of sovereignty, leaving open every option as to the modalities of political participation. It is true that all its talk of popular sovereignty did not prevent the Congress from carefully restricting political rights. Not a single call for universal suffrage was heard in the assembly room.<sup>198</sup> Even delegates from the republican left, like Seron, explicitly rejected it.<sup>199</sup> Despite his former Jacobinism – Seron had been secretary to Georges Danton – he denounced the anarchy inherent in systems of ‘pure democracy’.<sup>200</sup> The conservative, Catholic newspapers *Courrier de la Meuse*, protesting against the proclamation of popular sovereignty in the Constitution, accused the liberals of inconsistency:

Nos confrères libéraux eux-mêmes n’exigent pas de notre part un aussi grand sacrifice; que disons-nous? Eux-mêmes reculent devant la démocratie pure, et personne d’entr’eux ne demande ni ne songe à établir le suffrage universel.<sup>201</sup>

<sup>194</sup>Idem, 31; Gilissen, *Die belgische Verfassung von 1831*, 59; Marteel, *Polemieken over natievorming*, 45.

<sup>195</sup>Gilissen, *Le régime représentatif*, 11; Van Velzen, *De invloed van de theorie van Benjamin Constant op het regime van koning Willem I*, 42.

<sup>196</sup>“Our present Constitution enshrines the principle of the sovereignty of the people, that is the supremacy of the collective will over any private wishes.” Constant, *Principes de politique*, 13.

<sup>197</sup>Hoogers, *De verbeelding van het soevereine. Een onderzoek naar de theoretische grondslagen van politieke representatie*, 143.

<sup>198</sup>Gilissen, *Le régime représentatif*, 90.

<sup>199</sup>Van den Steene, *De Belgische grondwetscommissie*, 32. For Seron, see: Discailles, Seron (Pierre-Guillaume).

<sup>200</sup>Huyttens, *Discussions*, vol. 1, p. 198, 19/11/1830.

<sup>201</sup>“Even our liberal colleagues do not demand such a sacrifice from us. They themselves shrink from pure democracy, and not one of them either asks for nor thinks of establishing universal suffrage”. *Courrier de la Meuse* no. 1, 01/01/1831.

Much as the National Congress recognised the people as the source of all legitimate authority, it had no intentions of letting the voice of the people dictate politics. The Congress was a socially conservative body.<sup>202</sup> Almost 75 % of the members belonged to the moneyed bourgeoisie; the remaining 25 % consisted of nobles. The delegates held clear views on who was to represent the nation and who was not. In the words of Joseph Forgeur:

La meilleure des garanties à demander aux électeurs, c'est le payement d'un cens qui représente une fortune, une position sociale, afin qu'ils soient intéressés au bien-être et à la prospérité de la société.<sup>203</sup>

The Constitutional Commission had proposed to fix the property requirements for the franchise by ordinary law. Delegate Eugène Defacqz, however, successfully proposed to include these requirements in the Constitution itself, so as to ensure their permanent character. Defacqz even motivated his proposal by a concern to stave off calls for universal suffrage in the future. By the introduction of direct election, the nation would finally have real representatives (as opposed to the indirectly elected members of the Estates General under the Dutch regime). This did not mean however that the whole nation was called to the urns:

Cependant la nation ne peut pas concourir directement et en entier à l'élection, car quelque beau, quelque séduisant que fût le spectacle d'un peuple concourant tout entier à l'élection de ses mandataires, nous savons malheureusement que cela est impossible.<sup>204</sup>

Joseph Forgeur agreed and warned his colleagues that the whole constitutional edifice depended on immutable franchise requirements:

(...) si vous n'avez pas dans la constitution une disposition qui fixe le cens électoral, comme c'est là-dessus que repose tout l'édifice constitutionnel, il se pourrait que les législatures à venir, en le modifiant, renversassent tout votre ouvrage.<sup>205</sup>

The resulting census suffrage requirements inscribed in the Constitution were higher even than under the preceding Dutch regime.<sup>206</sup> Capacity suffrage, which had been allowed for the election of the Congress itself, was abolished under the pretense that it created privilege. Property requirements for the Senate were so high that only a group of about 400 landowners, most of them aristocrats, was eligible.<sup>207</sup>

<sup>202</sup> De Lichtervelde, *Le Congrès National de 1830*, 64; Magits, *De Volksraad*, 272.

<sup>203</sup> Huytens, *Discussions*, vol. 2, p. 29, 06/01/1831.

<sup>204</sup> "But the nation cannot in its entirety and directly participate in the election. However beautiful, however seductive the spectacle of an entire people participating in the election of its representatives may be, unfortunately we all know that it is impossible". Huytens, *Discussions*, vol. 2, p. 28, 06/01/1831.

<sup>205</sup> "(...) if you don't include in the Constitution a stipulation fixing the census suffrage requirements, for on them rests the entire constitutional edifice, future legislatures may, by changing it, overturn your entire work". Huytens, *Discussions*, vol. 2, p. 29, 06/01/1831.

<sup>206</sup> Witte, *De constructie*, 87.

<sup>207</sup> Stevens, *Een belangrijke faze*, 658.

The debates of the Congress do not allow to distill a distinct picture of the nation as it existed in the minds of the delegates. This was all the more so because in questions of sovereignty, the nation and the people were treated as synonyms. If the nation was indeed conceived of as an entity different from the concrete people, that difference was not put into words. What is clear, however, is that the idea of limited suffrage was not considered to contradict the sovereignty of the nation or the people. Suffrage had by necessity to be delegated to a portion of the population that could speak for the whole. In this sense, the principle of representation operated not only on the level of the Chamber of Representatives, but also on that of the electors. The limitation of political participation was inherent to it, if only for pragmatic reasons.

## 4 Reception

### 4.1 *The Contested Nature of Popular Sovereignty*

The newspapers too, agreed on the meaning of article 25. Regardless of their political inclination, they interpreted it as the proclamation of popular sovereignty. The anti-democratic, conservative *Courrier de la Meuse* called it “(...) le principe de la souveraineté populaire absolue, lequel vient d’être nettement posé dans la constitution”.<sup>208</sup> The radical *Le Belge* wrote:

C’est dans le peuple que réside aujourd’hui la souveraineté. Cette souveraineté il l’exerce par ses représentans. Tout pouvoir, toute société qui voudrait décider nos grandes questions avant que le peuple n’ait eu le temps de se prononcer par l’organe de ses représentans, attenterait véritablement à la souveraineté nationale.<sup>209</sup>

The radical *Courrier de la Sambre* defined nation as:

(...) une réunion d’hommes qui s’associent pour tout ce qui concerne la garantie des leurs intérêts privés et communs: de ce fait il découle nécessairement qu’à eux seuls appartient le droit de déterminer le mode le plus avantageux et le moins onéreux de parvenir à ce but.<sup>210</sup>

<sup>208</sup> “The principle of absolute popular sovereignty, which has been clearly enshrined in the Constitution”. *Courrier de la Meuse* no. 6, 07/01/1831.

<sup>209</sup> “Sovereignty nowadays resides in the people. It exercises this sovereignty by way of its representatives. Every power, every society wishing to decide our great questions before the people has had time to pronounce via its representatives, would veritably be attacking national sovereignty”. *Le Belge* no. 287, 14/10/1830.

<sup>210</sup> “A nation is nothing but a reunion of men who associate for everything which concerns the guarantee of their private and communal interests. It necessarily follows that the right to determine the most advantageous and least onerous way to obtain this goal, exclusively belongs to them”. *Courrier de la Sambre* no. 189, 20/11/1830. The *Courrier de la Sambre* was the mouthpiece of the liberal, constitutional opposition in Namur. Its editors were involved in the radical club *Réunion patriotique de Namur*, the reports of which it published. See: Doyen, *Bibliographie namuroise*, no. 1764; Dulieu, *Namur 1830: une fringale de liberté*; Fivet, *Le Pays de Namur et la Révolution de*

The liberal *Courrier des Pays-Bas* very literally identified the nation with the people:

Deux êtres qui n'étaient au fond que le même, sous deux modes différens d'existence: la nation, c'est-à-dire, tout le peuple; et la représentation nationale, c'est-à-dire, le peuple encore, mais agissant sous une forme convenue, pour se faciliter à lui-même l'exercice de sa volonté.<sup>211</sup>

Elsewhere the newspaper jubilantly exclaimed:

Qu'elle est noble, majestueuse, imposante, l'assemblée qui remplit l'auguste mission de fonder les institutions politiques d'un peuple libre! Son existence est la preuve la plus éclatante, la plus solennelle que la souveraineté est dans le peuple, source et origine de tout pouvoir social. Qu'on vienne, en présence du congrès belge, nous persuader que les rois tiennent leur pouvoir directement de Dieu, et non pas de la volonté des peuples; qu'on vienne, en présence des débris de la couronne de Guillaume 1<sup>er</sup>, nous dire que l'insurrection n'est pas l'acte extrême, mais légitime, de la souveraineté national outragée.<sup>212</sup>

The radical *L'Emancipation* wrote that sovereignty by necessity resided in the nation and equated it with popular sovereignty.<sup>213</sup> These findings are consistent with Els Witte's research into the concept of nation used in the period directly preceding the Belgian Revolution. Via discourse analysis methods she concluded that, although the term 'nation' was used more often in Belgian newspapers than 'people', the former concept was positively associated with popular sovereignty.<sup>214</sup>

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1830: *récit des événements*; Istace-Deprez, *Le Courrier de la Sambre et la Révolution de 1830*; Warnotte, *Etude sur la presse à Namur, 1794–1914*, 127.

<sup>211</sup>“Two beings which were essentially the same, under two different forms of existence: the nation, in other words the people; and the national representation, in other words, the people again, but acting in an agreed-upon form, to facilitate the exercise of its will”. *Courrier des Pays-Bas* no. 321, 17/11/1830. The *Courrier des Pays-Bas*, based in Brussels, was one of the leading liberal and anticlerical newspapers of the opposition against the regime of William I. Among its collaborators were prominent revolutionary leaders, several of whom rose to political power in the course of the Revolution: Louis de Potter, Edouard Ducpétiaux, Alexandre Gendebien, Lucien Jottrand, Jean-Baptiste Nothomb, Jean-François Tielemans, Pierre Van Meenen. On 1 January 1831, the title of the newspaper changed into *Le Courrier*. Gilissen, Jean-Baptiste Nothomb, 6; Harsin, *Essai sur l'opinion publique*, 29; Witte, *De Belgische radicalen*, 16; Wouters, *De Brusselse radikale pers*, 139.

<sup>212</sup>“How noble, how majestic, how imposing is the assembly, fulfilling its august mission of founding the political institutions of a free people! Its existence is the most solemn, the most brilliant proof of the sovereignty of the people, the source and origin of all social power. Who will, in the presence of the Belgian Congress, persuade us that kings hold their powers directly from God, and not from the will of peoples? Who will, in the presence of the debris of William I's crown, tell us that insurrection is anything else than an extreme, but legitimate act of injured national sovereignty?” *Le Courrier* no. 34, 03/02/1831.

<sup>213</sup>*L'Emancipation* no. 34, 23/11/1830. *L'Emancipation*, based in Brussels, was a radical newspaper sponsored by French republican émigrés. Its contributors moved in the circles of radical thinkers and revolutionaries such as Buonarroti and De Potter. Its principle editor was the republican delegate to the National Congress De Robaulx. Kuypers, *Les égalitaires en Belgique. Buonarroti et ses sociétés secrètes d'après des documents inédits (1824–1836)*; Leconte, *La Réunion centrale*; Wouters, *De Brusselse radikale pers*, 141–142.

<sup>214</sup>Witte, *Het natiebegrip*.

In the newspapers under investigation, popular and national sovereignty were treated as exact synonyms. The newspapers systematically contrasted popular sovereignty with Old Regime royal sovereignty and divine right. Whether they supported or rejected the principle, they presented its proclamation in Belgium in a historical perspective. The Belgian Revolution was depicted as yet another phase in the fight to the death which had been going on between both conceptions of sovereignty since 1789. The Belgians were said to have been inspired by the French July Revolution, and to have taken it further by explicitly ruling out the last traces of monarchical sovereignty: “Après ce principe, l’origine du pouvoir a été déplacé; elle n’a plus sa source dans la dynastie, mais dans la nation”.<sup>215</sup>

However, the exact meaning of popular sovereignty was a source of controversy. The concept was explicitly discussed by journalists and led to sharp disputes between rival newspapers. The *Courrier de la Meuse*, while supporting the Revolution, deplored the course taken by the Congress. While it recognised that the Revolution had been driven by the popular principle, it fiercely opposed turning it into a principle of government. The newspaper considered it a dangerous concept, since it was unfit to serve as the basis of a stable government:

(...) si on veut combattre efficacement le despotisme populaire, le despotisme des partis, la tyrannie des tribuns et des anarchistes, non seulement il n’est pas nécessaire, d’admettre le principe de la *souveraineté du peuple*, mais il est même très dangereux de l’admettre. (...) Malheur à nous, malheur au pays si notre nouvelle charte consacrait ce principe funeste! Ce serait le germe de sa mort, et par conséquent la cause de nouveaux bouleversements. Un gouvernement quelconque *fondé sur ce principe*, n’a que la force brute pour se défendre.<sup>216</sup>

What the newspaper feared above all was the reign of the populace:

(...) la souveraineté des rues, souveraineté terrible, brusque, aveugle, sourde, cruelle et inexorable. (...) cette souveraineté monstrueuse qui parcourt les rues une torche à la main et qui ne vit que des désordres.<sup>217</sup>

Following the newspaper, the principle of popular sovereignty was not only dangerous, but also impracticable. It endorsed the *Journal des Flandres*’ description of the principle as “an absurd and chimeric supposition” since it considered it impossible to fully realise.<sup>218</sup> In every human society, the exercise of power is by necessity delegated to a fraction of the population. Whichever political regime would be

<sup>215</sup>“By this principle, the origin of power has shifted, it is no longer in the dynasty but in the nation”. *Le Courrier* no. 139, 19/05/1831.

<sup>216</sup>“(…) when wishing effectively to combat popular despotism, the despotism of parties, the tyranny of tribunes and anarchists, it is not only unnecessary to admit the principle of popular sovereignty, but it is even very dangerous to do so. (...) Woe to us, woe to the country, should our new charter consecrate this fatal principle! It will be the seed of its death, and consequently the cause of new upheavals. Any government founded on this principle has nothing but brute force to defend itself”. *Courrier de la Meuse* no. 262, 29/10/1830.

<sup>217</sup>“(…) the sovereignty of the streets, which is a terrible, sudden, blind, deaf, cruel and inexorable sovereignty. (...) this monstrous sovereignty which roams the streets torch in hand and which lives from disorders only”. *Courrier de la Meuse* no. 169, 15/07/1831.

<sup>218</sup>*Courrier de la Meuse* no. 271, 10/11/1830.

instated by the Constitution, it would never fully conform to the implications of article 25. Therefore new revolts, followed by new failed attempts at popular governments, were unavoidable:

Vouloir que ces faits [the establishment of a new government] aient lieu véritablement en vertu de la souveraineté du peuple, c'est vouloir l'impossible, c'est vouloir ce qui ne s'est jamais vu. (...) c'est vouloir tous les jours une nouvelle révolution, c'est vouloir anéantir la société. (...) il faut, de toute nécessité, qu'il y ait un pouvoir souverain et ce pouvoir souverain sera toujours, quoi qu'on fasse et quoi qu'on veuille, celui d'un ou de plusieurs individus, celui d'un ou de plusieurs corporations.<sup>219</sup>

The newspaper arrived at this conclusion by its identification of sovereignty with the actual exercise of power. While it did approve of the idea that every power needed to rest on the consent of popular opinion, it rejected as impossible the idea of entrusting the exercise of power to the entire people. This would require a distribution of power among all citizens, which meant its annihilation altogether. In every society, power is held by a limited group of people who command, while the rest of the population obeys. Only the holders of power can truly be called sovereign: "(...) car toute souveraineté est absolue en ce sens qu'elle décide en dernier ressort et que personne ne résiste".<sup>220</sup> In line with the newspaper's Catholic and reactionary background, it defended the view that sovereignty emanates not from the people but from God and that it should be vested in the powerful hands of a hierarchically constituted government, preferably of a monarchical kind. The newspaper went on to observe that even the National Congress, by its own composition, contravened the popular principle it so proudly proclaimed. Far from taking its mandate from the hands of the entire people, it took it from the infinitesimal minority that had been allowed to vote. Without the introduction of universal suffrage, to which even the liberals objected, power could not be said to really emanate from the nation:

Chez nous, la souveraineté appartiendra vraisemblablement désormais à un vaste collège d'électeurs, qui sera composé peut-être d'environ 50,000 membres; ce sera *une quatre-vingtième de la nation*; et les 79 autres 80<sup>mes</sup>, seront nécessairement sujets. (...) jamais on ne pourra, et quand on le pourrait, jamais on n'oserait y placer la nation toute entière.<sup>221</sup>

Liberal and radical newspapers contested the *Courrier de la Meuse's* critique on the concept of popular sovereignty. *Le Vrai Patriote* accused it of confusing the

<sup>219</sup> "To wish that the establishment of a new government really takes place by virtue of the sovereignty of the people is to wish the impossible, is to wish something that has never been seen before. (...) it is to wish a new revolution every day, to wish the annihilation of society. (...) it is necessary to have a sovereign power and this sovereign power will always, despite what one does or wishes for, belong to one or several individuals, to one or several groups". *Courrier de la Meuse* no. 269, 07/11/1830.

<sup>220</sup> "(...) because all sovereignty is absolute in the sense that it decides in last resort and that no one resists". *Courrier de la Meuse* no. 59, 10/03/1831.

<sup>221</sup> "Henceforward, sovereignty will probably belong to a vast college of electors, which will be composed of around 50,000 members; it will consist of one eightieth part of the nation, and the other 79 parts will by necessity consist of subjects. (...) never will one be able to place sovereignty in the hands of the entire people, nor would one dare to do so, if one were able to". *Courrier de la Meuse* no. 269, 07/11/1830.

origin and the exercise of power. It considered popular sovereignty to be self-evident because a government only exists where a people exists, and a people always has the power to change its mandataries. However, this by no means implied the establishment of pure democracy.<sup>222</sup> The radical *Courrier de la Sambre* likewise pointed out that the origin and the exercise of power were two different things. It furthermore argued that the formulation of article 4 of the draft Constitution (“emanates from” instead of “resides in”) clearly implied government by representation, not direct democracy.<sup>223</sup> The liberal *Courrier des Pays Bas* held a similar view:

Nous convenons que la souveraineté est absolue. Mais la souveraineté n'est pas dans les pouvoirs; elle est dans la nation. Les pouvoirs, loin d'être souverains, sont liés par la constitution, qui est le véritable acte de la souveraineté. Ils peuvent, je le sais, franchir les limites constitutionnelles, mais dans ce cas il y a rébellion des pouvoirs contre la souveraineté nationale.<sup>224</sup>

The point was that, even if sovereignty was undividable, a careful balance of powers could be built upon its base. Also, universal suffrage was absolutely out of the question. Nonetheless, popular sovereignty was a reality, because the people was the source of all powers.<sup>225</sup>

The *Courrier de la Meuse* could not be convinced. Its fears were made worse by the composition of the National Congress, which it judged to be all too democratic. Already sovereignty was fatally divided among so many electors and so many Congress delegates. Furthermore, the new Constitution accorded a far too preponderant position to the Chamber of Representatives, at the expense of the monarch. Instead of monarchy, the Congress had created a pure democracy in disguise:

Notre congrès s'est, à la vérité, d'abord décidé pour une monarchie constitutionnelle; mais des résolutions postérieures ont complètement détruit cette décision; et maintenant il est évident que nous ne pouvons avoir qu'une vraie démocratie. Le roi ou le duc que nous aurons ne fera rien à l'affaire.<sup>226</sup>

<sup>222</sup> *Le Vrai Patriote* no. 29, 10/11/1830. *Le Vrai Patriote*, based in Brussels, was the short-lived successor of the defunct Orangists newspaper *Gazette des Pays-Bas*. It systematically criticised the Provisional Government and favoured the return of the Nassau dynasty. Wouters, *De Brusselse radikale pers*, 140.

<sup>223</sup> *Courrier de la Sambre* no. 189, 20/11/1830.

<sup>224</sup> “We agree that sovereignty is absolute. But sovereignty is not in the powers, it is in the nation. The powers, far from being sovereign, are bound by the Constitution, which is the veritable act of sovereignty. It is true that they can transgress the constitutional limits, but in that case there is rebellion of the powers against the national sovereignty”. *Le Courrier* no. 64, 05/03/1831.

<sup>225</sup> However, the newspaper expected universal suffrage to become a reality in the future, as the people, by its progressive enlightenment, would develop the necessary capacities: “En effet, quelque avantage qu'on attende de l'abaissement du cens électoral, et de l'abolition intégrale du cens d'éligibilité, il est évident que les législateurs futures, sortant d'une société moralement et politiquement progressive, étendront successivement le cercle des capacités électorale et élective, et le jour viendra où les masses populaires seront assez éclairées pour concourir, sans aucune exception, et sans danger, à l'élection des députés”. *Le Courrier* no. 118, 28/04/1831.

<sup>226</sup> “At first our Congress has, to be sure, decided for constitutional monarchy; but posterior resolutions have completely destroyed this decision; and now it is evident that we can have nothing else

The popular principle was fated to cause the downfall of the Constitution which enshrined it:

(...) nous ne pensons pas que ce que nous constitutions maintenant, soit pour l'avenir, c'est-à-dire, qu'il puisse durer. La charte à laquelle nous travaillons (nous croyons pouvoir le prédire) ne sera qu'une de ces constitutions éphémères dont le vieux et le nouveau monde ont vu des exemples par douzaines depuis une quarantaine d'années.<sup>227</sup>

The controversy goes to show that, despite a general understanding that national sovereignty, as enshrined in article 25, was synonymous with popular sovereignty, a widely shared definition of it was not at hand. All parties agreed that the new principle implied that all powers derived from below. They differed on the questions of the division of powers and the extent of political participation.

## 4.2 *Legal Order, Legitimate Representation and Political Participation*

The question of who was entitled to represent the nation was a cause for controversy from the very beginning. It directly concerned the legitimacy of the Revolution and the source of sovereignty. At first, the Belgian opposition had taken recourse to the Fundamental Law for legitimising its claims. The years 1827-'29 were marked by systematic attacks on the Dutch government, based on the real or supposed provisions of the Constitution of 1815.<sup>228</sup> It earned the Belgian opposition the nickname 'constitutionals', as opposed to the 'ministerials' siding with the government.<sup>229</sup> The French newspaper *Le Constitutionnel* commented: "L'insurrection est décidément nationale et constitutionnelle".<sup>230</sup> The *Courrier des Pays-Bas* encouraged the Belgian delegates to the Estates General to persist in their "legal resistance" against "the violations of the Fundamental Law" and against the "anti-constitutional projects of the ministers".<sup>231</sup> It confirmed that what the opposition desired was respect for the will of the Fundamental Law, and added: "Nous le répétons, nous ne sommes ni en révolution, ni en insurrection".<sup>232</sup>

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but a pure democracy. Our future King or Duke will change nothing to the fact". *Courrier de la Meuse* no. 6, 07/01/1831.

<sup>227</sup>"(...) we do not think that the thing we are currently constituting, will be the future, in other words, that it will last. The charter we are working on (we believe we can predict) will be but one of these ephemeral constitutions of which the old and the new world have seen scores of examples in the last forty years or so". *Courrier de la Meuse* no. 8, 09/01/1831.

<sup>228</sup>Cordewiener, *Etude de la presse liégeoise*, 65; Harsin, *Essai sur l'opinion publique*.

<sup>229</sup>Marteel, Polemieken over natievorming.

<sup>230</sup>"The insurrection is definitely national and constitutional". Quoted in: *Courrier de la Sambre* no. 140, 13/09/1830.

<sup>231</sup>*Courrier des Pays-Bas* no. 260, 17/09/1830.

<sup>232</sup>"We repeat that we are neither waging a revolution nor an insurrection". *Courrier des Pays-Bas* no. 244, 01/09/1830.

Soon afterwards, however, a new legitimation was needed. Violent actions in the streets of Brussels led to the creation of new forms of authority alongside the official ones. As the Belgian protests started to resemble a proper rebellion, the government denounced them as illegal. In his Royal Message of 5 September, King William announced that a debate over the grievances of the Belgian opposition could only be opened on the condition of the latter's "return into the legal order".<sup>233</sup> The opposition replied that the legal order, as it was meant by William, was tyrannical because it harmed the rights of the Belgian Nation. The *Courrier des Pays-Bas* commented:

Nous ne sommes plus dans l'ordre légal tel que le ministère Van Maanen l'avait organisé, parce que cet ordre légal était tyrannique pour nous, et ce prétendu ordre légal n'étant autre chose que l'oppression organisée et couverte d'un vernis de légalité, c'est lui qu'il faut modifier et corriger.<sup>234</sup>

It contested the legality of the existing order on account of its tyrannical character and of the harm it caused to the Belgian Nation: "Cet ordre, c'est l'oppression de la Belgique systématiquement organisée avec un faux semblant de légalité".<sup>235</sup> *Le Vrai Patriote* maintained that a people was free to choose a new leader when the social contract was being violated.<sup>236</sup> As the opposition left the legal order behind, the rights of the nation were increasingly being named as the only legitimate source of authority. The *Courrier de la Sambre* wrote:

Et qu'on ne dise pas qu'il faut le consentement des états-généraux; nous sommes aujourd'hui en dehors de l'ordre légal; toute mesure est légale en ce moment dès qu'elle a pour base l'assentiment de la nation.<sup>237</sup>

Towards the end of September, Dutch troops violently clashed with an improvised army of insurrectionists on the streets of Brussels, sparking general rebellion against the Dutch government. The killing of Belgian citizens by the Dutch troops was presented as a final attack on the Belgian Nation by which the Dutch government forfeited its remaining claims to legitimate authority. *Le Courrier* proclaimed

<sup>233</sup> *Courrier des Pays-Bas* no. 252, 09/09/1830.

<sup>234</sup> "We are no longer under the legal order organised by the Minister Van Maanen, because that legal order was tyrannical for us. Since it is nothing but organised oppression covered with a varnish of legality, this supposed legal order must be modified and changed". *Courrier des Pays-Bas* no. 256, 13/09/1830. Cornelis Felix van Maanen (1769–1846) was William I's Minister of Justice. As the driving force behind the press trials directed against prominent opposition members in the years preceding the Belgian Revolution, and as a staunch supporter of William's autocratic style of government, he became the personification of the 'ministerial' regime abhorred by the Belgian opposition. Van Sas, *Het politiek bestel onder koning Willem I; Vermeersch, Willem I en de pers in de Zuidelijke Nederlanden*, 1814–1830.

<sup>235</sup> "This order is the systematically organised oppression of Belgium with a fake semblance of legality". *Courrier des Pays-Bas* no. 260, 17/09/1830.

<sup>236</sup> *Le Vrai Patriote* no. 29, 10/11/1830.

<sup>237</sup> "Don't tell us that we need the consent of the Estates General. We are now outside of the legal order. Presently, every measure is legal as soon as it is founded on the approval of the nation". *Courrier de la Sambre* no. 137, 09/09/1830.

that the only legitimate source of authority in the contemporary world was the people's right to self-determination:

Aujourd'hui ce n'est pas le fait antérieur, ni les convenances de tel souverain qui peuvent autoriser sans leur consentement respectif la réunion de deux peuples en une seule famille politique. Le principe qui a triomphé en septembre est l'association consentie. (...) Le principe de l'association consentie, est aujourd'hui tellement inhérent au principe du gouvernement populaire, que le règne de la liberté ne pourra pas autrement s'établir en Europe, qu'en laissant à chaque peuple la faculté de s'unir à l'association politique qui est le plus conforme à ses vœux.<sup>238</sup>

As Dutch authority was eroded, the Provisional Government filled the void. From that moment on, respect for the old legal order needn't concern the Belgians any more, the newspapers agreed.

"(...) cette question a été résolue dans les journées de 23, 24, 25 et 26 septembre; c'est cette solution qu'il fallait solennellement faire connaître; c'est le seul titre du gouvernement provisoire; il y puise sa légitimité".<sup>239</sup>

"La guerre a prononcé, c'est la légitimité de son mandat improvisé au milieu de la lutte".<sup>240</sup>

"Secondons de tous nos efforts l'autorité naissante, autorité éminemment populaire et qui est avoué par la nation".<sup>241</sup>

The Provisional Government's mandate was considered legitimate by its acting in the interest of the nation.<sup>242</sup> The latter was said to have endorsed it by tacit agreement:

"La nation qui ne pouvait agir par elle-même, laissait agir en son nom le gouvernement provisoire, tant que les circonstances le rendaient indispensable".<sup>243</sup>

"Il arrive parfois que des hommes montent au pouvoir vacant sans élection directe et que le peuple les souffre sans répugnance manifeste. Le peuple les élit en ne le renversant pas. C'est la position de notre gouvernement provisoire".<sup>244</sup>

<sup>238</sup> "Nowadays neither prior facts nor the liking of such or such sovereign can authorise, without their respective consents, the reunion of two peoples into one political family. The principle which has triumphed in September is that of consented association. (...) The principle of consented association is today so inherent to popular government that the reign of liberty cannot establish itself in Europe but by leaving each people the faculty to unite with the political association most conforming to its wishes". *Le Courrier* no. 173, 22/06/1831.

<sup>239</sup> "(...) this question has been answered during the days of 23, 24, 25 and 26 September; this solution had to be solemnly announced; it is the only title of the Provisional Government; it is the source of its legitimacy". *Courrier des Pays-Bas* no. 278, 05/10/1830.

<sup>240</sup> "War has pronounced, it is the legitimacy of its mandate improvised in the middle of the battle". *Courrier des Pays-Bas* no. 274, 01/10/1830.

<sup>241</sup> "Let us support with all our efforts the nascent authority. This eminently popular authority is avowed by the nation". *Courrier de la Sambre* no. 162, 11/10/1830.

<sup>242</sup> Gilissen, *Le régime représentatif*, 80.

<sup>243</sup> "Not being able to act by itself, the nation let the Provisional Government act in its name as long as the circumstances rendered it indispensable". *Courrier des Pays-Bas* no. 321, 17/11/1830.

<sup>244</sup> "It sometimes happens that men ascend to the vacant power without being directly elected and that the people tolerates them without manifest repugnance. The people elects them by not overthrowing them. Such is the position of our present government". *Le Vrai Patriote* no. 29, 10/11/1830.

The Provisional Government therefore legitimately represented the nation until such time as the nation was in a position to designate the representatives of its own choice:

Le gouvernement provisoire, comme seule représentation nationale d' alors, avait au nom de la nation et comme si c'eût été cette nation elle-même qui agissait, déterminé, pour une époque postérieure, une autre forme de représentation nationale. Cette nouvelle forme réalisée, la première était anéantie, à moins qu'on ne soutînt qu'il fût convenable que la nation fût représentée à la fois de deux manières.<sup>245</sup>

The newspapers thus endorsed De Potter's justification of the Provisional Government's actions presented in the opening session of the National Congress. The argument was essential for the legitimacy of the mandate of the Congress itself. For if the Provisional Government hadn't legitimately represented the nation, how could a body that had been single-handedly convened by its initiative be said to do so? At stake was the very origin of sovereignty. In general, few observers outright rejected the legitimation provided by the Provisional Government for taking power. However, this sensitive question did now and then surface in the press in the following months, in particular when a newspaper didn't agree with the line taken by the Government or the Congress.

In its crusade against the principle of popular sovereignty, the *Courrier de la Meuse* didn't hesitate to qualify the Provisional Government's claim to represent the people as pure fiction:

Deux cent hommes, choisis par quelques milliers de notables du pays, vont se réunir à Bruxelles; ils y vont exercer les droits de la souveraineté; de qui les tiennent-ils, ces droits? De nous électeurs; et nous électeurs, de qui tenons-nous les nôtres? Du gouvernement provisoire; et le gouvernement provisoire ne tient les siens de personne, il les tient de lui-même.<sup>246</sup>

The Provisional Government could not by right claim to represent the nation. Neither could the Congress, since, as the Fundamental Law had been abolished, it had been convened in the absence of a valid electoral law:

La nécessité veut que les hommes qui vont décider de notre avenir, ne doivent leur droit de voter qu'à une simple ordonnance, émanée d'un pouvoir provisoire qui ne tient son mandat que de lui-même: nouvelle preuve de l'impossibilité d'appliquer au corps social le principe de la souveraineté du peuple.<sup>247</sup>

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<sup>245</sup> "Being the sole representative of the nation at that moment, the Provisional Government had in the name of the nation, and as if through the action of the nation itself, determined for a later moment another form of national representation. As soon as that new form was realised, the first one was nullified, unless one had found it suitable for the nation to be represented in two ways at the same time". *Courrier des Pays-Bas* no. 321, 17/11/1830.

<sup>246</sup> "Two hundred men, chosen by a few thousand of the country's notables, will unite in Brussels; there they will exercise the sovereign rights. But from whom do they take these rights? From us, the electors. But from whom do we, electors, take ours rights? From the Provisional Government. And the Provisional Government doesn't take them from anyone, it takes them from itself". *Courrier de la Meuse* no. 269, 07/11/1830.

<sup>247</sup> "By way of necessity, the men who are to decide over our future owe their right to vote to a simple ordinance, issued by a provisional power which took its mandate from itself only: another

Whereas the newspaper approved of the Provisional Government's actions, it denied that its mandate rested on popular or national sovereignty.

Most newspapers didn't contest the Provisional Government's popular mandate though, and praised its members for their competent government. They did however show a measure of distrust towards this non-elected authority. The mandate of the Constitutional Commission in particular was a matter of debate in the press, just as it was in the Congress. *Le Belge* published a letter by Alphonse Dujardin, who contested the Commission's right to present a draft Constitution to the Congress, since only the latter represented the people:

(...) car il n'appartient à aucun pouvoir, ni fraction de pouvoir, non seulement d'octroyer ou de concéder, mais même de proposer une constitution.<sup>248</sup>

Whereas the Provisional Government was considered to legitimately exercise public authority in anticipation of the installation of a proper national representation, it was felt that drawing up a new Constitution, even when it was only a draft version, should not be within its competence. To a great extent these critiques were motivated by a rejection of the conservative slant of the draft Constitution, which was generally poorly received in the press.<sup>249</sup>

The most radical protest was indeed heard on the left side of the ideological spectrum. The conservative *Courrier de la Meuse* signalled that many democrats and republicans had been disappointed by the property requirements for suffrage of the constituent elections:

Le mécontentement fut même si grand que beaucoup d'entre ces derniers annoncèrent très-clairement qu'ils ne se croiraient pas liés par les décisions du congrès.<sup>250</sup>

Since it had been elected by less than 1% of the population, the Congress was not considered by these people to truly represent the nation. The democratic newspaper *L'Emancipation* blamed the Provisional Government for its 'unlawful' introduction of census suffrage:

Nous disions au gouvernement qu'il se fit dictateur pour le bien du pays. Il a abusé de ses pouvoirs pour dépouiller de leurs droits les neuf dixièmes de la nation. Il s'est privé de tous ceux-là surtout qui faisaient sa force et son appui.<sup>251</sup>

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proof of the impossibility to apply to the social body the principle of popular sovereignty". *Courrier de la Meuse* no. 252, 17/10/1830.

<sup>248</sup>“(…) for it does not belong to any power, nor to any fraction of a power, not only to grant or to concede, but even to propose a Constitution”. *Le Belge* no. 304, 31/10/1830. Dujardin further expounded his opinion in a separately published brochure: Dujardin, *La Belgique au 16 octobre 1831*. See also: Magits, *De Volksraad*, 354.

<sup>249</sup>Magits, *De Volksraad*, 354; Nothomb, *Essai*, 78.

<sup>250</sup>“So discontented were they, that many of them publicly announced their conviction that they were not bound by the decisions of the Congress”. *Courrier de la Meuse* no. 40, 16/02/1831.

<sup>251</sup>“We told the government to become dictatorial for the well-being of the country. It has abused its powers so as to rob nine tenths of the nation of its powers. It has especially discarded power from those who constituted its power and its support”. *L'Emancipation* no. 15, 03/11/1830.

The *Courrier de la Sambre* likewise protested against the ‘arbitrary’ and ‘absurd’ limitation of suffrage introduced by the Provisional Government, which in its view completely undermined the principle of national sovereignty:

Le congrès tient son mandat d’une petite fraction de la nation belge, mais cette petite fraction ne tient le sien que du percepteur des contributions.<sup>252</sup>

Very few radicals were elected to the Congress, since most of their sympathisers did not have the vote.<sup>253</sup> The few of them that were involved in the Provisional Government and the Congress quickly realised that they belonged to an infinitesimal minority.<sup>254</sup> Jean-François Tielemans quit the Constitutional Commission when his colleagues decided to maintain the monarchy instead of establishing a republic.<sup>255</sup> His friend and mentor Louis de Potter stepped down from the Provisional Government soon after the National Congress’s first session.<sup>256</sup> He too found the draft Constitution a far too conservative piece of work and slightly commented: “Ce n’était pas la peine de verser tant de sang pour si peu de chose”.<sup>257</sup> Since his republican and democratic programme had no chance of being endorsed by those who had now come to power, he shifted his actions to other terrains.

Disappointment over the suffrage requirements indeed prompted some radicals to dispute the Congress’s aptitude to represent the nation.<sup>258</sup> Typical examples of this line of reasoning are Grenier’s calling into question the mandate of the Congress and Toussaint’s threat of a new popular revolution against the institution of a Senate (both cited above). Radicals took their cue from Rousseau in arguing that the sovereignty needed to be shared by the whole nation, which they identified as the physical people. They typically accused the government of depriving those who didn’t have the vote of their citizenship, as in a letter to the *Courrier de la Sambre* signed by “un ex-citoyen à fl. 49,99 ¾” (“an ex-citizen” who fell short of the suffrage requirements by less than one cent).<sup>259</sup>

<sup>252</sup> “The Congress takes its mandate from a small fraction of the Belgian nation, but that small fraction takes its own from the tax collector only”. *Courrier de la Sambre* no. 202, 26/11/1830.

<sup>253</sup> With Els Witte, we count as radicals those who contested the social inequality upon which the power position of the bourgeoisie was based. This heterogeneous group of people shared the common goal of striving for the introduction of democratic and social reforms, usually via parliamentary action. Witte, *Politieke machtsstrijd*, 349; Witte, *De Belgische radicalen*; Witte, *De constructie van België*, 109. For the radical press, which was often of a republican persuasion, see: Vermeersch, *De structuur van de Belgische pers, 1830–1848*, 104–115 and Wouters, *De Brusselse radikale pers*.

<sup>254</sup> Witte, *De Belgische radicalen*, 16.

<sup>255</sup> Hymans, *Le Congrès national*, 19; Van den Steene, *De Belgische grondwetscommissie*, 35. For Tielemans, see: Freson, J.F. Tielemans; Van den Steene, *De Belgische grondwetscommissie*, 18–19.

<sup>256</sup> Witte, *De constructie*, 88.

<sup>257</sup> “There was no point in spilling so much blood for so little result”. Nothomb, *Essai*, 98; Van den Steene, *De Belgische grondwetscommissie*, 41.

<sup>258</sup> In the spring of 1831 the radicals’ dissatisfaction culminated in a failed attempt at a democratic coup. Witte, *De Belgische radicalen*, 17.

<sup>259</sup> *Courrier de la Sambre* no. 205, 29/11/1830.