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# **'Bring this mad woman to reason !'**

## **Elisabeth Farnese as a female ruler in 18<sup>th</sup> Century Europe**

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Looked at from a distance, Ancien Régime public law seemed to install a masculine domination. Succession laws in most territories were designed to exclude women from accessing to supreme responsibilities, or to prevent them from transferring rights and claims to the crown to their descendants. No woman could reign as Holy Roman Emperor. Yet, female rulers Early Modern Europe are not so uncommon as one would think at first sight.<sup>1</sup> For example, regencies,<sup>2</sup> such as those of Maria de'Medicis, widow of Henry IV of France (1610-1617), and Anne of Austria, widow of Louis XIII (1643-1651) gave queens an opportunity to act in their deceased husband's stead. However, factual situations might as well lead to a *de facto* female rule or joint rule. Moreover, influential mistresses, such as Madame de Maintenon, Louis XIV (1638-1715)'s morganatic wife, played an important political role<sup>3</sup>. Another well-known example are the principalities of the Southern Netherlands, none of which was never ruled by a woman. From the 16<sup>th</sup> to the 18<sup>th</sup> Century, the Spanish and then Austrian Netherlands had five female rulers<sup>4</sup>. The case discussed in the present article is that of Elisabeth Farnese (1692-1766), queen of Spain from 1714 to 1746.<sup>5</sup> Born an Italian princess in the House of Parma, she married Philip V of Spain, first Bourbon King of Spain and grandson of Louis XIV.<sup>6</sup> Elisabeth was Philip's V second wife. Although the term is an anachronism applied to the 18<sup>th</sup> century, their household was a composite or blended family, as the King still had three surviving children from the first bed and seven more would follow from his union with the Parmesan princess. Eventually, his second wife would achieve the installation of her sons as rulers in her native Italy, and even manage to have her husband abdicate and come back on his decision to the detriment of his own son.<sup>7</sup> I propose to examine Elisabeth's example, since, as consort of the Spanish King, she both represented a physical and a political reality in a European system that confounded private relationships between the members of a princely society and the conduct of the interstate game.<sup>8</sup>

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<sup>1</sup> See in general L. BÉLY, *La Société des Princes XVI<sup>e</sup>-XVIII<sup>e</sup> siècle*, Paris, 1999.

<sup>2</sup> A. CORVISIER, *Les régence en Europe. Essai sur les délégations de pouvoirs souverains*, Paris, 2002.

<sup>3</sup> M. BRYANT, Partner, matriarch, and minister: Mme de Maintenon of France, clandestine consort, 1680-1715 in *Queenship in Europe 1660-1815: the role of the consort*, ed. C. Campbell Orr, Cambridge, 2004, 77-107.

<sup>4</sup> On the specific case of the Southern Netherlands, see J. GILISSEN, *Le statut de la femme dans l'ancien droit belge*, in *La Femme*, Bruxelles, 1962, 255-321.

<sup>5</sup> E. ARMSTRONG, *Elisabeth Farnese, 'The Termagant of Spain'*, London, 1982.

<sup>6</sup> A. BAUDRILLART, *Philippe V et la cour de France* [Philippe V], Paris, 1890. Louis' unique legitimate son, Grand Dauphin Louis (1661-1711) had three sons: Louis, Duke of Burgundy (1682-1712), Philip, Duke of Anjou (1683-1746) and Charles, Duke of Berry (1686-1714). Louis XV (1710-1774) was the second son of the Duke of Burgundy, Philip V's elder brother, who died before he could accede to the throne. Consequently, the survival of Louis XV was crucial to avoid a 'Spanish' claim by Philip of Anjou on the Kingdom of France.

<sup>7</sup> H. KAMEN, *Philip V of Spain: the King who Reigned Twice*, New Haven (Conn.), 2001.

<sup>8</sup> L. BÉLY, *La Société des Princes*, 7. On the intertwining of private and public international law concerning marriage and succession, see F. DHONDT, From contract to treaty: The legal transformation of the Spanish Succession (1659-1715), *Journal of the History of International Law* 2011, No. 2, 347-375.

## 1. Public International Law: the irrational tyrant queen

At first sight, this might read as a traditional story of dynastic European politics, where personal and public interest were mixed. Philip of Anjou (1683-1746) was Louis XIV's second grandson, and thus the great-grandson of the Spanish King Philip IV (1605-1665), as well as the grandson of Elector Ferdinand Maria of Bavaria (1636-1679). Elisabeth was the granddaughter of Philip William, Elector of the Palatinate (1615-1690) and descended from both the Farnese<sup>9</sup> and the de'Medici.<sup>10</sup> If we put Elisabeth's action into a *horizontal* perspective, that of politics (and legal rules) between sovereigns, a quite different picture emerges. Her Bourbon-Farnese successes in Italy were antithetic to the general rules of the international system in the aftermath of Louis XIV's wars. From 1701 to 1714, Europe was rocked by the War of the Spanish Succession.<sup>11</sup> At the decease of Charles II, the last Habsburg king of Spain (1661-1700), Bourbon and (Austrian) Habsburg disputed each other's right to the Spanish throne. After fourteen years of fighting, the Spanish monarchy was partitioned between Philip of Anjou, grandson of Louis XIV, who obtained Spain and its colonies, on the one hand, and Charles VI (1685-1740), Holy Roman Emperor, on the other, who was allotted the Spanish Netherlands and most of the Italian possessions.<sup>12</sup> This peace, although multilateral, expressed in a myriad of bilateral treaties between European powers, had been worked out in private between Louis XIV and Britain.<sup>13</sup> Although none of the parties foresaw this effect, the bilateral deal became the blueprint for three rather stable decades, in contrast to the violent and bloody 17<sup>th</sup> century.<sup>14</sup>

The legal framework behind these '*Trente Heureuses*' (Emmanuel Le Roy Ladurie<sup>15</sup>) consisted of two maxims. First, the separation of the crowns of France and Spain (which belonged to two branches of the Bourbon family). This rule served as a *species* of a more general one: no fusion between two big European powers. Practice had shown that an automatic coalition of the remaining players in Europe against a potential hegemon would lead to war.<sup>16</sup> Consequently, the '*Balance of Power*'<sup>17</sup> established at the Peaces of Utrecht,

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<sup>9</sup> Elisabeth's cousins Francesco (+ 1727) and Antonio (+ 1731) ruled the duchies of Parma-Piacenza. They were both unable to produce surviving heirs.

<sup>10</sup> The Medici link through her great-grandfather Duke Odoardo I of Parma-Piacenza (1616-1646), who married Margaretha de'Medici (1612-1679) in 1628. Margaretha was the second daughter of Grand-Duke Cosimo II de'Medici (1590-1621), the great-grandfather of the ultimate Grand-Duke of Tuscany, Gian Gastone. The latter's succession was in suspense for a very long period, from around 1718 to 1737, although he only replaced his father Cosimo III in 1723 and still ruled for fourteen years afterwards.

<sup>11</sup> F. DHONDT, *Op Zoek naar Glorie in Vlaanderen. De Zonnekoning en de Spaanse Successie, 1707-1708*, Heule, 2011.

<sup>12</sup> K. VAN GELDER, L'empereur Charles VI et "l'héritage anjouin" dans les Pays-Bas méridionaux (1716-1725), *Revue d'Histoire Moderne et Contemporaine* 2011, 53-79.

<sup>13</sup> Preliminary articles of Peace between Louis XIV and Queen Anne, London, 8 October 1711, J. DUMONT DE CARELS-KROON, *Corps universel diplomatique du droit des gens*, La Haye, 1731, VIII/1, CXIX, 281.

<sup>14</sup> F. DHONDT, Legal Discourse between Integration and Disintegration: The Case of the Peaceful Succession Struggles, 1713-1739, in *European traditions: integration or disintegration?*, ed. J. Oosterhuis and E.D.G. Van Dongen, Nijmegen, 2013, 159-174.

<sup>15</sup> E. LE ROY LADURIE, *L'Ancien Régime. II: L'absolutisme bien tempéré*, Paris, 1991, 93.

<sup>16</sup> E. DE VATTEL, *Le droit des gens*, London, 1758, Book III, Chapter III, §47: '[Les Souverains de l'Europe] considèrent les deux principales Puissances, qui, par-là même, sont naturellement rivales, comme destinées à se contenir réciproquement, & ils se joignent à la plus faible, comme autant de poids, que l'on jette dans le bassin le moins chargé, pour le tenir en équilibre avec l'autre.' On the significance and legal interpretation of this concept, see F. DHONDT, Looking Beyond the Tip of the Iceberg: Diplomatic Praxis and Legal Culture in the History of Public International Law, *Rechtskultur - Zeitschrift für Europäische Rechtsgeschichte* 2013 (forthcoming).

<sup>17</sup> 'Un Equilibre et des limites politiques entre les Etats; dont les intérêts respectifs avoient fait le sujet de la guerre, de sorte que leurs forces ne fussent point dorénavant à craindre, et ne pussent causer aucune jalousie [...] [f. 6v<sup>o</sup>] afin [...] que lesd. Puissances inspirent moins de crainte, et ne puissent aspirer à la monarchie [f.7r<sup>o</sup>] universelle', AMAE [Archives du Ministère des Affaires Étrangères et Européennes], M&D [Mémoires & Documents], Hollande, v. 60, f. 6r<sup>o</sup>-7r<sup>o</sup>.

Rastatt and Baden<sup>18</sup> was guaranteed by multilateral intervention. In case of a breach of the peace committed by one of the players, France and Britain would side with the injured party and stop the aggressor<sup>19</sup>.

Second, these separations could not be achieved otherwise than by renunciation declarations issued by physical persons, such as Philip V of Spain (who had to drop his claims to his grandfather's crown)<sup>20</sup> or Philip of Orléans (1674-1723; Louis XIV's nephew, who held claims on Spain *via* his late grand-mother, Anne of Austria, Louis XIII's wife). However, according to the French *loi fondamentale* of indisposibility of the crown, this was impossible.<sup>21</sup> Consequently, diplomats had to establish the *primacy of treaties over internal law*. Otherwise, constitutional problems could never be overcome, which would have resulted in a serious threat to the *pacta sunt servanda*-principle and, thus, the stability of the international system as a whole.<sup>22</sup> Nowadays, this principle is enshrined in art. 27 of the Vienna Convention on the Law of Treaties.<sup>23</sup> In the 18<sup>th</sup> century, it was the subject of a considerable internal political battle in France,<sup>24</sup> but was gradually established through subsequent practice.

Elisabeth Farnese is often blamed personally for turnarounds in Spanish foreign policy. Alfred Baudrillart, author of the most elaborate study on the Spanish court in the early 18<sup>th</sup> century, attributed the conclusion of the 1725 Treaty of Vienna to the queen's stubborn refusal to follow the guidance of French ambassador Tessé.<sup>25</sup> Philip V is her '*docile époux*', whereas Farnese pursues her Grand Design or '*rêve grandiose*'.<sup>26</sup> The King is the victim of his '*folles manies*', Elisabeth of her '*dévorante ambition*'.<sup>27</sup> The Queen convinced her husband to abdicate on 10 January 1724,<sup>28</sup> to... return to power at his son Luis I (born in 1707)'s decease on 31 August of the same year. If things turned out better for the Franco-Spanish relationship, Baudrillart ascribes this to the talent of José Patiño y Rosales (1666-1736), a (male) politician, rather than to the queen's management of

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<sup>18</sup> On the Peace of Utrecht, by far the best work remains L. BÉLY, *Espions et ambassadeurs au temps de Louis XIV*, Paris, 1991.

<sup>19</sup> In the eyes of late nineteenth-century French historiography: A. BAUDRILLART, *Philippe V et la Cour de France*, Paris, 1890, III; 4: '*Gouvernée par un prince de l'Église romaine, la France, comme au temps de Richelieu et de Mazarin, fait une fois de plus cause commune avec l'Europe protestante.*' Note the contrast with Fleury's assurance to Horatio Walpole (British ambassador in Paris) in 1726: '*Engagements once plighted not only may but ought to be strictly performed with Protestants, & even with infidells & that the wisest, & most pious Princes in France have acted upon this principle*' (Horatio Walpole to Charles du Bourgay, Paris, 12 July 1726, NA, SP, 78, 184, f. 52v<sup>o</sup>). This demonstrates once again how careful we should be applying convictional or religious schemes to the field of 18<sup>th</sup> Century international relations.

<sup>20</sup> Renunciación jurada de Felipe Duque de Anjou como Rey de España a la Corona de Francia por el y todos sus Descendientes perpetuamente, a favor del Duque de Berri, y otros Principes de la Sangre de Francia, cadauno según su grado, con clausula de incompatibilidad entre los dos Coronas, de fuerte que jamás puedan ballarse unidos en una misma persona; Madrid, 5 November 1712 in front of the Cortes, CUD, VIII/1, CXXXVI, 310-312.

<sup>21</sup> S. DE BOURBON-PARME, *Le Traité d'Utrecht et les lois fondamentales du royaume*, Paris, 1914; F. Garrisson, Lois fondamentales in *Dictionnaire de l'Ancien Régime*, ed. L. BÉLY Paris, 2010, 737-757.

<sup>22</sup> Réal de Curban explained in his *Science du Gouvernement* how the application of the private law-concept of usufruct to the reign of a sovereign over his kingdom was inapt to the conduct of international relations: '*De ce qu'un Souverain a le droit de faire la guerre & celui de conclurre la paix, il suit que toutes les cessions qu'il fait, lient & ses sujets & ses successeurs*' (G. RÉAL DE CURBAN, *La Science du Gouvernement*, Paris, 1764, V, 620).

<sup>23</sup> Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331. '*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.*'

<sup>24</sup> A. BAUDRILLART, Examen des droits de Philippe V et de ses descendants au trône de France, en dehors des renonciations d'Utrecht, *Revue d'Histoire Diplomatique* 1889, 161-191.

<sup>25</sup> A. BAUDRILLART, *Philippe V*, III, 2.

<sup>26</sup> A. BAUDRILLART, *Philippe V*, III, 3.

<sup>27</sup> A. BAUDRILLART, *Philippe V*, III, 5.

<sup>28</sup> Act of Abdication, 10 January 1724, in V. BACALLAR Y SANNA, MARQUIS DE SAINT-PHILIPPE, *Mémoires pour servir à l'histoire d'Espagne*, Amsterdam, 1756, IV, 272-367 (in Spanish and French translation)

policy<sup>29</sup>. The extravagant plan of the Dutch adventurer Ripperda (1682-1737)<sup>30</sup> to tie Austria and Spain together, is seen as '*un rêve de femme, non une conception politique*'.<sup>31</sup> If don Ferdinand (1713-1759), son of Philip V and his first wife Maria Luisa of Savoy (1688-1714), plotted against his father, the King's feebleness, as well as his stepmother's egregious ambitions were suitable justifications<sup>32</sup>. The Spanish translation of Philippe Erlanger's biography depicts Philip V as '*esclavo de sus mujeres*', the slave of his wives.<sup>33</sup>

In reality, Elisabeth contracted in and out of different alliances as she liked. In 1718, Spain attacked the Emperor and Savoy-Sicily. In 1721, France and Britain, who had solemnly declared war on Philip V in response to the previous invasions, teamed up with Spain in an alliance.<sup>34</sup> Four years later, the Emperor was seduced by Elisabeth's ambassador Ripperda to sign a treaty radically opposite to the 1721 pact with his Anglo-French rivals.<sup>35</sup> Whereas Spain was not powerful enough to reverse the European system on its own, it nevertheless could not be forced to respect all of its treaty engagements. Farnese aligned Spanish foreign policy on her personal pride.

During the protracted Cambrai negotiations,<sup>36</sup> the French cancelled the foreseen marriage between Louis XV, aged fourteen, and the Spanish infanta Maria Anna Victoria (1718-1781). Instead, Louis hastily married Maria Leszczyńska (1703-1768), daughter of the former king of Poland, Stanislas Leszczyński (1677-1766). Irrespective of the main players' characteristics,<sup>37</sup> the French decision was a product of necessity.<sup>38</sup> The princess, aged seven, was too young to give birth to an heir. Elisabeth's impetuous policy of an alliance with the Emperor isolated her in 1727, when Spain was besieging Gibraltar without Imperial support. Simultaneously, Cardinal Fleury (1635-1743),<sup>39</sup> the most influential figure at Louis XV's court and Prime Minister in 1726, had been approaching the Viennese court through the papal nuntio-network.<sup>40</sup> Gradually, Spain managed to split the Emperor off the French and the British again, to sign the Treaty of Seville in 1729.<sup>41</sup> Two years later, France was isolated and Elisabeth hoped to have persuaded the Emperor through the

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<sup>29</sup> A. BAUDRILLART, *Philippe V*, III, 7: '*ce patriote intelligent, énergique, fécond en expédients*'.

<sup>30</sup> S. VAN DER VEEN, *Spaanse Groninger in Marokko: de levens van Johan Willem Ripperda (1682-1737)*, Amsterdam, 2007.

<sup>31</sup> A. BAUDRILLART, *Philippe V*, III, 137.

<sup>32</sup> A. BAUDRILLART, *Philippe V*, III, 7: '*annihilé par une Italienne dont le coeur est allemand*'.

<sup>33</sup> P. ERLANGER, *Felipe V, esclavo de sus mujeres*, Barcelona, 2003.

<sup>34</sup> Treaty of Defensive Alliance between Louis XV, Philip V and George I, Madrid, 13 June 1721, published in *CUD VIII/2*, 34.

<sup>35</sup> Treaty of Peace and Alliance between Charles VI and Philip V, Vienna, 30 April/1 May 1725, *CUD VIII/2*, 106.

<sup>36</sup> F. DHONDT, La culture juridique pratique du congress de Cambrai (1722-1725), *Revue d'Histoire Diplomatique* 2013, 3, 271-292; K.-H. LINGENS, Kongresse im Spektrum der Friedenswährenden Instrumente des Völkerrechts in: Zwischenstaatliche Friedenswahrung in Mittelalter und früher Neuzeit, ed. H. Duchhardt, Köln, 1991, 205-226; M. STARKEY, La diplomatie britannique au congress de Cambrai (1722-1725), *Revue d'Histoire Diplomatique* 1971, 98-115.

<sup>37</sup> E.g. A. BAUDRILLART, *Philippe V*, III, 6 on the duke of Bourbon: '*le vilain borgne, chef très peu brillant et moins encore sympathique du gouvernement de Louis XV; hypocrite et plat*'.

<sup>38</sup> A. BAUDRILLART, *Philippe V*, III, 6, on Louis XV: '*on le marie, on le démarie, on se dispute sa succession, sans qu'il ait presque l'air de s'en apercevoir*'.

<sup>39</sup> P. R. CAMPBELL, *Power and Politics in Old Regime France 1720-1745*, London, 1996; G. CHAUSINAND-NOGARET, *Le cardinal de Fleury: le Richelieu de Louis XV*, Paris, 2002; A. Wilson, *French Foreign Policy during the Administration of Cardinal Fleury: a study in diplomacy and commercial development* [Harvard Historical Studies; 40], Cambridge (Mass.), 1936.

<sup>40</sup> Articles Préliminaires conclus entre l'Empereur et les Alliez d'Hanover, Paris, 31 May 1727, *CUD VIII/2*, LVII, 146-148 and NA, SP, 78, 187, ff. 314r°-316r°. Technically, neither the Emperor nor Spain had an ambassador in Paris. Consequently, George I (1660-1727) sent a declaration to Vienna, which Charles VI, Philip V and the King of France through his ambassador Richelieu, could sign (2 June 1727).

<sup>41</sup> Treaty of Alliance between Louis XV, Philip V and George I, Seville, 9 November 1729, *CUD VIII/2*, 158.

Maritime Powers' intervention to have her son installed in Italy. In 1733, however, Spain declared war on the Emperor and teamed up with France.<sup>42</sup> Once she had don Carlos installed as King of Naples and his brother, don Felipe (1720-1765) as Duke of Parma, France deserted her again, to sign a new alliance in 1743 against the Emperor.

Elisabeth's behaviour irritated foreign courts. Its (external) incoherence was frequently invoked as an ultimate explanatory factor for what was in fact well-considered and consistent furthering of Spanish interests, e.g. the following report by British diplomat Stephen Poyntz (1685-1750) in Paris to the Duke of Newcastle (1693-1768), George II (1683-1760)'s Secretary of State for the Southern Department:

*'The Cardinal [Fleury] is firmly convinced, that the Queen of Spain still retains an entire ascendant over her Husband, and will not be persuaded, that the King is capable of bearing the least fatigue or business, or even of forming an opinion or resolution of his own, and pursuing it with steadiness for half an hour together [...] His Eminence, in speaking of that Prince, constantly represents him as more grossly indolent and supine than any man that ever was born.'*<sup>43</sup>

Philip is seen as a weak husband, with Elisabeth's supposedly natural uncontrollable character as a woman as the natural cause for exaggerated claims:

*'l'entière confiance que S.M. [Britannique] a toujours eu en la Cour de France, et [...] la satisfaction que lui ont donné la mission du comte de Rottembourg et les ordres précis qu'on lui a envoyés, qui ont enfin produit un si bon effet que d'engager l'Espagne à se desister de ses Objections frivoles et pretensions deraisonnables.'*<sup>44</sup>

To foreign envoys in Madrid, there was no doubt that the queen was in charge, as illustrated in the words of Benjamin Keene, George II's minister plenipotentiary and envoy extraordinary:

*'but not to tire your Ex<sup>ty</sup> with proofs of this nature, the timidity and irresolution of the King and immaturity of the Prince, the want of courage and capacity in the Grandees and the formality of the Court and the jealous prying temper of the Queen, will not allow me to doubt of the impossibility, that a negotiation of what nature soever can be carried on here without her knowledge'*<sup>45</sup>

Put short, for Fleury, Elisabeth was a tyrant:

*'that the King of Spain was an Imbecile & had frenzys, that he was absolutely under the government of the Queen, who did whatever she would & was more Mistress than ever'*<sup>46</sup>

The figure of Elisabeth as a woman explained her husband's stubbornness. Philip delayed his acceptance of the attribution of Italy and the Southern Netherlands to Charles VI for twelve years, counting from the Peace of Utrecht (11 April 1713) to the 'Ripperda' Treaties (30 April/1 May 1725).<sup>47</sup> The latter, an overt violation of the Balance of Power-principle as a metaphor for Europe's new horizontal legal infrastructure,<sup>48</sup> struck

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<sup>42</sup> Treaty of Alliance between Louis XV and Philip V, Madrid, 7 November 1733, <http://www.diplomatie.gouv.fr/traites/affichetraite.do?accord=TRA17330002>, last accessed 16 January 2013.

<sup>43</sup> Poyntz to Newcastle, Paris, 22 February 1729, NA (National Archives/Kew), SP (State Papers – Foreign), 78 (France), 190, f. 174r°

<sup>44</sup> Newcastle to Chauvelin (French Secretary of State for Foreign Affairs), s.l., s.d. [1727], NA, SP, 78, 188, f. 32r°, at the occasion of a mission performed by the French diplomat Rottembourg, with as its main objective to convince Philip and Elisabeth to stick to the execution of the Parisian Peace Preliminaries.

<sup>45</sup> Benjamin Keene to Stephen Poyntz (copy), Cadiz, 24 March 1729, NA, SP, 78, 190, f. 380r°-v°.

<sup>46</sup> William Stanhope (British ambassador in Madrid) and Horatio Walpole to Newcastle, very private, Paris, 8 December 1728, NA, SP, 78, 188, f. 399v°.

<sup>47</sup> See footnote 34.

<sup>48</sup> F. DHONDT, Law on the Diplomatic Stage: the 1725 Ripperda Treaty, : in *Die Inszenierung des Rechts – Law on Stage*, ed. V. Draganova, H. Landerer, L. Heimbeck, S. Kroll and U. Meyer, München, 2011, 303-324.

European diplomats as a bombshell. As the text had been kept secret, the wildest speculations circulated. Charles VI would have promised the Imperial throne for don Carlos, potential heir to that of Spain as well, and thus revive the spectre of Charles V's Universal Monarchy.<sup>49</sup> Seeing Elisabeth as the motor of her husband's seemingly irrational foreign policy allowed outside observers to cast Spain's behaviour as an exceptional and thus temporary parenthesis in the system of peace treaties. Luring the Emperor away from Philip V did not turn out to be difficult at all. Charles VI integrated the Utrecht system -although the reverse is true for his stance on matters of Imperial feudal law, cf. *infra*- for his major dynastic claim: the guarantee that his daughters would be able to inherit the Habsburg hereditary lands.

## 2. Spanish public law: Philip V's renunciation and return (January-September 1724)

Second, when Luis I died, the crown ought to have passed on to his brother Ferdinand. Philip V had renounced his rights to the throne at his abdication. Yet, Elisabeth used all possible means to convince her husband to return.<sup>50</sup> Whereas he had renounced solemnly before the Council of Castille in 1723, the King could be convinced to judge his own declaration void by the same Council.<sup>51</sup> The latter pointed out that at don Ferdinand's installation, he ought to accept the previous declaration by his father, as his elder brother Louis had done in January 1724 at the age of seventeen.<sup>52</sup> Don Ferdinand, still minor,<sup>53</sup> was legally incapable to perform the same act. Conversely, Philip V could not accept in his son's stead, since he had already renounced his rights to the Spanish throne.<sup>54</sup>

However, Philip attached more value to theological than to legal grounds. His confessor, Bermudez, saw the King's coming back on an earlier solemn vow as a cardinal sin and threatened to withhold him the communion.<sup>55</sup> This put the ball in the camp of a *junto* of theologians, which assembled on 5 of September in the Imperial College in Madrid. To Elisabeth's anger, the *ad hoc* assembly stated that the King could only take up the Regency, until don Ferdinand would have come of age (i.e. for two more years). The Queen, as well as the French ambassador,<sup>56</sup> were furious<sup>57</sup> and asked the Council of Castille to overcome the theological stumbling block of the solemn renunciation. In a new consult,<sup>58</sup> the Council pointed out that Philip had already foreseen a Regency council in case don Ferdinand would come to inherit the Spanish throne before the age of thirteen.<sup>59</sup> Consequently, the theologians' point of view, according to which the King could respect

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<sup>49</sup> In reality, the Austrian commitment was far from sincere: Charles VI never specified which archduchess would marry don Carlos. To quote the British opposition newspaper *The Craftsman*: '[The chances of Don Carlos becoming Emperor are] about as great as those of a Welsh lady, who, if an uncle, three brothers and two sons happen to die, may be left a considerable fortune.' (quoted in G. C. GIBBS, Britain and the Alliance of Hanover, April 1725-February 1726, *English Historical Review* LXIII (1958), No. 288, 415).

<sup>50</sup> '*plus de choses pour obliger le Roi Catholique à remonter sur le trône qu'il n'en aurait fallu pour en faire descendre un autre*' (Tessé to Morville, Madrid, 3 September 1724, AMAE, CP [Correspondance Politique], Espagne, 336, f.2r°).

<sup>51</sup> Consulte du Conseil de Castille sur la reprise de possession du Trône par Philippe V, 4 September 1724, published (in French translation) in SAINT-PHILIPPE, *Mémoires*, IV, 374-391.

<sup>52</sup> Declaration of Acceptance by Luis I, 15 January 1724, published in SAINT-PHILIPPE, *Mémoires*, IV, 367-373.

<sup>53</sup> Consult, 4 September 1724 in SAINT-PHILIPPE, *Mémoires*, IV, 387.

<sup>54</sup> Consult, 4 September 1724 in SAINT-PHILIPPE, *Mémoires*, IV, 388.

<sup>55</sup> A. BAUDRILLART, *Philippe V*, III, 83-84.

<sup>56</sup> '*production de monstres sortis de l'Enfer*' (Tessé to Morville, Madrid, 5 September 1724, quoted in A. BAUDRILLART, *Philippe V*, III, 87).

<sup>57</sup> '*fripon, Judas*' (Bermudez), '*ces fripons de théologiens*' (A. BAUDRILLART, *Philippe V*, III, 89-90).

<sup>58</sup> Remonstrances made by the Council of Castille on the renewed request for a *consult* by Philip V, Madrid, 5 September 1724, in SAINT-PHILIPPE, *Mémoires*, IV, 391-399 (French translation).

<sup>59</sup> Consult, 4 September 1724 in SAINT-PHILIPPE, *Mémoires*, IV, 377.

his intention to definitely abandon the throne by occupying the Regency for two years, was invalidated.<sup>60</sup> Either the whole of the renunciation, whereby Philip had abandoned his '*domination, possession et administration*'<sup>61</sup> was null, or the document counted in all its aspects.<sup>62</sup> The Queen, encouraged by this success, saw a division in the theologians' camp and summoned her husband to ask the papal nuntio, Aldobrandini, for arbitration. 24 years earlier King Charles II had done the same concerning the validity of his Testament, allotting the whole Spanish composite monarchy to Philip of Anjou.<sup>63</sup> Convinced by this analogical reasoning, Philip contacted the nuntio, who persuaded the theologians to issue a second, more docile, opinion.<sup>64</sup> On 7 September 1724, the King issued a decree stating he had returned to rule, as natural lord and possessor of the crown.<sup>65</sup>

### 3. Imperial succession law: from treaty to conquest (1718-1735)

Whereas one could argue that Elisabeth was acting in the interest of Spain in its horizontal relations with the other European powers (section 1), or when she assured Philip V's return to power (section 2), Elisabeth's wished concerning the succession in the Italian dominions of Parma and Piacenza placed her children in the middle of the game. The intertwining of dynastic and state interest is of course a commonplace. Advancing one's offspring or relatives contributed to the attainment of both personal and geopolitical ends. Spanish presence in the Mediterranean went back to the take-over by the Kingdom of Aragon of Naples and Sicily in the thirteenth century. The combination of local interest (keeping the Emperor at bay by balancing his power with Savoyard or Spanish presence) went together with a Spanish desire for a '*renovation*' or '*Spanish Risorgimento*'.<sup>66</sup> The Peace of Utrecht had confirmed the situation brought about by eviction of the French and Spanish armies of Italy during the War of the Spanish Succession.<sup>67</sup> English attempts to install Duke Victor Amadeus as a counterweight clashed with Imperial interests. Consequently, Victor Amadeus had to swap the (more prosperous) Kingdom of Sicily for that of Sardinia. The specific need for an extra player on the peninsula, which was also felt by the Pope in his position as a secular ruler in the Centre of Italy, was inscribed in article V of the Treaty of the Quadruple Alliance.<sup>68</sup> This legal document of paramount importance was a compromise between, on the one hand, the emergency to repress Spanish aggression on then Imperial Sardinia (Summer 1717) and Savoyard Sicily (Summer 1718), and, on the other hand, the middle-run need for

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<sup>60</sup> 'Il ne faut pas que Votre Majesté s'arrête à des subtilités Théologiques, puisqu'il appartient au Conseil de sçavoir fondamentalement ce qu'il convient à Votre Majesté de faire en justice.' (Remonstrances in SAINT-PHILIPPE, *Mémoires*, IV, 398).

<sup>61</sup> Remonstrances, 5 September 1724 in SAINT-PHILIPPE, *Mémoires*, IV, 393.

<sup>62</sup> 'un acte d'abdication & renunciation est une espèce de mort civile' (Consulte, 4 September 1724 in SAINT-PHILIPPE, *Mémoires*, IV, 381) [...] 'Votre Majesté n'est pas & ne peut être Gouverneur, mais Roi & Seigneur naturel de cette Couronne, dont elle a obtenu par toute sorte de droits la domination & la propriété [...] Votre Majesté est de droit Roi & Seigneur naturel de ces Etats, & que sans avoir égard à la diversité d'opinions Théologiques, Votre Majesté est obligée de rentrer dans le gouvernement de la Monarchie.' (Remonstrances, SAINT-PHILIPPE, *Mémoires*, IV, 396-397). Comment by A. BAUDRILLART, *Philippe V*, III, 92: 'il n'y a point de renunciation dont les juristes habiles ne soient capables de démontrer la nullité.'

<sup>63</sup> See M.-F. MAQUART, *Le réseau français à la cour de Charles II d'Espagne: jeux diplomatiques de fin de règne* (diss. doc.), Toulouse, 2000.

<sup>64</sup> Consulte d'une assemblée de Théologiens sur le même sujet, in SAINT-PHILIPPE, *Mémoires*, 399-402.

<sup>65</sup> Notwithstanding the formal possibility to abdicate in favour of don Ferdinand when the latter would have reached the appropriate age and if this would not bring harm to the State (A. BAUDRILLART, *Philippe V*, III, 93).

<sup>66</sup> C. STORRS, *The resilience of the Spanish Monarchy, 1665-1700*, Oxford: Oxford UP, 2006; ID., "The Spanish Risorgimento in the Western Mediterranean and Italy 1707-1748", *European History Quarterly* LXII (2012), No. 4, 555-577.

<sup>67</sup> See H. BENEDIKT, *Das Königreich Neapel unter Kaiser Karl VI*, Wien, 1927; M. LANDAU, *Rom, Wien und Neapel während des Spanischen Erbfolgekrieges; ein Beitrag zur Geschichte des Kampfes zwischen Papsttum und Kaisertum*, Leipzig, 1885; F. PESENDORFER, *Österreich-Grossmacht im Mittelmeer ? Das Königreich Neapel-Sizilien unter Kaiser Karl VI (1707/20-1734/35)*, Wien, 1998 and the thematic issue of *Cheiron* XXXIX-XL (2004) on the War of the Spanish Succession in Italy and Spain.

<sup>68</sup> Treaty of Alliance between Charles VI, Louis XV and George I, London, 22 July OS/2 August NS 1718, *CUD*, VIII/1, CCII, 531-541.



a more balanced political landscape. James Stanhope, Secretary of State for the Northern Department,<sup>69</sup> and abbot Dubois, the French Regent's main counsel in foreign affairs, had been conducting trilateral negotiations for a year between Paris, London and Vienna.<sup>70</sup> Looked at from an Imperial feudal law perspective, the duchies of Parma-Piacenza and the grand-duchy of Tuscany, occupied by relatives of Elisabeth, would have to return to the Emperor as overlord (*Heimfall*) at the extinction of the ruling male line.<sup>71</sup> Consequently, Charles VI's legal position in the quarrel was not that of an equal contracting party. He had the competence to appoint another vassal of his choice, and thus to tighten Austria's grip on Italy even more. Yet, as the Emperor needed French and British help against Philip V's invasion, he had to accept the latter powers' choice: don Carlos, born two years earlier (20 January 1716). In other words, international legal obligations superseded national law, as had been the case in the Treaties of Utrecht and Baden. Nevertheless, although labelling Parma, Piacenza and Tuscany as '*Sacri Romani Imperii feudus masculinis*', implied recognizing the Emperor as overlord (something which had been disputed against the Pope or the Florentine Senate),<sup>72</sup> the material solution obliged Charles VI to abide by the solution set forth by France and Britain: admit Elisabeth Farnese's son as a vassal.

The execution of this core article of the Quadruple Alliance dominated European inter-state relations from 1717 to 1735 on. Eventually, don Carlos was installed in Parma and Piacenza by November 1733.<sup>73</sup> As her cousin Antonio Farnese passed away early in 1731, Elisabeth's claim on behalf of the 15-year old don Carlos turned into an actual and immediate demand. Although Charles VI had formally recognized Spanish rights in 1718 (Quadruple Alliance) and 1725 (Ripperda Treaties), it took a new confirmation to witness the physical installation of the new duke. Britain and the United Provinces secured Charles VI's consent again in exchange for their guarantee of the Pragmatic Sanction (19 March 1731).<sup>74</sup> Along this process, diplomats thought the Queen was in the quarrel for her own very private interests, and suggested she could be bought off. Installing Elisabeth as '*sovereign or administratrix*'<sup>75</sup> in Italy would do the trick. Security in case of widowship, when the fragile Philip V would come to die, was all she was looking for... A similar case had popped up during the Utrecht Peace conference, where Princess Orsini – a French confidant of Philip V's first queen – had tried to secure a principality for herself in the Southern Netherlands.<sup>76</sup>

Don Carlos having arrived in Parma, his mother's claims seemed satisfied. Spain had subsequently lined up with France and Britain, the Emperor, France and Britain, ultimately with the Maritime Powers and the

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<sup>69</sup> B. WILLIAMS, *Stanhope. A Study in Eighteenth-Century War and Diplomacy*, Oxford, 1932.

<sup>70</sup> F. DHONDT, *Balance of Power and International Law. European Diplomacy and the Elaboration of International Order, 18<sup>th</sup> Century and Post 1945* (diss. doc.), Gent, 2013, 87-109.

<sup>71</sup> R. VON SCHÖNBERG, *Recht der Reichslehen*, Heidelberg/Karlsruhe, 1977, 166.

<sup>72</sup> '*L'occasion de se faire reconnoître aussy automatiquement et aussy solidement les Etats de Toscane et de Parme pour fiefs imperiaux*' (Nancré to Dubois, Paris, 5 December 1718, NA, SP, 78, 162, f. 385r°; J. ROUSSET DE MISSY, *Les intérêts présents des puissances de l'Europe, Fondés sur les Traitez conclus depuis la Paix d'Utrecht inclusivement, & sur les Preuves de leurs Prétensions particulieres*, La Haye, 1733, I, 86-97).

<sup>73</sup> Newcastle to Waldegrave (ambassador in Paris), Whitehall, 29 October 1731 OS [Julian Calendar], NA, SP, 78, 202, s.f.

<sup>74</sup> Treaty of Alliance between Charles VI and George II, Vienna, 19 March 1731; J. ROUSSET DE MISSY, *Supplément au Corps Universel Diplomatique du Droit des Gens, contenant un recueil des Traitez d'alliance, de trêve, de neutralité*, Amsterdam, 1739, II, CLXII, 288-291; Act of accession of the States-General, The Hague, 20 February 1732, J. ROUSSET DE MISSY, *Supplément*, II, CLXIII, 291-294; Treaty between Charles VI and George II, Vienna, 22 July 1731, J. ROUSSET DE MISSY, *Supplément*, CXLVI, 307-311.

<sup>75</sup> An Idea for accommodating the Succession of Tuscany, NA, SP, 78, 188, f. 555v°.

<sup>76</sup> L. BÉLY, *Espions et ambassadeurs* 215.

Emperor. This did not prevent Elisabeth and Philip from going to war in November 1733,<sup>77</sup> in a coalition with the French Bourbons (isolated only two years earlier). Tenuous as the connection with the War of the Polish Succession (1733-1735),<sup>78</sup> formally fought over the election of Louis XV's father-in-law Stanislas to the throne in Poland, had actually been, Spain assaulted Habsburg Italian possessions with the aid of Savoy-Sardinia and France. In the compromise negotiated bilaterally between the French secret envoy La Beaune and the Imperial ministers, Charles VI abandoned Naples for don Carlos, who would henceforth rule as King Charles III of Naples and Sicily (3 October 1735).<sup>79</sup> In exchange, Parma and Piacenza were abandoned to Vienna, and the Grand-Duchy of Tuscany befell on the Emperor's son-in-law, duke and future Holy Roman Emperor Francis Stephen of Lorraine,<sup>80</sup> as a compensation for the attribution of the latter's ancestral duchy to Stanislas, who had to abandon his claims to Poland. It would take another war, that of the Austrian Succession (1740-1748)<sup>81</sup> for Elisabeth to see not a third, but a fourth Bourbon branch installed in Parma with her second son, don Felipe (°1720), who had married Louis XV's and Maria Leszczyńska's eldest daughter Elisabeth in 1739.<sup>82</sup> The Queen of Spain had triumphed. Not through the law, but by right of conquest ! She finally showed herself more masculine than any of her negotiating partners would have desired.

## Conclusion

Looking back at British and French diplomat's judgement of Elisabeth as an unstable, irascible and emotional, rather than rational or predictable partner in deal-making, it is hard to deny the inconsistency of her legal argumentation strategies, or *'unaccountable and irregular proceedings'*.<sup>83</sup> Breaking treaties on the pretext others did it as well, forcing her husband to renege his declaration of abdication... Elisabeth clearly forced her will upon the others. Irrespective of legal argument or even crude power relations. Her political morals were an abomination to them:

*We may with great probability conclude that all our force used against Spain only & its dominions, even though it should go to the depriving them of their possessions in the E[ast] & W[est] Indies, would not bring this mad woman to reason.*<sup>84</sup>

Yet, the gendered explanation, as clearly expressed by Charles Townshend, the impetuous Secretary of State for the Northern Department, during the negotiations of the League of Hanover against Spain and the Emperor<sup>85</sup>, seems not as much valid as a description of her undertakings, but rather as a mental construct. Verbally invoked solidarity against an irrational woman failed to obscure the geopolitical objectives behind diplomatic discourse. Elisabeth's judgment was not any more or less detached of moral values: both France and Britain gradually oriented their diplomacy to gear up for confrontation with the Emperor and Spain in the

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<sup>77</sup> Treaty of Alliance between Louis XV and Philip V, 7 November 1733; AMAE, Base des Traités [<http://www.diplomatie.gouv.fr/traites/affiche traite.do?accord=TRA17330002>, last accessed 16 January 2013].

<sup>78</sup> J.L. SUTTON, *The King's Honour and the King's Cardinal. The War of the Polish Succession*, Lexington, 1980.

<sup>79</sup> Preliminaries of peace concluded between Charles VI and Louis XV, Vienna, 3 October 1735, J. ROUSSET DE MISSY, *Supplément*, II, CXC VII, 546-548.

<sup>80</sup> R. ZEDINGER, *Franz Stephan von Lothringen (1708-1765) : Monarch, Manager, Mäzen* [Schriftenreihe der Österreichischen Gesellschaft zur Erforschung des 18. Jahrhunderts; 13], Wien, 2008.

<sup>81</sup> R. BROWNING, *The War of the Austrian Succession*, New York, 1995.

<sup>82</sup> L. BÉLY (dir.), *La présence des Bourbons en Europe, XVI<sup>e</sup>-XXI<sup>e</sup> siècle*, Paris, 2003.

<sup>83</sup> Horatio Walpole, William Stanhope and Poyntz to Townshend, Paris, 6 June 1729, NA, SP, 78, 191, f. 245r<sup>o</sup>.

<sup>84</sup> Charles Townshend to Horatio Walpole, 27 August 1725, Hanover, BL [British Library], Add. Ms. [Additional Manuscripts], 48981 (Townshend Papers), f. 105v<sup>o</sup>. See F. DHONDT, So great a revolution. Charles Townshend and the partition of the Austrian Netherlands, September 1725, *Dutch Crossing* XXXVI (2012), No. 1 (March), 50-68.

<sup>85</sup> Treaty of Alliance between George I, Louis XIV and Frederick William I, Hanover, 3 September 1725, CUD VIII/2, XLI, 127-129.

late 1730s, factually unbinding the European system<sup>86</sup>. The Queen's soundness, determining her pseudo-Machiavellian attitude, can be judged by the effectiveness of her judgment in an arena where contingent elements triggered the respect or violation of legal principles. Against this background, the inaptness of a woman to show respect for treaty law can be seen as a form of framing. If law is a product of society, law between princes must be read within the codes of that very interaction between crowned heads. Positioning Elisabeth as unreliable is an implicit affirmation of the operation of binding norms between sovereigns. Moreover, the combination with assumptions of feminine behaviour affirmed the usefulness of legal discourse, fragile and optional as it might seem to a XXI<sup>st</sup> century reader, and its embedding in broader mental conceptions<sup>87</sup>.

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<sup>86</sup> F. DHONDT, *Balance of Power*, 325-380.

<sup>87</sup> Cf. D. HEIRBAUT, A Tale of Two Legal Histories: Some Personal Reflection on the Methodology of Legal History, in *Reading Past Legal Texts*, ed. D. Michalsen, Oslo, 2006, 94: *For contextual legal historians the autonomy of law is anathema: law is anything but an isolated phenomenon, it is a product of a society that in its turn influences that same society.*'