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Jurisdiction and Taxation in the Habsburg Netherlands: the Manuscripts of Goswin Arnould de Wynants, Emperor Charles VI's Belgian Councillor

Frederik Dhondt

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SOMMAIRE

LIX

INHOUD

	Pages-Blz
Rapport d'activités 2024 Werkzaamhedenverslag 2024	5
Contributions – Bijdragen	9
Dave DE RUYSSCHER, Ordonnanties over civiele procedure en orde in de stedelijke rechtbank(en) in Antwerpen (ca. 1400- 1620)	11
Frederik DHONDT, Jurisdiction and Taxation in the Habsburg Netherlands: the Manuscripts of Goswin Arnould de Wynants, Emperor Charles VI's Belgian Councillor	231

JURISDICTION AND TAXATION
IN THE HABSBURG NETHERLANDS:
THE MANUSCRIPTS
OF GOSWIN ARNOULD DE WYNANTS,
EMPEROR CHARLES VI'S BELGIAN COUNCILLOR

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Abstract

Goswin-Arnould de Wynants (1661-1732), councillor (judge) in the Council of Brabant, and member of the High Council for the Netherlands in Vienna appointed by emperor Charles VI of the Holy Roman Empire, was one of the most privileged observers of law and administration in the Spanish and then Austrian Netherlands at the turn of the eighteenth century. Most of his work has never been published, although copies of his manuscripts circulated relatively widely and can be found in various Belgian heritage institutions. Although Wynants is a reference for nineteenth- and early twentieth century legal historians, scholarship in legal history seems to have forgotten both the author and the eighteenth century in the Southern Netherlands. Part of the explanation lies with Wynants's informal writing style and lack of explicit references, which render his work less suitable for handwritten text recognition and computational legal history.

However, a traditional close reading highlights his extensive use of implicit legal reasoning and elements of broader legal culture. Building on the work of Ben Croon (1991) and the institutional study of Klaas Van Gelder (2016) as well as the comprehensive study of public law manuscripts of Martin Schennach for the Holy Roman Empire (2020), two of Wynants's main works are analysed. First – for the battle over jurisdiction between secular and ecclesiastical power – his Memoirs on

the institutions of the Austrian Netherlands. Secondly, the treatise on taxation in Brabant. Although it is still solid to see Wynants as a ‘regalist’ (Croon), defending the secular ruler against ecclesiastical competition and fiscal exemptions, this image has to be complemented. *In fine*, Wynants primarily defends the judge as a crucial actor in the early modern legal ‘cacophony’ of legal sources and languages (Herzog 2024).

Keywords

History of public law, history of tax law, history of private law, legal manuscripts, Council of Brabant

Table of contents

I. Introduction	235
A. <i>Wynants, a ‘Juris Oraculum’?</i>	239
B. <i>A Composite Monarchy</i>	247
II. Wynants’s Regalist Argumentation	253
A. <i>Institutions</i>	253
(1) External analysis	253
(2) More than mere history	255
(3) Ecclesiastical and Secular Jurisdiction	261
a. Redrawing the Ecclesiastical Map (Charles V, Philip II) and Ensuring a ‘Dowry’	261
b. Foreign Bishops and their Jurisdiction in the Austrian Netherlands	266
c. The Sovereign’s Grip on Ecclesiastical Dignities and Beneficia	268
d. Be Wary of ‘God’s People’?	272
B. <i>The Private Sinews of Public Power: Taxes in Brabant</i>	275
(1) External Analysis	276
(2) Internal Analysis: the ‘aide’	279
a. The Legal Basis for Taxation in Brabant, ‘ <i>de toute anti-quit� si jaloux de ces anciennes coutumes</i> ’	279

b. The Clergy and its Wide Exceptions	294
c. Nobility and its ' <i>fausses maximes</i> '	297
d. <i>Oude Stock Bosschen</i> : Exempted Old Woods	302
e. Wording and Distinctions	304
f. Is the Duke Exempted ?	310
g. Foreigners	312
h. War and Transformations	313
i. Variations in Taxation for the ' <i>aide</i> '	314
(3) Internal Analysis: Grants	316
a. Exemptions	316
b. Taxable Basis and Tax Rate	321
c. Undue Taxes...	324
(4) Internal Analysis: Rampant Tax Fraud	325
(5) Internal Analysis: The Financial Substrate of Taxation	332
(6) Internal Analysis: War and Acts of God	345
III. Conclusion	347
A. <i>From the Lawyer's Writing Cabinet to the Digital Reading Cabinet ?</i>	347
B. <i>'In Autographo': the Mystery of the Many Manuscripts</i>	349
C. <i>Wynants and the Common Good, Preserved by the Judge</i>	350



Goswinus Comes De Wynants In Supremo Consilio Belgico Apud CAROLUM VI. Imperatorem Consiliarius. Obiit Viennae 8. Mart. 1732 a^o Aetatis 71.
Belgian State Archives (all rights reserved)

I. Introduction

We witness a new wave of interest for the history of eighteenth-century public law. Recent research on natural law, the theory and practice of the law of nations, and municipal constitutional law has improved our understanding of public law prior to the French Revolution¹. The ‘absolutist’ state has faded away to the benefit of a negotiated type of monarchical rule². For legal historians, the early modern period is foremost that of a variety of legal sources, expressing different types of normative and hermeneutic communities³. Surprisingly, we still see a gulf between historical-institutional literature⁴, on the one hand, and, on the other hand, analyses more premised on political theory⁵. Whereas we dispose of legal studies on towering lawyers of old regime France as d’Aguesseau (1668-1751)⁶, the portrait of top judges or advisors in the Austrian Netherlands before 1740 results more from a pragmatic

¹ G. GÁNGÓ and K. HAAKONSSSEN, Preface: Approaches to Natural Law in East-Central Europe, in G. GÁNGÓ (ed.), *Early Modern Natural Law in East-Central Europe*, Leiden/Boston, 2023, viii <https://doi.org/10.1163/9789004545847> [Accessed 11 January 2024]. I thank A. Leclère and Y. Skalli for proofreading.

² P. R. CAMPBELL, Absolute Monarchy, in W. DOYLE (ed.), *The Oxford Handbook of the Ancien Régime*, Oxford, 2012, p. 11-38, <https://dx.doi.org/10.1093/oxfordhb/9780199291205.013.0002>.

³ T. SCHENK, Knowledge of Production of Normativity at the Imperial Aulic Council. Towards a Procedural Perspective on Early Modern Legal Reasoning, in *Rechtsgeschichte – Legal History*, 2024, p. 108-143 <https://dx.doi.org/10.12946/rg32/108-143> [Accessed 15 February 2025]. One might refrain from using the term ‘legal pluralism’, as it has been mostly associated with intercultural encounters in an imperial context: L. BENTON and R. J. ROSS (eds.), *Legal Pluralism and Empires, 1500-1850*, New York, 2013, <https://dx.doi.org/10.18574/nyu/9780814771167.001.0001> [Accessed 15 February 2025].

⁴ K. VAN GELDER, *Regime Change at a Distance: Austria and the Southern Netherlands Following the War of the Spanish Succession (1716-1725)*, Leuven, 2016.

⁵ H. HATTENHAUER, *Europäische Rechtsgeschichte*, Heidelberg, 1994, p. 392-418.

⁶ I. STOREZ-BRANCOURT, *Le Chancelier Henri François d’Aguesseau (1668-1751), monarchiste et libéral* (La France au fil des siècles), Paris, 1999; D. FEUTRY, *Un magistrat entre service du Roi et stratégies familiales : Guillaume-François Joly de Fleury (1675-1756)*, Paris, 2011.

synthesis built on the aggregation of disparate correspondence and handwritten work⁷.

Viscount Goswin Arnould de Wynants, councillor (judge) in the Council of Brabant⁸ and member of the High Council for the Netherlands⁹ in Vienna from 1717 to 1732, certainly ticks all the boxes of a key player in the politico-legal arena of the composite Habsburg Monarchy. In this respect, Wynants can be likened to his son-in-law Patrice-François de Neny (1716-1784)¹⁰, two generations after him, or imperial councillor Bartenstein (1689-1767), in the generation that

⁷ A reference in the introduction of the 1732 *Decisiones* mentions ‘*in Manuscriptis quae in manibus quorundam versantur*’ (cases missing in the collection, currently circulating in manuscript collections), which confirms the existence of a parallel, non-public stream of legal literature. G.A. DE WYNANTS, *Supremae curiae Brabantiae decisiones recentiores*, Bruxellis, 1732, I, viii.

⁸ A. GAILLARD, *Le conseil de Brabant : histoire, organisation, procédure*, Bruxelles, 1898. See recently H. DE JONG, Motieven in het archief van de (Soevereine) Raad van Brabant, in *Pro Memoria*, 25.2, 2023, p. 141-162. <https://dx.doi.org/10.5117/PROM.2023.2.003>. JONG [Accessed 15 February 2025].

⁹ The expression ‘*Conseil Suprême*’ is used throughout Wynants’s manuscripts. In the present article, I use ‘High Council’ (and not ‘Supreme Council’), as earlier in VAN GELDER, *Regime Change at a Distance*, p. 180; M. BAELDE and R. VERMEIR, Hoge Raad voor de Nederlanden te Wenen, in E. AERTS and others (eds.), *De centrale overheidsinstellingen van de Habsburgse Nederlanden (1482-1795)*, Brussel, 1994, p. 116-122. Wynants was created count in 1721, viscount in 1727, B. CROON, *Orde en informatie. Goswin Arnould de Wynants (1661-1732) en het bestuur der Oostenrijkse Nederlanden*, Leuven, 1995, p. 8, KU Leuven Bijzondere Collecties, THL55745.

¹⁰ Neny Married Wynants’s daughter in 1739, seven years after his decease, L. DHONDT, *Verlichte Monarchie, Ancien Régime en Revolutie: een institutionele en historische procesanalyse van politiek, instellingen en Ideologie in de Habsburgse, de Nederlandse en de Vlaamse politieke ruimte (1700/1775-1790)*, Brussel, 2002, III, p. 106, <https://dx.doi.org/10.17605/OSF.IO/3PVKW> [Accessed 15 February 2025]. P. F. DE NENY, *Mémoires historiques et politiques des Pays-Bas autrichiens dédiées à l’Empereur*, Neuchâtel, 1784; G. VAN DIEVOET (ed.), *Patrice de Neny (1716-1784) et le gouvernement des Pays-Bas autrichiens*, Heule, 1987; B. BERNARD, Patrice Mac Neny (1676-1745). Secrétaire d’État et de Guerre, in H. HASQUIN and R. MORTIER (eds.), *Une famille noble de hauts fonctionnaires : les Neny*, Bruxelles, 1985, 7-78 and ID., *Patrice-François de Neny (1716-1784), chef et président du Conseil Privé des Pays-Bas Autrichiens : un homme d’État éclairé dans la Belgique des Lumières*, Bruxelles, 1992.

immediately followed his¹¹. Wynants is hardly remembered today, although one of the streets surrounding Leopold II's Palace of Justice in Brussels still bears his family name¹². Nineteenth-century Belgian lawyers delving into the Old Regime legal system, or tracing the forerunners of contemporary law, frequently mention, cite or discuss Wynants¹³. More than a century after his decease, on 15 October 1847, Wynants was also the subject of the mercurial address at the Brussels Court of Appeal by top prosecutor (*procureur général*) de Bavay (1801-1875)¹⁴. He was even invoked (together with Anselmo, Christinaeus, Dehumayn, Dufief and Coloma, with reference to Britz) by the Antwerp Tribunal of First Instance on 10 August 1850, to illustrate the rules on fiscal exemptions and *mainmorte*¹⁵.

Wynants considered his role as that of expert *a latere principis*, but also as that of a watchdog, to keep the governor-general of the Austrian Netherlands in check from Vienna, together with the *Chef-Président* of

¹¹ Secretary of the *Geheime Konferenz* in Vienna under Maria Theresia (DHONDT, *Verlichte Monarchie*, III, p. 172-173). See A. Ritter VON ARNETH, *Johann Christoph Bartenstein und seine Zeit*, Wien, 1871. The *Geheime Konferenz* was a gathering without legal personality around the emperor, providing him with oversight and confidential advice. In order to master the complex institutions of the Low Countries in Brussels (with similar intentions as Bergeyck's), the Austrian authorities tried to impose *Jointes* ('*Juntas*') with members drawn from the various councils and courts (*Ibid.*, III, p. 187, the '*Jointe de Cabinet*' 1725-1740).

¹² <https://maps.app.goo.gl/JwwLLYSa111RrdH57> [Accessed 15 February 2025].

¹³ J. BRITZ, *Code de l'ancien droit Belgique : ou Histoire de la jurisprudence et de la législation*, Bruxelles, 1847, p. 303-304. Britz has a quite negative judgment of Wynants's style and 'brilliance'. Frequent references to Wynants's manuscripts (but no judgment of the author) can be found with E. POULLET, *Les Constitutions nationales belges de l'Ancien Régime à l'époque de l'invasion française de 1794*, Bruxelles, 1875. The dictionary of administrative and public law of Giron cites Wynants's chapter on the '*Médianate*', A. GIRON, *Dictionnaire de droit administratif et de droit public*, Bruxelles, 1895, III, p. 3.

¹⁴ The full speech can be read in the *Indépendance Belge* (a Liberal newspaper) of 17 October 1847: <https://uurl.kbr.be/1054271> [Accessed 15 February 2025].

¹⁵ Tribunal of First Instance (Antwerp), 10 August 1850, *Belgique Judiciaire*, col. 1125-1127.

the Privy Council in Brussels¹⁶. Applying legal research questions (for instance with regards to the legal sources explicitly or implicitly quoted; with regards to the authors cited) to the rich primary and published material certainly enhances our understanding of the discursive canvas of political quarrels. Moreover, if we move a step further, a typical constitutional topic as taxation also connects with the economic and social structure of Old Regime society as a whole.

This introduction will briefly present Wynants and the manuscripts under study for the purpose of the paper, as well as the institutional and constitutional set-up of the Austrian Netherlands under emperor Charles VI (1715-1740). The second section of the article (II) will delve into this manuscript on Institutions in the Low Countries¹⁷, focusing on ecclesiastical and secular jurisdiction. We will finally turn to the virtuous manuscript on taxes in Brabant, whereby the author combines his skill in public affairs and adjudication.

¹⁶ G.A. DE WYNANTS, 'Mémoires contenant des notions générales de tout ce qui concerne le Gouvernement Des Païs-Bas. Formés en 1730 par Mr. Le Vicomte de Wynants Conseiller régent du Conseil Suprême des dits Païs-Bas' (1730), f. 135, 140, <https://anet.be/record/opacehc/c:lvd:15072816> [Accessed 15 February 2025]. Wynants used the expression '*censure*' to describe the High Council's scrutiny of imperial decisions, initiated by the Brussels government. The '*corps entier de conseil*' in Vienna would intimidate more than if a single councilor and secretary would fulfil the same tasks! Wynants thought of the example of Pierre Roose (1585-1673) and would have had the ambition to become head of the Privy Council himself, CROON, *Orde en informatie*, p. 8, 84, 96; DHONDT, *Verlichte Monarchie*, III, p. 198. On this institution: H. DE SCHEPPER, Geheime Raad, in E. AERTS and others (eds.), *De centrale overheidsinstellingen van de Habsburgse Nederlanden (1482-1795)*, Brussel, 1994, I, p. 295-304. The High Council can thus be seen, together with the minister plenipotentiary, the imperial ambassador in The Hague and the Secretary of State and War, as an institution competing with the governor-general (DHONDT, *Verlichte Monarchie*, III, p. 184).

¹⁷ Which I briefly introduced elsewhere: F. DHONDT, Constitutional Identity in the 18th Century Austrian Low Countries: Count Goswin de Wynants's Viennese Mémoires (1730), in P. HILPOLD and C. PERATHONER (eds.), *Europäisches Minderheitenrecht*, Wien/Baden-Baden, 2023, I, p. 749-769.

A. Wynants, a ‘*Juris Oraculum*’¹⁸?

On 15 November 1715, the Barrier Treaty was signed in Antwerp.¹⁹ This international agreement set in motion the transfer of sovereignty over the Spanish Netherlands to emperor Charles VI of the Holy Roman Empire (1685-1740)²⁰. From 1715 until 1792/1794, the greater part of present-day Belgium would remain under the sovereignty of the Austrian branch of the House of Habsburg²¹. To assist the emperor in taking decisions or issuing texts of a normative nature, the High Council for the Austrian Netherlands – a typical Habsburg ‘polysynodical’²² areopagus – met regularly in Vienna. In 1717, Goswin Arnould de Wynants (born in Brussels in 1661)²³, experienced judge

¹⁸ DE WYNANTS, *Supremae curiae Brabantiae decisiones recentiores*, iii.

¹⁹ Treaty between Charles VI, George I of Great Britain and the Dutch Republic, Antwerp, 15 November 1715, J. DU MONT DE CARELS-CROON and J. ROUSSET DE MISSY, *Corps universel diplomatique du droit des gens*, La Haye, 1731 [further: *CUD*], I, nr. CLXXX, p. 458-468. See K. VAN GELDER, The estates of Flanders Manning the Barricades for Territorial Integrity: The Protest against the Barrier Treaty of 1715, in G. MARTYN, R. VERMEIR and C. VANCOPPENOLLE (eds.), *Intermediate Institutions in the county of Flanders in the Late Middle Ages and the Early Modern Age*, Brussel, 2012, p. 114-137.

²⁰ See for details of the transfer L.-P. GACHARD (ed.), *Tome troisième, Contenant les ordonnances du 2 janvier 1716 au 29 décembre 1725*, Bruxelles, 1873; R. DE SCHRYVER, Who had sovereignty in the Southern Netherlands during the War of the Spanish Succession (1700-1715)?, in *Liber Amicorum Jan Buntinx. Recht en instellingen in de oude Nederlanden tijdens de Middeleeuwen en de Nieuwe Tijd*, Leuven, 1981, p. 483-497.

²¹ Notwithstanding a French occupation (1745-1748), a brief episode of national revolt (1789-1790) and – again – French occupation (1792-1793).

²² DHONDT, *Verlichte Monarchie*, III, p. 171-175. The Council was the Viennese successor of the erstwhile Spanish *Consejo supremo de Flandes y Borgoña*, and initially used Spanish (as Charles VI’s favourite Rialp was a member), see on this institution: R. VERMEIR, *De Hoge Raad voor de Nederlanden en Bourgondië onder Filips II (1588-1598)*, Gent, 1990. For the expression polysynody: C.-I. CASTEL DE SAINT-PIERRE, *Discours sur la polysynodie. Où l’on démontre que la polysynodie ou pluralité des Conseils, est la forme de ministère la plus avantageuse pour un Roy et pour son royaume*, Londres, 1718.

²³ Parish registers of the Saint Michael and Saint Gudula Church, 19 October 1661, Baptism Certificate nr. 191, City Archives Brussels, Project Parish Registers and Baptism Certificates 1539-1796 (pardobrus), accessible through <https://agatha.arch.be>

and former lawyer at the Council of Brabant, the sovereign court in the duchy of Brabant, was proposed as a member by governor-general Eugene of Savoy (1662-1736)²⁴. In his overviews of publications on constitutional law, legal historian Jan Van Den Broeck (1925-2016) devoted attention to Wynants's son-in-law, Patrice François de Neny (1716-1784), as well as to his eldest son, Pierre Melchior de Wynants (1691-1727)²⁵.

Throughout Wynants's writings, it transpires that he saw his role in Vienna as that of the voice of an experienced local lawyer from the Low Countries, by the side of his sovereign, in the latter's specific role as duke of Brabant, count of Flanders... The ideal position to safeguard '*droits fondamentales* [sic] *et privileges*', as for instance – in his eyes – the councilors of governor-general Margaret of Parma (1522-1586) had done when the Council of Trent's decisions had to be applied in the

[Accessed 15 February 2025]. P. DELSAERDT, WYNANTS, Goswin Arnould De, in *Nationaal Biografisch Woordenboek*, 14, Brussel, 1992, p. 782-790. Wynants enrolled at the University of Louvain in December 1676 (During the Dutch War), at the Collegium Falconis (Source: Database Matrikels, Belgian State Archives, <https://doi.org/10.34934/DVN/PWIOKR> [Accessed 15 February 2025]).

²⁴ Eugene of Savoy to Charles VI, Vienna, 24 June 1717, J. LEFÈVRE, *Documents sur le personnel supérieur des conseils collatéraux du gouvernement des Pays-Bas pendant le dix-huitième siècle* (Palais des Académies, 1941), p. 54-55. Wynants was sworn in in October 1717, at the age of fifty-six. On the Council of Brabant: NAUWELAERS, *Avocats souverain conseil de Brabant*; The Council equally had some administrative attributions. It was impossible to appeal against its verdicts with the Privy Council or the Grand Council of Malines, which secured the Council of Brabant a separate, independent position. On Eugene: M. BRAUBACH, *Prinz Eugen von Savoyen: eine Biographie*, München, 1963-1965.

²⁵ J. VAN DEN BROECK, *De Historiografie van het Recht in de Zuidelijke Nederlanden tijdens de 18de eeuw*, Brussel, 1990, p. 39-42, 48-49; ID., *De Rechtsleer in de Zuidelijke Nederlanden Tijdens de 18de eeuw*, Brussel, 2001, p. 49-52, 55-56. Petrus Melchior enrolled at the University of Louvain in September 1707, during the War of the Spanish Succession (source: database Matrikels, Belgian State Archives, <https://doi.org/10.34934/DVN/PWIOKR> [accessed 15 February 2025]). As we know, Pierre Melchior died before the *Mémoires* were written. He authored a commentary on the Joyous Entry, which – logically – was of great interest at the time of the revolt against Joseph II, DHONDT, *Verlichte Monarchie*, V, p. 140. Britz confounds him with his younger sibling Henri Guillaume, BRITZ, *Code de l'ancien droit belge*, p. 304.

Spanish Netherlands²⁶. Wynants did not refrain from priding himself on having stood up to a man as famous as Eugene of Savoy²⁷.

However, we should be prudent in projecting this view on Charles VI, a highly intricate personality, to put it mildly²⁸. Due to the War of the Spanish Succession and the protracted bilateral discussion with Philip V of Spain, the emperor was certainly more attached to the Austrian Netherlands than his daughter Maria Theresia (1717-1780)²⁹. The territories central to Wynants were but one piece in a far more complex Habsburg imperial reality, as the emperor's decision to abandon the Ostend Company illustrated³⁰. Furthermore, in spite of his impressive writings, Wynants was far from the only councillor advising the sovereign. His analysis cannot replace a comprehensive examination of decision-making processes at the local, municipal, provincial, gubernatorial, and central levels³¹.

²⁶ The Council's decisions could be applied for '*le dogme*', but not for ecclesiastical discipline and '*moeurs*', for which the sovereign's rights ought to be safeguarded by mandatory intervention of the governing councils. DE WYNANTS, *Mémoires*, f. 313. See recently on this female governor-general: K. LICHTERT (ed.), *Margaretha van Parma: Keizersdochter tussen Macht en Imago*, Veurne, 2024.

²⁷ DE WYNANTS, *Mémoires*, f. 144.

²⁸ S. SEITSCHKE, *Die Tagebücher Kaiser Karls VI.: zwischen Arbeitseifer und Melancholie*, Horn, 2018.

²⁹ B. STOLLBERG-RILINGER, *Maria Theresia: die Kaiserin in ihrer Zeit: eine Biographie*, München, 2017. Stollberg-Rilinger's recent authoritative biography tends to support the thesis that Maria Theresia (who was one generation further away from the Spanish Succession quarrel, whereby her father projected himself as the 'true' heir of the Burgundian inheritance) did not see the Austrian Netherlands as a priority within the composite Habsburg empire. One should however not ignore the mercantilist and administrative reforms that took place after the peace of Aix-la-Chapelle (1748).

³⁰ DE WYNANTS, *Mémoires*, f. 263; C. BACKERRA, *Wien und London 1727-1735: internationale Beziehungen im frühen 18. Jahrhundert.*, Göttingen, 2018; F. DHONDT, Delenda Est Haec Carthago: The Ostend Company As A Problem Of European Great Power Politics (1722-1727), in *Revue Belge de Philologie et d'Histoire / Belgisch Tijdschrift voor Filologie en Geschiedenis*, XCIII.2 (2015), p. 397-437, <https://dx.doi.org/10.3406/rbph.2015.8840> [Accessed 15 February 2025].

³¹ See VAN GELDER, *Regime Change at a Distance*.

Wynants had a long-standing experience in governmental and judicial affairs, as he had been an advocate since 1684 and a judge at the Council of Brabant since 1695³². At the end of his career, in 1730, he drafted a manuscript to guide one of his nine children: Henri Guillaume³³ (at that time already a judge in the Council of Brabant) through the institutional labyrinth of Old Regime society, as well as through the *cursus honorum* of (government-paid) positions of power and influence. This is very fitting for a state structure described as a ‘government of lawyers, if not of judges’, at a juncture where a – generic – legal training was one of the rare types of university-taught expertise available³⁴. Thirty years after Wynants’ decease, Austrian statesman Kaunitz (1711-1794) complained that the local elites in the Austrian Netherlands were obsessed with obtaining places, without actually doing the work associated with them³⁵. However, the sovereign and his or her ‘Belgian’ lawyers were caught in an indissoluble

³² DELSAERDT, WYNANTS, Goswin Arnould De, p. 783; CROON, *Orde en informatie*, p. 3.

³³ CROON, *Orde en informatie*, p. 11. The eldest son, Pierre-Melchior-Henri (1671-1727) died three years earlier. The second son, Arnould Charles (1693-1750), enrolled at the University of Louvain in law in 1711 (during the War of the Spanish Succession), canon of Saint Gudula, had to flee the Austrian Netherlands, due to his Jansenist leanings. Henri-Guillaume (born in 1698) would have authored an unpublished history of the High Council. He enrolled at the University of Louvain in August 1717, Source: Database Matrikels, Belgian State Archives, <https://doi.org/10.34934/DVN/PWIOKR> [Accessed 15 February 2025]) and DELSAERDT, WYNANTS, Goswin Arnould De, p. 1782.

³⁴ DHONDT, *Verlichte Monarchie*, III, p. 201. One should, however, not forget Wynants’s own criticism of the university of Leuven (Chapter XII of the *Mémoires*), as well as that of Kaunitz in 1732: ‘*es ist ein Verbrechen junge Herren von Stand hierher zu schicken. Anstatt etwas zu lernen, vergessen zie hier alles, was sie an einer anderen Universität hätten lernen können*’ (quoted in BERNARD, *Patrice-François de Neny*, 18).

³⁵ ‘*les gens de ce pays-là ne cherchent qu’à être placés et s’embarassent très peu de remplir fructueusement leurs places dans un gouvernement débonnaire*’, Wenzel-Anton Graf von Kaunitz-Rietberg, 28 August 1761, cited in DHONDT, *Verlichte Monarchie*, III, p. 201. On Kaunitz: G. KLINGENSTEIN and F.A.J. SZABO (eds.), *Staatskanzler Wenzel Anton von Kaunitz-Rietberg (1711-1794): neue Perspektiven zu Politik und Kultur der europäischen Aufklärung*, Brno, 1996.

relationship of mutual dependence³⁶. The lawyers' expertise was essential to help the sovereign surpass the power of local notables, reflecting a long-term but only slowly increasing trend³⁷. However, personal ambition and family interest dominated.

On 8 March 1732, Goswin Arnould de Wynants passed away. Within a year of the author's decease, a collection of case law of the Council of Brabant was published in-8° in Brussels by Moris³⁸. In its preface, the publisher stated that:

'In our Belgian jurisprudence, decisions issued by higher courts constitute a certain type of custom; and they are valid not only for the specific case at hand but also for similar cases, acquiring the force of law. Indeed, it is recognized as established by our rulers that, when there is no proper law, i.e., national customs and royal statutes, recourse is to be had to Roman law, or *ius commune*³⁹.

Praising the qualities of Wynants's work, the introduction further stated that he would continue the work of Petrus Stockmans (1608-1671)⁴⁰, whose collection of decisions had become an 'oracle of

³⁶ One could add that Wynants's two treatises discussed here contained all matters judged essential by Kaunitz (27 July 1769, cited in DHONDT, *Verlichte Monarchie*, III, p. 213): '*une connoissance profonde du droit commun et municipal, ainsi que du droit public et de l'ordre judiciaire des provinces belgiques [...] les saint canons de l'Eglise, l'autorité du Prince [...] la nature, les effets et l'objet des bulles et autres provisions apostoliques [...] les maximes d'état à leur égard [...] l'étendue de la juridiction attribuée à chaque tribunal [...] l'esprit et le sens naturel de nos édits et ordonnances pour répondre avec justice aux doutes que les Etats ou les juges formulent [...] une connoissance également profonde des traités de paix [...] une idée des charges publiques, de leur qualité, de leur objet et de la forme de les asseoir sur les contribuables*'.

³⁷ *Ibid.*, III, p. 250.

³⁸ DE WYNANTS, *Supremae curiae Brabantiae decisiones recentiores*.

³⁹ '*In Jurisprudentia nostrâ Belgicâ Consuetudinis quamdam speciem efficiunt Decisiones, quae à Majoribus Judiciis promanant; nec tantùm in illa ipsa Causa, verum etiam in similibus valent, & Juris effectum sortiuntur. Et quidem à Principibus nostris constitutum esse dignoscitur, ut deficiente Iure proprio, id est, Consuetudinibus Patriis & Constitutionibus Regiis, recurratur ad Jus Romanum, ceu Jus Commune*', *Ibid.*, I, i.

⁴⁰ Stockmans studied law at the University of Leuven, where he obtained the title of doctor (1631) and taught from 1632 on. He succeeded his supervisor Diodore Tulden (G. SLUIJS, *Jurisdiction and Its Attribution in the Works of Diodorus Tuldenus*

law', cited in daily court practice. The publisher emphasises that the late Wynants never had the intention to publish his collection of 226 decisions⁴¹. This is an important clue for what we will see further for the two main texts in this contribution⁴². Wynants's work as

(1594-1645), in *Tijdschrift voor Rechtsgeschiedenis / Revue d'histoire du Droit / The Legal History Review* [further: TRG], 90.1-2 (2022), p. 222–49, <https://dx.doi.org/10.1163/15718190-20220003> [Accessed 15 February 2025]. He was twice rector (1633, 1636) and became a judge in the Council of Brabant (1643), warden of the charters of Brabant (1653), member of the Privy Council (1654) and superintendent of military justice (1665). He was equally active as a diplomat in The Hague (1648) and at the Diet of the Empire in Regensburg (1663). During the War of Devolution (1667-1668), he published an important treatise on the law of devolution in Brabant, to refute French expansionist arguments (F. DHONDT, *Entre droit privé et droit international : la Succession d'Espagne aux XVII^e et XVIII^e siècles*, in *C@biers du CRHiDI*, 35-36, 2011, p. 61-102, <https://popups.uliege.be/1370-2262/index.php?id=754> [Accessed 15 February 2025]). See P. STOCKMANS, *Tractatus de jure devolutionis*, Brussels, 1667; A. MEYERS, *Le Droit de dévolution et le Traité de Pierre Stockmans*, Liège, 1925; V. BRANTS, STOCKMANS (Pierre), in *Biographie Nationale de Belgique*, Brussels, 1926, XXIV, co. 57-66. Stockmans equally supported a strong regalist point of view (as Van Espen), and defended the obligation of the *placet*: VAN DEN BROECK, *De Rechtsleer*, p. 75-76.

⁴¹ DE WYNANTS, *Supremae curiae Brabantiae decisiones recentiores*, I, iv. A similar statement is made by de Bavay on Wynants's remarks on criminal ordinances (see following footnote), C. DE BAVAY, Goswin de Wynants. Discours de M. le Procureur Général de Bavay, in *L'Indépendance Belge*, 1847, p. 3, <https://uurl.kbr.be/1054271> [Accessed on 25 February 2025].

⁴² Wynants equally composed manuscripts on criminal law and procedure. E.g. G.A. DE WYNANTS, 'Tractatus de Judiciis Criminalibus sive de Ordine ac Modo Procedendi in Criminalibus', s.l., s.d., KBR, Manuscripts, 14513, 118 f., with a Section of 'Remarques' (in French), f. 119-169^v, see J.S.G. NYPELS, *Les ordonnances criminelles de Philippe II des 5 et 9 juillet 1570 : Discours prononcé à la réouverture solennelle des cours de l'Université de Liège, le 16 octobre 1855*, Bruxelles, 1856, p. 13-14, 21-25, 36; E. POULLET, *Histoire du droit pénal dans le duché de Brabant : depuis l'avènement de Charles Quint jusqu'à la réunion de la Belgique à la France, à la fin du XVIII^e siècle*, Bruxelles, 1870, *passim*; A. PRINS, *De l'appel dans l'organisation judiciaire répressive : étude historique et critique*, Bruxelles, 1875, p. 95-96. Wynants equally annotated the customs of Louvain: G.A. DE WYNANTS, 'Annotatien op de Costuymen van Loven', BRUSSELS, Belgian State Archives, *Fonds Koninklijke Commissie Oude Wetten*, K 165. A work on the establishment of (French-style) *Intendants* and one on chambers of commerce are equally ascribed to him, CROON, Orde en informatie,

‘*arrétiste*’⁴³ was interrupted when he moved to the High Council for the Austrian Netherlands in Vienna. According to the publisher’s preface, he worked further on the notes assembled by his father Goswin, who equally sat on the Council of Brabant⁴⁴. An identical edition in-4° was published in Brussels in 1744 by Foppens⁴⁵. A second edition, twelve years later, can be interpreted as an indication of success, conformably to publisher Moris’s hope and expectations. Moris smelled a commercial opportunity, as he had been prodded on to publish Wynants’s *Decisiones*, ‘*commune Eruditorum votum*’⁴⁶. The publisher would have added nothing but formal aspects, in order to imitate the ‘elegant style’ of the illustrious Stockmans⁴⁷.

p. 67; J. CUVÉLIER, II. Le commerce, l’industrie et l’administration des Pays-Bas autrichiens au commencement du XVIII^e siècle. Enquête du comte de Wynants. (1728), in *Bulletin de la Commission royale d’Histoire*, 81.1 (1912), p. 27-52, <https://dx.doi.org/10.3406/bcrh.1912.1911> [Accessed 15 February 2025]. His remarks on Legrand’s commentary on the customs of Troyes (France) were published in 1777, G.A. DE WYNANTS, *Remarques sur le commentaire de Me. Louis le Grand sur la Coutume de Troyes, à l’usage des Pays-Bas Autrichiens & principalement du Duché de Brabant*, Bruxelles, 1777.

⁴³ On the expression: S. DAUCHY and V. DEMARS-SION, À propos d’un “Recueil d’arrêts” inédit : la jurisprudence du Parlement de Flandre de Georges de Ghewiet, in *TRG*, LXXVII (2009), p. 157-189, <https://dx.doi.org/10.1163/004075809X403424> [Accessed 15 February 2025].

⁴⁴ DE WYNANTS, *Supremae curiae Brabantiae decisiones recentiores*, I, v.

⁴⁵ G.A. DE WYNANTS, *Supremae Curiae Brabantiae decisiones recentiores, auctore Illustrissimo ac Clarissimo Viro D. Goswino Comite de Wynants. Olim in Supremâ Brabantiae Curia, ac demum in Supremo Rerum Belgicarum Consilio statûs apud Carolum VI. Imperatorem consiliario*, Bruxellis, 1744. The edition was the product of Jan Frans Foppens, professor of philosophy in Leuven. VAN DEN BROECK, *De Rechtsleer*, p. 13 note 4; H. HELBIG, FOPPENS (Jean-François), in *Biographie Nationale de Belgique*, Bruxelles, 1880, VII, col. 193-195. Wynants’s son-in-law Neny is sometimes noted as editor of the *Decisiones*, e.g. R. FEENSTRA, *Catalogue des imprimés de la collection Meyers de la Bibliothèque de l’Université de Leyde*, Zwolle/Leyde, 1980, p. 246. However, born in 1716, he could only have been sixteen years old in 1732, at the first edition, whose introduction is identical to that of 1744.

⁴⁶ DE WYNANTS, *Supremae curiae Brabantiae decisiones recentiores*, I, p. vii.

⁴⁷ DE WYNANTS, *Mémoires*, I, viii. It would thus be exaggerated to state that Wynants had ‘published nothing, but had been cited by so many’, CROON, *Orde en informatie*, p. 10.

This contribution presents the *Mémoires contenant des notions Générales de tout ce qui concerne le Gouvernement des Païs-Bas* (458 ff. in an undated copy)⁴⁸ and the *Traité général des charges publiques tant aides, subsides, charges personnelles, & des quartiers, que Contributions dans la Province et Duché de Brabant* (638 ff., dated ‘around 1740’ in the KBR’s catalogue)⁴⁹. Contrary to what the reader might be inclined to learn, based on the introduction of the ‘*Decisiones*’, the writing style is rather informal. Both texts ought to be seen as a complement to a well-furnished law library, and – in the case of the institutional manuscript – to a list of 210 original pieces (left out in the [ulterior] copies)⁵⁰. The manuscript on institutions and the *Decisiones* are well known in older historiography. Several copies of the institutional manuscript reside in Brussels⁵¹, Ghent⁵² and – recently

⁴⁸ DE WYNANTS, *Mémoires*.

⁴⁹ G.A. DE WYNANTS, ‘Traité général des charges publiques tant aides, subsides, charges personnelles, & des quartiers, que contributions dans la province et duché de Brabant’ (1740), BRUSSELS, KBR, *Manuscripts*, LP 16.768. C. Croon dates the original work around 1723, CROON, *Orde en informatie*, p. 10.

⁵⁰ DE BAVAY, ‘Goswin de Wynants. Discours de M. le Procureur Général de Bavay’, p. 3.

⁵¹ BRUSSELS, KBR, *Manuscripts*, various copies (see further). The original copy in BRUSSELS, Belgian State Archives, *Manuscripts*, 829, contains the full list of handwritten copies of documents and extracts (e.g. of advice given in the High Council), as well as print copies of legislation. Twenty-eight pieces are missing, explained by the document’s delivery to the State Archives in 1834 in five ‘*portefeuilles*’ by the ‘widow [*douairiere*] Barsen’.

⁵² G.A. DE WYNANTS, ‘Mémoires contenant des notions générales de tout ce qui concerne le Gouvernement des Pays-Bas’, late eighteenth century, GHENT, University Library, *Manuscripts*, HS.1282 - HS.1581. This copy bears a stamp ‘Rob. Mar. Helias d’Huddeghem’, with annotation added in separate slips of paper by (a nineteenth-century?) reader, e.g. f. 10 and 28 (on the Council of Finance and its 1782 composition), 51 (on the creation of a separate council of justice in Tournai in ‘177.’ [sic]), 70 (on the suppression of the High Council for the Austrian Netherlands in Vienna), 86-88 (stating that Wynants is ‘wrong’ (*faux*) on the composition of the estates of Flanders, with reference to Zaman’s treatise on this institution, as well as a regulation by Charles VI of 1732). See J.P. ZAMAN, *Exposition des Trois Etats du Païs et Comté de Flandres, Scavoir : du Clergé, de la Noblesse, & des Communes*, s.l., 1711. Robert Hélias d’Huddeghem (1791-1851) was an influential judge for over two decades, as he

– Antwerp⁵³. Although a critical edition was initiated under the auspices of the Royal Commission for History in the early 1990s, it has not yet materialised⁵⁴.

B. Composite Monarchy

‘This province of Brabant, although the first in esteem and rank, has no superiority nor domination whatsoever over the others. It is only a member of the body politic of all other provinces, united by the same Prince and the police regarding laws and statutes in general, although it can invoke privileges of various kinds, not common to the others’.

Wynants, remarks on Hovyne’s treatise on the Low Countries⁵⁵

presided the Ghent Court of First Instance (1830-1832) and was chamber president in the Ghent Court of Appeal (1832-1851) (Source: Digithemis – Database and directory of Belgian magistrates, UCLouvain, https://sites.uclouvain.be/digithemis/?page_id=3566 [Accessed on 15 February 2025]).

⁵³ Digitized here: <https://dams.antwerpen.be/asset/snYBYalXguLKePYsNCg2vUHI> [Accessed on 15 February 2025].

⁵⁴ A scheme was foreseen by the Royal Commission for History in the early 1990s, see CROON, *Orde en informatie*, iv. Part of the transcription (*État des travaux*, 31 August 1989, based on BRUSSELS, Belgian State Archives, Manuscript Collection, manuscripts 829 and 833/4) can be consulted in VIENNA, Haus-, Hof- und Staatsarchiv (AT-OeStA/HHStA SB NI Elisabeth Kovacs 40-11), <https://www.archivinformationssystem.at/detail.aspx?ID=3670348> [Accessed on 15 February 2025]). For the present contribution, I opted for the copy conserved in the Conscience Heritage Library, due to its digitization by the heritage institution and the excellent quality of the handwriting. The absence of Wynants’s original intention to publish transpires from the tiny scribbling and many corrections in manuscript 829 (72 f. recto/verso), compare with the copy in 833 (320 f. recto/verso plus non numbered alphabetical register). The corrections (insertion of little annotated scraps of paper) resemble those in the ‘d’Huddeghem’-copy, kept in the Ghent University Library, GHENT, University Library, HS.0142 - HS.1581. If Bruno Bernard (*Patrice-François de Neny*, 75) mentions ‘*trois gros volumes in-folio*’, this counts the two documentary volumes of original pieces.

⁵⁵ C. DE HOVYNE and G. A. DE WYNANTS, ‘Mémoire touchant la forme du gouvernement politique des Païs-Bas et des conseils et officiers qui en composent le ministère. Dressé par Monsieur le Président Hovyne en 1662 : pour être envoyé au Roi’, 1753 (?), p. 3, BRUSSELS, KBR, *Manuscripts* G 107. Wynants’s remarks are of course copied in the source mentioned here. In the introduction, doubts are raised on

Governing the Southern Netherlands ‘at a distance’⁵⁶ had been a challenge to the Spanish branch of the Habsburg dynasty as well during almost two centuries, from the accession of Charles V (1500-1558) to the decease of Charles II of Spain (1661-1700). One initial obstacle were the deeply ingrained constitutional customs of the different regions. Despite the Pragmatic Sanction of November 5, 1549, which imposed a simultaneous succession for the XVII Provinces collectively, they continued to be a personal union with independent constitutional incorporation⁵⁷. As a result, dynastic rights could not serve as the central focus of a history of public law. The reciprocal link between the lord of the land (*Landesherr*) and the estates (*Stände*) was the cornerstone of every principality’s tradition, making the ‘territorial focus’ evident⁵⁸. However ruled the Southern Netherlands, could only do so as lord or lady of the various principalities, with their own constitutional order⁵⁹.

The duchy of Brabant clung to its *Joyeuse Entrée*, a constitutional charter granted in 1356 and repeatedly issued by subsequent rulers⁶⁰.

the date of Hovyne’s manuscript, which would likely have predated the Treaty of the Pyrenees of 1659, see CROON, *Orde en informatie*, p. 11.

⁵⁶ VAN GELDER, *Regime Change at a Distance*. See more recently on multilevel governance throughout the early modern period: M. KERVYN and Y. JUNOT (éds.), *Les Pays-Bas dans les systèmes impériaux : insertions et gouvernance*, Études sur le XVIII^e Siècle, Bruxelles, 2024, <https://doi.org/10.4000/134pw> [Accessed 16 June 2025].

⁵⁷ GACHARD, *Tome troisième*, xxviii.

⁵⁸ CROON, *Orde en informatie*, p. 65. This is what Schennach describes as the territorialisation or the territorial premise of the *Jus publicum specialissimum* for the Austrian hereditary lands: M.P. SCHENNACH, *Austria inventa?: zu den Anfängen der österreichischen Staatsrechtslehre*, Frankfurt, 2020, p. 77-78. A similar analysis was made for the whole of the Low Countries in DHONDT, *Verlichte Monarchie*, III, p. 247: due to the frequent absence of the monarch, the dynastic element was just ‘one of several administrative levels, a supranational one’ [supranational not in the legal sense], whereas ‘the State [sic] was embodied at various other levels by ‘national’ institutions’] (DHONDT, *Verlichte Monarchie*, III, 247).

⁵⁹ *Ibid.*, III, p. 253.

⁶⁰ V. VRANCKEN, *De Blijde Inkomsten van de Brabantse hertogen. Macht, opstand en privileges in de vijftiende eeuw*, Brussel, 2018; *De blyde incomste van syne majesteyt Carel den Tweeden Coninck van Spaignien als Hertogh van Brabant verleent den 12. Februarii, ende besworen den 24. der selver Maendt inden Jaere 1666*, Brussel, 1702;

Although a written document of the same nature had been lacking in the county of Flanders, the main province, its lawyers and notables saw this territory as a differently incorporated entity⁶¹. General ordinances for the whole of the Austrian Netherlands were issued in Brabant with the duchy's seal⁶². Wynants had to counsel the emperor on striking the correct balance between the interests of the ruling classes and his rights as a sovereign to maximize the unification of law and administration, particularly taxation. The estates of Brabant considered Charles VI as their duke⁶³. Every ruler was bound by his or her oath on the Joyous Entry⁶⁴. The defence of regional and local interests translated into provincial estates, on the one hand, city councils (for urban areas) and castellanies (for rural areas) on the other hand. Brabant, Flanders,

De blijde incomste van sijne Majesteyt Philippus den Vijfden Coninck van Spaignien als Hertogh van Brabant, verleent den 13. ende solemnelijck Bezwooren en 21. Februarii 1702, Brussel, 1702.

⁶¹ DHONDT, *Verlichte Monarchie*, III, p. 162, Flanders – as ‘the biggest, most populous and economically most active’ province – can be seen as the ‘first’, and Brabant the ‘second’ of the principalities in the Austrian Netherlands (*Ibid.*, III, p. 254).

⁶² *Ibid.*, III, p. 170. See on this matter R. ADAM, Printing for Central Authorities in the Early Modern Low Countries (15th-17th Centuries), in N. LAMAL, J. CUMBY & H. HELMERS (éds.), *Print and Power in Early Modern Europe (1500-1800)*, Leiden/Boston, 2021, p. 64-85, https://dx.doi.org/10.1163/9789004448896_005 [Accessed 16 June 2025]

⁶³ ‘*la soumission de cette province de Brabant sous sa douce et légitime domination*’, remonstrances of the estates of Brabant to emperor Charles VI regarding the Barrier Treaty (whose art. XVI allowed for the occupation of the cities along the river Demer, e.g. Halen, Diest, Aarschot, DU MONT DE CARELS-CROON and ROUSSET DE MISSY, *CUD*, VIII/1, p. 460), cited in the letter written by their deputies, bishop of Antwerp Franken-Sierstorff, count d’Ursel baron of Hoboken and Jean-Baptiste del Campo, burgomaster of Antwerp, Vienna, 29 February 1726, cited by GACHARD, *Tome troisième*, xxviii.

⁶⁴ ‘*La bonté paternelle et la protection auguste de Votre Majesté Impériale et Catholique [...] ne pourra jamais permettre qu’au lieu de récompense ils [les états] seraient dépouillés de leurs privilèges les plus précieux [...], contre la foi publique et [...] le serment qui se fait à son inauguration aux états de Brabant*’. *Ibid.*, xxvii-xxviii.

Hainault, Luxemburg⁶⁵, Namur, Guelders⁶⁶, Limburg⁶⁷, Malines and Tournai had estates. In the penultimate case, the city authorities and the estates overlapped.

To rule over the various territories that had come to be united in the Spanish branch of the House of Habsburg under Charles V, the latter had established three ‘collateral councils’ to assist the sovereign. The Council of State, which represented the high nobility and clergy; the Privy Council (*Conseil Privé*), an increasingly more administrative organ⁶⁸, composed of lawyers, and the Council of Finance (withouth judicial competence)⁶⁹. The governor-general, the sovereign’s deputy in Brussels in a ‘bicephal’ system⁷⁰, convened with these organs at the

⁶⁵ The duchy of Luxemburg was raised to the rank of Grand-Duchy at the Congress of Vienna (1814-1815). Following the Belgian revolt of 1830-1831, it was split between Grand-Duke William and Belgium in 1839-1841. Only part of the ‘Austrian’ duchy is thus currently a part of the Kingdom of Belgium. Luxemburg was the most rural province of the Austrian Netherlands, with only 10% of its population living in urban areas, compared to 30% in Brabant, see P. JANSSENS, *De Achttiende Eeuw: Een Lage Maar Zware Belastingdruk*, in P. JANSSENS, H. VERBOVEN and A. TIBERGHEN, *Drie eeuwen Belgische belastingen : van Contributies, Controleurs en Belastingconsulenten*, Brussel, 1990, p. 43. Thousands of its inhabitants were used as ‘colonists’ to the Banat of Temesvar in the Habsburg monarchy, DHONDT, *Verlichte Monarchie*, III, p. 122.

⁶⁶ The Austrian part of Guelders (around Roermond) belongs to the Kingdom of the Netherlands at present.

⁶⁷ The duchy of Limburg is not to be confounded with the present Dutch and Belgian provinces of Limburg. The latter was mostly part of the Prince-Bishopric of Liège. The duchy of Limburg contained parts of the current Belgian province of Liège (including its capital, the city of Limbourg), most of which are now German-speaking and thus part of the German-speaking Community of Belgium, a constituent entity in the Belgian federal state (also called ‘Ostbelgien’). See C. LEJEUNE (ed.), *Band II: Tuche, Töpfe, Theresianischer Kataster 1500-1794*, Eupen, 2016.

⁶⁸ DHONDT, *Verlichte Monarchie*, III, p. 249.

⁶⁹ M. BAELEDE, *De Collaterale Raden onder Karel V en Filips II (1531-1578). Bijdrage tot de Geschiedenis van de centrale instellingen in de zestiende eeuw*, Brussel, 1965; H. DE SCHEPPER, *A latere principis u de su theniente general. De regeringsraden naast landsheren en landvoogden in de Habsburgse Nederlanden: leden, instellingen en algemene politiek, 1577/1580-1609*, Leuven, 2023.

⁷⁰ DHONDT, *Verlichte Monarchie*, III, p. 181.

Palace of the Coudenberg. It was in the sovereign's interest to staff these institutions with members of the local elites, who also controlled positions at the provincial and urban, local level: seats in the Council of State (nobility, clergy) and the Privy Council (Council of Brabant) were often offered to the elite of the duchy of Brabant⁷¹.

During Wynants's tenure as member of the High Council in Vienna, the governor-general was first prince Eugene of Savoy, most illustrious commander and statesman, who resided permanently in Vienna. In Brussels, the sovereign was represented by a minister plenipotentiary, the Marquis of Prié (1658-1726), a Savoyard⁷². In 1717, prior to his departure to Vienna, Wynants was part of a *Jointe sédentaire* created by Prié, to circumvent opposition in the Council of State and the Privy Council⁷³.

Eugene was succeeded by Archduchess Maria Elisabeth (1680-1741), sister of Charles VI, and thus of a sufficiently elevated birth to compare to Mary of Hungary (1505-1558) and Margaret of Austria (1480-1530), who had governed the Spanish Netherlands for Charles V, or Cardinal-Infant Ferdinand, who had governed for Philip IV (1609-1641)⁷⁴. The idea of appointing a close relative of the ruling sovereign

⁷¹ *Ibid.*, III, p. 195. The estates and domestic members of the councils resisted attempts to appoint 'strangers' from within the Habsburg monarchy in these positions. Knowledge of Flemish was a prerequisite to for a position in the Privy Council (*Ibid.*, III, p. 202). One should however be careful: several dignitaries in the Austrian Low Countries had foreign roots, e.g. Patrick MacNeny and Patrice-François de Neny, who were initially Irish (BERNARD, *Patrice-François de Neny*, p. 13-16). Spaniards having resided for a long time in the Netherlands were not seen as strangers either.

⁷² Hercule-Joseph-Louis Turinetti marquis de Prié (1658-1726), minister plenipotentiary 1716-1724, VAN GELDER, *Regime Change at a Distance*, p. 158-166. For the preparation of Maria Elisabeth's tenure, see K. VAN GELDER and S. HERTEL, Die Mission des Grafen Daun in Brüssel in 1725, in *Zeitschrift Für Historische Forschung*, 38.3 (2011), p. 405-439, <https://dx.doi.org/10.3790/zhf.38.3.405> [Accessed 25 February 2025]. On Wynants and Eugene, see also SEITSCHKEK, *Die Tagebücher*, p. 428.

⁷³ DHONDT, *Verlichte Monarchie*, III, p. 196-197.

⁷⁴ *Ibid.*, p. 182-184. From Maria Elisabeth on, the governors-general would always be a prince of the blood, conformably to the wishes of the elites in the Austrian Netherlands, as 'quasi irremovable Vice-Roys, incarnating hereditary monarchy' (*Ibid.*, p. 184). Maria Elisabeth, epitomizing the 'reaction to the *libertinage* of the French

could also lead to the dream of an own second branch of the Habsburg dynasty, which could revive the idea of an independent state, neutralised in international relations⁷⁵.

A further layer in Wynants's analysis was the 'regime change'⁷⁶ of 1713-1715 and the preceding period of war and occupation⁷⁷. Personal animosity and family interests explain sometimes acrimonious references to contemporaries such as count Bergeyck (1644-1725), 'the Belgian Colbert'⁷⁸. The latter had been the main minister of governor-general Max II Emanuel of Bavaria (1662-1726) at the end of the seventeenth century and during the War of the Spanish Succession⁷⁹. Bergeyck managed to unify the 'collateral councils' into a single organ at the beginning of the war. This idea would reverberate over the years under Austrian rule⁸⁰.

Regency', would have reigned 'with brilliance and prestige unknown since the days of Albert and Isabella [1598-1621]'. She 'cynically ignored' her brother's orders when they were not of her liking (*Ibid.*, all excerpts my translation).

⁷⁵ *Ibid.*, III, p. 184. The partition of Habsburg lands in the sixteenth century (with courts in Madrid, Vienna, Innsbruck, Graz...), and the idea of Philip IV of Spain (1601-1665) to request for the Austrian branch's second son to be elevated at court in Madrid, to keep a strict separation between Madrid and Vienna, are earlier examples of this type of reasoning. The establishment of Philip of Anjou, Louis XIV's second grandson, while his elder brother was supposed to succeed, created a similar situation. Irrespective of dynastic links, the existing institutional and constitutional framework as well as the local elites' interests ensured that the 'junior branch' could govern independently. See on this L. BÉLY, *La Société des Princes XVI^e-XVIII^e siècle*, Paris, 1999.

⁷⁶ VAN GELDER, *Regime Change at a Distance*. See recently R. VERMEIR, «Y en fin los flamencos son españoles, y no alemanes». La representación diplomática española en los Países Bajos austríacos, 1716-1725, in *Cuadernos Dieciochistas*, 25 (2024), p. 121-43, <https://dx.doi.org/10.14201/cuadecici202425121143> [Accessed 15 February 2025].

⁷⁷ H. VAN HOUTTE, *Les occupations étrangères en Belgique sous l'Ancien Régime*, Gand, 1930, I, p. 1.

⁷⁸ Y. SCHMITZ, *Bergeyck, le Colbert belge*, Nivelles, 1961.

⁷⁹ R. DE SCHRYVER, *Jan van Brouhoven Graaf van Bergeyck 1644-1725: een halve eeuw staatkunde in de Spaanse Nederlanden en in Europa*, Brussel, 1965; *Id.*, *Max II. Emanuel von Bayern und das Spanische Erbe: die Europäischen Ambitionen des Hauses Wittelsbach 1665-1715*, Mainz, 1996, CLVI.

⁸⁰ Interestingly, merging all expertise into one governing council... could also slow down debates, as everybody participated in discussions on matters on which one was

II. Wynants's Regalist Argumentation

I will examine representative parts of two of Wynants's main works, proceeding first with a classical external analysis of the manuscript copies retrieved and consulted (II A (1), II B (1)), to proceed to an internal analysis (II A (2), II B (2)) whereby – of course – the legal historical component will be predominant, as specifically a reading with a lawyer's eye can reveal the originality and thoroughness of his detailed and rigorous dissection of various layers of norms. The sovereign's rights are finely balanced with the privileges of the incorporated provinces of the Netherlands, as well as with those of his subjects, to whom the ruler owns protection. The Church's claims to jurisdiction and fiscal exemption are fended off to Wynants's best ability. To arbitrate between ruler, estates and subjects, the indispensable secular judge becomes more and more prominent, as the reader progresses throughout the folios.

A. Institutions

(1) *External analysis*

Besides the copy in the City of Antwerp's Heritage Library, I consulted several versions kept in the Royal Library. As noted already in 1949 by legal historian John Gilissen (1912-1988), this institution had no less than ten different copies⁸¹. Van Den Broeck characterises this as a typical practice in the eighteenth-century judicial world: manuscripts on *ius proprium* (the locally applicable norms in the various provinces of the Austrian Netherlands) could be copied 'countless times' and circulated 'hand in hand', even if they counted hundreds of folios⁸².

not necessarily well informed. This can be seen as a return to the prior universal *curia regis*, competent for all matters (DHONDT, *Verlichte Monarchie*, III, p. 195).

⁸¹ *Quelques livres anciens de droit belge: exposition organisée à la Bibliothèque de l'Université du 4 au 12 juin 1949*, Bruxelles, 1949, p. 71.

⁸² VAN DEN BROECK, *De Rechtsleer*, p. 12. A similar phenomenon in the seventeen authors discussed by Géraldine Cazals for French-speaking Flanders from the Peace of Aix-la-Chapelle to the end of the Ancien Régime: G. CAZALS, *L'arrestographie flamande:*

Wynants's *Mémoires*, written for the instruction of his second son Henri Guillaume⁸³, are structured in 18 chapters, starting from the scheme of government established in 1517 under Charles V, and ending with titles of nobility. The manuscript has been analysed using Transkribus to map concepts and recurrent expressions as well as a map of citations⁸⁴. In the end, however, the author's own pedagogic structure is the best guide. The narration starts as a 'beginner's guide to the *cursus honorum* under Charles VI', but evolves to an encompassing study of the sovereign's power.

The physical form and redaction style of the copies kept at the KBR vary. In one case, the manuscript has been split in two parts (*Tomes*)⁸⁵. In another case, the title has been altered, but not the contents of the *Mémoires*⁸⁶. Some of them have no pagination or foliotation at all, while others have a double system of foliotation/pagination⁸⁷. The most extensive copies have an alphabetical index, on top of the author's

jurisprudence et littérature juridique à la fin de l'Ancien Régime (1668-1789), Genève, 2018.

⁸³ VAN DEN BROECK, *De Rechtsleer*, p. 12.

⁸⁴ I am grateful to research students Leen Elewaut and Max Van den Bosch for their assistance in this process.

⁸⁵ *Mémoires manuscrits du Comte de Wynants, Avec les Notes du Baron de Neny sur les Affaires des Païs Bas*, BRUSSELS, KBR, *Manuscripts*, 12088. The first 'part' (f. 71-81) consists of an outline of the first eight chapters of Wynants's initial work. The second part contains the text in full.

⁸⁶ 'Notions générales sur l'Histoire des Pays-Bas Autrichiens, à commencer de Philippe le Bon, données par un Père à son Fils pour son instruction', BRUSSELS, KBR, *Manuscripts*, 18136. A first manuscript page indicates that the copy had belonged to Charles de Grave, 'en son vivant conseiller au ci-devant Conseil en Flandre' (meaning the Council of Flanders, the county of Flanders' main court of justice). This very neat copy runs along 247 folios (or 494 pages).

⁸⁷ 'Memoires Contenant des notions générales de tout ce qui concerne le Gouvernement[en]t des Pays-Bas, formés en 1730 par Mr. le Victome de Wynants Conseiller Régent du Conseil Suprême des dits Payx-Bas', Vienne, s.d., BRUSSELS, KBR, *Manuscripts*, 15973, belonging to the famous Ghent bibliophile Charles Van Hulthem (1764-1832), who purchased it in 1820, 358 p/179 f. The same (double) foliotation is used in the second volume of the 'Memoires manuscrits' (BRUSSELS, KBR, *Manuscripts*, 12088), as well as for the 'Notions générales' (BRUSSELS, KBR, *Manuscripts*, 18136).

chapter structure. In one case, a register of documents cited in the volume is present⁸⁸. It is not uncommon for eighteenth-century manuscripts to be bound in a volume with similar documents, e.g. the *Etat general de tous les Revenus et de toutes les charges des Pays-Bas Autrichiens*⁸⁹.

(2) *More than mere history*

Contrary to what one might assume in an embroiled and multifaceted institutional and normative structure, Wynants's writings are clear in opposing concepts, explaining rules and exceptions, and indicating the various parties' positions in argumentation. This is all the more remarkable, since his manuscript evidently seems to serve 'documentary' purposes, in an age where legal works of reference were scarce⁹⁰.

Following Jan Van Den Broeck's assessment of eighteenth-century legal doctrine on constitutional law, one might be tempted to equate public law writing in the Austrian Law Countries with a positivist analysis of past charters and legislation. This, after all, is also the main turning point of Bodin's *Methodus*, as highlighted by Martin Loughlin and other specialists⁹¹. However, when we dive deeper into the manuscript of the *Mémoires*, it becomes clear that one essential aspect ought not to be forgotten. Lacking teaching of legal history or public law as a proper subject in the law training at Louvain (where almost all lawyers in the region were obliged to study)⁹², Wynants applied reasoning from Roman law and theology in a subsidiary way. Van Den Broeck signalled the relative decline of Roman law as a suppletive source of law; the

⁸⁸ 'Memoires contenant de notions generales de tout ce qui concerne le Gouvernement des Pays-Bas formés en 1730 par Mr. Le vi Comte [sic] de Wynants Conseiller Regent dū [sic] Conseil supreme desd. Pays-Bas à Vienne', s.d., 379 p. BRUSSELS, KBR, *Manuscripts*, nr. 15972, acquired by Van Hulthem in 1811. The list runs from p. 365 to 379.

⁸⁹ 'Avertissement pour l'intelligence des Revenus et Charges de l'Etat', 96 f. BRUSSELS, KBR, *Manuscripts*, 15973.

⁹⁰ VAN DEN BROECK, *De Rechtsleer*, p. 12.

⁹¹ M. LOUGHLIN, *Foundations of Public Law*, Oxford, 2010, p. 56. <https://doi.org/10.1093/acprof:oso/9780199256853.001.0001>.

⁹² VAN DEN BROECK, *De Rechtsleer*, p. 5.

supposed lack of interest and attention by practitioners for legal literature and, finally, the decline in teaching of Roman law⁹³. However, these phenomena were more manifest at the end of the century, than in Wynants's own lifetime⁹⁴.

As we will see in the next section, Wynants kept his eye on the case law of the council of Brabant. Adagia (mostly without precise *sedes materiae*) seem the only relict of his training. However, the invocation of authors from doctrine, but essentially the reasoning in itself, indicate that the author's legal mind and its operations constitute the essential difference with a purely factual narrative. The added value of eighteenth-century doctrine normally resided in its capacity to bring together the various sources of law⁹⁵. Although judicial decisions were not motivated⁹⁶ and doctrine abhorred of lengthy theoretical dissertations⁹⁷, the conversational space of legal reasoning did know its *habitus* and gatekeepers, who could reduce legal uncertainty⁹⁸.

Wynants tries to settle points in dispute at all possible bifurcations. In essence, the legitimacy of institutions follows from the construction

⁹³ 'parmi les Gens de Robe il y en a plusieurs, qui font fort peu de cas des Recueils d'Arrêts, & qui en dépit des choses jugées ont recours indifferamment au Droit Romain' (preface to Du Laury's 1717 collection of case law for the Grand Council in Malines), VAN DEN BROECK, *De Rechtsleer*, p. 12, note 3.

⁹⁴ 'deficiente Iure prioprio, id est, Consuetudinibus Patriis & Constitutionibus Regiis, recurratur ad Jus Romanum, ceu Jus Commune' (if municipal law, i.e. customary law of the forefathers, and the constitutions of the principalities of the Low Countries, do not provide an answer, the judge shall have recourse to Roman law, or *ius commune*). DE WYNANTS, *Decisiones*, iii-iv.

⁹⁵ VAN DEN BROECK, *De Rechtsleer*, p. 5.

⁹⁶ Y. MORIGAWA, M. STOLLEIS and J.-L. HALPÉRIN (eds.), *Interpretation of Law in the Age of Enlightenment*, Heidelberg, 2011, <https://doi.org/10.1007/978-94-007-1506-6>.

⁹⁷ VAN DEN BROECK, *De Rechtsleer*, p. 199.

⁹⁸ The preface to Wynants's *Decisiones* (cf. supra) states that 'In Jurisprudencia nostra Belgica Consuetudinis quamdam speciem efficiunt Decisiones, quae à Majoribus Judiciis promanant; nec tantum in illa ipsa Causa, verum etiam in similibus valent, & Juris effectum sortiuntur'. Although judgments, pronounced by several judges of the Council, only apply to the parties in the litigation, they can influence future outcomes in similar cases. DE WYNANTS, *Decisiones*, iii.

of the social contract assumed by Wynants between the sovereign of the Austrian Netherlands and his (or her) subjects. This contractual relationship explains the binding force of legislation emanating from the sovereign, who is bound (by natural and divine law, in certain cases in provincial constitutional law) to use his powers in a targeted, objectives-linked way. Explaining legislation, and balancing it against (homologated) custom, logically leads to the presence of domestic legal scholars⁹⁹. Furthermore, the state-Church relationship and the influence of canon law on Western legal thought in general¹⁰⁰, explain the presence of canonists, both in Wynants's treatise and in the doctrinal sources cited.

In Martin Schennach's recent work on the *Jus publicum specialissimum*, several authors (both 'local' and active in the *Reichspublizistik*, at the level of the Empire) are analysed. The parallels with Wynants's writing are unmistakable, as all authors navigate the intersection of historical and legal scholarship. The famous Johann Jakob Moser (1701-1785) is cited as an example: one of his earlier works (1729) treats the constitution of Württemberg, but only as a collection of 'curiosa'¹⁰¹. Ten years later, he developed a structure to describe the constitutional law of territorial principalities in the Empire: a historical chapter; a chapter devoted to the reigning dynasty; one treating succession; a chapter on the relationship with the Empire; one on the other members of the Empire (*Reichsstände*); one on states outside of the Empire; one on the *Stände*; and, finally, one on the rights and freedoms granted to the *Stände*¹⁰². Even a cursory examination of Wynants's treatise reveals

⁹⁹ G. MARTYN, *Het Eeuwig Edict van 12 juli 1611 : zijn genese en zijn rol in de verschriftelijking van het privaatrecht*, Brussel, 2000.

¹⁰⁰ H.J. BERMAN, *Law and Revolution. The Formation of the Western Legal Tradition*, Cambridge (Massachusetts), 1983.

¹⁰¹ SCHENNACH, *Austria inventa?*, p. 80. On Moser: M. WALKER, *Johann Jakob Moser and the Holy Roman Empire of the German Nation*, Chapel Hill, 1981); S. WENDEHORST, Johann Jakob Moser: der Reichspublizist als Völkerrechtler, in S. WENDEHORST (ed.), *Die Anatomie früneuzeitlicher Imperien. Herrschaftsmanagement jenseits von Staat und Nation: Institutionen, Personal und Techniken*, Berlin, 2015, p. 303-324, <https://dx.doi.org/10.1515/9783486839425.303> [Accessed 15 February 2025].

¹⁰² SCHENNACH, *Austria inventa?*, p. 81.

the considerably broader scope of his analysis, addressing issues such as jurisdictional disputes with the Church, finance and taxation, as well as economics and trade¹⁰³.

Wynants distinguished between the various sources from which he draws either a narrative element or a legal argument. The author signals where theology, legal doctrine (Stockmans (see higher), Zypaeus¹⁰⁴, Van Espen¹⁰⁵, ‘*les canonistes*’, Sarpi)¹⁰⁶, writings of judges (Lamoignon¹⁰⁷, de Pape, Rose), historical literature (e.g. Bentivoglio, Strada)¹⁰⁸, personal experience (‘*je*’, ‘*moi*’, conversations), original archival

¹⁰³ DE WYNANTS, Mémoires, f. 262-274. ‘*Véritable encyclopédie de la situation des Pays-Bas au début du XVIII^e siècle, au point de vue tant politique et économique que juridique, fiscal et religieux et culturel*’, CUVELIER, Enquête, p. 132.

¹⁰⁴ Zypaeus graduated at the University of Leuven in law in 1604 and made an ecclesiastical career in the bishopric of Antwerp. His *Notitia juris belgici* (1635) gives a systematic overview of ‘Belgian’ law, combining legislation and custom, following the structure of Justinian’s *Codex*. R. DEKKERS, ZYPAEUS (François), in *Biographie Nationale de Belgique*, Bruxelles, 1938, XXVII, col. 475-480; R. LESAFFER, Vernulaeus, Zypaeus en Tuldenus: Het recht van de oorlog in de Spaanse Nederlandens tijdens de laatste fase van de Tachtigjarige Oorlog (1621-1648), in *Ex Officina*, 8 (1991), p. 32-70.

¹⁰⁵ ‘*le plus grand de nos canonistes*’, F. LAURENT, *Van Espen : étude historique sur l’Église et l’État en Belgique*, Bruxelles, 1860, p. 241; J. ROEGIERS, *De Leuvense theologen en de Verlichting. Onderwijs, wetenschap, polemiek en politiek van 1730 tot 1797*, Leuven, 1979, I, p. 18-30. Hervé Hasquin classified Van Espen as a forerunner of ‘josephinism’, or Joseph II’s anti-clerical policies, see H. HASQUIN, *Het jozefinisme en zijn wortels*, in H. HASQUIN (ed.), *Oostenrijks België 1713-1794*, Brussel, 1987, p. 205-207.

¹⁰⁶ Erroneously spelled as ‘Pietro’, DE WYNANTS, Mémoires, f. 326. P. SARPI, *Les droits des souverains, défendus contre les excommunications et les interdits des papes*, La Haye, Scheurleer, 1721; S. CATTELAN, The Defence of Venetian Dominion over the Adriatic Sea: Situating Paolo Sarpi c 1600-1625, in *Comparative Legal History*, 9.2 (2021), p. 177-207, <https://dx.doi.org/10.1080/2049677X.2021.2001968> [Accessed 15 February 2025].

¹⁰⁷ J.-L. THIREAU, Les arrêtés de Guillaume de Lamoignon : une œuvre de codification du droit français ?, in *Droits*, 39.1 (2004), p. 53-68, <https://dx.doi.org/10.3917/droit.039.0053> [Accessed 15 February 2025].

¹⁰⁸ DE WYNANTS, Mémoires, f. 276; CROON, *Orde en informatie*, p. 54, note 35.

documents¹⁰⁹ or published pieces of legislation¹¹⁰ constitute the bedrock of his argument. Unfortunately, references are rarely precisely pinpointed. As many lawyers of his own time, he had the *Placards* (or *Placcaeten*) of the county of Flanders¹¹¹ and the duchy of Brabant at his disposal¹¹². In 1699, to oppose the governor-general, Max II Emanuel of Bavaria, the Brussels guilds and corporations ordered the collection *Luyster van Brabant*¹¹³. Interestingly, Wynants thought he could well

¹⁰⁹ E.g. ‘j’ai ramassé autant que j’ai pu les instructions ouvertes et secrètes [sic] des différens gouverneurs généraux depuis et inclus l’archiduc Albert [...] celle de l’archiduchesse Isabelle [...] la particuliere et la secrète [sic] du Cardinal Infant [...]’ DE WYNANTS, Mémoires, f. 128. Certain documents were, however, strictly private, and even Wynants, as councillor of the sovereign, could not have full access, e.g. on the instructions of Maria Elisabeth: ‘pour autant qu’elles me sont connües [...] sur secrèt [sic] entre ces augustes personnes [Charles VI and his sister] que j’ignore; aussi bien que la communication secrète [sic] qu’il y a entre eux en matiere de Gouvernement’ (*ibid.*, 130). See also Wynants’s reference to the ‘notes’ of the Privy Council, wherein *chef-président* de Pape’s mémoire argues that a separate ‘*garde des sceaux*’ would not be necessary for the Spanish Low Countries. *Ibid.*, 138. For the right to allot abbey and dignities in the Netherlands: ‘je dois m’en rapporter à mes Notes, du Conseil Suprême [...] j’y vois, sous la date du 28 fevrier 1668. en Espagnol, ce qui suit traduit en françois’, *Ibid.*, f. 305.

¹¹⁰ E.g. on pope Leo X’s bull of 4 July 1515, establishing mandatory consent by the temporal ruler for appointments of abbots and abbesses: ‘La Bulle se trouve au 1^{er} tome des Placcards de Brabant, Fol^o III, si incorrectement imprimée qu’elle n’est presque pas intelligible. Elle se trouve mieux dans l’imprimé des coutumes de Namur in 4.^e fol^o 248’, *Ibid.*, f. 304.

¹¹¹ *Derden Placcaet-Boeck van Vlaenderen, Inhoudende de Placcaeten, Ordonnancien, Reglementen, Tractaeten, Alliancien, Ende Andere Edicten, Gheemaneert van Spagnien, Ende van Hunne Doorluchtigste Voorsaeten Graven van Vlaenderen, Ende Souveraine Princen van Dese Nederlanden by Een Vergadert Door Order van Hooghe Ende Moghende Heeren Den President Ende Raeden Vande Selve Provincie*, Ghendt, 1685.

¹¹² *Placcaeten Ordonnantien Landt-Chartres Blyde-Incomsten Privilegien, Ende Instructien by de Princen van Dese Neder-Landen, Aen de Inghesetenen van Brabandt, Vlaenderen, Ende Andere Provincien, t’sedert t’iaer M.CC.XX. Wtgeheven, Gheacordeert, Ende Verleent, v Ande Welcke Inde Voorgaende Twee Placcaet-Boecken Gheen Mentie Gehmaect En Wordt [...]. Vergadert, Ende Onder Bequame Titulen in Ordre Ghestelt Door Antonium Anselmo, Voor Desen Advocaet Tot Antwerpen, Ende Teghenvoordelijcken Schepene Aldaer*, Antwerpen, 1648.

¹¹³ J.B. ANSEMS, *Den Luyster ende Glorie van het Hertoghdom van Brabant, her-stelt door de Genealogique Beschryvinghe van desselfs Souveryne Princen, ende door het*

have avoided these ‘*émotions*’. If only the Governor-General had followed his suggestion to change the whole city magistrate...¹¹⁴ Publications of case law, such as du Lauri’s collection on the Great Council of Malines or Stockmans’s on the Council of Brabant, are equally cited¹¹⁵. For Brabant, Jean-Baptiste Christyn (1635-1707)¹¹⁶ and Christophe Butkens (1590-1650)¹¹⁷ are frequent as well, for ecclesiastical history, Aubertus Miraeus (1573-1640). We will see that Wynants tended to exercise (modest) source criticism, constructing a historical narrative similar to the operations of his contemporaries in the Holy Roman Empire¹¹⁸.

ontdecken van den schat der Privilegien, Ordonnantien, ende soo Rechts, en Staet-Kundige, als Oeconomique Reglementen der stad Brussel, Brussel, 1699; CROON, *Orde en informatie*, p. 48-49; P. LENDERS, *De Zuidelijke Nederlanden, 1715-1740. Politieke ontwikkeling*, in M. CLOET et al. (eds.), *Algemene Geschiedenis der Nederlanden*, Bussum, 1980, IX, p. 63.

¹¹⁴ DE WYNANTS, *Mémoires*, f. 403. See on the revolt against Prié: VAN GELDER, *Regime Change at a Distance*, p. 217-235.

¹¹⁵ E.g. DE WYNANTS, *Mémoires*, f. 335; R.-A. DU LAURI and P.-C.-M. DE SAINT VAAST, *La Jurisprudence des Pais-Bas Autrichiens établie par les Arrêtés du Grand Conseil de Sa Majesté Impériale et Catholique, Residant en la Ville de Malines; Auxquels sont ajoutés quelques decrets portés au Conseil Privé de Sadite Majesté*, Bruxelles, 1717.

¹¹⁶ J.-B. CHRISTYN, *Jurisprudentia heroica sive De iure Belgarum circa nobilitatem et insignia, demonstrato in commentariis ad edictum... Alberti et Isabellae emulgatum 14. decembris 1616. Liber prodromus*, Bruxellis, 1663.

¹¹⁷ C. BUTKENS, *Trophées tant sacrés que profanes du duché de Brabant, contenant l’origine, succession et descendance des ducs et princes de cette maison ... Ensemble ... la description des villes, franchises & baronnies de Brabant ... L’institution du Conseil souverain de Brabant, et autres cours residentes a Bruxelles. Les magistrats des quatres villes capitales, sçavoir Louvain, Bruxelles, Anvers & Bois-le-Duc ... Avec les preuves servant à l’entiere verification. Par Christophe Butkens, prieur du monastere de S. Sauveur ordre de Cisteaux en Anvers. Enrichis d’un grand nombre de figures en taille-douce*, La Haye, 1724.

¹¹⁸ Schennach situates similar Austrian attempts (in the debate with Bavaria on Austria’s belonging to Bavaria prior to 1156) as an ‘anticipation of the historical method of Göttingen and Halle’: SCHENNACH, *Austria inventa?*, p. 87. On the legal-theoretical convulsions of interpretation: J. SCHRÖDER, *Recht als Wissenschaft. Geschichte der juristischen Methodenlehre in der Neuzeit*, München, 2020, II, p. 134-170.

(3) *Ecclesiastical and Secular Jurisdiction*

Among the eighteen chapters of the *Mémoires* on the institutions of the Austrian Netherlands, Wynants's defence of secular rule deserves our attention. He overtly affirms his sovereign's preponderance over both local and Roman clergy.

a. *Redrawing the Ecclesiastical Map (Charles V, Philip II) and Ensuring a 'Dowry'*

Wynants opened the eleventh chapter of his work, devoted to dignities, beneficia and ecclesiastical jurisdiction with an overview of the ecclesiastical institutional structure in the Low Countries since the Council of Trent¹¹⁹ and the reforms demanded by Philip II of Spain in 1559¹²⁰. To ensure sufficient revenues for the new seats (besides the traditional Tournai¹²¹ and Liège¹²², the latter outside of the Spanish Netherlands: Ghent, Antwerp, Ypres, Namur, Bruges and Roermond), they received a '*dot*' (literally: dowry). Hence, the archbishop of Malines received the title of abbot of Affligem, as well as half of its revenues. The bishop of Antwerp held a seat on the estates of Brabant as abbot of Saint Bernard. As a result of this intrusion in their community, the

¹¹⁹ W. FRANÇOIS and V. SOEN (EDS.), *The Council of Trent: Reform and Controversy in Europe and beyond (1545-1700)*, Göttingen, 2018.

¹²⁰ The creation of the bishoprics pertained to the papacy's competence, as Wynants explained with references to bulls by Paul IV (1559) and Pius IV (1651 [sic], which appears unlikely in view of the latter's tenure, rather 1561). DE WYNANTS, *Mémoires*, f. 276.

¹²¹ Tournai used to be '*suffragant*' of the archbishopric of Reims, but this hierarchical link was moved to Cambrai in 1559 (at that time, Cambrai was still under Philip II of Spain's sovereignty). *Ibid.*, f. 281.

¹²² The diocese of Liège lost a considerable part of its territorial reach in Namur and Hainault at this occasion, see J.-L. KUPPER, *Episcopus-advocatus*. Sur l'exercice du pouvoir épiscopal dans l'ancien évêché de Liège, in *C@hiers du CRHiDIVII* 1997, <https://popups.uliege.be/1370-2262/index.php?id=1229> [Accessed 20 December 2024]; J. DURY, *La mise en place du réseau paroissial dans le diocèse de Liège (des origines à 1559). Étude de géographie historique*, 2024) <https://orbi.uliege.be/handle/2268/321402> [Accessed 6 January 2025]. My thanks to Antoine Leclère for this reference.

monks recovered the right to elect a second abbot, who equally held a seat at the estates, ‘*comme réellement pourvû de la dignité abbatiale*’¹²³.

The secular authorities’ interventions in the past, under the Spanish branch of the House of Habsburg transpire once more with the mention of Charles V’s earlier decision to move the chapter of the Saint Bavo abbey to the Saint John parish in Ghent. As a punishment for the urban insurrection of 1539-1540, a ‘*forteresse*’ was erected on the abbey’s site¹²⁴. The separation of the Low Countries and the French annexations (1668¹²⁵, 1678¹²⁶) had deprived the primate of these lands, the archbishop of Malines, from his oversight over the archbishops of Utrecht and Cambrai¹²⁷. Only the bishoprics of Ghent, Antwerp, Ypres, Namur, Bruges and Roermond remained.

¹²³ DE WYNANTS, *Mémoires*, f. 277. Hence, the resilience of pre-modern elective practices in an ecclesiastical community could be serious enough to limit decisions taken by the pope at royal request. See on this phenomenon: O. CHRISTIN, *Vox Populi : une histoire du vote avant le Suffrage Universel*, Paris, 2014. The benedictine abbey of Floreffe, in the newly established bishopric of Namur, on the contrary, managed to escape absorption, and convinced pope Paul V to switch to the Abbey of Saint Gerard as source of revenue. DE WYNANTS, *Mémoires*, f. 279.

¹²⁴ *Ibid.*, f. 278.

¹²⁵ Treaty of peace between Charles II of Spain and Louis XIV, Aix-la-Chapelle, 2 May 1668, DU MONT DE CARELS-CROON and ROUSSET DE MISSY, *CUD*, VII/1, nr. XXXV, p. 89-90.

¹²⁶ Treaty of peace between Charles II and Louis XIV, Nijmegen, 17 September 1678, *ibid.*, nr. CLXXVI, p. 365-374. Dating annexations by reference to a treaty of cession is an anachronism with regards to the Old Regime, as Hubert Van Houtte has convincingly demonstrated in 1930 (in a response to the modern codification of the law of occupation and the laws of war with the Hague Conventions of 1899 and 1907, followed by their violation by the German occupant during the Great War). While the conflict was still ongoing, oaths of fidelity were sworn and confirmations of privileges given between conquerors and representative bodies in the Southern Low Countries. The modern law of belligerent occupation would only allow for a transfer of sovereignty once a peace treaty would have been reached. For the sake of simplicity, we however chose to keep to the treaties, as they are the most common reference to the reader. Van Houtte’s work was a response to the historical conceptions of public international lawyers as Albéric Rolin (1843-1937), Johann Kaspar Bluntschli (1808-1881) or Ernest Nys (1851-1920). See VAN HOUTTE, *Les Occupations (I)*, I, vii-xxxiii.

¹²⁷ DE WYNANTS, *Mémoires*, f. 276.

Wynants's use of history (notably Miraeus) in this passage is illustrative of his reading with a jurist's eye: the actual impact on property, taxation and participation in provincial government is the focal point of the analysis of documents dating back almost two centuries. The ensuing part of the narrative was even more contentious, as the competence *ratione loci* of the new bishoprics was concerned. Both the pope and the secular ruler insisted on separating the new seats from the older jurisdictions of Liège, Cologne (both immediate rulers of the Holy Roman Empire, the latter even an elector) and Cambrai (part of the Kingdom of France). Their opposition to the new settlement was met with 'contempt' (*mépris*) in both Rome and Brussels¹²⁸.

Subsequent cessions to the Dutch Republic (in 1648), France or Brandenburg-Prussia (1713)¹²⁹ reduced the territory on which the bishops of Ghent, Antwerp, Namur and Roermond exercised their competence, thus also their revenue. The latter, as well as that of Ypres, having suffered the most, Charles VI had even been obliged to allot a revenue of twenty thousand florins to the bishop. The inevitable overlaps, conflicts and divisions of jurisdiction started with the bishopric of Tournai. Ten parishes in Tournai were divided by the Scheldt. On the East bank ('*qui regardent la Flandre*'), the bishop of Tournai was competent. On the West bank ('*situées du côté regardant le Hainaut*' [sic])... the archbishop of Cambrai held sway¹³⁰. Tournai counted among the '*droit de régale*' of the emperor. Hence, when the bishopric was vacant, he was entitled to receive its income¹³¹. This was surprisingly not the

¹²⁸ DE WYNANTS, 'Mémoires contenant des notions générales [UGent]', f. 280.

¹²⁹ Treaty of peace between Louis XIV and Frederick William I of Brandenburg-Prussia, Utrecht, 11 April 1713, DU MONT DE CARELS-CROON AND ROUSSET DE MISSY, *CUJUS*, VIII/1, nr. CLIV, p. 356-362.

¹³⁰ The archbishop of Cambrai's jurisdiction being exercised by a '*Doien de la Chretienmeté dit de St Brixé*', DE WYNANTS, *Mémoires*, f. 281.

¹³¹ Wynants noted that Charles VI delegated this to his sister, governor-general Maria-Elisabeth, as governor-general, as a specific example of her '*instructions amples et generales*', even described as wider than Isabella Clara Eugenia's powers (although she had been ceded sovereignty by her father, Philip II). DE WYNANTS, *Mémoires*, f. 130; G. MARTYN, How Sovereign were the Southern Netherlands under the Archdukes?, R. LESAFFER (ed.), in *The Twelve Years Truce (1609). Peace, Truce, War and Law*

case for the ‘newly’ created seats in Ghent, Antwerp, Namur, Bruges, Ypres or Roermond, since Philip II had omitted to claim this right. Appointing the bishops or the archbishop of Malines, however, was within the sovereign’s perimeter, as conceded by the papacy.

Pope Clement XI (r. 1700-1721) contested this as far as Ypres was concerned, when Joannes Baptista de Smet (1674-1741)¹³² was due to be appointed at this seat. Wynants witnessed the treatment of this case by the High Council for the Austrian Netherlands in Vienna. The court of Rome based its argument on the peace treaties of Utrecht, Rastatt and Baden, whereby France had to relinquish this city¹³³, which it had annexed at the peace treaties of Nijmegen in 1678/1679.¹³⁴ With regards to the settlement reached in Nijmegen between Charles II of Spain and Louis XIV¹³⁵, the Court of Rome claimed that the new sovereign of the Spanish Netherlands, Charles VI, was obliged to issue

in the Low Countries at the Turn of the 17th Century, Leiden/Boston, 2014, p. 196-209, https://dx.doi.org/10.1163/9789004274921_011 [Accessed 15 February 2025]; A. ESTEBAN ESTRÍNGANA, The “Perfect Principality” of the Archdukes Albert and Isabella, in E. DE BOM, R. LESAFFER, and W. THOMAS (eds.), *Early Modern Sovereignities. Theory and Practice of a Burgeoning Concept in the Netherlands*, Leiden/Boston, 2020, p. 167-218, https://dx.doi.org/10.1163/9789004446267_008 [Accessed on 15 February 2025]. At the same time, in another manuscript, Wynants suggested that the Archduchess was being tricked constantly by her advisors, ‘*on lui représente les objets tout autrement qu’ils ne sont, et souvent le piège est si finement tendu qu’on ne s’en aperçoit que lorsqu’il n’est plus temps d’y remédier*’, BRUSSELS, Belgian State Archives, *Manuscripts*, 2169, quoted in CROON, *Orde en informatie*, p. 140).

¹³² <https://www.catholic-hierarchy.org/bishop/bdsmet.html> [Accessed on 15 February 2025].

¹³³ GACHARD, *Tome troisième*, xliii. Art. XII, Treaty of peace between Louis XIV and the Dutch Republic, Utrecht, 11 April 1713, DU MONT DE CARELS-CROON and ROUSSET DE MISSY, *CUD*, VIII/1, nr. CLVI, p. 366-377. Art. XXI, Treaty of peace between Charles VI and Louis XIV, Rastatt, 6 March 1714, *Ibid.*, VIII/1, nr. CLXX, p. 415-423. Art. XXI, Treaty of peace between Charles VI, the Holy Roman Empire and Louis XIV, Baden, 7 September 1714, *ibid.*, nr. CLXXIV, p. 436-444.

¹³⁴ L. BÉLY, La frontière au temps de la Paix d’Utrecht : réalités et représentations, in O. RYCKEBUSCH and R. OPSOMMER (eds.), *Guerre, Frontière, Barrière et Paix en Flandre*, Ieper, 2014, p. 175-185.

¹³⁵ Treaty of peace between Charles II and Louis XIV, Nijmegen, 17 September 1678, DU MONT DE CARELS-CROON and ROUSSET DE MISSY, *CUD*, VII/1, nr. CLXXVI,

a new ‘*indult*’, just as Louis XIV had done when Ypres came under French sovereignty. Wynants and his colleague Jean-Remacle de Thisquen¹³⁶ were charged with drafting a ‘*mémoire pour détruire les raisons ou prétextes avancés*’ by three different libels produced by the papacy. They fed the argumentation of Michael Friedrich Graf von Althann, Charles VI’s ambassador at the papal court¹³⁷. Wynants enjoyed his triumph against the court of Rome, ‘*un petit coup de maître*’, since the opponent was ‘*dure à l’éperon d’avouer son tort*’¹³⁸. Even more, this ought to be of service when the bishopric of Tournai would come to be vacant¹³⁹. Or... if Charles VI could become sovereign in Cambrai (ceded to Louis XIV 1678), Arras (1659) or Saint-Omer (1668)¹⁴⁰.

p. 365-374. The manuscript does not indicate the precise article referred to, this might be artt. XXIV and XXV.

¹³⁶ Created viscount by Charles VI in 1719, Thisquen had served Philip V of Spain during the War of the Spanish Succession, see J.C.J. DE VEGIANO D’HOVEL, *Nobiliaire des Pays-Bas, et du comté de Bourgogne, contentant les Villes, Terres & Seigneuries, érigées en titre de Principauté, Duché, Marquisat, Comté, Vicomté & Baronnie: les Personnes qui ont été honorées de la dignité Chevalier: les Familles nobles, qui ont obtenu des Ornemens à leurs Armes, & le Nom & les Armes de ceux qui ont été annoblis ou réhabilités: par les Princes des augustes maisons d’Autriche et de Bourgogne Depuis le Règne de Philippe le Bon, Duc de Bourgogne, & de Brabant, &c. jusqu’à la mort de l’Empereur Charles VI. Rapportées par ordre chronologique*, Louvain, 1760, II, p. 676; VAN GELDER, *Regime Change at a Distance*, p. 179.

¹³⁷ H. BENEDIKT, Althann, Michael Friedrich Graf von, in *Neue Deutsche Biographie*, 1 (1953), S. 220 [Online-Version]; URL: <https://www.deutsche-biographie.de/pnd116294086.html> [Accessed 15 February 2025]. The manuscript erroneously describes this person as ‘Cardinal’.

¹³⁸ DE WYNANTS, *Mémoires*, f. 283. The appointment of a papal nuntius in Brussels, with the accession of Maria Elisabeth as governor-general, created a complementary diplomatic channel, as she had been entrusted with the right to appoint abbots and even bishops. *Ibid.*, f. 131.

¹³⁹ *Ibid.*, f. 284.

¹⁴⁰ Note that Wynants did not word this as a recovery of sovereignty (irredentism), *Ibid.*, f. 284. The shadow of the lost unity of the Seventeen Provinces looms large across the manuscript, e.g. when discussing the bishopric of Bois-le-Duc (’s Hertogenbosch), ceded in 1648, the pope – and thus not the duke of Brabant – appointing a vicar-general for those parts not under Dutch ‘*domination*’ from 1682, something Wynants lively resented, as he considered it mandatory to consult the secular

b. *Foreign Bishops and their Jurisdiction in the Austrian Netherlands*

Another tortuous issue was the (ecclesiastical) jurisdiction of the Prince-Bishop of Liège¹⁴¹, whose competence reached into the duchy of Limburg, parts of the duchy of Luxemburg ('à savoir sur la pluspart des Ardennes'), part of the duchy of Brabant, the town of Chimay in Hainault, within Tournai, and for one of the parishes of Fontaine-l'Évêque dedicated to Saint Vaast. Moreover, Wynants also saw the bishop of Arras (France since 1659) exercise 'quelque jurisdiction' in this area¹⁴². Likewise, the archbishop-elect of Cologne's power reached to Luxemburg, Saint-Vith, Cronenburg and Schleiden¹⁴³, as well as parts of the country of Rolduc¹⁴⁴. His colleague of Trier (equally an ecclesiastical elector in the Holy Roman Empire) could boast to have spiritual jurisdiction in Luxemburg as well. The (French, since 1559) bishop of Metz had the same for the lordship of Thionville¹⁴⁵ and Rodemacheren¹⁴⁶, his colleague of Verdun for Montmédy.¹⁴⁷ The situation for the duchy

ruler before obtaining papal confirmation for these appointments, as for the ecclesiastical councillors at the Great Council of Malines) or the university of Douai (ceded in 1668) and its relationship to the university of Leuven, *Ibid.*, f. 284, 346-347. Four years later (22 July 1622), the Council of Luxemburg (court of justice in the duchy) permitted the vicar general of Liège to exercise jurisdiction against the 'grands scandales et excès par la trop licentieuse vie d'aucuns Curez & Personnes Ecclesiastiques'. *Recueil d'édits, ordonnances, déclarations et reglemens, concernant le Duché de Luxemburg & Comté de Chiny*, Luxembourg, 1691, p. 266. Wynants regretted that the archdeacon of Famenne was allowed by the same Council to proceed in Luxemburg, without commissioners. Ergo: the provincial council of justice had not followed the precedent of the Archdukes (the sovereign!). *Ibid.*, f. 289.

¹⁴¹ For the borders between Liège, the Austrian Netherlands and France: S. DUBOIS, *Les bornes immuables de l'État: la rationalisation du tracé des frontières au siècle des Lumières (France, Pays-Bas autrichiens et Principauté de Liège)*, Heule, 1999.

¹⁴² DE WYNANTS, *Mémoires*, f. 286.

¹⁴³ Both presently in the German Federal Republic.

¹⁴⁴ Presently in the Kingdom of the Netherlands.

¹⁴⁵ Presently in the French Republic. Thionville was ceded to France in 1659, but this concerns the 'lordship of Thionville'.

¹⁴⁶ Just South of the present-day Grand-Duchy of Luxemburg, now in the French Republic.

¹⁴⁷ Presently in the French Republic.

of Luxemburg was so complex, with also the archbishop of Reims and the bishop of Namur exercising jurisdiction, that no less than three archbishops and four bishops competed with each other, ‘*ce qui ne peut manquer de causer des inconvénients*’¹⁴⁸. Wouldn’t a separate bishopric have been suitable for this considerable province? Philip II would have considered the matter, for instance by reserving the revenue of the abbey of Orval as ‘*dot*’. However, the archbishop-elect of Trier managed to stall the operation. An attempt in 1721, on which Wynants advised in the High Council, likewise failed¹⁴⁹.

Without unification in a separate bishopric, potential incidents between the secular ruler and the various ecclesiastical authorities were not excluded. Wynants explained that for every visit, either in person or by a vicar-general, permission had to be obtained from the Brussels government. A commission accompanied, assisted and – of course – narrowly investigated the delegation’s behaviour: ‘*les hauteurs du Prince* [...]’, ‘*les loix du Pays*’ and ‘*les droits des sujets*’ could not be infringed upon. The example of 1618 is given, whereby Albert and Isabella granted permission for abbot Pierre Richardot of Echternach to receive the bishop and count of Verdun.¹⁵⁰ Wynants is not astonished that bishops and their courts were not happy on being accompanied by an embarrassing or restraining company, and signaled that an attempt by the elector of Trier¹⁵¹ to have the abbey of Orval visited by his vicar-general, had been blocked by Prié, on the emperor’s order. Even if his master was an elector of the Holy Roman Empire, the vicar-general was forced to retreat.

Foreign bishops (cf. infra: Trier, Liège, Cologne...) had to appoint an ‘*official forain*’ for cases within the duchy of Brabant, as prescribed

¹⁴⁸ DE WYNANTS, Mémoires, f. 287.

¹⁴⁹ *Ibid.*, f. 288.

¹⁵⁰ *Ibid.*, f. 288-289. Ordinance of 20 August 1618. *Recueil d’édits, ordonnances, déclarations et reglemens, concernant le Duché de Luxembourg & Comté de Chiny*, p. 263-264.

¹⁵¹ DE WYNANTS, Mémoires, f. 290. No exact date is given, but the archbishop-elect is likely Franz Ludwig of the Palatinate-Neuburg (1664-1732, r. 1716-1729): <https://www.catholic-hierarchy.org/bishop/bpzn.html> [Accessed 15 February 2025].

by the additions to the *Joyeuse Entrée*¹⁵². These rules had to be jealously guarded: the bishop of Liège attempted to circumvent his own ‘*official forain*’ established in the duchy of Limburg. Papers were sent to Liège, where the archdeacon judged the case immediately, and asked the ‘*official forain*’ to publish the verdict. Yet, ‘*celui-ci plus habile que lui*’ refused. This meant the dismissal of the ‘*official forain*’... Wynants dryly remarked that the ‘*esprit Liegeois est fort imperatif*’¹⁵³. The case of the ‘*official forain*’ was brought to the Council of Brabant (which was competent for Limburg)¹⁵⁴. Both the judicial decision of the Liège archdeacon and the decision to revoke the judge in Limburg were cancelled. The Council of Brabant, ‘*par forme de loi*’ ordered that these judicial appointments ought to be ‘*à vie et irrévocables*’. Abuses by ‘these strangers’ had to stop. Even the archbishop of Malines was obliged to instruct and decide cases in Brabant with a separate official, having his seat in ‘*BasBrugghe*’, far away from the archepiscopal palace in Malines¹⁵⁵! Likewise, for Hainault, the archbishop of Cambrai had his ‘*official forain*’ in Mons¹⁵⁶.

c. *The Sovereign’s Grip on Ecclesiastical Dignities and Beneficia*

Section 4 of chapter 11 starts with an indication whereby Wynants refers the reader – his son – to doctrine for the theoretical foundations: canon Chokier is mentioned as the author of a treatise on the *ius advocacionis*, just as Franciscus Zypaeus as well as the inevitable Van Espen, to whose Jansenist, Augustinian ideas Wynants was sympathetic¹⁵⁷. The sovereign protects churches and monasteries, without asking anything

¹⁵² DE WYNANTS, Mémoires, f. 322. The reader might notice that Wynants treats these aspects in a separate section of chapter 11. For reasons of coherence, the question is treated in the present section.

¹⁵³ *Ibid.*

¹⁵⁴ On this issue: VAN GELDER, *Regime Change at a Distance*, p. 165-169.

¹⁵⁵ DE WYNANTS, Mémoires, f. 323.

¹⁵⁶ Conflicts with Arras and Liège used to exist in the county, but successive French annexations in the seventeenth century rendered this obsolete. *Ibid.*, f. 324. The archbishop-elect of Trier contested the right of the Council of Luxemburg to hear cases in first instance concerning clerics. *Ibid.*, f. 325.

¹⁵⁷ *Ibid.* f. 295.

in return: *'une espèce d'advocatie honnoraire [sic] non onéreuse'*. For Brabant, this would go back to emperor Conrad II of the Holy Roman Empire (990-1039)¹⁵⁸. Wynants uses the imperial concession as legal basis for the exclusive jurisdiction of the Council of Brabant over abbots, abbesses and monasteries in the duchy, who had no *'autres juges actifs et positifs'*¹⁵⁹.

The right of appointment (*'droits de nomination'*) starts with a treatment of the right to erect or create new bishoprics. Referring to the bull of 1559 (*cf. supra*) used by Philip II, Wynants keeps this firmly in the sovereign's hands¹⁶⁰. The *'dotation'* of these bishoprics found its origin in the prince's cashier, and only partly in the revenues from abbeys, monasteries and convents, whose *'supérieurs'* were classically appointed by the temporal sovereign, as they had been 'generously' founded by the pious rulers¹⁶¹.

More quarrels arose regarding existing dioceses. Besides the issue of Ypres (*cf. supra*), Wynants recalls the issues that arose during the War of the Spanish Succession. Pope Clement XI Albani (r. 1700-1721) was militarily threatened by the Austrian Habsburgs (emperor Leopold I, emperor Joseph I), mostly from 1706-1707 on, while Archduke Charles of Habsburg (from 1711: emperor Charles VI) claimed the Spanish composite monarchy as Charles III. At the same time, the supreme pontiff favoured Philip of Anjou, Louis XIV's second grandson, who ruled in Madrid as Philip V. Wynants dryly noted that the pope had no alternative but to recognise the 'legitimate rights of his majesty', by *'les événements de la guerre'*¹⁶². Hence, this ought to include the right to appoint bishops in vacant bishoprics.

¹⁵⁸ *Ibid.*, f. 295.

¹⁵⁹ *Ibid.*, f. 296. He equally extends this to the competence for *'excès, délits et crimes commis dans les enceintes des monastères, ou leurs censés et biens'*, to the *'Grand Écuier du Brabant'*.

¹⁶⁰ See also DHONDT, *Verlichte Monarchie*, III, p. 168.

¹⁶¹ DE WYNANTS, *Mémoires*, f. 299.

¹⁶² *Ibid.* See on this issue C. FRESCHOT, *Histoire anecdote de la cour de Rome. La part qu'elle a eue dans l'affaire de la Succession d'Espagne. La situation des autres cours d'Italie, et beaucoup de particularités de la dernière & de la présente guerre de ce pays là*, Cologne,

At the end of the war, several sees were vacant: the archbishopric of Malines, the bishoprics of Antwerp and Bruges (*'par mort'*) as well as Ipres (*'par abandonnement'*, as bishop Martin de Ratabon withdrew to France)¹⁶³. Charles VI claimed that the first three sees were under his control, as the allied armies had conquered them after the Battle of Ramillies (23 May 1706)¹⁶⁴. Britain and the Dutch Republic, who exercised factual control between 1706 and 1715, had only acted as *'gardiens et negotiorum gestores Caroli'*¹⁶⁵. Clement XI, however, stubbornly rejected this argumentation, and did not want to recognise Charles VI's right to appoint as sovereign since 1706¹⁶⁶. A temporary compromise consisted of allowing those appointed to take up the episcopal charge, but without a mention of Charles VI's right to appoint them in the papal Bull.

Yet, Charles VI had already appointed Thomas Philip Wallrad d'Hénin-Létard d'Alsace-Boussut de Chimay as bishop of Ypres¹⁶⁷. Clement XI refused this, applying a constant practice of the Holy See according to which no nomination or suggestion by a secular prince could be enacted without being in *'possession actuelle'* of the diocese, even if the temporal sovereign would be chased *'par violence et contre*

1706; David MARTÍN MARCOS, *El Papado y La Guerra de Sucesión Española*, Madrid, 2011.

¹⁶³ <https://www.catholic-hierarchy.org/diocese/dy508.html> [Accessed 15 February 2025].

¹⁶⁴ In the case of Bruges, which was briefly lost between July and December 1708, the *terminus a quo* could also start a bit later. F. DHONDT, *Op zoek naar Glorie in Vlaanderen. De zonnekoning en de Spaanse Successie (1707-1708)*, Heule, 2012, p. 191-192, 276 <https://hdl.handle.net/1854/LU-1939104> [Accessed 15 February 2025].

¹⁶⁵ DE WYNANTS, Mémoires, f. 226. A. J. VEENENDAAL, *Het Engels-Nederlands Condominium in de Zuidelijke Nederlanden Tijdens de Spaanse Successieoorlog 1706-1716 : Eerste Deel*, Utrecht, 1945; DE SCHRYVER, *Jan van Brouhoven...*

¹⁶⁶ One could argue here that the pope reverted to a more modern conception of belligerent occupation and transfer of sovereignty, arguing that 'might does not make right'.

¹⁶⁷ This person (1679-1759) landed on the see of Malines as archbishop, to remain in office until 1759: <https://www.catholic-hierarchy.org/bishop/bdalsace.html> [Accessed 15 February 2025].

tout droit'. Wynants saw this as the reason used to block the appointment of d'Alsace in Ypres, as this city was controlled by France at the Peace of Utrecht, and only transferred to Charles VI after the Barrier Treaty. However, when Ypres was handed over to Charles VI, the papal pretext was not tenable anymore: Wynants affirmed his master's sovereignty, '*nonobstand* [sic] *ledit traité de Barrière*'¹⁶⁸.

Again, Tournai, as 'old' bishopric (pre-dating the creations in Philip II's time), had to be distinguished from the rest. Appointments for this seat were governed by the concordat between pope Leo X and Francis I of France¹⁶⁹, as well as by the terms of Louis XIV's cession at the Treaty of Rastatt at the end of the War of the Spanish Succession.¹⁷⁰ Tournai was subject to Charles VI's '*droit de la régale*', which had a wider range than the right of appointment defined for the newly created bishoprics under Philip II. With reference to – again – Van Espen, Wynants stated that the right's origin was obscure, yet its existence was not to be contested in France, nor – for the Austrian Netherlands – Tournai. All revenues from a vacant bishopric are owed to the temporal sovereign, including income derived from ecclesiastical benefices where the bishop typically holds exclusive authority to appoint the abbot or abbess. Thus, when a new bishop is sworn in, the phrase '*prendre possession*' should be understood in a literal sense, as it also involves assuming

¹⁶⁸ DE WYNANTS, *Mémoires*, f. 301.

¹⁶⁹ Concordat concluded in 1517, pursuant to the battle of Marignano, see P. BLET, *Concordat*, in L. BÉLY (ed.), *Dictionnaire de l'Ancien Régime*, Paris, 1996, p. 311-313. Further down in the same chapter, Wynants remarks that this agreement abolished the turn to election by chapters taken by the Council of Basel. DE WYNANTS, *Mémoires*, f. 309; A. BLACK, *The Conciliar Movement*, in J.H. BURNS (ed.), *The Cambridge History of Medieval Political Thought, ca. 350-ca. 1450*, Cambridge, 1988, p. 573-587, <https://dx.doi.org/10.1017/CHOL9780521243247.021> [Accessed 15 February 2025]. Wynants was open to provincial church meetings, beneficial to the '*maintien de la discipline Ecclesiastique*', but not if they could lead to a contestation of secular authority! DE WYNANTS, *Mémoires*, f. 312. This seems to echo concerns on Jansenist and Gallican writings, such as those of Le Gros in France, see B. COTTRET and M. COTTRET, *L'Europe des Lumières: 1680-1820*, Paris, 2023, p. 92-94.

¹⁷⁰ Artt. XX, XXV, XXVII Treaty of peace between Louis XIV and emperor Charles VI, Rastatt, 6 March 1714, DU MONT DE CARELS-CROON and ROUSSET DE MISSY, *CUD*, VIII/1, nr. CLXX, p. 415-423.

possession of – both factual control and the semblance of a rightful claim – income sources from abbeys subordinate to his diocese¹⁷¹.

This interstice of temporal power over ecclesiastical income is used by Wynants to increase the temporal sovereign's competence: he would be able to grant age dispensations. Wynants drew on Feburet's treatise on the *appel comme d'abus*¹⁷², to argue that the cession of Tournai by Louis XIV had transferred the French system to a possession of Charles VI in the Low Countries¹⁷³. Conversely, for Nivelles in Brabant, the concordat between the 'Germanic nation' and emperor Frederick III of Habsburg applied (15 March 1448). In this case, the competence for vacant beneficia was divided throughout the year: vacancies in January, March, May, July, September and November (the '*menses papales*') benefited the pope. All 'dignities and benefices' that had opened in the other months remained to the '*collateurs ordinaires*'¹⁷⁴.

d. *Be Wary of 'God's People'?*

Wynants, as signalled in our introduction, attached great importance to the delimitation of ecclesiastical supranational competence. When the decisions of the Council of Trent had to be implemented in the Spanish Netherlands, governor-general Margaret of Parma was

¹⁷¹ VAN ESPEN, '*Titre 29*' and '*chap. 8*'. DE WYNANTS, *Mémoires*, f. 301-302.

¹⁷² On this topic of appeals against ecclesiastical courts lodged with secular courts: A. BONZON and C. GALLAND (eds.), *Justices croisées : histoire et enjeux de l'appel comme d'abus (XIV^e-XVIII^e siècle)*, Rennes, 2021. Notably: J. HALLEBEEK, *L'appel comme d'abus dans l'œuvre de Zeger Bernard van Espen. Principes, contextes, développements*, in *Ibid.*, p. 251-270.

¹⁷³ On the fiscal level, the *pays rétrocedé* (Tournai, the region around Tournai and West-Flanders) lost its right to consent to taxation, JANSSENS, *De Achttiende Eeuw*, p. 47.

¹⁷⁴ Wynants, again, refers to Van Espen, '*part. 1. Tit. 12. Chap. 2*', '*les auteurs qui ont écrit sur cette matière*', and specifies that Maastricht used to fall under the same scheme. However, the Dutch Republic had decided not to respect this usage, against the treaties concluded at Nijmegen, and obliged to 'buy the benefices from their own hands', '*tamquam ex manibus haereticorum*'. The papacy agreed to this practice, but only if the sum paid by the new occupant of the benefice would be used '*pour l'entretien des pauvres orphelins, des veuves et d'autres personnes misérables de la ville*'. DE WYNANTS, *Mémoires*, f. 307-308.

persuaded to ask for a general ‘*réserve*’ concerning the temporal sovereign’s rights. The princely ‘*placet*’ was and remained required before any papal legislation could be implemented, outside of dogmatic aspects. Wynants argued that this important decision was an illustration of a general principle:

*‘Si on laissoit agir ce peuple de Dieu, selon sa fantaisie, les souverains seroient bientôt depouillés des plus Beaux et importants fleurons de leurs couronnes, et s’il s’établirait peu à-peu une republique indépendant du Prince dans ses propres. Tanta est imperandi libido’*¹⁷⁵.

The risk existed thus that the clergy would try to get its hands on the richest properties in the country, whereby it would become quasi-independent from the temporal ruler. Hence, even a brief enumeration of a sovereign right could count as a reservation to ecclesiastical pretensions. When Wynants discussed censorship, he cited ‘*le petit traité de Vanespen*’, to which ‘*Rome n’a pas trouvé à redire*’¹⁷⁶.

As we will see in the next section, Wynants attentively combatted attempts by the clergy to escape imposition in Brabant. The exhortation to the reader, to be wary of the Church’s ‘*imperandi libido*’ or lust to dominate or command, reads as if it might also have been written by another admirer of Van Espen, the nineteenth-century anti-clerical liberal lawyer François Laurent (1810-1887)¹⁷⁷. Combatting ecclesiastical power was a main objective for lawyers in the collateral councils¹⁷⁸.

However, one ought not to forget that Wynants’s adherence to Catholicism (both theologically and institutionally) was sincere and

¹⁷⁵ *Ibid.*, f. 315; CROON, *Orde en informatie*, p. 62.

¹⁷⁶ DE WYNANTS, *Mémoires*, f. 328.

¹⁷⁷ E. BRUYÈRE, *Principes, esprit et controverses. L’avant-projet de Code Civil de François Laurent ou l’œuvre séditieuse d’un libre-penseur*, Gent, 2019. ‘*C’est à la Belgique libérale à venger la mémoire d’un jurisconsulte qui a été un des vigoureux défenseurs de la souveraineté civile contre les usurpations de la cour de Rome*’, LAURENT, *Van Espen*, p. 241.

¹⁷⁸ CROON, *Orde en informatie*, p. 44. The clergy was seen as the ‘weakest and most threatened social element’ in the reform policies of Maria Theresia and Joseph II in the second part of the century, DHONDT, *Verlichte Monarchie*, III, p. 152 and 252.

steadfast¹⁷⁹. When introducing the section on conflicts of jurisdiction between ecclesiastical and temporal rulers, Wynants, ‘the regalist’, pleads for a just balance, and for moderation:

*‘Il y a de l’abus et de l’excès dans l’usage de la puissance appartenante véritablement à l’une ou à l’autre [...] C’est un mal que le Demon esprit de la discorde fait naître et les Ministres de part et d’autre, s’ils sont sages, doivent aller Bride en main, pour ne pas donner lieu à des troubles et à des scandales, qui font tort à notre Religion, au Repos de l’Eglise, aux Souverainetés et à l’union pacifique entre des Chrétiens apostoliques Romains’*¹⁸⁰.

Hence, it is not surprising to see Wynants develop a legal reasoning to explain why two jurisdictions can coexist. In principle, ‘*nul ne peut avoir le moindre degré de jurisdiction, à moins qu’il ait territoire*’: no jurisdiction without territory. Who else but ‘*le Prince*’ could be said to control the territory of the Austrian Netherlands? Wynants draws on the *Corpus Iuris Civilis* (Codex, Book I), where the pertinent title is labeled ‘*Audientiâ Episcopali*’, and thus not ‘*Jurisdiction*’¹⁸¹. Next, Guillaume I de Lamoignon de Basville (1617-1677), president of the Parliament of Paris, would have wiped out the term ‘*jurisdiction*’ for clergymen from the draft of the Ordinance on civil justice in 1667, replacing it by ‘*officialité*’¹⁸².

Alas, ‘*la faute est commise*’: widespread usage of the term ‘*jurisdiction*’ introduced a ‘*sens forcé et très impropre*’, whereby the meaning was watered down to ‘*faculté de connoître et de juger des procès et cas attribués aux officialités et juges ecclesiastiques*’. Wynants focused on containing ecclesiastical courts, and warned that attempts to establish a tribunal of auditors by papal internuntii or nuntii would be blocked as a dangerous ‘*nouveauté*’ by the governing councils¹⁸³. If an appeal were to be lodged with the pope, the nuntius had to intervene, by granting letters of appeal, by which judges ‘*in partibus*’ ought to be appointed. Doing

¹⁷⁹ Croon characterises Wynants as ‘a pious man’, CROON, *Orde en informatie*, p. 63.

¹⁸⁰ DE WYNANTS, *Mémoires*, f. 316.

¹⁸¹ *Ibid.*, f. 319. As at many other instances, a blank space has been left by the copyist between the book number and the title.

¹⁸² *Ibid.*, f. 320.

¹⁸³ *Ibid.*

otherwise would violate the ‘*Loix fondamentales*’, as they forbade introduction or relief of cases ‘*extra patriam*’¹⁸⁴. The only remaining ecclesiastical ‘*privilège de conservation*’ was that of the University of Louvain, which is treated in a separate chapter¹⁸⁵. Wynants was satisfied that ordinary courts as the Council of Flanders¹⁸⁶, the Council of Brabant or the Council of Luxemburg could hear cases involving clerics. Moreover,

*‘il est constant d’ailleurs que les Ecclésiastiques même évitent autant que possible les tribunaux de l’Evêque ou de son official, à case de trois sentences qui doivent être conformes pour mener la dernière fin au procès, et d’ailleurs à cause de maints incidents et chicannes en matière d’appel, étant vrai qu’un habile chicanneur y peut faire durer un procès pendant toute la vie d’un homme...’*¹⁸⁷.

B. The Private Sinews of Public Power: Taxes in Brabant

Wynants’s *Mémoires* on institutions are well-known, as we explained higher in this contribution. His manuscript on taxation, on the contrary, did not receive copious attention, in spite of several copies circulating (1). This can in part be linked to the relative dearth of scholarship on the history of domestic tax law in the last decades¹⁸⁸. The fascinating

¹⁸⁴ The latter is underlined in the original, DE WYNANTS, *Mémoires*, f. 321. The *nuntius* had to propose three appeal judges. The appellant could then choose one of these. Wynants saw this as a trick (*‘un tour d’habileté’*): if a case from Brabant is appealed, and the appellant can pick a tribunal with Flemish judges, or judges from Hainault, and thus escape the Council of Brabant. Yet, Wynants warned that in these cases, with a *‘sentence portée hors de l’étendue de la province’*, the Council could be seized by a complaint and void the decision of the ecclesiastical ad hoc appeal tribunal.

¹⁸⁵ DE WYNANTS, *Mémoires*, f. 325, 343-353; CROON, *Orde en informatie*, p. 142-144. Wynants’s discussion of the University of Louvain and the gulf between Archducal instructions (1617) and eighteenth-century practice is quite lively, but falls outside of the scope of the present manuscript.

¹⁸⁶ P. VAN PETEGHEM, Raad van Vlaanderen (1386-1795), in W. PREVENIER and B. AUGUSTYN (eds.), *De gewestelijke en lokale overheidsinstellingen in Vlaanderen tot 1795*, Brussel, 1997, p. 131-156.

¹⁸⁷ DE WYNANTS, *Mémoires*, f. 326.

¹⁸⁸ Exceptions are: JANSSENS, VERBOVEN, and TIBERGHEN, *Drie eeuwen Belgische belastingen*; D. HEIRBAUT, *Het sociaal, economisch en fiscaal recht in België: een beknopte*

aspects of Wynants on taxation lie with his clear legal reasoning, on the one hand, and, on the other hand, with his linkage of the traditional earmark of legal practical knowledge : private law and property relations. The internal analysis of the manuscript (2) will focus on these aspects, for ordinary taxation (*'aide'* and *'subside'*), which accounted for about 60% of the central government's income¹⁸⁹. Contrary to what is common in a centralised modern bureaucratic state, taxation in the Old Regime relied on the intervention of local and provincial administrators and estates. The allocation of the tax burden proceeded through a decentralised system of repartition, whereby total amounts were imposed on local communities, rather than on individuals¹⁹⁰.

(1) *External Analysis*

I consulted three versions of this manuscript, which is dated according to the Royal Library's catalogue 'around 1740'¹⁹¹. Given the author's death in 1732 and the reference to 'Vienne' as the place of original composition, the date can only pertain to the subsequent copy. The first

geschiedenis, Gent, 2019; S. WATTEYNE, Le coût de la Première Guerre scolaire et les débats des "Graux Impôts" (1878-1884), in *Journal of Belgian History/Revue belge d'Histoire Contemporaine/Belgisch Tijdschrift Voor Nieuwste Geschiedenis*, L. 2 (2020), p. 34-60.

¹⁸⁹ This figure does not include local taxes. JANSSENS, *De Achttiende Eeuw*, p. 47-48, 53, 107. Flanders and Brabant made up each a third of the population of the Austrian Low Countries, and brought in two thirds of the *'aides'* and grants (*'subsides'*). In 1782, however, Flanders – which was more [proto-]industrialised – generated 43,6% and Brabant 24,9%, JANSSENS, *De Achttiende Eeuw*, p. 86-87. In the age of the 'fiscal-military state', most of government expenditure went to defence. On government finance in the Austrian Low Countries: DHONDT, *Verlichte Monarchie*, vol. III and JANSSENS, *De Achttiende Eeuw*, p. 1-122; H. COPPENS, *Het institutioneel kader van de centrale overheidsfinanciën in de Spaanse en Oostenrijkse Nederlanden tijdens het late Ancien Regime (ca. 1680-1788)*, Brussel, 1993.

¹⁹⁰ JANSSENS, *De Achttiende Eeuw*, p. 90; G. BIGWOOD, *Les impôts généraux dans les Pays-Bas Autrichiens : étude historique de législation financière*, Louvain, 1900, IV, https://www.europeana.eu/nl/item/9200326/BibliographicResource_3000059131173 [Accessed 13 February 2025].

¹⁹¹ <https://opac.kbr.be/LIBRARY/doc/SYRACUSE/21402119> [Accessed 15 February 2025].

and best kept copy can be found in the Belgian Royal Library's collections¹⁹², two less orderly versions in the City of Antwerp's Heritage Library¹⁹³ and the collections of the Plantin Moretus Museum¹⁹⁴. The latter copies are not dated or datable except for a wide range of years. The former is attributed to have been made in the year 1740. It is bound in leather and ornamented with the Council of Brabant's seal. A copy of the well-known engraving of count Wynants precedes the manuscript¹⁹⁵. The front piece is of a beautiful calligraphy, with red ink used for the third, tenth, and penultimate line¹⁹⁶. The copy kept in Plantin Moretus has the peculiarity of paragraph numbering per chapter. Its 316 pages show a different chapter ordering from the two other copies and contain haphazard headings indicating chapter names¹⁹⁷. The table below illustrates this for the three main types of taxes:

¹⁹² DE WYNANTS, Charges publiques (KBR). The library catalogue indicates 'Joseph Pholien' (1884-1968, Prime Minister 16 August 1950 to 15 January 1952) as provenance. The KBR has several other copies of the manuscript, BIGWOOD, *Les impôts généraux*, p. VI.

¹⁹³ G.A. DE WYNANTS, 'Traité Des Charges Publiques' (s.d.). ANTWERP, Museum Plantin Moretus, c:lvd:610524. ANTWERP, City of Antwerp Heritage Library Hendrik Conscience, c:lvd:610524.

¹⁹⁴ G.A. DE WYNANTS, 'Traité Des Charges Publiques Pour Le Brabant' (s.d.), MPM, c:lvd:14008105. ANTWERP, Museum Plantin Moretus, c:lvd:14008105.

¹⁹⁵ According to the KBR's catalog record, based on a painting made in 1714 by Sauvage. See DE WYNANTS, *Decisiones*.

¹⁹⁶ 'CHARGES PUBLIQUES' – 'Messire Goswin Arnould Vi[comte]:' – 'A VIENNE'.

¹⁹⁷ E.g. *De l'Aide* (§ 7 *De l'Aide*) DE WYNANTS, 'Traité des charges publiques pour le Brabant', p. 32-91. *Charges des Quartiers* (§ 10 *Chapitre concernant la Répartition que les Chefs officiers des Quartiers font en leurs majories qui composent le corps de leur quartier*) *ibid* 92-175 ; *subsidies* (§ 11 *Des Subsidies*) *ibid* 175-188 ; *Recellemens* (§ 12 *Chapitre touchant les Recellemens*) ; *ibid* 188-199 ; *Deduction des XX des Rentes* (§ 13 *Chapitre concernant la deduction des Vingtiemes et des Rentes Réelles*) *ibid* 199-212 ; *Deduction des XX par les Fermiers* (§ 16 *Chapitre Concernant la deduction des Vingtiemes par les fermiers*) ; *ibid* 212-215. *Exemptions* (§ 17 *Chapitre de l'exemption des Conseils et Ministres pour les maisons où ils demeurent*) *ibid* 216-217 ; *Lieu de la taxe* (§ 25 *Chapitre concernant le lieu ou l'on doit et peut etre taxé dans les XXes*) *ibid* 221-229 ; *Taxes des biens chargés* (§ 26 *Chapitre de la taxe des Biens et fonds qui ont changez de face & sont ainsy passez dans une autre classe ou cathégorie*) *ibid* 229-251 ; *Charges personnelles* (§ 24

Introduction	KBR	EHC	MPM
<i>Aide</i>	48-128 (80)	26-60 (34)	32-91 (59)
<i>Subside</i>	128-243 (115)	118-173 (55)	92-175 (83)
<i>Charges de Quartier</i>	243-387 (144)	61-118 (57)	175-217 (42)

The table of contents of the copy kept at the KBR is outright puzzling (in total, five pages, or three folios with three recto and two verso-sides). Whereas the chapter on the *Charges the Quartier* is the longest one in the Heritage library copy, and quite substantial in the Plantin Moretus version, the KBR copy's table of contents announces this as a section running over three pages (243-245), or 140 (245-387). The announcement of the title *des Charges de Quartiers* (243) on the recto-side of the table of contents' first folio is followed by an indication of the chapter on *recellemments* (non-declared taxable goods, fraud), almost eighty pages earlier. The rest of the verso-side equally concerns subdivisions of the part of the manuscript devoted to *Subsides*. Only at the end, the title on *Taxe des Biens et Fonds qui ont changé de face et sont ainsi passé* [sic] *dans une autre classe ou cathégorie* (387) seems to pick up a logical chronological thread.

Whereas the first folio of the table of contents does not identify such a main division, the second one introduces two 'Titres' or titles: one on tax rolls, another on tax farmers ('*entrepreneurs*') and collectors (543-558)¹⁹⁸. The verso-side adds a 'Titre' on execution (558-566) and accounting (556-559). The final recto-page of the table of contents then passes on to judiciary competence (605-). Execution, accounts and judiciary competence can also be found in the Plantin Moretus copy, but in a different order. The table of contents does not even

Des charges personnelles) *ibid* 251-262. Contributions (§ 25 *Des Contributions*) *ibid* 262-272. Execution (§ 32 *Titre de la forme de l'exécution pour les charges publiques*). *ibid* 278-302. Comptes (§ 34 *De la Reddition des Comptes*) *ibid* 307-316. Judicature (§ 43 *Titre des competences et Judicatures a l'égard des Charges Publiques*) *ibid*.

¹⁹⁸ Tax collectors were not central civil servants, but were hired by the provincial estates, JANSSENS, *De Achttiende Eeuw*, p. 45.

manage to describe the whole volume, as the title of chapter six within the latter title is incomplete. Page 636 enlightens us: the final chapter treats ‘interdictions and inhibitions’, the manuscript ending two pages later (638). All these indications seem to point at a non-expert copyist, who did not manage to draft the table of contents at the end of a long copying operation.

(2) *Internal Analysis: the ‘aide’*

a. *The Legal Basis for Taxation in Brabant, ‘de toute antiquité si jaloux de ces anciennes coutumes’*¹⁹⁹

Wynants’s introduction spans the full array of politico-legal questions relevant to the emperor as duke of Brabant, duke of Luxemburg, count of Namur, count of Hainault, count of Flanders, lord of Malines and successor to Charles V and Philip II as ruler of the Spanish Netherlands. Most importantly, the subjects’ contributions to the royal chest occupied a primordial place in the ‘*droit publique*’²⁰⁰. The monarch governed by consent, and needed the unanimous support of the estates in many cases. Wynants opposed excessive taxation, but also looked at the excessive influence of guilds and high urban taxes as brakes on economic development²⁰¹. The reciprocal relationship of prince and subjects brought salvation and happiness. Virtuous princes and subjects are the consequence of this intimate bond, strengthening the state against outside threats, ensuring bliss for all parties involved internally, and every member individually.

Wynants complains that the ‘*ignorance*’ of judges and lawyers alike could be explained by the lack of legal literature on the matter²⁰². The lack of stability in legislation was caused by conflicting interests of ‘those who are entitled to consent in taxation, or to establish the rules

¹⁹⁹ DE WYNANTS, *Charges publiques* (KBR), f. 38.

²⁰⁰ *Ibid.*, f. 1.

²⁰¹ CROON, *Orde en informatie*, p. 109, 122.

²⁰² DE WYNANTS, *Charges publiques* (KBR), f. 2. I would not go as far as Croon to state that the treatise was meant as a ‘handbook’, CROON, *Orde en informatie*, p. 110.

according to which they it should be governed'²⁰³. Legal certainty was an illusion as the 'continuous variations' within Brabant itself alone were responsible for 'obscurity'²⁰⁴.

1. *Taxation By the Prince as Head of a Common Body Politic*

Wynants compared the ruler to a 'father' of 'all his subjects without exception', as 'the living image of God, glorified in his name'. As a consequence, the monarch had the obligation to 'love them, and treat them as his children', 'lead them by example, and his good laws, administering perfect justice, defend and protect them as well against his enemies as against internal oppression'²⁰⁵. Mirroring their ruler's rights and obligations, the subjects, '*par droit de reciprocation*', had to love and honour their ruler as their 'father and lord', 'obey him', even 'in assisting him with their own goods, their body and lives', whenever necessity and the good of the state imposed it²⁰⁶.

Besides his annual revenues, the sovereign also had a domain as *dominus* in the classical Roman law-sense (owner). First his private domain (*privatum patrimonium*), or his possessions 'based on another legal title than that of duke'. This in contrast with the public domain (*principum publicum patrimonium*), whose alienation could not be granted but with the consent of the estates, as prescribed by article V of the *Joyeuse Entrée*²⁰⁷. Wynants refers here to 'Choppin' (1537-1606) on the royal

²⁰³ DE WYNANTS, Charges publiques (KBR), f. 2.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*, f. 3. See on this image DHONDT, *Verlichte Monarchie*, III, p. 170.

²⁰⁶ DE WYNANTS, Charges publiques (KBR), f. 4. See also DHONDT, *Verlichte Monarchie*, III, p. 169. For the sake of simplicity (and since the duke was a man during Wynants's life, i.e. emperor Charles VI), I use the male 'duke', although women could rule in their own right as duchess, e.g. Maria Theresia from 1740 to 1780. 'Duke' can thus also be read as 'duchess' throughout the manuscript.

²⁰⁷ DE WYNANTS, Charges publiques (KBR), f. 5. DHONDT, *Verlichte Monarchie*, III, p. 167.

domain²⁰⁸, Le Bret (1555-1655) on the sovereignty of the King²⁰⁹, ‘and others’.

Taxation was necessary to allow the sovereign to sustain ‘the lustre of his dignity’ and bear ‘the weight of the business of state’²¹⁰. The right

²⁰⁸ R. CHOPPIN, *Trois livres du domaine de la couronne de France composez en latin par M. René Choppin I.C. angevin, ancien et célèbre advocat de la Cour de Parlement. Et traduits en langage vulgaire sur la dernière impression de l’an 1605. Avec une table alphabétique fort ample des matières, & choses plus remarquables y contenuës*, Paris, 1613. CBR0411, Inventory of the Council Library (BRUSSELS, Belgian State Archives). Gaspard Réal de Curban, *La Science du Gouvernement*, Paris, 1764, VIII, p. 103-105; A. FRIGERIO, CHOPPIN René, in P. ARABEYRE, J.-L. HALPÉRIN, and J. KRYNEN (eds.), *Dictionnaire historique des juristes français XIF-XX^e siècle*, Paris, 2007, p. 244. Choppin (1537-1606), a contemporary of Jean Bodin, was *avocat* at the *Parlement de Paris*. His work was initially published in 1574 and allowed for the author’s elevation to the rank of count, but was criticized for its hermetic and pompous use of the Latin language. According to Réal de Curban, Henry III of France (1551-1589) ennobled Choppin to thank him for his treatise on the royal domain. Yet, Choppin converted to Catholicism in the later stages of his life (*‘dans ces jours malheureux où le faux zèle de la Religion montra, aux yeux de nos pères, toute l’horreur de l’infidélité & de la révolte’*, RÉAL DE CURBAN, *La Science du Gouvernement*, VIII, p. 104). Choppin seemed to have turned around completely: he joined the Catholic *Ligue* and published a pamphlet supporting the excommunication of Henry IV of France, championing ecclesiastical jurisdiction against the state (the reference is in that sense quite surprising, knowing Wynants’s Jansenist and regalist sympathies).

²⁰⁹ CARDIN LE BRET, *De la Souveraineté du Roy, par Messire Car. Le Bret* (J. Quesnel, 1632); RÉAL DE CURBAN, *La Science du Gouvernement*, VIII, p. 194; F. MONNIER, Cardin Le Bret (1558-1655), in *Revue Française d’Histoire des Idées Politiques*, 47, 2018, p. 303-324; C. REGAD, Le Bret, Cardin (1558-1655), in B. MENIEL (ED.), *Écrivains juristes et juristes écrivains, du Moyen Âge au siècle des Lumières*, Paris, 2015, p. 699-702. Cardin was *avocat general* at the *Cour des Aides*, at the *Parlement de Paris* and ultimately councilor of state. *La Souveraineté du Roy* is Cardin Le Bret’s most famous work, whereby Bodin’s concept sovereignty and royalty were closely intertwined. Le Bret stated that the sovereign could achieve his subject’s common good by any sort of means (REGAD, Le Bret, Cardin (1558-1655), p. 700-701). Although his work on domestic French public law was well received by Réal de Curban (who wrote in the 1750s), Cardin was criticized for his incomplete understanding of the law of nations, e.g. when fragilizing cessions of territory by treaty.

²¹⁰ DE WYNANTS, *Charges publiques* (KBR), f. 4.

to impose taxes (*Ius exigendi Tributa aut imponendi*) belonged to the Prince, ‘or those who have the right of sovereignty, as in all free states’²¹¹. This was a consequence of taxation’s belonging to the *regalia*. The latter distinction between princely and ‘free states’ ought not to be applied too crudely, Wynants insisted. In a ‘*Pays d’Etats*’ as Brabant, the estates’ consent was indispensable. The Prince did not hold it by himself or solely²¹². This ‘most considerable right of the Fatherland’ was outside of any controversy or contestation²¹³.

Wynants counted the estates’ consent as more than a Privilege (or written fundamental law of ancient origin)²¹⁴. It was of a natural law-nature for the ‘country and duchy of Brabant’²¹⁵. Its inhabitants were not ‘*taillables*’, or to be subjected to an income tax as the French *taille*²¹⁶, outside of the preceding unanimous consent of the three estates of Brabant. Wynants traced ducal moderation in impositions back to duke John II (1273-1312) in 1312²¹⁷. ‘Ancient and immemorial usage’ demonstrated ‘clearly’, in addition to repeated confirmations of

²¹¹ *Ibid.*, f. 6.

²¹² *Ibid.*

²¹³ *Ibid.*, f. 7.

²¹⁴ See recently on the concept: H. MOHNHAUPT, *Privilegien als Sonderrechte. Rechtsordnungen vom Mittelalter bis heute*, Frankfurt am Main, 2024.

²¹⁵ DE WYNANTS, *Charges publiques* (KBR), f. 7.

²¹⁶ The term ‘*taille*’ does not fit the system in Brabant well, for this reason (DHONDT, *Verlichte Monarchie*, III, p. 248). On France: A. LE GONIDEC, *Les sédimentations du ius commune dans l’édification du droit fiscal français*, in *Clio@Themis. Revue électronique d’histoire du droit*, 27, 2024, <https://dx.doi.org/10.4000/12qyt> [Accessed 26 November 2024]. See also recently M. TOUZERY, *Payer pour le roi: la fiscalité monarchique, France, 1302-1792*, Ceyzérieu, 2024. The present contribution focuses on Wynants’s treatise, and not on a – complementary – study of ‘fiscal practices’. See for example R. RENAULT, *La permanence de l’extraordinaire: Fiscalité, pouvoirs et monde social en Allemagne aux XVII^e-XVIII^e siècles*, Paris, 2017, p. 13-15, <https://doi.org/10.4000/books.pSORbonne.56062> [Accessed 15 February 2025].

²¹⁷ DE WYNANTS, *Charges publiques* (KBR), f. 8-9. citing the original letter in Dutch: only marriage, chivalry and captivity were listed as exceptional cases in which the duke could request financial aid. Further examples ran to Charles V in 1516 (*ibid* 9-23).

article V²¹⁸ by subsequent rulers, that the duke was bound to request his subjects' services and thank them. This extended not only to taxation, but also to the constitution of rents on the public (and thus collective) domain²¹⁹. Moreover, Wynants stated that the duke's (ergo: the emperor's) hands were tied when it came to granting a '*simple Amortissement*' to ecclesiastical goods, even less an '*Amortissement avec franchise*', or any exception from public taxation, without explicit consent of the three estates²²⁰. Only the '*igorans du Droit commun et naturel du Païs*', or the '*partisans du Gouvernement despotique et arbitraire*' could defend the contrary²²¹.

Again, for Wynants, the right to tax his subjects was only 'just and legitimate' inasmuch as it was caused by the 'upkeeping of the Prince's dignity', the 'necessity of the state', or the 'good of the land'. This could be argued for 'officers of justice, police, finance or war', or the defence of cities and troops. The latter encompassed defensive, as well as offensive warfare, which meant that taxes for a war of conquest were not disputable in Wynants's eyes. However, anything beyond this exceeded the limits of reason, justice and the obligations of the prince against his subjects²²².

The link between prince and subjects, in turn, gave rise to an organicist comparison: 'they form only one single body, of which the prince is the head, and the subjects the members'. Advantages drawn from taxes for their common welfare ought to befall on both 'equally and together'²²³. This description is reminiscent of the typology of 'Catholic' natural law sketched by Gángó and Haakonssen. The top-down authority of the sovereign is explained as rooted in justice, whereby a

²¹⁸ And, implicitly, article LVIII, which confirmed all privileges of '*Prelats, maisons de Dieu, Monasteres, Barons, Chevaliers, Villes, Franchises, et tous nos autres Sujets et bonnes Gens de nos Païs de Brabant*', DE WYNANTS, *Charges publiques* (KBR), f. 24.

²¹⁹ '*nul Païs, Ville, Chateau, Gens, Rentes, et Seigneuries de Brabant ne peuvent être oppignorés, engagés, vendus, aliénés, diminués, chargés, ni aucunement embarrassés si ce n'est du consentement desdits trois Etats*', *ibid.*

²²⁰ *Ibid.*, f. 25.

²²¹ *Ibid.*

²²² *Ibid.*, f. 26.

²²³ '*egalement et ensemble*'. *Ibid.*

synallagmatic relationship ensures that government is a mean, and not a goal in itself: the sovereign provides both protection and welfare²²⁴.

2. *The Organs of Consent*

Il faut le consentement des magistrats, des métiers, des quartiers-mâitres, etc. [...] C'est une mer à boire que de faire entendre raison à tous ces gens là qui mettent souvent sur le tapis des prétensions [...] il arrive que les bourgemaîtres sont obligés de traiter par différentes reprises ces sortes de gens en leur donnant à boire et à manger pour arracher leur consentement.

Mémoire fait pour l'information de S.E.
sur la Constitution du Gouvernement Général
des Pais-Bas Autrichiens et des Provinces qui en dépendent, 1748²²⁵.

Wynants distinguished 'since more than two centuries' three 'capital parties' in the 'general corps of the State'²²⁶, which held its meetings at the Brussels Town Hall²²⁷. The first of them was the ecclesiastical estate, represented by abbots, who took their rank determined by seniority. No secular clergy was allowed in the ecclesiastical estate. This irritated many members of the clergy²²⁸. In practice, the bishop of Antwerp (as abbot

²²⁴ GÁNGÓ and HAAKONSEN, Preface, XII-XIII.

²²⁵ VIENNA, Haus-, Hof- und Staatsarchiv, CB, f. 96r^o-v^o, cited in DHONDT, *Verlichte Monarchie*, III, p. 117.

²²⁶ Brabant counted over 700 000 inhabitants near the end of the eighteenth century, JANSSENS, *De Achttiende Eeuw*, p. 45.

²²⁷ *Ibid.*, p. 49.

²²⁸ DE WYNANTS, *Charges publiques (KBR)*, f. 27. They claimed that the abbots were solely defending their own establishment's interest. Consent of the abbots would amount to nothing more than their own abbeys or convents, '*nullement pour le clergé séculier, qui n'est pas sous leurs ordres, qui ne dépend pas d'eux, qui ne les a jamais autorisé à cette fin, et qui souvent a des intérêts opposés*'. *Ibid.*, f. 33. Flanders, Hainault, Limburg, Luxemburg and Namur, '*pays voisins*' had a representation of both secular and regular clergy. For the arguments of the secular clergy: *Ibid.*, f. 33-37. Wynants dismisses the latter, since '*les Exemples des Pais voisins ne sont d'aucune consideration à l'égard du Brabant qui a toujours subsisté par soi même, qui de tout têmes [sic] a été régi par ses propres Loix, et par les usages anciens j [sic] reçus, qui a un Gouvernement particulier, conventions particulieres avec les Ducs, et qui de toute antiquité a été si jaloux de ses anciennes coûtumes*' (*Ibid.*, f. 38). Moreover, the secular clergy had already been frustrated in its attempts to escape taxes on wine, beer or flour in a judicial decision

of Saint-Bernard in Hemixem) and the archbishop of Malines (as abbot of Affligem) had their seat in the first estate²²⁹. The second estate, nobility, contained ‘the titles of duke, prince, marquis, count and baron’. Access was barred to those without a title, but no specific written text imposing this norm could be retrieved²³⁰. This restricted access to the estates to thirty noblemen²³¹. The third estate, finally, contained the deputies of the main cities. Erstwhile their number was of seven, before the Dutch Revolt: Louvain, Brussels²³², Antwerp²³³, ‘s Hertogenbosch, Tienen and Landen²³⁴. ‘*Le plat païs*’ and towns without own representatives were assumed to have been represented by the first two estates²³⁵.

by the Council of Brabant of 24 December 1594 (*Ibid.*, f. 40). Admitting the regular clergy would amount to ‘*renverser un ordre, un usage, et desuite un droit établi de toute ancienneté confirmé par un arrêt solennel*’ (*Ibid.*).

²²⁹ DE WYNANTS, Mémoires, f. 155. The income of the members of the first estate together would have been equal to that of a major city as Antwerp or Brussels, JANSSENS, De Achttiende Eeuw, p. 53. The income of the main abbeys largely surpassed that of the nobility, *Ibid.*, p. 79.

²³⁰ DE WYNANTS, Charges publiques (KBR), f. 28.

²³¹ JANSSENS, De Achttiende Eeuw, p. 49.

²³² Brussels counted around 75 000 inhabitants, *Ibid.*, p. 43.

²³³ Antwerp counted around 50 000 inhabitants, comparable with Ghent and Liège. *Ibid.*

²³⁴ A handwritten remark in the KBR’s copy asks the question which city was the seventh. This ought to be Bergen-op-Zoom. Smaller urban centres in the countryside (counting a couple thousand souls), ergo not the major cities Antwerp and Brussels, contained most of the urban population in Brabant (a phenomenon also present in the country of Flanders, DHONDT, *Verlichte Monarchie*, III, p. 254). For the end of the century, Claude Bruneel argued that two inhabitants out of three lived in the countryside (C. BRUNEEL, *Economie en samenleving in de eeuw van de Verlichting*, in R. VAN UYTVEN, C. BRUNEEL, A.M. KOLDEWEIJ, A.W.F.M. VAN DE SANDE and J.A.F.M. VAN OUDHEUSDEN (eds.), *Geschiedenis van Brabant. Van het hertogdom tot heden*, Leuven/Zwolle, 2004, p. 480). However, the financial power of Brussels and Antwerp (with an annual household of 500 000 guilders, twice as much as Louvain, and tens of times bigger than the ordinary urban centers) was far more considerable, JANSSENS, De Achttiende Eeuw, p. 43-44.

²³⁵ For Brabant alone, 557 villages with each several ‘sets of books’ to survey, P. JANSSENS, *Taxation in the Habsburg Low Countries and Belgium, 1579-1914*, in B. YÜN-CASALILLA and P. K. O’BRIEN (eds.), *The Rise of Fiscal States: A Global History*,

Every estate had to give its decision to consent or refusal separately. The ecclesiastical and noble estates decide ‘*par pluralité de voix*’ (by simple majority). The third estate, however, voted only in the final stage, when clergy and nobility had already consented²³⁶. Its proceedings operated differently. The cities were represented by delegates, who could not vote themselves. They held an imperative mandate and were obliged to report back²³⁷ to their principals, which meant the city council as a whole²³⁸. Wynants explained that different corpora deliberated on proposals within each town. While a simple majority within each city might be sufficient, the unanimous consent of all cities was essential to reach an agreement on taxation²³⁹. This had consequences for the common deliberations of the three estates: if the third estate refused to agree to a proposal, there was no unanimity, and no decision could be taken.

Wynants referred to the ‘*embarras*’ caused by troubles in Brussels in 1619 under the reign of Albert and Isabella²⁴⁰. In practice, the refusal to grant ordinary taxation triggered a round of negotiations with the sovereign²⁴¹. The sovereign counted on the local elites’ coopera-

1500–1914, Cambridge, 2012, p. 69, <https://dx.doi.org/10.1017/CBO9781139004237.004> [Accessed 15 February 2025]. Every village would have applied a different fiscal system, JANSSENS, *De Achttiende Eeuw*, p. 97.

²³⁶ *Ibid.*, p. 50.

²³⁷ DE WYNANTS, *Charges publiques (KBR)*, f. 29.

²³⁸ JANSSENS, *De Achttiende Eeuw*, p. 51.

²³⁹ DE WYNANTS, *Charges publiques (KBR)*, f. 30.

²⁴⁰ *Ibid.*, f. 31. Janssens nuances this: in Brussels, a two thirds majority was needed to reject proposals, pursuant to the 1619 troubles. In Leuven, the guilds could be outvoted by the three other members of the city council. In Antwerp, a two thirds majority within the guild bench was necessary to reject, see JANSSENS, *De Achttiende Eeuw*, p. 51–52. The opposition between the guilds and other social groups was not purely a question of legal status and privilege: guild masters obtained income through their own enterprises, while ‘a broad coalition’ of ‘clergy, aristocracy and urban patricians’ drew income from ‘land, houses and government bonds’, JANSSENS, *Taxation*, p. 70.

²⁴¹ In Flanders, the sovereign could threaten not to reappoint the magistrates, if ‘*persuasion à la flamande*’ did not work, ‘*en répandant une bonne quantité de vin de Champagne, avec une entière familiarité, à table, etc.*’ see DHONDT, *Verlichte Monarchie*, III, p. 116–117 (quote: J. LAENEN, *Le ministère de Botta-Adorno dans les Pays-Bas autrichiens pendant le règne de Marie-Thérèse*, Anvers, 1901, p. 134). Janssens situates the

tion²⁴². Without local and provincial authorities, no central taxes could be levied for the Austrian Low Countries²⁴³. Conversely, the exercise of many positions of power was conditional to appointment by the sovereign, which generated reciprocal advantages. Paul Janssens sees this an explanation for the lower tax burden in comparison with the United Kingdom and the Dutch Republic, as well as for the restricted degree of arbitrariness in tax assessment²⁴⁴. This ought however to be relativised: ‘rent, seignorial rights and tithes’ did ‘hit the great majority of the population hard’²⁴⁵.

The sovereign’s right to tax was subject to consent by the estates, as we have seen. Wynants however pleaded for a restrictive approach to ecclesiastical exemptions. Croon has demonstrated how strongly Wynants supported Zeger Bernhard Van Espen (1646-1728)’s regalist theories²⁴⁶. The secular clergy could not invoke its non-representation

only real means of pressure on the sovereign from within the estates with wartime, which required extraordinary taxation, JANSSENS, *Taxation*, p. 69. Reaching a ‘modus vivendi’ boiled down to respecting the local bulwarks of power held by ‘a broad category of wealthy people of private means’ (*Ibid.*, p. 70). In 1766, Maria Theresia linked the duty to consent to taxation to the loyalty and obedience of her subjects, who reciprocally could rely on her ‘*protection*’ et ‘*justice*’. Agreeing to taxation would only concern the amount, see declaration of 31 January 1766, cited in DHONDT, *Verlichte Monarchie*, III, p. 169.

²⁴² JANSSENS, *Taxation*, p. 79-80.

²⁴³ However, this did not mean that Brabant, for instance, could spend the tax revenue collected. Towards the end of the Austrian regime, barely 3,8% of tax revenue collected by provincial and local authorities served the estates of Brabant’s own policy. 60,5% went to the sovereign, 35,7% served to pay off debts and cover administrative expenses, F. ZELCK, *De Staten van Brabant op het einde van de achttiende eeuw: hun invloed op de besluitvorming op sociaal-economisch gebied (1772-1794)*, Brussel, 1986; JANSSENS, *De Achttiende Eeuw*, p. 66-67.

²⁴⁴ JANSSENS, *Taxation*, p. 80.

²⁴⁵ *Ibid.*, p. 82.

²⁴⁶ Z. B. VAN ESPEN, *Jus ecclesiasticum universum hodiernae disciplinae, praesertim Belgii, Galliae et vicinarum provinciarum accommodatum*, Bruxelles, 1700; CROON, *Orde en informatie*, p. 46, 139-144. Réal de Curban characterised Van Espen’s work as ‘*l’ouvrage le plus parfait & le plus estimé*’. Although written under ‘*une domination étrangère*’, his analyses of questions of law include case law according to French standards, whereby the author cites ‘*nos Loix & les Arrêts des Parlemens de ce Royaume*’.

in the estates to demand a separately negotiated legal title for a '*subvention speciale*'²⁴⁷. Conversely, the whole of the clergy could not hide behind the necessity of papal approval of imposition. Wynants based this on Van Espen's universal ecclesiastical law, which refuted that the immunity of ecclesiastical property for taxation had been received in the Austrian Netherlands²⁴⁸. In the case of a '*don gratuit particulier*' (supplementary tax consented by the estates), the consultation of a bishop would not be opposed, which did not mean that the ecclesiastical hierarchy could veto such a measure²⁴⁹.

3. *Effects of the estates' Consent: King in Parliament and the Rule of Law?*

Wynants pointed out that the estates could not create impositions without the monarch's consent as duke of Brabant. The former had to issue an explicit act of agreement, necessary to authorise the levying of taxes²⁵⁰. This act had to include the basis (*le pied*) and form of the levy, usually determined at the same time of the estates' consent²⁵¹. This was

Especially Van Espen's defence of the obligation of acceptance by the bishops of documents emerging from the Holy See, as well a princely *placet* for the publication of ecclesiastical laws, and even his right to prevent the publication of '*Bulles ou Rescripts des Papes*' without monarchical permission: '*il peut arriver que ces Bulles contiennent des choses contraires à la Police du Gouvernement, & qu'il seroit dangereux de laisser à la personne du Pape, une Jurisdiction immédiate dans tous les Diocèses du Royaume*'. RÉAL DE CURBAN, *La Science du Gouvernement*, VIII, p. 580-581. See VAN DEN BROECK, *Historiografie*, p. 70-72, 88-89; ID., *De Rechtsleer*, p. 75-77 singling out his authority throughout the century (especially in Germany, through Febronianus) and his historical method (which was also preferred by Joseph II for the teaching of roman and canon law, see also VAN DEN BROECK, *Historiografie*, p. 28-29). VAN DEN BROECK, *Historiografie* (71) quotes Massez, who stated in 1780 that citing Van Espen was enough to win a case in court. See also B. WAUTERS, *Recht als religie: canonieke onderbouw van de vroegmoderne staatsvorming in de Zuidelijke Nederlanden*, Leuven, 2005.

²⁴⁷ DE WYNANTS, *Charges publiques* (KBR), f. 41.

²⁴⁸ VAN ESPEN, *Jus ecclesiasticum*, Part II, Title XXXV, Chapter III, Nr. VI; DE WYNANTS, *Charges publiques* (KBR), f. 41.

²⁴⁹ *Ibid.*, f. 42.

²⁵⁰ *Ibid.*, f. 43.

²⁵¹ From the sixteenth century on, the amount of the *aide* requested by the duke (ergo: the King of Spain as duke of Brabant) became a fixed annual sum, which can

accompanied by a specific administrative instruction issued by the estates and agreed by the sovereign, directed at receivers (*receveurs*), collectors (*collecteurs*), debtors (*debiteurs*) and all other interested parties.

The duke was compelled to observe his obligations pursuant to the commonly agreed operation, as much as ‘*all other contracts for which Christian Theology and the law of nature teach a Prince is obliged to execute and observe*’²⁵². This obligated him just as a private person. The duke could not prevent that a convention (mutual contract) which arose between him and the estates generated a reciprocal obligation, binding the two contracting parties in the same way²⁵³. No duke could despoil his subjects of a ‘*Droit acquis*’ without committing an injustice. The legal title of a subject’s right was indifferent: either by ‘*des actes célébrés entre des particuliers*’, or by a ‘*convention faite avec le Prince*’²⁵⁴. Wynants argued that Brabantians contracted with the prince (‘*capitulant avec le Prince*’) from the latter’s accession on, even before receiving him or her and pledging an oath of fidelity²⁵⁵. It was thus impossible to argue that the prince ever had had the option to unilaterally impose obligations outside of the three estates’ consent. Conditions tied to impositions had to be strictly observed by both parties in the contractual relationship, as exemplified in the first addition to the ‘*Joieuses Entrées*’ of Charles V, ‘Prince of dear memory and eternal veneration’.

be assimilated to permanent taxation, JANSSENS, *De Achttiende Eeuw*, p. 46. From 1725 on, the amount of *aides* and *subsides* was blocked. Rising government income in the second half of the century was the product of a rise in customs revenue caused by the economic expansion policies of Maria Theresia and Joseph II and the end of the Barrier subsidy to the Dutch Republic (1748). The taxation burden caused by direct taxes (*aide*, *subside*) thus... declined over time, due to its fixed nature and the economic growth in the second half of the century (JANSSENS, *Taxation*, p. 68, 115; DHONDT, *Verlichte Monarchie*, III, p. 151, 248).

²⁵² See on the theological roots of early modern contract law: W. DECOCK, *Theologians and Contract Law. The Moral Transformation of the Ius Commune (Ca. 1500-1650)*, Leiden/Boston, 2013, <https://dx.doi.org/10.1163/9789004232853> [Accessed 15 February 2025].

²⁵³ DE WYNANTS, *Charges publiques* (KBR), f. 45.

²⁵⁴ *Ibid.*, f. 46.

²⁵⁵ *Ibid.*

4. *Types of Taxes in Brabant*

Wynants distinguished between four main categories of taxes. First, the ‘*aide*’ or sometimes ‘*Taille ordinaire*’, which takes 80 folios of the manuscript. Second, the ‘*subside*’ (grant) and imposts (115 folios). Third, the ‘*charges des quartiers*’. Finally, the ‘*charges personnelles*’ (18 folios). In times of war, contributions would add up to these four.

The ‘*aide*’ is regarded as one of the oldest taxes in Europe, as sovereigns could not depend solely on the revenues from private and public domains to meet the needs of the state. Subjects, as members of the corps, are obliged to help their Prince financially.²⁵⁶ ‘*Aide*’²⁵⁷ ought to be understood as help with the ‘*charges de l’État*’ or the payment of ‘*troupes [sic] et gens de guerre*’, or other necessities²⁵⁸. The Flemish word ‘*bede*’, in Wynants’s eyes, was ill-chosen. It did not express the ‘help’ offered to the prince, but rather a request or humble prayer. Yet, the advantage of the expression consisted in the prince’s asking for permission to impose. Conversely, the estates’ clear privilege and right to accede to his demand or not, was suggested by the very word:

*‘on ne peut faire les impositions sans les avoir prié, et sans qu’ils aient accordé ce dont on les a prié’*²⁵⁹

Latin treatises, such as – again – Van Espen’s, used the expression ‘*precariat*’²⁶⁰.

The *aide* was levied per fire (*feu*) or family unit, and on the basis of land and goods. Wynants traced the former back to Philip the Good’s letter of 20 September 1451²⁶¹: after a deduction of a ninth in cities

²⁵⁶ *Ibid.*, f. 48-49.

²⁵⁷ *Ibid.*, f. 48-127.

²⁵⁸ As with other points in the treatise, Wynants referred to the *Placcarts de Brabant*, pointing to 15th-century acts. *Ibid.*, f. 50.

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*, f. 51; VAN ESPEN, *Jus ecclesiasticum universum*, Part II, Tit. XXXV, Ch. III, Nr. XLV.

²⁶¹ Seconde addition à la Joyeuse Entrée, P. GODDING (ed.), *Ordonnances de Philippe le Bon pour les duchés de Brabant et de Limbourg et les pays d’Outre-Meuse*, Bruxelles, 2005, nr. 202, p. 308-310.

and a fifth in the countryside (to alleviate taxation for the poor), rates of eleven *sols* (pennies) per fireplace in the main cities of the duchy, and seven in the other towns and six in the countryside, were applicable²⁶².

Furthermore, taxes were collected on trade, as exemplified in the Placcart of 31 May 1617, which stated that traffic or *bedrief* had to be taxed²⁶³. Wynants added that in various small localities, inferior to 60 *bonniers*, but densely populated and with a *grand trafic*, the contribution to the *aide* in the duchy had been considerable. He gave the example of Waehlem (Walem) between Antwerp and Malines²⁶⁴. Waelhem and other villages complained that they had been taxed too heavily in comparison with the diminishing number of their inhabitants. In the past, the *aide* weighed heavier on land. Diminishing this factor was of course to the disadvantage of smaller entities. Likewise, the city and district of Diest were listed among the complaining parties²⁶⁵.

In 1686 and 1687, the fiscal *dénombrément* (inventory, cadastre)²⁶⁶ was repeatedly questioned by a major part of the duchy. Every day, more and more errors, *abus* and lacunae were identified. Wynants blamed the tax commissioner's *manque de connaissance*, the malice of officers and of private persons²⁶⁷. Another point of confusion was the taxability *ratione loci*: rules issued by count John of Nassau²⁶⁸ in 1450 and an arbitral sentence by Elisabeth countess of Hoogstraten²⁶⁹ in 1540 indicated according to Wynants that taxes were not due at the *locus rei sitae* (where they were situated), but at their owner's place of

²⁶² DE WYNANTS, Charges publiques (KBR), f. 52.

²⁶³ This *placcard* is not included in the publication of ordinances for the Archdukes Albert and Isabella, nor in the related chronological list. V. BRANTS (ed.), *Règne d'Albert et Isabelle : 1597-1621. Tome deuxième, Actes du 8 mai 1609 au 14 juillet 1621*, Bruxelles, 1912, p. 341-342; V. BRANTS, *Liste chronologique des édits et ordonnances des Pays-Bas. Règnes de Philippe IV (1621-1665) et de Charles II (1665-1700)*, Bruxelles, 1910, p. 87.

²⁶⁴ DE WYNANTS, Charges publiques (KBR), f. 53.

²⁶⁵ *Ibid.*

²⁶⁶ JANSSENS, *De Achttiende Eeuw*, p. 92.

²⁶⁷ DE WYNANTS, Charges publiques (KBR), f. 54.

²⁶⁸ Presumably John IV, count of Nassau, lord of Breda (1410-1474/1475).

²⁶⁹ Presumably Elisabeth de Culemborg (1475-1555).

residence, regardless of their immovable or movable nature²⁷⁰. Wynants, however, indicated that the old definition of families and fires, or *trafic* (trade) had been gradually replaced by land and goods. Taxes were not payable where the fruits of goods were collected, but at the place where they were situated. The precise moment of this change, nor the exact ‘act, ordinance or instruction’ were known... ‘*l’on ne sçait pas précisément*’²⁷¹.

5. Usage Beats Legislation

Wynants argued that the change described above occurred only gradually, and was caused by the efficiency of tax collection for the magistrate (city authorities). The placcart of 1617 had simply been ignored: ‘*ce qui étoit ordonné n’a ainsi été fait que sur l’usage ancien pour le confirmer, et pour faire cesser les disputes et difficultés qu’on formoit contre le même usage*’²⁷². All the explanations above... could only count for ‘*le plat païs*’. Wynants explained that the main and smaller cities could determine the *quote* as they wished, ‘*et comme ils ont été accoutumé par ancienneté*’, as authorised by Philip II’s Edict of 23 December 1571²⁷³. Some cities created a permanent system of rights and duties. Others taxed houses and land²⁷⁴, some opted for *trafic et negoce*²⁷⁵.

The annuality of taxation was not a settled practice in the ‘*anciens Actes d’acceptation*’ by the estates. The timeframe for the *aide* granted by the estates to their ruler could be longer: four, six or nine years, or,

²⁷⁰ DE WYNANTS, *Charges publiques* (KBR), f. 55.

²⁷¹ *Ibid.*, f. 56.

²⁷² *Ibid.*, f. 57.

²⁷³ Regulations of 23 December 1571, concerning the collection of various taxes in Brabant, conserved at the State Archives in the archives of the *Audience*. C. TERLINDEN, *Liste chronologique provisoire des édits et ordonnances des Pays-Bas : règne de Philippe II (1555-1598)*, Bruxelles, 1912, p. 122. Philip II’s ordinances between 1563 and 1598 have not been published yet by the Royal Commission for the Publication of Old Laws and Ordinances.

²⁷⁴ Land was not taxed in a uniform way everywhere either. Some tariffs were at five *sols* per *bonnier*, others at a *florin*, and others still at six or seven *sols*. DE WYNANTS, *Charges publiques* (KBR), f. 58.

²⁷⁵ *Ibid.*, f. 57.

conversely, shorter, as in terms of six months. To put an end to these varying practices, the *grande Aide* or *Grote Bede* was agreed: 120 000 florins per year²⁷⁶. Again, the exact moment... ‘*ne se sçait pas au juste*’²⁷⁷. Of course, due to mint depreciation and economic growth, this amount could not remain representative of state expenses. Hence, the *Cleijne Bede* or *petite Aide* was added²⁷⁸. Since this did not suffice either, the *Verhooginghe Van Bede* (*augmentation de l’aide*) was added, in 1634 for 34 000 florins²⁷⁹. Payment was due at St John’s Day and Christmas. Naturally, this could never have sufficed either. The duke (King of Spain) consequently obliged himself and the State to levy *de l’argent à rente sur l’aide*. This turned the *aide* into a permanent and ordinary tax²⁸⁰.

The major part of the *aide* had been a levy on real property, ‘*une charge purement réelle*’, borne ‘according to Roman Law’ by the owner or usufructuary: *tributa solvit qui possessiones tenet, et fructus percipit*²⁸¹. Wynants clarified that as the tax touched landowners, their tenants (farmers) were only held to contribute for ‘*son trafic ou bedrief*’, if all had been payed first by the owner, with a proportional deduction for the payment of ‘*sa pension ou redevançe*’, not more nor less than if he had paid his master a ‘*rente foncière ou seigneuriale*’²⁸². Exceptionally, the duke (legislator) could demand that tenant-farmers paid the terms of the *aide* during their rent period (*inpachtinge* – *inlaetschap*)²⁸³. Wynants clarified that the term *inpachtinge* could refer to short term rent (3 – 6 – 9 years) as well as to long term contracts (10, 20, 30 and more). *Laetschap*, on the other hand, had a perpetual connotation (*contrat censal, durable*), with regards to the cession of a right as recognition to someone who had transferred his inheritance to a third party²⁸⁴. We

²⁷⁶ *Ibid.*, f. 58.

²⁷⁷ *Ibid.*, f. 59.

²⁷⁸ *Ibid.*

²⁷⁹ The two preceding amounts were left blank in the manuscript.

²⁸⁰ DE WYNANTS, *Charges publiques* (KBR), f. 60.

²⁸¹ *Ibid.*, f. 60-61. Reference to *L. est quide. 2. Cod. de annon: et tribut.*

²⁸² *Ibid.*, f. 61.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*, f. 62.

will return to the creditor-owner-tenant relationship in the fifth section of the current part of our contribution.

This practice had evolved to one whereby both landlord and tenant paid half of the *aide*. Wynants explained this with reference to the Roman law-*stipulatio 'du double'* or *stipulatio duplicae*. This clause (or separate special contract) had been added to many sale transactions, and, according to Wynants, had become an integral part, implicitly comprised and expressed when the contact failed to do so explicitly²⁸⁵. A similar mechanism of implicit inclusion had emerged in rent contract practices, passing '*en droit commun*'. Yet, the '*haut quartier d'Anvers*' had the *aide* completely on the owner's shoulders.

b. *The Clergy and its Wide Exceptions*²⁸⁶

Wynants clarified that the clergy was not exempt from taxation. Those holding a seat in the estates were subject to a specific tax, which applied solely to the assets they possessed at the time the tax was established. Extra '*accrués et acquets*' remained under the ordinary *aide*. Wynants argued that reasoning otherwise would result in villages and quarters losing significant tax revenue if clerics began acquiring property in their localities²⁸⁷. Conversely, the acquiring cleric would not pay an additional tax proportional to the value of the property acquired²⁸⁸.

Wynants provided guidance on addressing claims by abbots that they were already subject to specific taxes, thereby exempting them from the *aide*. He first recommended demanding the production of the legal title of acquisition to confirm that it indeed predated the imposition of the special tax. If the property was acquired subsequently, the cleric would be required to pay like any other individual. Only

²⁸⁵ *Ibid.*, f. 63.

²⁸⁶ *Ibid.*, f. 69-76. The KBR's copy, which is cited throughout the manuscript, only haphazardly contains numbering of either parts (§) or paragraphs. The MPM's copy enumerates every sentence or paragraph. This seems to indicate a more mature and structured version of the manuscript. Yet, it is not uncommon for these versions to cut sentences in two and start a new paragraph in the middle of a reasoning (e.g. f. 27-28, § 5, nr. 1).

²⁸⁷ *Ibid.*, f. 66.

²⁸⁸ *Ibid.*, f. 67.

a specific exemption title could provide relief in such cases. Without producing the document, the cleric can be obliged '*sans balancer*' by way of provision. As long as the proof of an exemption to a '*règle commune*' has not been given, he ought to have been '*mis au rang avec les autres*'²⁸⁹. This was not only a customary obligation for the judge. Statutory rules and practices enjoined him not to allow for a postponement²⁹⁰. Moreover, *in dubio contra exemptionem*: in case of a doubtful proof of title, the cleric would still be liable to pay.

The *aide* had been devised to weigh as equally as possible on Brabantian subjects. No exemptions were conceived, not even for judges and officeholders. Wynants referred to art 6 of the instruction of 20 September 1451 and art. 10 of '*celle de l'année 1497*', adding that art. 7 of the former and 11 of the latter expressed that:

*'Tous gens seront taxés pour leurs biens patrimoniaux'*²⁹¹.

Even ecclesiastical goods belonging to chapters, colleges, cloisters and other communities, either acquired by sale or act of last will, were included by art. 8 of the 1451 instructions and 12 of that of 1497²⁹². The 'goods of the first *fondation*' or the '*biens d'amortisation*' were exempt from these provisions. The same applied to goods held '*libres de taille*', more than seventy years prior to 1451. Wynants clarified that '*amortisation*' depended on a positive decision by the sovereign dukes of Brabant: a proof was needed²⁹³.

If the former '*biens de la première fondation*', duly recognized as '*amortis*' by the duke, had not managed to retain their status as exempted from the *aide*, goods could – in Wynants's opinion – still be considered as '*taillables*', if they had been held in a constant possession on a physical location that could be considered as taxable, at least '*a l'avenir*'. Wynants linked this interpretation to a sentence of the Council of

²⁸⁹ *Ibid.*, f. 68.

²⁹⁰ *Ibid.*, f. 69.

²⁹¹ *Ibid.*, f. 70.

²⁹² *Ibid.*

²⁹³ *Ibid.*, f. 71.

Brabant²⁹⁴, namely the case of the locality of Rebecq²⁹⁵ against the nuns and cloister situated within its boundaries. De Fierlant's report mentions that the case concerned '*des biens de la première fondation*'²⁹⁶. There would even have been a deed of '*amortissement*'. However, the latter had been issued by a local nobleman (*seigneur*), and not by the sovereign dukes of Brabant²⁹⁷. Furthermore, the inhabitants of Rebecq (*ceux de Rebecq*) had been in 'ancient' possession, which allowed them '*de les tailler dans l'aide*'²⁹⁸. The dukes had demonstrated a particular solicitude for goods of first foundation, which received 'easily' the decision of exemption. Wynants thought the chapter *de Censibus*, especially regarding the word '*mansum*', used by the chapter for '*dotem*' or '*dot*', could justify such an interpretation. Unsurprisingly, his main reference here was Zeger Bernhard Van Espen's *Jus Ecclesiasticum*²⁹⁹.

This contrasted starkly with the treatment of goods acquired by cloisters *after* their establishment: '*ces acquisitions posterieures [sic] ne méritent pas la même faveur*'³⁰⁰. The problem here resided in the custom that cities, franchises and villages were obliged to pay the *aide* for those goods that had passed under ecclesiastical control. The general matrix of taxation established by the duke counted the village as a whole. Local authorities were solely responsible for the whole amount applied to them, or, in, practice: '*contraint de païer doublement*'³⁰¹. It was customary that all goods were transferred to their new owners with the charges attached to them. Why should cloisters and chapters be allowed to enrich themselves³⁰²?

²⁹⁴ *Ibid.*, f. 72.

²⁹⁵ Village in the duchy of Brabant, presently in the province of Walloon Brabant, displayed on sheet 62 (Enghien) of the 1777 Ferraris Map: <https://www.kbr.be/nl/kaart-van-ferraris/> [Accessed on 15 February 2025].

²⁹⁶ Probably Philippe Ignace de Fierlant (1645-1716), Councillor in the Council of Brabant.

²⁹⁷ DE WYNANTS, *Charges publiques* (KBR), f. 72.

²⁹⁸ *Ibid.*

²⁹⁹ VAN ESPEN, *Jus ecclesiasticum universum*, Part II; Title XXXV; Ch. II; Nr. XV.

³⁰⁰ DE WYNANTS, *Charges publiques* (KBR), 73.

³⁰¹ *Ibid.*, f. 73.

³⁰² *Ibid.*, f. 73-74.

By unjustly favouring newly acquired ecclesiastical goods, a paradoxical situation could arise. What if the Church came to control the majority of wealth in a given locality? This would mean that laypeople, who only owned a small part of the total value, would carry the majority of the burden of taxation³⁰³. They would unluckily sustain the State, wherein precisely the Church controlled the biggest part. Weren't public means spent on the defence of ecclesiastical goods as well³⁰⁴? Wynants recalled that Salvianus already complained on the excessive augmentation of exceptions³⁰⁵. By adding ever more goods to the ecclesiastical tax exemption, the repeated interdictions by successive dukes were undermined. As a rule, the *mains mortes* could not acquire immovable property³⁰⁶.

c. *Nobility and its 'fausses maximes'*

The next category of exemption was that of fiefs (§ 5)³⁰⁷. Practitioners and the '*gens de la cour feudale*' repeat as a '*maxime incontestable*' that fiefs shall not pay into the '*aide*'. However, Wynants doubted of the

³⁰³ Cf. as in France with the *taille*, the *aide* was considered to weigh on all inhabitants collectively, cf. LE GONIDEC, Les sédimentations du ius commune dans l'édification du droit fiscal français.

³⁰⁴ DE WYNANTS, Charges publiques (KBR), f. 74.

³⁰⁵ Salvianus (390?-480?), *De Dei Gubernat*: [reference to Salvianus's *De Gubernatione Dei*] *Divinam severitatem junos provocari, si ita exemptiones dentur ut divites cunctos immunes reddent et miserorum tributa cumulent, ut illis dementur vectigalia vestra, ut addantur nova, illos et decessio etiam minimarum functionum locupletaret, istos ut accessio maximarum affligeret, illi ut eorum quae leviter ferebant, aut ferre possunt, immunitate diresserent, isti ut eorum quae ferre non poterant multiplicatione morentur.* DE WYNANTS, Charges publiques (KBR), f. 74-75. ('We provoke divine severity if exemptions are granted in such a way that they render all the wealthy immune and heap tributes upon the wretched, so that your taxes are maddening to them, so that new burdens are added, to enrich those through the withdrawal even of the lowest functions, to afflict those through the accession of the greatest, to direct these toward the multiplication of what they were lightly bearing, or can bear, through immunity, and to let those perish, or be delayed, through the multiplication of what they could not bear') (my emphasis).

³⁰⁶ DE WYNANTS, Charges publiques (KBR), f. 75.

³⁰⁷ *Ibid.*, f. 75-91.

general applicability of this idea, which, in practice, often failed. Reading article 6 of the first, and 10 of the second ducal instruction, the only valid conclusion appeared to be that ‘big fiefs’ and baronies were exempted from the *aide*³⁰⁸. Article 6 mentioned ‘*hooghe heerlijckheijt*’ as the criterion of distinction, or whose ‘*vader ofte oude vader*’ (father or grandfather) had possessed ‘*in onsen Landen Banrotsen Stammen*’ (who had held baronies or baronial descent in our country). Wynants thought that this could not mean anything else than those who possessed high justice, or those whose father and grandfathers had possessed Baronies in the same country. ‘*Hooghe heerlijckheijt*’ had to mean ‘high jurisdiction’, which in Wynants’s opinion was decisive to state that this could not mean an ordinary fief. Fiefs had to depend on or be an integral part of a fief. The latter needed to have high jurisdiction and ‘*toute justice*’.

Commenting on the text of the ducal instruction, Wynants noted that the ‘possessors of high lordships and baronies’ being exempted, a separate exemption was formulated:

‘behoudelyck ofte sij eenige goederen hielden ofte vercreghen die voormaels als sij andere luyden toebehoorden mede ten laste pleghen te staen, dat sy daer af mede gelden sullen ten waere dat sy dit wedergecreghen ende totter heerlijckheijt hadden gevueght ofte vueghden’.

If an immovable good was in one’s possession or had been recently acquired and was previously subject to taxation, the holder of a ‘*seigneurie ou baronie de haute justice*’ could not evade their tax obligations. The only exception was that the good had been an integral part of their ‘*haut fief*’, and had subsequently been reintegrated by incorporation or unification with the same fief³⁰⁹. Ancient exemptions, concluded Wynants, could thus be restored, when the recovery or partial reunion took place for a fief that had been separated by alienation in the past. In the meanwhile, from the *terminus a quo* of the alienation to the *terminus ad quem* of the reunification by acquisition by the lord ‘*de haute*

³⁰⁸ *Ibid.*, f. 75-76.

³⁰⁹ *Ibid.*, f. 77 (folio erroneously numbered as 67).

justice, the previous possessor, *'ce particulier'* who did not have the same noble status, would have had to pay taxes for the good.

Wynants contrasted this clear exception (limited to fiefs held by lords with *'haute justice'*) with the practice of the Feudal court of Brabant³¹⁰, which had declared all fiefs to have been exempted from paying the *'aide'*. In Wynants's own terms in the institutional *Mémoires*, the Feudal court of Brabant, *'une cour très ancienne'*³¹¹, was competent *ratione loci* for a wide array of fiefs *'en tres grand nombre'*, due to the typical feudal chain of dependence, going all the way to East Frisia and the city of Cologne. The court was called *'souverain'*, as the *'sovereign's feudal court'* and was composed of alternating feudal peers, from five to seven and sometimes nine³¹². Its sentences were called *arrêt*, and thus not subject to appeal, and only to revision³¹³. Wynants explained that the court was *'un prétexte d'obstacle'* in Brabant, because the nobility with a *'fief titré'* could act as peer in the court and invoked its privilege to be summoned at the Feudal court, rather than at the duke's Council of Brabant³¹⁴. This found no grace in the eyes of the regalist Wynants: the nobles were not at all called upon to judge, and would never really consider taking their seat in the court:

*'ce seroit avilir leur qualité s'ils s'y trouvoient parmi les Juges avocats'*³¹⁵

³¹⁰ DE WYNANTS, *Mémoires*, f. 116-121. *'On lui donne le titre de cour souveraine. J'en sais autre raison, si ce n'est qu'elle étoit la cour féodale du Souverain, elle juge par arrêt'* (*Ibid.*, p. 117).

³¹¹ *Ibid.*, f. 116.

³¹² The court was run by the *'Lieutenant de Sa Majesté'*, who picked the judges from the *'Avocats pairs de la cour'*. It held a general assembly every Saturday at his residence to discuss pending cases. The Lieutenant's residence equally was the seat of the court for its hearings and sentences. The court's proceedings were *'très fraieuses aux parties plaidantes'*, hence the need to cut through conflicts of jurisdiction with the Council of Brabant, the duke's sovereign court of law.

³¹³ This procedure triggered an invitation for judges from other councils or the University of Leuven, depending on the number of judges that had intervened in the attacked sentence. DE WYNANTS, *Mémoires*, f. 117.

³¹⁴ *Ibid.*, f. 119.

³¹⁵ *Ibid.*

In practice, by Wynants's days, rarely more than two to three judges were called by the Lieutenant... from the ranks of the Council of Brabant³¹⁶.

Far from accepting the general statement that fiefs owned by nobles ought to be exempted from the *aide*, Wynants brought in his own observations in the duchy. Fiefs had been subjected to taxation in the *aide*: not only when they were rented out, but even in cases whereby the noble owner exploited the land by his own hands, 'holding, cultivating and reaping the fruits himself'³¹⁷. However, the '*fausse maxime de tenir les Fiefs exemts*' was so widespread and had taken root in the biggest part of the duchy, where *de facto* all fiefs enjoyed an exemption for the *aide*³¹⁸.

Wynants deplored the use of fallacious arguments by the *feuodistes* [sic]³¹⁹: statements confirming old exceptions could not create new rights: *conservatio juris antique, non concessio novi*³²⁰. According to Wynants, only a legislative act by the duke, having heard all three estates (and not only the nobility) could establish exceptions and break the equal footing between most fiefs and other pieces of land³²¹. Infractions on the rights and privileges of the subjects of Brabant had been exposed frequently by 'the State, the Council [of Brabant], as well as the cities and inhabitants of the Province'³²². The consequence of this lack of rigour in legal reasoning was not only that nobles did not pay the *aide*, but, conversely, foremost that:

³¹⁶ *Ibid.* The Lieutenant pleaded that he ought to have been a *de iure* member of the Grand Council of Malines and the Privy Council, as he had the authority (as replacement of the duke) to appoint judges in the Feudal Court, including among members of these two judicial bodies. Yet, Wynants restricted this to the cases of *révision* (whereby a sentence of the Feudal Court was re-examined by the same court, but in a different composition, possibly including members of the Grand Council and the Privy Council). *Ibid.*, f. 121.

³¹⁷ DE WYNANTS, Charges publiques (KBR), f. 80.

³¹⁸ *Ibid.*, f. 80.

³¹⁹ *Ibid.*, f. 83.

³²⁰ *Ibid.*, f. 82.

³²¹ *Ibid.*, f. 83.

³²² *Ibid.*, f. 91.

*‘plusieurs particuliers ont été chargés mal à propos de la quote de ceux qui selon le Droit et les Instructions auroient du contribuer avec les autres’*³²³

Wynants targeted Antonius Anselmus (1589-1668), who, in his *Tribonianus Belgicus*³²⁴, had elevated the exemption for all fiefs, even ‘*arri-ers fiefs*’ [sic] to a general principle³²⁵. Anselmus drew his arguments from the case law of the Council of Brabant and the Feudal Court, Acts of 4 April 1651 and 21 October 1654 and general principles drawn from the nature of fiefs. Wynants rejected the invocation of the cases decided by the Council of Brabant, as they concerned cases of ancient, proven, tax exemptions. The Feudal Court, however, had overstepped its competence. For the *aide*, litigation could only take place before the tribunals of the *chefs villes du Duché* in each quarter, by exclusion of any other judge³²⁶. The Acts cited by Anselmo demonstrate ‘*combien cet auteur a été peu informé de la matière*’³²⁷. Wynants argued that these documents did not even mention the exemption of fiefs. Anselmo’s choice of documents was as useful as that of the History of Alexander the Great³²⁸!

Finally, the reasons built on the specific charges linked to vassalage were ‘*de peu de consideration aujourd’hui*’ and would only have been relevant centuries earlier, as Brabant did not know personal service obligations for vassals. Military obligations for noblemen did not weigh any

³²³ *Ibid.*, f. 83.

³²⁴ Anselmus had been an alderman in Antwerp and advocate at the Council of Brabant in the first half of the seventeenth century. See W. DRUWÉ, *Loans and Credit in Consilia and Decisiones in the Low Countries (c. 1500-1680)*, Leiden/Boston, 2019, p. 89 <https://dx.doi.org/10.1163/9789004416529> [Accessed on 15 February 2025]. A. ANSELMO and J. ROMMEL, *Tribonianus Belgicus sive dissertationes forenses, ad Belgarum principum edicta ... Additae sunt res judicatae in supremis, & provincialibus Belgii conciliis, nec non aliarum curiarum sententiae*, Bruxelles, 1663, Ch. LXXXVII (erroneously 77 in the manuscript), § 8.

³²⁵ DE WYNANTS, Charges publiques (KBR), f. 84.

³²⁶ *Ibid.*, f. 85 and 89 (invoking a Placcard of March 1617 governing the fiscal procedure for the *aide*).

³²⁷ *Ibid.*, f. 86.

³²⁸ *Ibid.*

heavier than those of ordinary subjects³²⁹. Homage to the overlord was ‘*pas une grande affaire*’. Paying ‘*relief*’ was only due at the concession of the fief (ergo: only once). Census goods (*biens censeaux*) were subjected to an annual tax, which could be likened to the ‘*droit de relief*’. However, this did not engender a tax exemption for census goods!

Breaking the equality of the duke’s subjects before the *aide* in the 1720s was even worse, Wynants argued, because the subjects had to contribute much more to the mere conservation of the State. Vassals are obliged just as ordinary people, and perhaps even more, as they were not obliged to personal service anymore³³⁰. How was it possible that this ‘evil’ had taken root in the biggest part of the duchy, to an extent that it had become impossible to eradicate it? *Non facile mutanda sunt quae certam legem ab antiquitate receperunt...*³³¹ Wynants proposed to tax all fiefs where it would be possible, and to leave those exempt where the owners could prove their legitimate and peaceful possession of exemption over forty, fifty, sixty or more years. Citing – again – Van Espen, Wynants invoked that ‘*le long usage est un bon interprete de la loi*’ [sic]³³².

d. *Oude Stock Bosschen* : Exempted Old Woods

Besides the cases of the clergy and the fiefs held by lords ‘*de haute justice*’, Wynants mentioned the tax exemption for ‘*les Bois d’Estoc*’ or ‘*Oude Stock Bosschen*’ (§ 6)³³³. These were woods not having been exploited (‘*réduits en culture*’) for three centuries or ‘*depuis toute ancienneté*’. The exact reason was not known, but these lands had been left out of the tax registers³³⁴. Usage and the Council of Brabant’s case law had entrenched the exception. However, if a subject of the duke invoked the

³²⁹ *Ibid.*, f. 87.

³³⁰ *Ibid.*

³³¹ *Ibid.*, f. 88.

³³² VAN ESPEN, *Jus ecclesiasticum universum*, Part II; Title XXXV, de imm. honor. Eccles.; Ch. II, Nr. XLVIII.

³³³ *Ibid.*, f. 91-106.

³³⁴ *Ibid.*, f. 91-92.

exemption for ‘*Bois d’Estoc*’, the burden of proof was not on the government’s shoulders.

Wynants critically examined documents brought in on behalf of the Jesuits in Nivelles, in the Southern part of the duchy³³⁵. Seven sentences, a *turbe* (witness statement recorded by a court of law) confirming that woods wherein no cattle had pastured, an opinion by a registrar of the estates of Brabant and even a decision by emperor Charles V were brought in as arguments. Wynants refrained from accepting these documents: no legitimate title had introduced the exemption, but only usurpation. He doubted whether the seven sentences concerning Nivelles had not just been decided on possession. Furthermore, the *turbe* had no value of proof, as it was not unusual for judicial decisions to go against the content of such a collection of witness statements. The registrar’s opinion mentioned not ‘*Bois*’, but ‘*biens*’ (goods), and the latter had been positively excluded by Instructions³³⁶.

Wynants argued that exemptions for forests could be lost after a ‘*longue succession*’ or a ‘*prescription de trente ans*’³³⁷. The *ratio* for the exemptions had been that woods were not yet economically as valuable as they had become with the passage of time, ‘*ce qui ferait cesser la cause pour laquelle on pourroit conjecturer qu’on ne les auroit pas taxés au tems de nos Ancêtres*’³³⁸. In other words, a ‘*bois d’estoc*’ could lose its exemption if it was exploited economically. Once the transition had been made to an economically valuable forest, the *bois d’estoc* could never again return to the fiscal exemption attached to a status of complete tranquillity and rest, ‘*puisqu’il y auroit memoire qu’ils auroient été reduits en culture*’³³⁹. The *bois d’estoc* label only counted for those woods ‘where time immemorial indicates that they have not been claimed by men’.

³³⁵ Displayed on sheet 79 of the 1777 Ferraris map: <https://www.kbr.be/nl/kaart-van-ferraris/> [Accessed 15 February 2025].

³³⁶ DE WYNANTS, Charges publiques (KBR), f. 96.

³³⁷ *Ibid.*, f. 97. ‘*res omnis facile redit ad communem naturam, et Privilegium Exemptionis facillime amittitur, ut res ad uniformitatem redigantur*’. (‘All things easily return to their common nature, and the privilege of exemption is very easily lost, so that things may be brought to uniformity’)

³³⁸ *Ibid.*, f. 97-98.

³³⁹ *Ibid.*, f. 98.

The owner who knowingly transformed the woods into arable land or built on it, had to accept the consequences of his actions: ‘*une chose qui entraînoit et qui devoit entraîner après soi la perte et l’extinction du Privilège*’³⁴⁰. The privilege of exemption for the *aide*... had been irretrievably lost, ‘*de morte ad vitam non datur regressus*’, denying any possibility that tax exemptions could become dormant and be resurrected again³⁴¹.

Of course, these considerations were connected to specific cases. Wynants recalled a *Bois d’Estoc* that had been cut and laboured for farming. When the administration intended to impose the *taille*, the owner opposed that he had just cut trees to plant them again³⁴². All the owner had done, as he alleged, was removing the ‘*anciennes souches*’, which – essential for a *Bois d’Estoc* – had become too old. Sowing oatmeal as an intermediate crop was necessary to ‘repopulate’ the forest³⁴³. Wynants analysed that the owner was not necessary mistaken. The essential aspect (‘*la face*’) of a forest is not altered if it is replanted using necessary and useful means. This is acceptable, even if the land is cultivated, laboured or even sowed (‘*ensemencé*’) with oatmeal, weat or any other crop. The total duration should not exceed two years³⁴⁴. The judge ought to investigate whether the owner’s actions are indeed followed by a new wave of tree plantation, or whether he has merely tried a trick (‘*une defaitte*’)³⁴⁵.

e. *Wording and Distinctions*

Deriving a general principle (*genus*) from the preceding specific case (*species*), Wynants indicated that the exceptions invoked for ecclesiastical properties ‘*de la première fondation*’ ought to be treated in the same way. Nevertheless, once the latter had been alienated for the first time to a layperson, the exemption could not apply anymore³⁴⁶. Quid,

³⁴⁰ *Ibid.*, f. 99.

³⁴¹ *Ibid.*, f. 98.

³⁴² *Ibid.*, f. 99.

³⁴³ *Ibid.*, f. 100.

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*, f. 101.

³⁴⁶ *Ibid.*

however, if a *'bien de la première fondation'* were to be sold off to another chapter, convent or ecclesiastical college? If the seller did not obtain the consent of the duke and his estates of Brabant, Wynants would be inclined to deny the conservation of the fiscal privilege³⁴⁷.

However, interpreting the first and second ducal instructions, Wynants distinguished two aspects of the privilege. With regards to the acquirer or buyer, the goods transferred by the seller could not be seen as *'biens de la première fondation'* (acquiring a good by sale is per definition a derivate way of acquisition). The eighth article of the first ducal instruction, and the twelfth of the second one would however indicate that the privilege would not be lost. The former prescribed that the *'biens de la première fondation'* ought to remain *'en mains Ecclesiastiques'* (in the power of the Church), and nothing more. The text did not require the first entity (*'le Corps'*), to whose benefit the goods had been primarily designated (*'amortis'*) to remain the owner³⁴⁸. The literal expression used in the first instructions was *'totter Geestelijckheijt'*. The 'old immunity' for the *taille* ought to remain intact.

The second instructions, however, frame the privilege somewhat differently: not *'totter Geestelijckheijt'*, but *'tot deser Geestelijckheijt'*. Wynants explains that the Dutch *'die'* (this) designated a specific Ecclesiastical corporation, and not the Church as a whole³⁴⁹. This wording would limit the privilege to the 'first possessors' (*'Premiers Possesseurs'*) and exclude the ulterior acquirers. However, Wynants proceeds to a closer reading of *'die'* (*'ces'* in French): the relative pronoun is not restrictive, but *'démonstratif'* or exemplarily used. Its antecedent is an enumeration of 'chapters, corporations, colleges, convents and other ecclesiastical bodies' within the same 12th article of the second ducal instructions. The latter applied to the goods of the first foundation possessed before the year 1481. If the latter had remained within the ownership and possession of the Church *sensu lato*, they could be counted as exempted. To sustain this interpretation, Wynants refers (this time positively) to

³⁴⁷ *Ibid.*, f. 102.

³⁴⁸ *Ibid.*, f. 103.

³⁴⁹ *Ibid.*, f. 104.

usage: permutation, sale or other derivate ways of acquisition, ‘from one ecclesiastical hand to another’, had not voided the exemption³⁵⁰.

Finally, Wynants added two general points. First, for tax exemption on ‘*bien amortis*’, fiefs exempted from the *aide* and ecclesiastical tithes, the owner, possessor of usufructuary cultivated and exploited the land with his own hands (‘*par ses propres mains*’)³⁵¹. Ergo: if these goods were given ‘*en ferme*’ (whereby the economic exploitation is ceded to someone else), the tax exemption would not apply to the acquirer of the economic exploitation. Here, the confused practice in Brabant made it difficult to assert the principle for all cases. Wynants referred again to Van Espen³⁵². Some ‘*fermiers*’ just paid the ‘*aide*’ in full, as would have done owners, possessors or usufructuaries of non-exempted goods. Most ‘*fermiers*’, however, paid only half of the ‘*aide*’. Finally, another minority considered the ‘*fermier*’ to be fully exempt, as in a judicial decision cited by Van Espen in favour of the abbot of the mighty abbeys of Averbode and Postel against those of Baelen, whereby exploitants were seen as exempt from contribution in the ‘*aide*’. Which rule could a conscientious lawyer follow in interpreting these contradictory cases? Wynants pleaded to stick to the ‘*usage ancien*’.

Secondly, the designation of goods to count as ‘*biens de la première fondation*’ (the ‘*amortissement*’) does not by itself confer the exemption. The duke has the faculty (the possibility) to use his power to designate goods as exempted from tax, as part of the foundation of an ecclesiastical entity. The estates of Brabant always must consent. It is not possible to proceed to an *amortissement* by the duke’s mere will³⁵³. This is all the more valid in view of the interdiction by the ‘*Placcarts et Edits Belgiques*’, for which Wynants refers to Peckius³⁵⁴ and Anselmo³⁵⁵.

³⁵⁰ *Ibid.*, f. 105.

³⁵¹ *Ibid.*, f. 106.

³⁵² VAN ESPEN, *Jus Ecclesiasticum*. Part II ; Title XXXV, Chapter II, Nr. XVII.

³⁵³ DE WYNANTS, *Charges publiques* (KBR), f. 107.

³⁵⁴ The Council of Brabant’s library only lists the *Opera Omnia*, CBR0457 (probably the edition of Verdussen, 1666).

³⁵⁵ *Tribon. Belg.* Cap 77 § 1°. Anselmo’s *Tribonianus Belgicus* is – unsurprisingly – listed in the Council of Brabant’s library: CBR0488.

The *amortissement* is thus a mere ‘*grâce*’ or merciful advantage granted exceptionally by the duke, under the estates’ control. It does not automatically entail a fiscal exemption. The latter ought to be seen as a second and distinct type of liberality. Wynants explains that several decisions of amortisation had been taken without the complementary granting of a fiscal exemption. The Carmelites of the ‘Desert of Neten’³⁵⁶ had received their amortization goods with an explicit denial of fiscal exemption: ‘*que les biens j’y spécifiés seroient taillables non obstant les lettres et la grâce d’amortissement*’³⁵⁷. Again, Van Espen is Wynants’s guide: the canonist cited François Zypaeus (François Van den Zype, 1578-1650)³⁵⁸, who already indicated several *lettres d’amortissement* explicitly stating that goods would remain *taillables* as before their amortization³⁵⁹. This explains why in the case of Rebecq, the whole Chamber (of the Council of Brabant) rejected the argument that amortized goods were exempt from taxation. Again, Wynants added that privileges were ‘*de droit étroit*’, and thus required a restrictive interpretation³⁶⁰. This was even more true for those that could cause grievances to third parties. If the beneficiary of an amortization had already received a liberality, automatically adding a second one, namely an exemption of ‘*charges publiques*’, this would increase the burden of taxation on the duke’s other subjects³⁶¹!

Stating again that the two privileges of amortization and fiscal exemption are distinct, Wynants reproaches Anselmo again to have made a mistake. The latter would have written that immovables are not taxable when amortization takes place. Even more, for Anselmo, the very act of amortization ought to specify that the immovable goods in

³⁵⁶ A municipality in the duchy of Brabant (presently the province of Walloon Brabant), south of the Forest of Meerdael, below Leuven. The convent of the Carmelites is displayed on sheet 112 of the 1777 Ferraris map of the Austrian Netherlands: <https://www.kbr.be/nl/kaart-van-ferraris/> [Accessed 15 February 2025].

³⁵⁷ DE WYNANTS, *Charges publiques* (KBR), f. 108.

³⁵⁸ *In Jure Eccles. Univ.* Part. 2 tit 35 cap 2 Nr 16.

³⁵⁹ DE WYNANTS, *Charges publiques* (KBR), f. 109.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

question remain ‘*taillables*’³⁶². If not, taxation would be impossible, and the goods would automatically disappear from the fiscal rolls. Wynants rejects this reasoning, and adds that the instructions formulate further conditions. If a good ought be seen as amortised with the consent of ‘the State’ (*L’État*, read: the estates of Brabant and the duke), the fiscal exemption would not apply if the remaining conditions would not have been met³⁶³. Firstly, only ‘*biens de la première fondation*’ could be concerned (with the peculiarity that they can have been ceded by the original owner, if only the acquirer(s) had been ecclesiastical corporations). Secondly, the amortisation ought to be proven to have been ‘*duement*’ constituted: only an explicit grant of a fiscal exemption could be valid.

Importantly, Wynants does not consider a consent of the estates as valid, if the latter does not contain the explicit agreement of the ‘*Chef Ville sous qui ses Biens sont scitués et ressortissent*’. This is of course quite logical, referring to the harm inflicted on third parties by the decision to grant a tax exemption: the other subjects of the duke within the city’s jurisdiction would have to compensate for the missing fiscal revenue³⁶⁴. It goes without saying that Wynants requires the consent of all three estates (clergy, nobility and cities). However, if the city within whose jurisdiction the goods were situated, had given its consent, this made the agreement of its pairs redundant³⁶⁵. Hence, as demonstrated in the Edict of 2 November 1520, it was not even necessary to formulate the proposal to the cities not concerned by the exemption³⁶⁶.

The estates and their ‘*Chefs Villes*’ ought to look at amortisation and exemption with the necessary suspicion. Even amortization without exemption make ‘*le public et le particulier*’ alike suffer a ‘very considerable prejudice and interest’. Wynants complains that the clergy acquired

³⁶² *Trib. Belg.* dict: Cap 77 § 1.

³⁶³ DE WYNANTS, Charges publiques (KBR), f. 111.

³⁶⁴ *Ibid.*, f. 112.

³⁶⁵ *Ibid.*

³⁶⁶ This Edict is not included in the ordinances of Charles V published by the Royal Commission for the Publication of Old Laws and Ordinances in 1898. C. LAURENT and J. LAMEERE (eds.), *Les ordonnances du 29 janvier 1519 (1520, n. st.) au 31 décembre 1529*, Bruxelles, 1898.

so many goods incessantly and unnoticed, that it would, in the long run ‘swallow all those of the whole Province’³⁶⁷. Who would then pay the (necessary) public charges? The Church asks for amortisation – as we saw before, a liberality and a grace conferred by the sovereign only exceptionally – for one reason today and for another one tomorrow, offering to pay taxes ‘*comme le moindre païsan*’³⁶⁸. The clergy, however, only pretends to be a loyal subject of the duke. As soon as the amortisation is granted, they attempt ‘by any means possible’ to get rid of the charges and obtain an exemption. Big and small relatives are used. If the lobbying does not play out well, a new attempt will start soon afterwards, until the secular authorities finally give in³⁶⁹. In order to resist the ceaseless temptations of ecclesiastical lobbying, secular authorities have to stick to a *terminus ad quem*: 1481. Anything acquired afterwards, even if amortisation is granted by an explicit ducal decision with the estates’ consent, cannot ever benefit from the exemption. Only an explicit mention in the same act can count as a valid title³⁷⁰.

Of course, the general principles of civil law apply as well. If none of the amortised goods have ever been subjected to taxation (‘*tels Biens n’eussent été taxés et taillés dans l’aide*’), it would become very difficult in practice ever to recover a penny of tax, ‘*la prescription immémoriale tenant lieu de titre*’, with reference to the famous lawyer Pieter Stockmans³⁷¹. This is especially true in cases whereby deeds would have been lost, as several corporations and private persons had suffered a loss of deeds by the unhappy circumstances of war³⁷².

As mentioned above, ‘*fermiers*’ or economic agents using land owned by ecclesiastical corporations, did have to contribute in the ‘*aide*’ (§ 9). Wynants adds the Regulations of 20 August 1655, obliging these third parties to contribute to the ‘*tailles*’, where they have always been paying

³⁶⁷ ‘*engloutiront à la fin tous ceux de la Province*’. DE WYNANTS, Charges publiques (KBR), f. 113.

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid.*, f. 114.

³⁷⁰ *Ibid.*, f. 115.

³⁷¹ ‘De Privilege &ca Stockm. 86 Decis no 5’.

³⁷² DE WYNANTS, Charges publiques (KBR), f. 115.

them ‘*d’ancienneté*’³⁷³. Where ‘*fermiers*’ had contributed, real taxes (established on things, i.e. goods) ought to be paid in the place where fruits have been collected. Personal contributions, on the other hand, had to be brought in where the latter had been stored in granaries (‘*où ils les engrangent*’)³⁷⁴.

Again, the cases discussed by Van Espen, following Zypaeus, bring some nuance³⁷⁵. The Council of Brabant judged on 22 August 1548 in favour of the abbot of Saint Bernard³⁷⁶. The latter had a dispute with the villages of Westmalle and Zoersel³⁷⁷. The abbot denied that his ‘*fermiers de la dîme*’ (the farmers paying tithes, economically using his lands) were subjected to the ‘*aide*’. He won the case. Wynants, however, nuances the impact of the judgment, as the ecclesiastical tithes and the farmers indeed had a franchise³⁷⁸. Conformably to the Edict of 1655 (a century after the Council of Brabant’s decision), no innovation ought to be tolerated in these cases.

f. *Is the Duke Exempted?*

Finally (§ 10), Wynants asks whether the duke himself, for his immovable goods and rights, was subjected to paying the ‘*aide*’ in Brabant. For the ‘old goods’ (of possession immemorial), it seems to be self-evident: ‘*il n’y a pas de raison que les Biens du Prince contribuent au Prince*’³⁷⁹. Why should the duke pay taxes to himself? However, when the latter have been leased out to a ‘*fermier*’, analogous questions arise

³⁷³ *Ibid.*, f. 116.

³⁷⁴ *Ibid.*

³⁷⁵ ‘2 Tit 35 Cap 2 N 17’.

³⁷⁶ Saint Bernard in Hemiksem, duchy of Brabant, presently Province of Antwerp. Sheet 73 of the 1777 Ferraris Map: <https://www.kbr.be/nl/kaart-van-ferraris/> [Accessed 15 February 2025]. The bishop of Antwerp (a bishopric created by Philip II conformably to the Tridentine Reform) had a seat in the estates of Brabant in his quality as abbot of Saint Bernard. DE WYNANTS, *Mémoires*, f. 155.

³⁷⁷ Resp. ‘*Westmale*’ and Soersel in the text, sheet 106 and 107 of the 1777 Ferraris Map: <https://www.kbr.be/nl/kaart-van-ferraris/> [Accessed 15 February 2025], both in the duchy of Brabant, presently Province of Antwerp.

³⁷⁸ DE WYNANTS, *Charges publiques (KBR)*, f. 117.

³⁷⁹ *Ibid.*

as for ecclesiastical immovable goods. In Wynants's interpretation, the 'fermier' has to contribute in those places where other 'fermiers' of exempted immovable goods (e.g. belonging to the Church, *Bois d'Estoc* or fiefs of the *Banrotsen*) are subjected to taxation. The *ratio* here would be that the rule ought to be the same for all³⁸⁰. The *fermiers* working on the duke's land tend to pay a lower price for obtaining their lease when the *ferme* is not linked to a tax exemption³⁸¹.

However, Wynants adds a further distinction. What if the duke acquires a piece of land subjected to the *taille*? The duke can either buy the land from a private person or corporation, acquire it by legislative decision, can confiscate land, acquire it as part of a vacant inheritance, by right of 'Batardise' or in any other way. It was customary to require the payment of half of the 20th penny tax from 'fermiers' on the goods and domains of the sovereign. Hence, Wynants applies the same reasoning to goods acquired by the dukes of Brabant: half of the 'taille' should be paid by 'fermiers' allowed to exploit the duke's lands economically³⁸².

If this contribution would not be demanded, Wynants added, the quarters³⁸³, villages and franchises would suffer too much by one single transaction, whereby the duke would acquire a piece of land and thus withdraw its related part in the fiscal revenue, increasing the burden on the other taxpayers³⁸⁴. The total amount of taxation demanded in each of these districts would not change. Those who alienated their land to the duke (and had to pay the 'aide' as ordinary subjects) would disappear. It would not be acceptable to have the burden associated with their immovable goods vanish as well: *res enim transit cum suo onere*³⁸⁵.

³⁸⁰ *Ibid.*, f. 118. Adding that the 11th article of the Instruction for the Levy of the 10th and 20th penny of 18 January 1554 (Charles V) prescribes that those who economically exploit the goods of the emperor pay the 20th penny, just as they would have done if they had been active on a private person's land.

³⁸¹ *Ibid.*, f. 119.

³⁸² *Ibid.*

³⁸³ Subdivision of the duchy of Brabant, also relevant for fiscal reasons, as we will see further on.

³⁸⁴ DE WYNANTS, *Charges publiques* (KBR), f. 119.

³⁸⁵ *Ibid.*

g. *Foreigners*

Foreigners (*étrangers et forains*) owning immovable goods in Brabant were subjected to the *'aide'* just as the inhabitants (§ 11). One could argue that the lordship of Malines (surrounded by the territory of Brabant)³⁸⁶ was a different polity. Inhabitants of Malines owning land and other immovables in Brabant had tried to interpret the fiscal instructions of Brabant to argue for their exemption, but this failed, as a decision of the Council of Brabant of 25 October 1540 explained³⁸⁷. Another claim was put forward by inhabitants of the county of Hainault. In the latter principality, the *'aide'* was collected on a personal, and not a real basis. When inhabitants of Hainault were forced to pay the *'aide'* for their property in Brabant, the provincial authorities retaliated and proposed to tax the goods held by inhabitants of Brabant as well. Wynants cites a decision of 1498 that forbade this, however without adding the competent organ³⁸⁸.

Besides the categories of exemptions enumerated above, the Order of Malta and the Teutonic Order likewise were not subjected to the *'aide'* (§ 12)³⁸⁹. The legal basis of this exemption was not, as they argued, a unilateral (and thus revocable) decision by the duke and the estates. The knight orders invoked a *'convention et concordat'* (ergo: a bilateral and reciprocal legal instrument, which cannot be terminated unilaterally without compensation)³⁹⁰. If the duke and estates had to tolerate the exemption, they received a counterparty: the orders' relentless efforts (and the expenses associated with it) to defend them against the

³⁸⁶ Presently part of the Province of Antwerp, Sheets 91, 92 and 109 on the 1777 Ferraris Map: <https://www.kbr.be/nl/kaart-van-ferraris/> [Accessed 15 February 2025].

³⁸⁷ DE WYNANTS, Charges publiques (KBR), f. 120.

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*, f. 121. On these orders and their fiscal and legal status in a transnational Catholic and Christian context: M. VAN DER EYCKEN, *Ridders in de lage landen. 800 jaar Duitse ridderorde*, Gorredijk, 2020; A. BLONDY, *L'Ordre de Malte au XVIII^e siècle. Des dernières splendeurs à la ruine*, Paris, 2002, <https://doi.org/10.3917/bouch.blond.2002.01> [Accessed 15 February 2025].

³⁹⁰ Indeed, Wynants added, all sovereigns up to Charles II of Spain (1661-1700) had confirmed these 'privileges and concordats'. DE WYNANTS, Charges publiques (KBR), f. 122.

infidels, as agreed to by all Christian princes, among whom the dukes of Brabant counted. This type of assistance was seen as ‘softer’ (*plus douce*) than sending payments³⁹¹. The knights added furthermore that their lands had not been counted in the tax rolls. This meant that their exemption would not disadvantage the villages or quarters of the duchy, as the potential tax income deriving from the belongings of the orders had never been comprised in the total amount due to the duke³⁹².

h. *War and Transformations*

What happens if goods are altered by the desolations and destructions of war (§ 13)? A tenant’s farm or a building could be burnt down and transformed into arable land. What if, by their owners’ own will, farmland is converted into a meadow, or vice versa, or into a fishpool, or into a forest³⁹³? Wynants pleads for treating these newly converted goods according to their actual use. What if the size of a piece of lands grows or diminishes? If a village expands and new buildings are added, the latter are taxable as the other dwellings that had been erected before. The same principle, Wynants added, ought to be applied when heathland (*Bruyère*) is transformed into farmland or meadows by a ‘natural movement’³⁹⁴.

Of course, if a ‘natural movement’ tends to transform heathland into cultivated land over time, it is quite logical that the latter were not comprised in the initial village tax roll. That, Wynants adds, should not be an obstacle to levying the ‘*aide*’ on their proprietors. It is more just that ‘*la généralité profite de la taxe que de mettre un nouveau possesseur hors du rang ordinaire et de le laisser exempt*’. The whole local community should benefit from this extra revenue. Leaving a possessor of new constructions or

³⁹¹ *Ibid.*, f. 121.

³⁹² *Ibid.*, f. 122.

³⁹³ *Ibid.*, f. 123.

³⁹⁴ ‘*se réduisent naturellement en culture*’ DE WYNANTS, Charges publiques (KBR), f. 124. This point should not be taken too lightly, as considerable parts of the North of Brabant were classified as ‘*Bruyère*’ (heathland) in the Ferraris Map, half a century after Wynants’s treatise. See sheets 88 (Capellen), 87 (Wuustwesel), 104-105 (Hoogstraten), 125 (Welde), 145 (Postel), 127 (Casterlee) and others.

freshly cultivated land outside of the solidarity between taxpayers is not an option³⁹⁵.

The ‘*usage universel*’ of the whole Province had elevated this rule beyond any suspicion or doubt. When the initial census (*matricule*) or inventory (*dénombrement*) had been drawn up for the *aide*, barren lands were of course not measured correctly. Nevertheless, they were part of the village. No reason justified leaving them exempt. Wynants hammered that the general rule (*la Règle ordinaire*) subjected *all* goods to public charges. It would be more just that the common good (*la généralité*) profited from the taxable revenue from newly developed lands. Otherwise, the new possessor of taxable lands (= the possessor of the converted *Bruyère*) would be left ‘*hors du rang ordinaire*’. No other outcome is possible but to ‘say and conclude’ that he is subjected to the *aide* (*taillable*)³⁹⁶.

i. *Variations in Taxation for the ‘aide’*

Another point (§ 14) discussed is the variety of levying by the estates of Brabant. Having consented to taxation, using the instruction of 18 January 1554, they granted 400 000 florins on the tenth and twentieth penny, applied on ‘all goods’ and products within Brabant³⁹⁷. In another case, the estates granted permission to levy a tenth penny on the sale of all movable goods in Brabant during two years, as two ordinances of July 1571 and November 1575 prove³⁹⁸. Likewise, the

³⁹⁵ *Ibid.*, f. 124.

³⁹⁶ *Ibid.*

³⁹⁷ This instruction is not comprised in the sixth volume of ordinances of Charles V published by the Royal Commission for the Publication of Old Laws and Ordinances of Belgium, J. LAMEERE (ed.), *Ordonnances du 9 janvier 1549 (1550 n. st.) au 25 octobre 1555*, Bruxelles, 1922.

³⁹⁸ DE WYNANTS, *Charges publiques* (KBR), f. 125. The former ordinance might refer to two texts of the same day (31 July 1571) the first on the levy and collection of the tenth and twentieth penny, notoriously connected to the duke of Alva. The latter ordinance is not listed in the (provisional) chronological list of ordinances, TERLINDEN, *Liste chronologique*, p. 107, 176.

consumption tax called ‘*Impôt*’, and the ‘*capitation*’ have been granted as ‘*aide*’³⁹⁹!

Yet, Wynants did not consider it useful to dwell on the various means by which the ‘*aide*’ had been levied and granted: these decisions have always been limited in duration, entailing an automatic end to their application. The only lasting means of levying the ‘*aide*’ is the original one: ‘*le reel qui n’a pû cesser, par ce qu’il a été chargé de rentes*’⁴⁰⁰. The ‘pecuniary constitution of annuities’ (*constitution de rente*) was a popular way to circumvent the canonical interdiction of interest: a loan was disguised as a sale, with the capital being paid off yearly as rent⁴⁰¹.

Another, more contentious issue concerned disputes between tenants (‘*fermiers*’). When did the fiscal obligation of a ‘*vieux*’ (ceding, primary) exploitant end, to constitute the *terminus a quo* of the new farmer? Wynants holds the initial ‘*fermier*’ liable to pay until the day before Saint John’s Day (24 June)⁴⁰² following the end of this lease. Saint John’s Day constitutes the beginning of his successor’s lease, as the latter had the right to collect fruits from, or shortly after Saint-John. If this term was not respected by the initial leaseholder, for instance by continuing the harvest on Saint John’s Day, he would be liable for the ‘*aide*’ until the next occurrence of the holiday (a year later). Wynants clarified that this was sometimes foreseen in contracts (‘*lorsque le Bail le porte*’), or necessary as a consequence of the normal agricultural cycle (‘*lorsque selon le labour cela se doit*’). However, the initial leaseholder could only be responsible in proportional terms: only those lands where he had continued to harvest could constitute the basis for his fiscal debt. Wynants illustrated this with the adagium ‘*tributa enim sunt onera fructuum*’.

³⁹⁹ DE WYNANTS, *Charges publiques* (KBR), f. 126.

⁴⁰⁰ *Ibid.*, f. 126.

⁴⁰¹ DRUWÉ, *Loans and Credit*, p. 316-398.

⁴⁰² E. STRUBBE and L. VOET, *De chronologie van de middeleeuwen en de moderne tijden in de Nederlanden*, Antwerpen/Amsterdam, 1960, p. 174.

(3) *Internal Analysis: Grants*

*'les gros subsides [...] pour subvenir aux pressantes necessités de Sa Majesté et du País'*⁴⁰³

a. *Exemptions*

Wynants passes on to the next tax in Brabant: the *subside* ('subsidy' or grant⁴⁰⁴). As the name suggests (*'par ce qu'elles servent subsidiairement et in subsidium'*), the *subside* is a complementary tax, as *'l'aide n'ayant pû fournir des deniers suffisans, pour subvenir à toutes les necessités du País'*. Grants were mainly caused by military expenditure, and became permanent in the course of the eighteenth century, just as the *aide*⁴⁰⁵. The taxable basis was not fixed for this tax: the estates established it on fire-places and hearths in 1600 (Instruction of 24 July 1600), 1602 (12 August 1604) and 1620 (10 December 1620). In other years, however, the estates taxed consumption in the '*subside*'⁴⁰⁶. The only relevant tax rate in Wynants's time was the '*vingtième*' (5%) used for most grants, calculated on all the goods and other income in Brabant, from 1671 on, during the tenure of governor-general '*Monterey*'⁴⁰⁷. Wynants clarified that this was in line with the tax rate for the *aide* of 400 000 florins granted to Charles V in 1554 (Instruction of 18 January 1554).

However, when Monterey levied the *subside* a second time at a rate of 5%, several local authorities complained: they could not manage to

⁴⁰³ DE WYNANTS, *Charges publiques* (KBR), f. 131.

⁴⁰⁴ JANSSENS, *Taxation*, p. 68.

⁴⁰⁵ JANSSENS, *De Achttiende Eeuw*, p. 46-47.

⁴⁰⁶ DE WYNANTS, *Charges publiques* (KBR), f. 129.

⁴⁰⁷ Juan Domingo de Zúñiga y Fonseca count of Monterey and Fuentes, Marquis of Tarazona (1640-1716), governor-general of the Spanish Low Countries from 1670 to 1675, Vice-Roy of Catalunya 1677-1678. BRANTS, *Liste chronologique*, p. X; STRUBBE and VOET, *De chronologie*, p. 406. Wynants probably refers to the ordinance of 8 June 1671 on direct taxation or *Placcaet van syne majesteyt, rakende d'executie vanden Uylsent van boven, vanden 8. Junij 1671*, published in *Derden placcaet-boeck van Vlaenderen, inhoudende de placcaeten, ordonnancien, reglementen, tractaeten, alliancen, ende andere edicten, gheëmaneert van wegghen de Koninghen van Spagnien, ende van hunne doorluchtigste voorsaeten graven van Vlaenderen, ende souveraine princen van dese Nederlanden. By een vergadert door order van hooghe ende moghende heeren den president ende raeden vande selve provincie*, Ghendt, 1685, p. 388-391.

pay the full amount, on top of what had already been demanded for the *aide*⁴⁰⁸. In response to this resistance, the central authority agreed to draft a new inventory of all goods, serving as basis for new tax assessment registers⁴⁰⁹. This process took until 1686/1687. Remarkably, feudal goods and ecclesiastical revenues from tithes, as well as all buildings were included⁴¹⁰. The estates only started to collect the ‘*vingtième*’ (5%) from this point on (fifteen years after Monterey’s decision), to find the ‘*gros subsides*’ necessary for the ‘most pressing necessities of his Majesty’ in the Spanish Netherlands⁴¹¹. This period coincided with the last decade of Charles II’s, and thus of ‘Spanish’ rule.

Only then (at the very last decade of the seventeenth century) did ‘most of the difficulties’ start for the *subsides*. Wynants distinguished a set of rules and principles governing the matter. First, tax collection has to strictly respect the specific consent of the estates of the relevant year. Not all (constitutionally required) consents by the estates were uniform: the conditions under which consent was granted to the duke were often different⁴¹². Specifically for the *subsides*, no difference whatsoever was allowed between the various ecclesiastical goods (first foundation, amortisation), those of military orders, old forests (*Bois d’Estoc*):

‘*tout contribue, rien n’est exempt*’.

The clergy did not have its separate tax, but was forced to contribute in the general *subside*. This is illustrated by Wynants’s quoting of the taxation slips sent:

‘*à charge du revenu de tout fond d’heritage, soit terres labourables, prez, pâtures, moulins, maisons et tout autre bien produisant fruits ou profit, fiefs, amortis des commanderies, ordres militaires, Ecclesiastiques, seculiers, Privilegiés ou non Privilegiés, ensemble de tout fabriquant, soit gens de Boutiques, brasseurs, taverniers,*

⁴⁰⁸ JANSSENS, De Achttiende Eeuw, p. 93.

⁴⁰⁹ DE WYNANTS, Charges publiques (KBR), f. 130. The operation resulted in ‘several edicts and ordinances’. JANSSENS, De Achttiende Eeuw, p. 92-93.

⁴¹⁰ *Ibid.*, p. 94. The ‘*vingtième*’ turned into a fixed tax on ‘immovable income’.

⁴¹¹ DE WYNANTS, Charges publiques (KBR), f. 131.

⁴¹² *Ibid.*

*charons*⁴¹³ ou autres sans Exception et reserve d'aucun bien ni des personnes de quelque nature, qualité, condition ou Etat qu'ils puissent être⁴¹⁴.

Wynants added to this that the tax exemption of the sovereign himself (or herself), normally applicable to the ruler and domain goods, was *not* applicable to the tenants labouring on goods owned by the duke or duchess. They were held to pay half of the *subside* due, as half normally fell on the owners' shoulders⁴¹⁵.

Wynants noted that the duke, contrary to many members of the clergy, knights of military orders and other privileged subjects⁴¹⁶, could have denied any application of the *subside* on his goods, even for tenants or leaseholders. This provided Wynants a smooth transition to his favourite topic: secular and ecclesiastical power⁴¹⁷. He had recourse to Zypaeus⁴¹⁸ and the inevitable Van Espen⁴¹⁹. Tenants or leaseholders had to pay more or less for their cattle, depending on their inclusion in the tax register or not. In other words, exempting farmers-tenants or leaseholders on the sovereign's land, could have been a reason to press them for a higher annual charge to their landlord (the sovereign). However, neither '*Sa Majesté*' (which we should read as emperor Charles VI, to whom Wynants was a close counsellor) nor his ministers distinguished direct public taxation (*subside*) from '*le plus ou le moins de profit qu'on tire par un accident*' (a windfall extra income from higher lease income for the sovereign as landlord). Exempting farmers on ducal lands for the remaining half of the *subside* would be neither good nor reasonable⁴²⁰!

Combatting exemptions (as we have seen with the *aide*) is one of Wynants's major challenges. He recalls that no exemption whatsoever had been accorded in 1554 (under Charles V) for either the tenth

⁴¹³ Artisan producing chariots.

⁴¹⁴ DE WYNANTS, Charges publiques (KBR), f. 132.

⁴¹⁵ '*sauf à deduire au Propriétaire la moitié, qui est à sa charge*'. *Ibid.*, f. 133.

⁴¹⁶ '*comme [...] tout autre Exêmt*'. *Ibid.*

⁴¹⁷ *Ibid.*, f. 134.

⁴¹⁸ *In jure Pontificis novo Tit: de Immun: Ecclesiasticorum* N. 22.

⁴¹⁹ VAN ESPEN, *Jus ecclesiasticum*, Part II, T. XXXV; Ch. II; Nr. XVII.

⁴²⁰ DE WYNANTS, Charges publiques (KBR), f. 134.

(10%) or the twentieth penny (5%). Referring to the instructions of 18 January 1554 (art. 5), Wynants pointed to the inclusion of the '*enclos des cloîtres*' and the non-rented out '*maisons des plaisances*'⁴²¹. For the *subside*, the tithes and goods of the local parish clergy constituted a problem. Likewise, parish priests' income below three hundred florins for their '*portion congrue*' escaped taxation. Wynants justified this by pointing to the material needs of local clergy: if the twentieth penny or any other tax pushed their income below this threshold, they would lack means of subsistence, which would make it impossible to exercise the '*cure des ames*'.

Villages and quarters (ergo: the rural areas of Brabant) complained that the new fiscal inventory had increased their relative part in taxation. Wynants agreed. As a solution, local authorities thought that goods and tithes belonging to the local clergy should *not* benefit from exemption in the *subside*, as the villages were directly prejudiced by this:

*'la quote de ces Biens devoit retomber sur les autres, qui ne sont déjà que trop chargés'*⁴²².

In view of parish priests' real material needs, the alternative proposed was a rebate decided on by the estates of Brabant, equal to '*ce que les curés prétendent d'affranchir*'⁴²³. Wynants added that the parish priests were free to ask the '*gros decimateurs*' (wealthy tithe levying clerics) and other '*obligés*' to top up for the sum, '*afin d'obtenir supplement*', if a shortage was caused by the payment of the twentieth penny to the duke⁴²⁴. This was apparently used in tax slips:

'les curés étoient taillables, sauf leur recours contre les Decimateurs, lors que le revenu annuel de la Dime alloit à'

This is another instance where Wynants's manuscript either contained blanks, or was copied incompletely. The author added that this system was used only for '*quelques Subsidés*', but had not been continued

⁴²¹ *Ibid.*, f. 135.

⁴²² *Ibid.*, f. 136.

⁴²³ *Ibid.*

⁴²⁴ *Ibid.*, f. 137.

afterwards⁴²⁵. Consequently, Wynants has to conclude that the question was still open (*'aucune décision positive'*), and only settled provisionally, by a declaration of the emperor⁴²⁶. *'après avoir oui les Etats'*: goods and tithes with a purely pastoral finality are exempt below three hundred florins of revenue per year. The excess would be subjected to the *'aide'* between three hundred and four hundred fifty florins per year. Above this amount, everything would be subjected to the *'aide'* and the *'subside'*.

The provisional nature of the settlement is one point of fragility. Another problem signalled by Wynants consisted in disputes between local clergy fulfilling the conditions of exemption, on the one hand, and the fiscal authorities, on the other hand. The issue at stake is one of levels of governance: village authorities are willing to allow the exemption, but only in exchange for an *'Acte de decharge ou diminution proportionnée'* (the former being applicable below three hundred florins, the latter between three hundred and four hundred fifty)⁴²⁷. The document is used as a proof against the estates of Brabant. One would think that the paper would serve the local parish priest. However, the village authorities are the main beneficiary, since they can use the proof to fend off reproaches by the tax collector of the estates, who would otherwise be able to raise the village's contribution to the *subside*⁴²⁸.

A logical response by the parish priest would then be that the certificate ought to be requested from the estates' tax collector by the village authorities, taking the priest's declaration at its value. This argument is refuted by local authorities, who state that the burden of proof is incumbent on the clergy⁴²⁹. Moreover, exemption or tax rebate touch the income of the estates, not of the local authorities, who claim the clergy

⁴²⁵ *Ibid.*

⁴²⁶ *'de Sa Majesté'*, without precise indication *ratione temporis*. *Ibid.*, f. 138. This could be a complementary element to date the manuscript to 1740 or before, as it took until 1780 before the duke of Brabant and the Holy Roman emperor were one and the same person. STRUBBE and VOËT, *De chronologie*, p. 411.

⁴²⁷ DE WYNANTS, *Charges publiques* (KBR), f. 139.

⁴²⁸ *Ibid.*

⁴²⁹ *Ibid.*

ought to address the central administration. The estates are ‘*superieurs*’, and ‘*la cause principale de la taxe*’⁴³⁰. If the latter’s orders literally state that no one shall be exempt from the *subside*, irrespective of condition or status, the local authorities cannot but execute this⁴³¹.

Moreover, if the goods concerned have been counted in the fiscal inventory of the village, the fiscal burden will be higher on the other inhabitants (‘*augmentera la quote*’). Wynants adheres to the local authorities’ point of view. The parish priest ought to draft his own ‘*acte de decharge*’. General taxation is the rule. Claiming an exception implies bearing the burden of proof! The local authorities only act for their *principal*, i.e. the provincial estates. One case is cited, whereby the ‘*gens de Leeuw St Pierre*’⁴³² opposed the request of a local parish priest. Before the Council of Brabant could reach a decision, the priest wrote to the estates, who granted him an ‘*acte de Decharge*’⁴³³.

b. *Taxable Basis and Tax Rate*

The fiscal inventory (applicable from the late 1680s or the Nine Year’s War) was drafted more than a decade after Monterey’s decision of 1671-1672. However, Wynants underlines that it was in no way comprehensive. He refers to ‘*nouveaux cahiers*’, hinting at a fiscal renewal operation under Charles VI. This operation had not been complete either. The objective of the inventory was more to establish categories: pastures, meadows, houses, arable land, woods, fishponds, tithes, traffic, mills, heathland, peat land⁴³⁴, ‘*bois de haute futaye*’⁴³⁵ and ‘*bois*

⁴³⁰ *Ibid.*, f. 141.

⁴³¹ *Ibid.*, f. 140.

⁴³² Sint-Pieters-Leeuw, nowadays a municipality in Flemish Brabant, 11 kilometres South-West of Brussels.

⁴³³ DE WYNANTS, *Charges publiques* (KBR), f. 143.

⁴³⁴ ‘*les fonds dont on tire les Tourbes et les terres à bruler, que ceux du Païs appellent Turf*’. DE WYNANTS, *Charges publiques* (KBR), f. 143.

⁴³⁵ This expression covers trees that have grown so much, that they are judged to be immovable, and cannot be cut by a usufructuary anymore. Alternative definition: ‘*de tems immémorial, propre à bâtir*’ (customs of Sens, cited by A. FURETIÈRE, *Dictionnaire universel françois et latin, contenant la signification et la définition tant des mots de l’une & de l’autre Langue, avec leurs différens usages, que des termes propres de chaque Etat &*

*tallis*⁴³⁶. Hence, the most recent establishment of the fiscal inventory made it possible to keep a uniform taxable basis for the whole duchy. Yet, the specific nature of every category of land has not been distinguished. Thus, ‘*bonnes et mechantes terres labourables, bons et mêchans prés*’ have been put on the same foot, occasioning an equal or similar taxable basis⁴³⁷. This is unjust for the worst (least exploitable) pieces of land, but very favourable to the best parcels. Wynants indicates that the assessment of the taxable basis looked for a middle-of-the-road solution, ‘*afin d’éviter les grandes difficultés*’ that would have arisen with too detailed an assessment, where by taxation would have been truly proportionate to the returns and income generated by every parcel of land.

An alternative existed: the system used in the ‘*Poldres*’ (Polders), wetlands close to the North Sea, where the ‘intrinsic quality’ (‘*bonté intrinsique* [sic]’) allowed for proportionate taxation, distinguishing between ‘*volpresen landt*’, on the one hand, and lands bringing in less for the leaseholder or owner, on the other hand. For the latter, it is possible that three measures of land surface are counted as two of ‘*volpresen Ghemetten*’⁴³⁸. By contrast, the income of one measure of ‘*volpresen landt*’ could well pay the whole tax. However, the case of the ‘*Poldres*’ was very specific: the distinction was justified by the relatively modest extent of the region, which rendered taxation and estimation a smoother process than would have been the case for a whole ‘Province’, stretching from Nivelles to Turnhout. The compromise found for the taxable basis of the *subsidié* was thus probably unjust and too lax at the same time: an

de chaque Profession. La Description de toutes les choses naturelles & artificielles; leurs figures, leurs especes, leurs usages & leurs proprietéz. L’Explication de tout ce que renferment les Sciences & les Arts, soit Libéraux, soit Mécaniques. Avec des remarques d’érudition et de critique. Le tout tiré des plus excellens Auteurs, des meilleurs Lécicographes, Etymologistes & Glossaires, qui ont paru jusqu’ici en différentes Langues. Dédié à Son Altesse Serenissime Monseigneur Prince Souverain de Dombes, Paris, 1732, I, col. 1093.

⁴³⁶ Wood that can or must be cut every ten years, and not older than forty years (if the tree in question is older than forty years, and has not been cut regularly, it becomes a *futaye sur taillis*); wood used to burn and serve as heating; wood cut in the season where cattle lives in its vicinity. *Ibid.*

⁴³⁷ DE WYNANTS, Charges publiques (KBR), f. 144.

⁴³⁸ *Ibid.*, f. 145.

acre of cultivated and fertile land cost as much as a neglected one⁴³⁹. Yet, Wynants believed that the relatively gentle consideration of productive pieces of land would benefit investment (*'favorise les Amendements'*), enticing the owners to fertilise.

However, the taxable base varied throughout the duchy! The fixed tariff was applicable in the Quarter of Brussels, in most of that of Louvain, and in a part of the Quarter of Antwerp. By contrast, the major part of villages and boroughs of the Antwerp Quarter, as well as some in Louvain, abided by a different system⁴⁴⁰. In these jurisdictions, it was possible to tax land of a same species differently according to its yield, halving the tariff for *'le plus méchant'* compared to that of the best. The *ratio* for this different system is 'distributive justice'. Every twenty to thirty years, a new estimation is done.

Although the exception might be seen as well-founded, Wynants deplores the deviation from the general rule of Brabant, and that followed by the commissioners of Charles VI. The Council of Brabant, treating the case of the abbot of Tongerlo against the aldermen of Westerlo, had to determine whether the same rules ought to apply everywhere in the duchy, or, conversely, whether the specific, but just, system explained above, could be left in place⁴⁴¹. Wynants describes that the party arguing for uniform application of the *cabiers* had the advantage of pleading for a legalist solution, sticking to the sovereign's will. However, in fiscal affairs, the *'force de la justice'* is a power to be reckoned with. Declarations by members of the first estate (at the 'central' level in the duchy) made clear that they had not been sufficiently aware of the specific usage in the Campine region (*Kempen*)! The expression 'legislator' is inappropriate for members of this representative assembly, whose prerogative it was to consent to fiscal measures. However, together with the duke, from whom sovereignty emerged, Wynants pleaded for excusable ignorance with the central authorities⁴⁴²! The Council of Brabant – having consulted the pensionary of the estates of Brabant – unanimously

⁴³⁹ *Ibid.*, f. 146.

⁴⁴⁰ *Ibid.*, f. 147.

⁴⁴¹ *Ibid.*, f. 148-149.

⁴⁴² *Ibid.*, f. 149.

decided to keep different systems for the determination of the taxable basis in the *subsides*, wherever they had been in usage.

Independently of the taxable basis, Wynants argued that every private individual could calculate his contribution in the *subside*, by consulting the revenue noted for his number of acres or measures in the local fiscal inventory: three, ten, fifteen, twenty or more florins per year? One ‘*sol*’ per florin would be enough⁴⁴³. A modest amount needed to be added to compensate for the administrative costs of tax collection and accounting⁴⁴⁴.

c. *Undue Taxes...*

Using these simple calculations sketched above, taxpayers could detect if the local authorities charged them too much, which could give rise to complaints. In the case of Merchtem⁴⁴⁵, Wynants had consulted the tax rolls: local authorities charged twenty to twenty-one *sols* instead of fifteen per acre. Who was responsible for these abuses? The aldermen (*Gens de loi*) and their assessors, who pocketed the extra tax income to pay off their own debts, professional costs or own taxes⁴⁴⁶! Another shocking example was the practice of Zemst⁴⁴⁷. The local authorities had increased the ‘*quote*’ of a taxpayer in order to exempt a person of their choice. Wynants deplored that this happened ‘*assez souvent*’, to favour a local noble, an office holder, or ‘*quelqu’un de la Loi, qui fait le cocq du village*’⁴⁴⁸.

A third example of malpractice existed in cases whereby local authorities blurred the distinction between real and personal *subsides*. The former were linked to a good, the latter to a person (whereby no deduction

⁴⁴³ A similar reasoning operated for houses, pastures, woods, fishponds and other goods. DE WYNANTS, *Charges publiques* (KBR), f. 153.

⁴⁴⁴ Adding that the cost per taxpayer had to be doubled and multiplied per payment of *subsides*. *Ibid.*, f. 151. For an acre of fifteen florins of revenue per year, fifteen *sols* were due. However, the costs of tax repartition and collection, as well as accounting caused the addition of between one and a half and two *sols*, leaving the total amount at sixteen and a half *sols*, or seventeen (or about 13% more).

⁴⁴⁵ Flemish Brabant, sixteen kilometres North-West of Brussels.

⁴⁴⁶ DE WYNANTS, *Charges publiques* (KBR), f. 154.

⁴⁴⁷ Flemish Brabant, almost eighteen kilometres North-East of Brussels.

⁴⁴⁸ DE WYNANTS, *Charges publiques* (KBR), f. 154.

can take place)⁴⁴⁹. The former, again, refers to the relationship between owner and leaseholder or tenant. In a first hypothesis, the estates can introduce the ‘*vingtième*’ on a real basis (‘*sur le pied reel*’). In this case, both owner and tenant or leaseholder have to bear the taxation. However, this is only an ultimate and final repartition. In the first stage, the leaseholder will have to advance the half due by the owner. This advance can then, in the internal relationship between owner and leaseholder or tenant, serve to diminish the latter’s annual ‘*pension*’ or charge⁴⁵⁰.

In another hypothesis, the estates introduce two *vingtièmes* on a real basis, indicating that tenants or leaseholders will have to bear two of them, whereas the owner and the leaseholder or tenant will have to bear the two personal *vingtièmes*. This is stated literally in the tax slips sent out by the estates. However, the local aldermen and assessors tend to confuse the different types of *vingtième*, making the owner pay the double of what would have been required (ergo: all four), and exempting the leaseholder or tenant. Needless to say, this practice is in overt violation of the estates’ consent⁴⁵¹. To redress these ‘scandals’ (as well as ‘several others’), Wynants demanded four types of documents to be presented, preliminary to any kind of oral intervention by the Council of Brabant: first the (local) tax roll or *livre d’assiette* (book of the taxable basis); secondly, the copy of the inventory passed by the local aldermen to the estates; thirdly: the tax slips (*Billets d’Envoi*) sent by the estates to the municipality; finally, the preceding accounts⁴⁵².

(4) *Internal Analysis: Rampant Tax Fraud*

‘*Qu’on ne remue pas cette affaire*’⁴⁵³

Wynants uses the problems with the *vingtièmes* to switch to a substantive chapter on ‘*les recellemens*’⁴⁵⁴, or the general abuses committed in Brabant, at the occasion of the confection of the new tax inventory.

⁴⁴⁹ *Ibid.*, f. 193.

⁴⁵⁰ *Ibid.*, f. 155.

⁴⁵¹ *Ibid.*, f. 156.

⁴⁵² *Ibid.*, f. 157.

⁴⁵³ *Ibid.*, f. 167.

⁴⁵⁴ *Ibid.*, f. 157-181.

Many corporations, colleges, abbeys and private persons, in his appreciation, have hidden considerable amounts of land and goods of various kinds. During Monterey's tenure as governor-general, an Ordinance of 27 March 1673 attempted to stall this movement⁴⁵⁵. However, the precautions taken and punishments prescribed were not severe enough. Wynants laments that a great number of private persons continued to draft false statements and have been allowed to remain in silent discretion. How could this be explained? The aldermen and assessors in local villages and boroughs – again – did not bother to report the fraudsters, in order to keep their own 'quote' low. Alternatively, the *taille* could turn out to the advantage of the local elites⁴⁵⁶.

The power of local nobles and some abbeys, furthermore, was so formidable that 'fear shut the mouths' of the aldermen and villagers, who – in Wynants's eyes – had or should have had the duty to speak out⁴⁵⁷. A burgomaster (*Maieur*), who had been so courageous as to report the hiding away of part of a two-hundred acre wood by an abbey, has been 'almost ruined'. Wynants does not go into further detail, but states that '*des personnes de grand credit*' could tell their own story as well (as victims of intimidation). Daily disputes arise as a consequence of the hideaway operation between aldermen and private persons. The former have the responsibility to update the tax roll or *livre d'assiette* for the *vingtièmes*, within the acres comprised in their village. Private persons oppose the inclusion of their land into the register. If they possess and harvest the fruits of forty acres, their willingness to pay up is only for thirty, arguing for example that the general report of 1686 only counted this land for the said extent. Why? The inventory of 1686 had been the basis for the *quote* of the village. Hence, the estates did not expect the village to return more tax revenue than this. Who would foot the bill of this oblivion? Well, not the aldermen or local elites themselves, of course. The *vingtième* was established for the duke's benefit,

⁴⁵⁵ Ordinance on the twentieth and fortieth penny on yearly income, BRANTS, *Liste chronologique*, p. 169, with reference to the ordinances register of the *Chambre des comptes*.

⁴⁵⁶ DE WYNANTS, *Charges publiques* (KBR), f. 159.

⁴⁵⁷ *Ibid.*

with the consent of the estates, at a higher level of government. *Nemo sine interesse agit*, Wynants added. If incitement lacks, would local elites really be willing to risk an internal conflict⁴⁵⁸?

However, didn't the ordinances foresee confiscation as a punishment for those who hid their assets for the taxman⁴⁵⁹? Wynants presents the reasons put forward by local authorities confronted with this type of complaints. First, they tend to argue that the responsibility for hiding assets against laws and ordinances lies solely with those who commit them. Hiding one's fortune is an illicit act, '*même doureux*'⁴⁶⁰. Second, they put forward that it would violate both law and reason, if one were to draw advantage from a forbidden, illicit and knowingly fraudulent act. *Nemo ex dolo suo capit, ne commissum aut omissum quod est contra leges, alieni potest ulitatem adferre*⁴⁶¹. However, if the village's *quote* is not increased with the taxable income from the lacking ten acres, this does not mean that the village can actually draw any benefit from the omission. The only beneficiary is the private person, who is subjected to the duke's laws and ordinances as taxpayer⁴⁶².

As to pressure and intimidation, causing the aldermen to forego their obligation to report illicit behaviour ('*qu'ils se seraient tûs*'), local authorities try to reframe the accusation. Firstly, the wording of the case is such that the perimeter is reduced: '*une parfaite connoissance*' (a perfect knowledge) would certainly be a fault... with respect to the individual aldermen. How could this have harmed the local community, which was in no ways the beneficiary of the *vingtième*? The analogy with tutelage pops up: the local community, '*comme étant [sic] une pupille*', could not be harmed by the faults, negligence, commission or omission committed by either curators or directors⁴⁶³. These reasons are taken from a case before the Council of Brabant between the

⁴⁵⁸ *Ibid.*, f. 161.

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*, f. 162.

⁴⁶¹ 'No one can take advantage of his own wrongdoing, nor can he bring benefit from an act committed or omitted that is against the laws', *Ibid.*

⁴⁶² *Ibid.*, f. 163.

⁴⁶³ *Ibid.*, f. 164.

aldermen of Niel⁴⁶⁴ and the widow of the local lord. The latter had not declared ten acres of land. No sentence is available, as the case had been ‘*terminé par accommodement*’ (terminated by settlement)⁴⁶⁵.

Surprisingly, the estates of Brabant showed themselves tolerant towards these abuses. Goods not declared at the time of the drafting of the fiscal inventory, could remain out of the *vingtième*. If they are not included in the *quote* sent over to local authorities, the latter cannot be seen as habilitated to alter this. However, in the opposite hypothesis, if the village authorities would be willing to include all lands, that would of course lead to a higher *quote* decided by the estates. Doing otherwise would allow either some individual taxpayers, or the local community as a whole, to draw benefit from the situation. This would in turn damage the superior interest of the whole province and the emperor⁴⁶⁶. Wynants ends his discussion of the estates’ reasons by the following dry statement:

*‘ils disent qu’il y a presque par tout des Recellemens’*⁴⁶⁷

The size of the problem was such, that ‘*ruses, procès et difficultés inextricables*’ would terrorise the whole province. Going after all non-reported goods would necessitate inquiries and measurements. Leaving all this quietly (and thus permitting the non-declared goods to remain *hors de Taxe*) would be ‘*avantageux au publicq*’. Future raises in the *quote* of quarters, villages and communities seemed inevitable. However, completing this administrative process would be cumbersome. A new full inventory would certainly generate as many complaints as the old ones did.

Moreover, the estates argue that the Edict of Charles II of Spain of 23 November 1691 did not allow to stir up these questions ‘every day’. ‘*Par la peine du Silence perpetuel*’, the sovereign (then king, as duke) intended to terminate the affair once and for all, invoking the ‘*exacte*

⁴⁶⁴ Village in the Province of Antwerp close to the Scheldt, 14 kilometres south of Antwerp.

⁴⁶⁵ DE WYNANTS, *Charges publiques* (KBR), f. 164.

⁴⁶⁶ ‘*Sa Majesté*’ (as duke of Brabant). *Ibid.*, f. 165.

⁴⁶⁷ *Ibid.*

recherche et meür Examen’ by his commissioners and deputies⁴⁶⁸. The king enticed all these who would have ‘forgotten to declare some part of their goods in the reports’ to do so within six weeks to special commissioners appointed by the Council of Brabant. Correcting these ‘mistakes’ would be possible without ‘*aucune peine portée à ce sujet par nos placcards*’⁴⁶⁹. Those intending to consult the register and signal mistakes, could count on a supplementary term of three months⁴⁷⁰. Afterwards, the tax register would be ‘*decrété comme de Raison*’, assuring a perpetual silence⁴⁷¹.

We should bear in mind that Wynants was appointed as a judge in the Council of Brabant in 1695, after having practiced as attorney at the same court⁴⁷². After citing the Edict *in extenso*⁴⁷³, Wynants added that the (interpretative) declarations of the estates were *not* of a statutory (legislative) nature. If only they had had ‘*force de loi*’, legal certainty would have been returned. The Council of Brabant did not ignore the estates’ declarations in deciding trials. However, they cannot be used as *ratio decidendi* on their own:

*‘elles n’ont cependant de l’autorité, que pour autant qu’elles sont soutenues de justes raisons’*⁴⁷⁴.

The estates’ interpretation has thus always to be complemented by the judges’ collective analysis of the whole constitutional and fiscal edifice! ‘*Il est du devoir des juges*’ to examine ‘who is right and who is not’ in fiscal quarrels, if the goods in question have not been included in the taxable basis for the *vingtième*. A judge cannot treat in the same way a case whereby *all* land has been hidden away, and one in which only a part has not been declared.

⁴⁶⁸ *Ibid.*, f. 168.

⁴⁶⁹ *Ibid.*

⁴⁷⁰ *Ibid.*, f. 169. The Edict excluded that those who provided the commissioners of the Council of Brabant with information would be registered as either plaintiff or denunciator, avoiding at any price any kind of formal trial.

⁴⁷¹ *Ibid.*

⁴⁷² DHONDT, *Constitutional Identity*, p. 752.

⁴⁷³ DE WYNANTS, *Charges publiques (KBR)*, f. 167-169.

⁴⁷⁴ *Ibid.*, f. 170.

The sovereign's interest should guide his Council of Brabant: '*Il faut que tout contribue*'⁴⁷⁵. Wynants presents the hypothetical case whereby a village would count three hundred acres, based on the declarations in the fiscal inventory. However, measuring leads to a correction: four hundred, rather than three hundred. Of course, a collective measuring exercise does not immediately point to specific private individuals or taxpayers who can be suspected to have hidden their assets. Nevertheless, the general interest commands that all should be taxed. The common good ('*la généralité*') ought to benefit from the tax revenues drawn from the hundred acres that were not declared⁴⁷⁶!

This reasoning can be found in a decision of the Council of Brabant concerning the village of Gooik⁴⁷⁷. Wynants adds that the 'ordinance'⁴⁷⁸ of 23 November 1691 did not prevent the court from deciding the case: the wording of the legislative act is such, that it 'does not impose a perpetual silence, but merely threatens to do so'. If Charles II used the term '*sera*' (will, a certain fact in the near future), that ought to be contrasted with the word '*puissent*' (indicating an uncertain fact in the near future): the sovereign's main goal was to ensure a stable and tranquil domestic climate, in order to make new tax inventories possible. This did not mean that the sovereign intended to proceed to issuing new inventories immediately, '*mais qu'Elle menace* [sic] *de la faire pour le futur*'⁴⁷⁹. Charles II's legislative act of 1691 was thus nothing more than

⁴⁷⁵ *Ibid.*, f. 171.

⁴⁷⁶ DE WYNANTS, *Charges publiques* (KBR), f. 173.

⁴⁷⁷ A village in Flemish Brabant, situated 19 kilometres to the South-West of Brussels.

⁴⁷⁸ Wynants (or the copyist?) uses this expression for a document identified as an Edict six pages earlier. The ordinances for the reign of Charles II (1665-1700) have not been edited by the Royal Commission for the Publication of Old Laws and Ordinances of Belgium as yet. This document is not mentioned in the chronological list of ordinances for the realms of Philip IV and Charles II either. The latter list allows to find either original documents or contemporary source publications, such as the *Trophées du Brabant* or the placards of the county of Flanders (a relevant source for ordinances and edits applicable in all provinces of the Spanish or Austrian Low Countries). See BRANTS, *Liste chronologique*, p. 249.

⁴⁷⁹ DE WYNANTS, *Charges publiques* (KBR), f. 174.

a pure ‘*Edit comminatoire*’⁴⁸⁰. The text was in itself insufficient to immediately impose a new punishment. A subsequent statute was necessary. Until that text was issued, nothing prevented boroughs or private persons to declare hidden assets.

According to Wynants, even if the Edict of 1691 would have imposed silence, depriving communities and private persons from their right to rectify declarations, even after three months had lapsed, it would have been superfluous to... renew the same Edict in 1697, six years later, at the end of the Nine Years’ War!⁴⁸¹ The context of war comes in most poignantly: the bombardment of Brussels in August 1695 caused all tax slips issued on the basis of the ‘*susdites ordonnances*’ to burn⁴⁸²! However, Wynants had inspected copies or duplicates of the said tax slips, for instance in Niel. Hence, the question could not be avoided before the Council of Brabant⁴⁸³. As a loyal servant of state interest, he reaffirms that ‘*Bourgs, communautés et villages*’ are entitled to include in their taxation operations all or part of the hidden goods, even if the provincial estates would think differently on this point.

Justice itself dictates that all possessors of a ‘*bien taillable*’ must contribute alongside others, even if they were not included in the taxable base when the village or borough quota were established⁴⁸⁴. Those who conceal assets should not be allowed to benefit from such fraudulent or illicit actions. Tolerating this behaviour – or accepting the contrary principle – would undermine the accuracy of fiscal records. To address this, it would be prudent for central authorities to renew tax inventories every thirty years, given the significant changes that inevitably occur within the duchy. However, these inventories will never be entirely accurate, as the underreporting of assets will likely remain widespread. The most influential members of society will succeed in concealing

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*, f. 175.

⁴⁸² *Ibid.*, f. 176-177. M. CULOT, E. HENNAUT and M. DEMANET, *Le bombardement de Bruxelles par Louis XIV et la reconstruction qui s’en suivit, 1695-1700*, Bruxelles, 1992.

⁴⁸³ DE WYNANTS, *Charges publiques* (KBR), f. 177.

⁴⁸⁴ *Ibid.*, f. 178.

whatever they deem appropriate⁴⁸⁵! They will continue to benefit from this illicit de facto exemption, even if it is later revealed that they have concealed half of their asset.

Wynants laments that this morally regrettable yet practically expedient conclusion was unanimously endorsed by the Council of Brabant. He argues that if hidden or undeclared assets were discovered, it would be both fairer and more practical to subject them to the same level of taxation as other similar goods within the village. This approach would ensure that the entire local community benefited – by paying a proportionally reduced share – rather than tolerating these de facto exemptions imposed by the local elite⁴⁸⁶. To ensure that the rest of the community benefited from the inclusion of hidden assets, the judges of the Council of Brabant held that the estates should not increase the total tax burden in a village following the discovery of fraud. The advantage should remain with the local community until an accurate new tax inventory could be established⁴⁸⁷!

The Council's case law was seen as an encouragement by local authorities to include hidden or non-declared assets. Thus, the court's decisions were

*'un moïen pour parvenir à la fin à un rapport universel, puisque petit à petit tout se decouvriroit et se declareroit'*⁴⁸⁸.

(5) *Internal Analysis: The Financial Substrate of Taxation*

As indicated above, Wynants regularly highlights that the existence of *rentes*⁴⁸⁹ and their relationship to tax income is an important issue. He devotes two chapters to the *Deduction* of taxes and *rentes réelles*, and two the relationship between securities and taxes⁴⁹⁰. According to

⁴⁸⁵ *Ibid.*

⁴⁸⁶ *Ibid.*, f. 179.

⁴⁸⁷ *Ibid.*, f. 180.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ P. GODDING, *Le droit privé dans les Pays-Bas Méridionaux du 12^e au 18^e siècle*, Bruxelles, 1991, p. 480-483.

⁴⁹⁰ DE WYNANTS, *Charges publiques (KBR)*, f. 181-208.

Philippe Godding (1926-2013), the contract of *rente* was essential in economic life throughout the medieval and early modern period, as the ‘equivalent of the present-day *emprunt hypothécaire* (mortgage)’⁴⁹¹. The wealthy patrician elites that ruled the main cities mainly drew their income from this investment⁴⁹². Due to the combined effect of war and ‘*accidents climatiques*’, more and more owners try to mobilise capital by offering their estate as a collateral⁴⁹³, or, conversely, try to make a little gain in the form of an annual canon. Both parties do so ‘*dans un but de subsistence, de petit investissement*’⁴⁹⁴.

In principle, *rentes* ought to be constituted with an immovable and ‘*frugifère*’ good (producing income) as collateral⁴⁹⁵. Although this principle was not always respected, it matters to understand the following debates treated by Wynants. The canon (based on the income generated by the collateral) and the annual fee due by the leaseholder *vis-à-vis* the owner (who is at the same time the debtor of the *constitution de rente*)

⁴⁹¹ GODDING, *Le droit privé*, p. 485. The possibility to ‘buy back’ these *rentes* ensured its circulation at the core of the financial system. *Ibid.*, p. 481.

⁴⁹² JANSSENS, *De Achttiende Eeuw*, p. 79. See for the Antwerp ‘*renteniersfortuinen*’ or big ‘*rentiers*’: K. DEGRYSE, *De Antwerpse fortuinen : kapitaalaccumulatie, -investering en rendement te Antwerpen in de 18de eeuw*, Gent, 1985, <https://hdl.handle.net/1854/LU-8538612> [Accessed 3 January 2025].

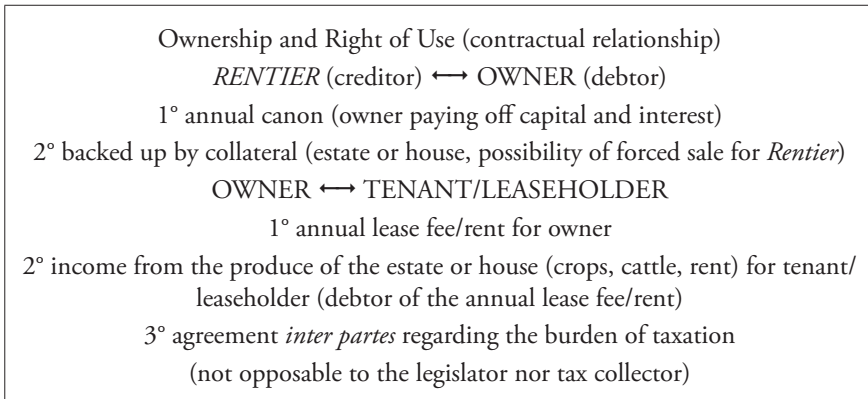
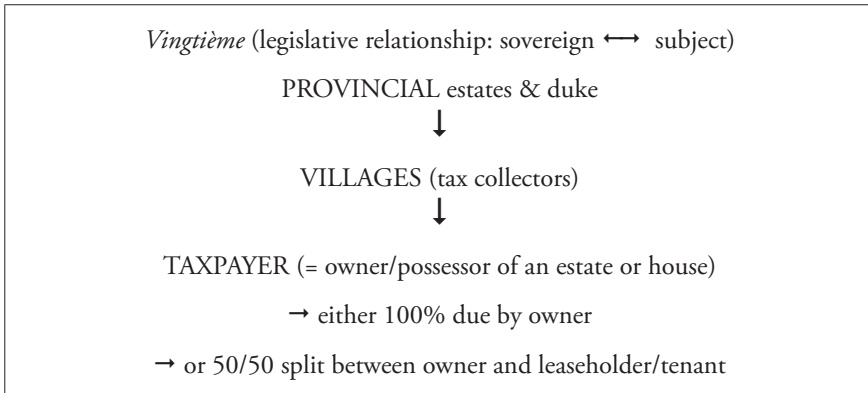
⁴⁹³ For instance, burghers of Namur have several *constitutions de rente* on estates laboured by farmers in the countryside. This allows the latter to be economically active (having received a capital as a loan granted by their urban contracting party), and the former to rely on a steady return (the annual canon), backed up by a collateral: the immovable asset of the land or house gaged. GODDING, *Le droit privé*, p. 485; DRUWÉ, *Loans and Credit*, p. 315.

⁴⁹⁴ GODDING, *Le droit privé*, p. 485.

⁴⁹⁵ Reference to the papal bull *Cum onus* (Pius V, 1569), *Ibid.*, p. 483. The owner of the estate (debtor of the annual canon, ‘*débirentier*’) gambles that the income from the estate will be sufficient to pay off the annuities to the *rentier* (‘*crédirentier*’). The essential condition of a ‘good producing income’ was the occasion for theologians to accept the *constitution de rente*, and to except it from the ecclesiastical interdiction of usury, which would have forbidden a loan, whereby the *crédirentier* would make a profit. Seeing the *constitution de rente* as a sale of the estates’ annual income (whereby the *débirentier*’s legal position as debtor of the *rente* could also be interpreted as the seller of the estate’s agricultural production and the *crédirentier* as the buyer) was then licit. *Ibid.*, p. 480-481.

are both linked with the income which all parties reasonably expect from the estate serving as a collateral.⁴⁹⁶ Unforeseen circumstances (such as war or a natural catastrophe) can impact this, by either diminishing the annual return, or damaging the asset itself.

If the reader allows me the crude simplification, the following scheme illustrates the social and legal relationships underpinning Wynants's analysis:



⁴⁹⁶ The annual interest varied from a legal maximum of 6,25% to 4% towards the end of the eighteenth century, GODDING, *Le droit privé*, p. 481.

a. *Split Between Owner and Tenant/Leaseholder*

The first issue identified is that of the deduction of the *subside* (*vingtième*) that holders of a ‘*rente*’ or ‘*rente hypothecquée*’ have to suffer (ergo: the owner of the property, who has consented the constitution of an annual rent, can justify the deduction because he or she has suffered taxation based on the annual revenue of the estate). Although the topic would not need to stir up a debate, Wynants identified two positions. On the one hand, those who argue that the full amount of the tax ought to be deducted from the *rentier’s* income. On the other hand, those who argue that a deduction *pro rata* of half of the tax was more justified.

In case the owner of a house or a farm is charged to pay all tithes or *vingtièmes*, with no taxation of the leaseholder or tenant, the owner of the *hypothèque* can deduct the full amount to the rent holder. Wynants identifies the Instruction of 18 January 1554 as the relevant instrument. However, when the estates of Brabant have consented that the owner and *conducteur*⁴⁹⁷ or *fermier* share the tax burden in a 50/50-proportion, reason would normally allow the *rentier* to diminish *pro rata* for the taxes paid or borne by the owner. However, the latter logical position is disputed by those who argue that the *whole* amount of the tax can be deducted by the *rentier*. Wynants questions the validity of this position, and states that he had not found case law supporting this point of view⁴⁹⁸. Even more, this interpretation was deemed *contra legem*, as article XX of the instruction of 1554 (which referred to a tax of 10% or a *dixième*, levied on the owner alone) allowed for the full deduction⁴⁹⁹. Wynants invoked the principle of ‘*la proportion*’, to explain why in his own time, as taxes were split between owner and tenant or leaseholder, the deduction ought to be proportionally split as well.

Wynants – for once – mentions a date of a judicial decision that put an end to the discussion. The Council of Brabant’s sentence of

⁴⁹⁷ In the sense of the Roman law *locatio-conductio*.

⁴⁹⁸ DE WYNANTS, *Charges publiques* (KBR), f. 182-183.

⁴⁹⁹ *Ibid.*, f. 183.

17 November 1702 stated that for the *vingtième*, the opinion of the estates of Brabant of 1 June and the certification by their registrar, vanden Broeck of 16 September of the same year, would be followed⁵⁰⁰. In principle, the deduction applied by the owner with regards to his annual payment to the *rentier* ought to be *pro rata* (half of the total amount of tax paid). However, if the *rentier* and the owner had foreseen in their sale contract (*contrat de stipulation de vente*) that the transaction would be *exênte des dixièmes, vingtièmes et autres deniers*, no deduction can be applied by the acquirer (the owner)⁵⁰¹. Wynants adds that ‘*par une erreur commune*’, several voices sustain that deductions could take place, even when the latter clause was added. In their perspective, such an exception was ‘*contraire au bien public*’. Several ‘*liquidations*’ and deductions have been made on account of this theory. Yet, both the estates and the Council of Brabant rejected this opinion. Only an explicit derogatory and specific clause in the act of consent (by the estates) could allow for this proceeding⁵⁰².

However, could this be applicable retroactively? Turning already effectuated liquidations upside down would not have been acceptable. Therefore, the Council indicated its decision would only have effects in the future. For the past, it could exclusively apply to the *vingtièmes* that had not yet been adjusted, liquidated or deducted. The same decision indicated that owners living in their home, or cultivating their land, were in any case forbidden to perform a deduction of half of the total amount of tax. For the remaining half, they were likened to a tenant or a leaseholder⁵⁰³. What could be meant by specific consents of the estates? Wynants clarifies that such decisions have been taken for the *rentes à denier 25* (4% rents) or lower, but only when they have been explicitly excluded from the *vingtièmes deniers* by contract. Some

⁵⁰⁰ *Ibid.*, f. 186. Pierre vanden Broeck, pensionary and registrar of the estates of Brabant († 1711), not to be confused with the late legal historian Jan Van Den Broeck.

⁵⁰¹ *Ibid.*

⁵⁰² *Ibid.*

⁵⁰³ *Ibid.*, f. 188. Life annuities (*rentes viagères*; GODDING, *Le droit privé*, p. 484-485) were not exempt from the reduction. However, they could not be deducted for half, but only for a quarter. This restriction was included in the tax slip.

consents of the estates have excluded rents from 5% and lower: ‘*chacun se doit conformer à la loy de chaque Acte de consentement*’⁵⁰⁴. Whereas the authority of the legislator goes top-down, the normative force of the lease or tenancy contract between owner and *fermier* or leaseholder can stipulate that all *vingtièmes* are borne by either the owner or his/her contracting party. These stipulations – which were not uncommon⁵⁰⁵ – only have effect *inter partes*. The tax slips (*Billets d’Envoi*) contain usually a clause indicating ‘*si les Baux des fermes et louages n’y sont contraires*’, which seems to affirm the suppletory nature of the *Acte de consentement*⁵⁰⁶.

Yet, Wynants (as a true regalist?) explains that this sentence does not alter the authority of the tax collector, who is entitled to demand the full amount of the tax to the *fermier*. The latter can hold the owner accountable for the remainder of the tax, but only by an ulterior *recours*⁵⁰⁷. The legal title for this appeal is of course the contract:

‘*ces Conventions [particulières] ne peuvent prejudicier aux consentemens [des états de Brabant], lorsqu’ils prescrivent que le fermier ou locataire doit faire l’avance, les conventions particulieres étant [sic] trop foibles pour detruire le droit public*’⁵⁰⁸.

The tax slips, moreover, immediately add to their suggestive sentence on contractual freedom, ‘*dont cependant le paiement entier se fera par le locataire*’⁵⁰⁹. This seemingly innocuous statement has direct consequences for the right of the owner, when obliged by contract to pay the full amount. He cannot deduct the taxes paid with regards to his *rentiers*, on the basis of a contract with his leaseholder or tenant. If the

⁵⁰⁴ DE WYNANTS, *Charges publiques* (KBR), f. 189.

⁵⁰⁵ Janssens states that ‘all tax levies for *aides* and grants were split’ contractually between owner and leaseholder or tenant and calls this a ‘fiscal shifting mechanism’ (*fiscaal afwentelingsmechanisme*), JANSSENS, *De Achttiende Eeuw*, p. 102. Contrary to David Ricardo’s assessment that taxes would eventually be paid by consumers, Janssens argues that this was not true, since much of agricultural produce did not enter the market.

⁵⁰⁶ DE WYNANTS, *Charges publiques* (KBR), f. 189.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ *Ibid.*, f. 190.

⁵⁰⁹ *Ibid.*

owner pays or comes to compensate his tenant or leaseholder for the whole amount of the tax, he (or she) only has him- or herself to blame⁵¹⁰. Or, to be more precise, he or she has to consider the overall balance of advantages in the reciprocal contract that has created the lease or tenancy:

‘un Proprietaire en faisant telles conditions retrouve ailleurs son avantage dans le prix et dans les autres conditions du Bail que le fermier ne lui auroit accorde [sic] sans cela, telles conditions faisant Partem rei vel pretii’⁵¹¹.

The *rentier* is of course a stranger with regards to the binding nature *inter partes* of the lease contract. He (or she) is not obliged to ‘*souffrir une Deduction des Vingtièmes en entier, et une Diminution de son Canon*’⁵¹². If the *consentement* of the estates has split the tax between owner and leaseholder, the owner can only deduct half of the amount paid to the estates on the basis of an agreement with his leaseholder!⁵¹³ Conversely, the *rentier* is obliged to suffer any kind of deduction prescribed by the consent of the estates, as an illustration of the top-down normative force of legislation⁵¹⁴.

b. *Conflict of Securities, Real Rents and Deduction of Taxes*

Wynants then moves to the discussion of a more complex case. Several securities (*hypotecques*) have been established on an estate. Some of these are subjected to the *vingtièmes*, others are not. Can the owner of the estate deduct the *vingtièmes* paid to the estates from his canon⁵¹⁵? The author explains that this is not infrequent: part of the *hypotecque* is situated in another province, or in another quarter of Brabant, where *vingtièmes* had not been consented by the estates, nor levied. Between 1692 and 1699, no *vingtièmes* had been collected in the quarter of

⁵¹⁰ *Ibid.*, f. 192.

⁵¹¹ *Ibid.*

⁵¹² *Ibid.*, f. 191.

⁵¹³ *Ibid.*

⁵¹⁴ ‘*les consentemens agréés [sic] par le Prince [...] servent de Loi, le reglent et le statuent*’ *Ibid.*, f. 192.

⁵¹⁵ *Ibid.*, f. 194.

Louvain and Brussels! Only the quarter of Antwerp had done so⁵¹⁶. If part of the *hipotecques* [sic] was to be found in the latter, and another in either Louvain or Brussels, could the owner proceed with a deduction with regards to his contracting party, who had sold the estate against a rent, as described above?

Wynants starts by refuting that a 50% deduction would be possible, even when the income in the quarter of Antwerp (where the *vingtième* had been collected!) would have been so high as to be equal to the full annual canon of the rent⁵¹⁷. The reason here is that all parts (read: real estate, collateral) in the *hypotecque* are equally implied. The *rentier* can use whichever collateral to act *hypotecquairement*. Why, then, should the owner be allowed to apply a full deduction of the half of his taxes paid? Wynants only agrees to a *pro rata* deduction, considering the income from all gaged collaterals. Who is the beneficiary in this story? Clearly, the *rentier*, who should not suffer ‘too much’⁵¹⁸.

However, the deduction of a proportionate amount of tax is the best-case scenario for the owner. The *rentier* could argue that no deduction at all ought to be applicable. Already allowing the deduction of ‘*charges reelles* [sic]’ weighing on the gaged collateral, is a ‘*passe droit*’⁵¹⁹. The main obligation pursuant to the contract of *rente* (which is a sale against an annual canon, and not a lump sum), is a *personal* obligation, consisting in an annual payment by the acquirer. The ‘*obligation hypotecquaire*’, or the collateral of the creditor, is only accessory. The main obligation should not suffer from ‘*les accidents qui surviennent à l’hypotecque*’. Wynants interprets the imposition of a ‘*vingtième*’ – which, owing to the principle of annuality and the estates’ consent, is neither permanent nor, as observed between 1692 and 1699, universally applied across the entire duchy – as a temporary phenomenon. This tax only

⁵¹⁶ *Ibid.*

⁵¹⁷ *Ibid.*, f. 195.

⁵¹⁸ *Ibid.*

⁵¹⁹ *Ibid.*, f. 196. ‘*Grâce accordée contre le droit et l’usage ordinaire*’ or ‘*Injustice faite à quelqu’un en lui préférant une personne qui a moins de titres que lui*’, ‘*licence, irrégularité*’, <https://www.littre.org/definition/passe-droit> [Accessed 15 February 2025].

occasionally reduces the revenue that the owner can derive from the property, which remains unpaid to the rentier.

‘Accidents’ are for instance ‘*perte de fruits*’ (diminishing value of renting out the estate, or the fruits, vegetables or cattle linked to it), or ‘*imposition sur le fond ou sur les fruits*’. With reference to Charles Loyseau⁵²⁰, the extreme case of the loss of a *hypotecque* is invoked. The latter author treats two hypotheses: either the *fruits* of a *fond* have disappeared, or the *fond* itself. Real charges, impositions and *tailles* are ‘without any dispute’ *accidents* with regards to the estate as collateral for the *rentier*. This type of events are to be borne by the owner or possessor of a good. Only if the consent of the estates, supported by the acceptance of the Prince, were to impose a different rule, ‘*droit et raison*’ would exclude any form of deduction for a *rente* with an effect *inter partes*, even if *vingtièmes* are applied to the collateral estate serving as security⁵²¹.

If, however, the consent of the estates, agreed to by the Prince, allows for a deduction⁵²², and if all gaged collaterals are situated within their fiscal competence *ratione loci*, the deduction is certainly allowed. Yet, this type of norms is exceptional. Exceptions ought to be interpreted

⁵²⁰ C. LOYSEAU, *Traicté du déguerpiement et delaissement par hypothèque*, Paris, 1606. Charles Loyseau (1564-1627), *avocat* at the *Parlement de Paris* is characterised by Monique Cottret as an ‘*admirateur de la monarchie française*’. M. COTTRET, Absolutisme, in L. BÉLY (ed.), *Dictionnaire de l’Ancien Régime*, p. 8. His *Traité des seigneuries* (wherein he equally treats the *seigneuries publiques*) is his most well-known work. See RÉAL DE CURBAN, *La Science du Gouvernement*, IV, p. 437-438 and VIII, p. 146-147.

⁵²¹ DE WYNANTS, *Charges publiques* (KBR), f. 197.

⁵²² Note the very heterodox nature of the description, coming closer to a bottom-up legislative process ‘on request’ N. SIMON, Une culture d’État ? Législation et prise de décision dans les Pays-Bas espagnols (1580-1610), in É. BOUSMAR, P. DESMETTE and N. SIMON, *Mélanges d’histoire du droit et des institutions (IX^e-XXI^e siècle) offerts à Jean-Marie Cauchies à l’occasion de ses 65 ans*, Bruxelles, 2016, p. 299-313, <https://dx.doi.org/10.4000/books.pu1.3257> [Accessed 16 June 2025] G. VERMEESCH, Professional Lobbying in Eighteenth-Century Brussels: The Role of Agents in Petitioning the Central Government Institutions in the Habsburg Netherlands, in *Journal of Early Modern History*, XVI.2 (2012), p. 95-119, <https://dx.doi.org/10.1163/157006512X613904> [Accessed 15 February 2025].

restrictively! If a measure of the estates and prince diverges from ‘*le droit ordinaire*’, it should certainly not apply *hors de son territoire*⁵²³! When his collaterals are not concerned by this exceptional deduction, the *rentier* ought to collect his normal canon. For instance, when a *rentier* lives in France, ‘*Hollande*’ or the prince-bishopric of Liège⁵²⁴, or ‘in another place outside of His Majesty’s domination’, and has a *rente* sustained in part by a collateral in Brabant with a sufficiently high income to match the canon, with an equivalent collateral in France and in the Dutch Republic, the ‘*rentier*’ will simply laugh at the deduction his debtor would want to apply, invoking the *vingtièmes* of the estates, imposed on the collaterals in Brabant⁵²⁵! Moreover, judges abroad, when having to deal with the distraction of collaterals within their competence *ratione loci*, when liquidating and distributing the product of their sale, will not even consider the pretended deduction, authorised by the estates of Brabant: *extra territorium statuenti impune non paretur*⁵²⁶.

Moreover, if deductions were to be allowed to Frenchmen, Dutchmen and other aliens, why wouldn’t it be so for Flemings, or inhabitants of Malines? If the Council of Brabant would allow these deductions to Flemings, why wouldn’t it be possible for the quarters of Brabant wherein the *vingtième* would not have been consented or are just not being collected, but where the revenue of a collateral would be enough to make up for a whole canon⁵²⁷? For Frenchmen, Dutchmen,

⁵²³ DE WYNANTS, *Charges publiques* (KBR), f. 198.

⁵²⁴ Liège’s surface reached no less than 5 700 square kilometres, or over a sixth of the current size of Belgium. The whole state of Liège counted around 450 000 inhabitants, JANSSENS, *De Achttiende Eeuw* p. 44; B. DEMOULIN and J.-L. KUPPER, *Histoire de la principauté de Liège: de l’an mille à la Révolution*, Toulouse, 2002. The tax burden in Liège, according to Janssens, was a quarter of that in Brabant, and a sixth of that in Flanders (figures for 1766, JANSSENS, *Taxation*, p. 78-79). The tax burden in our regions was lower than in Old Regime France, JANSSENS, *De Achttiende Eeuw*, p. 118. For similar indications: C. VANDENBROEKE, *Hoe rijk was arm Vlaanderen*, Brugge, 1994, p. 75.

⁵²⁵ ‘*il se raillera de la Deduction*’, DE WYNANTS, *Charges publiques* (KBR), f. 199.

⁵²⁶ ‘No one can be seen to impose norms outside their territory with impunity’, *Ibid.*, f. 199.

⁵²⁷ *Ibid.*, f. 200.

Flemings and other aliens, Wynants holds that when both debtor and creditor are *Brabançons*, and their collaterals are situated in the duchy, albeit in different quarters (with different regimes of *vingtième*), the deduction is admissible *pro rata* of the revenues of their collaterals⁵²⁸.

c. *Principal and Subsidiary Collaterals and Tax Deduction*

The next hypothesis is that of two collaterals, one being the principal, and the other the subsidiary back-up of an obligation by the owner of an estate to pay off his annual canon to his creditor. Deduction should be allowed, if the main collateral is ‘sufficient’, and situated in the district where the *vingtième* has been paid by the owner of the estate. In that case, the location of the subsidiary collateral is irrelevant⁵²⁹.

By contrast, if the main collateral (whose revenue is in itself sufficient to pay the canon) is situated in a place where the *vingtième* is *not* collected, the deduction cannot be allowed. The subsidiary collateral’s status (in a *locus* where one or more *vingtièmes* are collected) is then irrelevant. However, what if the revenues of the main collateral would be insufficient to cover the canon, ergo in a hypothesis whereby the income from the subsidiary collateral is needed to pay the yearly canon⁵³⁰? Wynants refers to the rule *lex loci rei sitae* (*‘les Loix du lieu de la situation des Biens’*). If the locally applicable rules in the quarter where either the principal or the subsidiary collateral are situated admit a deduction, it should be allowed. In the latter case, a subsidiary collateral is then treated as if it were a main collateral. Conversely, if arrears on the *rente* are in part paid with revenues from the main collateral, and part from the subsidiary collateral, deduction is only possible *pro rata* of that relationship, and only if the locally applicable regulations allow for it.

⁵²⁸ This is mentioned to have been confirmed in a report made by Lescornet in the case of Bollaert, secretary of the Privy Council, and the *licentié en Medecine* [sic] Sommeren. Part of the collaterals were situated below Malines. The manuscript does not provide former details. *Ibid.*, f. 200.

⁵²⁹ *Ibid.*, f. 201.

⁵³⁰ *Ibid.*, f. 202.

This is illustrated with three examples⁵³¹. In the first one, a rent of a hundred florins per year is affected on a tenant farm (*cense*) in the quarter of Antwerp (main collateral). Between 1692 and 1699, several *vingtièmes* have been consented by the estates and collected. The rent contract comes with a subsidiary collateral: another tenant farm, in the countryside (*au Plat País*) in the quarter of Louvain. From 1692 to 1699, no *vingtièmes* whatsoever have been collected there. If the canons from 1692 to 1699 can be paid, drawn from and covered by the main collateral in the quarter of Antwerp, the debtor will be entitled to deduct the paid *vingtièmes* from his (or her) canon⁵³².

When, by contrast, in the second example, the main collateral becomes *caducque* (inoperative or ineffective), the *rentier* (as creditor of the canon) will only be able to recover what is due on the price of the public sale (*subhastation*) of the main collateral⁵³³. Hence, the owner will have to pay the full price of the canons of the years concerned (= the *saldo* of what is due to the creditor, minus the income from the public sale of the main collateral), utterly separate from the price of the subsidiary collateral in the Louvain countryside. The debtor (owner) will in no case be able to deduct the *vingtièmes* paid in the Antwerp quarter from the sum due to the *rentier*. This is logical, since the main collateral (for which the *vingtièmes* have been paid to the estates) has been sold off and is no longer in the debtor's patrimonium⁵³⁴.

The third example starts from the hypothesis whereby the price of the public adjudication of the main collateral suffices to provide the creditor with the canons of 1692, 1693 and 1694, but not for those of 1695, 1696, 1697, 1698 and 1699, he will need to have recourse to the subsidiary collateral, situated in the quarter of Louvain. The debtor will

⁵³¹ *Ibid.*, f. 203.

⁵³² *Ibid.*

⁵³³ ‘*Vente de meubles ou d’immeubles qui se faisait à cri public, par autorité de justice, au plus offrant et dernier enchérisseur*’, <https://www.littre.org/definition/subhastation> [Accessed 15 February 2025].

⁵³⁴ DE WYNANTS, Charges publiques (KBR), f. 204.

then be able to deduct the *vingtièmes* for 1692, 1693 and 1694, *sans plus*⁵³⁵.

A fourth case concerns a situation whereby the creditor of a *rente* or *redevance foncière* (contribution based on immovables) had been obliged to consent to a moderation of the canon due to wartime⁵³⁶. This as a consequence of the new case law introduced in Brabant, which Wynants judges ‘*contraire aux raisons très bien deduities*’ in the treatise of ‘Loiseau’ (Loyseau)⁵³⁷. The *rentier* (here used as a synonym for the owner, the debtor of the *rente*)⁵³⁸ pretended to have deducted the *vingtièmes* paid in the years for which the Council had granted moderation. He (as debtor) had thus decided to diminish his canon twice: once for the wartime hardship, once as fiscal debtor having paid the *vingtième*. The Council of Brabant, however, rejected this reduction: the *rentier* (in the sense of creditor) ought to suffer the deduction only for those years wherein he or she has been fully paid with the normal canon. Years wherein a moderation had been imposed, were exceptional, and had not given rise to the normal payment. Deductions could thus not be applied by the debtor of the canon⁵³⁹.

Wynants remarks that a deduction must be a:

*‘diminution d’une plus grande somme, qui se doit païer, et s’il n’y en a pas de plus grande à faire païer, de quoi se fera telle [sic]?’*⁵⁴⁰

To sum up, Wynants enumerates four elements to be proven in court by the debtor wishing to reduce his canon due to the creditor⁵⁴¹:

⁵³⁵ *Ibid.* Handwritten interlinear addition: ‘*La Deduction se fera*’.

⁵³⁶ *Ibid.*, f. 205.

⁵³⁷ *Ibid.*; LOYSEAU, *Traicté du déguerpiement et delaisement par hypotheque*, Book V, Chapter XII.

⁵³⁸ <https://www.littre.org/definition/rentier> [Accessed 15 February 2025].

⁵³⁹ DE WYNANTS, *Charges publiques (KBR)*, f. 205.

⁵⁴⁰ *Ibid.*, f. 206. The case sketched out as fourth example is revealed to have been that of the Count of Tildonck, against de Longin le Jeune and Bousset, judged on the 24 December 1706, with a report by du Bley sous Gindertaelen.

⁵⁴¹ *Ibid.*, f. 207-208.

- 1) The consent of the estates of Brabant (the necessary legal basis for levying the *Vingtième*)
- 2) The contractual conditions under which the rent was created with regards to the deduction
- 3) The quantity of ‘XX^{es}’ imposed every year
- 4) The effective burdening of collaterals with them

This last element, according to Wynants, leads to the discovery of erroneous deductions allowed by villages, franchises and towns in the *Plat País*. This leads to a shortage in tax revenue for the estates. Local authorities forget that often *rentes* are not specifically assigned to a collateral, or that many collaterals do not pay any kind of *vingtième*.

(6) *Internal Analysis: War and Acts of God*

Due to the repetitive source of war throughout the seventeenth century⁵⁴², the estates consent to collecting the *vingtième*, but have to liberate local authorities (quarters, villages),

*‘pour l’impuissance dans laquelle ceux qui doivent les païer se trouvent réduits par les ravages de la Guerre’*⁵⁴³

In such a case, Wynants refutes the possibility for the owner (debtor of a canon) to diminish his payment to his *rentier* (creditor). If the liberation is partial, a *pro rata* deduction is of course admissible.

The estates can however decide not to liberate the local authorities, but to cede them the revenues of the *vingtième*, for instance in order to support the costs of lodging troops, fodder or like charges. This is rather an ‘*assignation*’, either to a village or a town. The effect is to take over costs that the central authorities would have borne themselves, conformably to reason and equity⁵⁴⁴. To avoid difficulties, the central authority (*l’État*) ought to draft an *acte de remise*, mentioning the reason of the cession.

‘Shortly ago’, according to Wynants, another question concerning deduction of *Vingtièmes* between owner and leaseholder arose. The

⁵⁴² VAN HOUTTE, *Les Occupations (I)*, I.

⁵⁴³ DE WYNANTS, *Charges publiques* (KBR), f. 208.

⁵⁴⁴ *Ibid.*, f. 210.

former had been obliged to moderate the latter's annual due for several years, due to the desolation of war. The latter pretended that the owner was held to reimburse half of the *Vingtièmes* which he had to pay upfront to the tax authorities. His claim was sustained by the principle that owner and leaseholder each are responsible for half of the tax.

In the leaseholder's point of view, the *vingtièmes* were a real charge (connected to the estate), and thus incumbent on the owner. The *censier* (leaseholder), by contrast, was only obliged to pay tax with regards to the fruits collected on the estate⁵⁴⁵. However, due to the scourge of war, the latter had not even been able to enjoy the estate as he should have done. Hence, only the 'real' owner of the '*fond*' should be responsible for paying the *vingtième*: *Fructûs enim suo pereunt Domino*⁵⁴⁶. The owner's counsel replied that the real character of the *vingtième* was indeed beyond dispute. If the tax would have remained unpaid, the estates would have had the possibility to recover it by executing on the *fond* for a year, following article XXXIV of the regulations of 1687⁵⁴⁷. Half of the tax would nevertheless have remained for the leaseholder or tenant, on the basis of the consent of the estates, which had established the obligation⁵⁴⁸.

Due to the perishing of the fruits, the owner was not alone to have suffered during wartime. The leaseholder had equally laboured the estate for nothing: all his sowing seed, harrowing (*façon*)⁵⁴⁹ and other

⁵⁴⁵ *Ibid.*, f. 212.

⁵⁴⁶ 'fruits perish to the owner's peril', *Ibid.*

⁵⁴⁷ '*De devoiren [...] sullen moeten geschieden goets tydts ende sonder eenigh merckelijck uytstel, als wesende Onsen wil ende intentie, dat naer het expireren van 't jaer tsedert d'uytsendinge van de respective taxen hun geene actie reel meer en sal competeren om te kunnen innen [...]*' Regulations for public charges (taxation) in Brabant of 13 September 1687, BRANTS, *Liste chronologique*, p. 220. Published in J.M. WOUTERS, *Placcaerten, ordonnantien, edicten, reglementen, tractaeten ende privilegien in dese Nederlanden Uyt-gegeven tsedert den jaere M.D.C.LXXV. Mitsgaeders diversche interpretatien, declaratien ende verclaeringe gevolght op eenige der selve Placcaerten. By-een vergaedert, ende onder bequame titulen in ordre gestelt met eene alphabetiecke Tafel der Materien*, Brussel, 1738, VI, p. 348-362.

⁵⁴⁸ DE WYNANTS, *Charges publiques* (KBR), f. 213.

⁵⁴⁹ Agricultural term indicating the preliminary work that is required to render land arable: <https://www.littre.org/definition/façon> [Accessed 15 February 2025].

expenses done ‘*pour la culture*’⁵⁵⁰. The leaseholder equally counts among the ‘*impenses*’⁵⁵¹ (expenses) the personal charges and taxes paid to the quarters, as well as that part of the real charges that weigh on the leaseholder. Would it not be unreasonable for the owner to compensate the leaseholder, in addition to bearing their own losses (such as lost estate revenues and contributions to real charges), for the portion that the estates had explicitly intended to fall solely upon the leaseholders? Wynants indicated that the Council judged in the owner’s favour: the leaseholder could not claim a deduction of half of the *vingtième*⁵⁵².

III. Conclusion

A. From the Lawyer’s Writing Cabinet to the Digital Reading Room?

When diving deeper into Wynants’s seemingly informal manuscripts, the reader discovers a wide array of references to specific decisions by the Council of Brabant (even if the date and/or party identifications are not mentioned), to doctrine (for which the inventory of the Council’s library provides indicative clues)⁵⁵³ or legislation (which is accessible, thanks to either contemporary or more recent publications). Reading Wynants’s treatises reveals above all the confusion and ‘cacophony’ of

⁵⁵⁰ DE WYNANTS, Charges publiques (KBR), f. 213.

⁵⁵¹ ‘*Somme employée pour la conservation, l’amélioration ou l’agrément*’ <https://www.littre.org/definition/impense> [Accessed 15 February 2025].

⁵⁵² Here again, the KBR’s copy has omitted the name of the *rapporteur* for the Council of Brabant (‘*Monsieur...*’). The copy kept in the Conscience Heritage Library does not mention the name either: DE WYNANTS, ‘*Traité des charges publiques*’, p. 144.

⁵⁵³ I am grateful to Harald Deceulaer and Klaas Van Gelder for sharing the excel inventory of the library, which is kept at the Belgian State Archives. Geert Van den Bossche suggests that Jan Baptist Verlooy (1746-1797) consulted this collection in the late 1780s to gather constitutional arguments for the revolt against Joseph II, G. VAN DEN BOSSCHE, *Enlightened innovation and the ancient constitution: the intellectual justifications of revolution in Brabant (1787-1790)*, Brussel, 2001, p. 136-138.

various legal languages⁵⁵⁴. In this case, displaying erudition or invoking authorities involves a lack of precise citation of the *sedes materiae* in Roman law, accompanied by a marked preference for adagia.

Contrary to Roman-Dutch or Roman-Frisian case law, the two manuscripts discussed above are ill-suited for quantitative analysis, for instance with a program as Transkribus. The relatively compact dimensions of the source (below 650 pages or folios) minimise the scale advantages of HTR recognition. In the end, the manuscript needs to be read, annotated, interpreted and translated by a conscious and critical human reader. Named Entity Recognition (through ‘tagging’), whereby institutions, people and places, but also parts of legal or implicitly legal discourse can be identified, helps in mapping (e.g. displaying the wealth of local cases cited in the manuscript, revealing the reach of the institutional manuscript’s scope, outside of current Belgian borders) or making the content machine-readable (linking with repositories such as VIAF or Wikidata), but does not add much to the analysis. The prominence of Van Espen is quite clear. Repositories (Butkens, *Placcards*) and other legal literature (Anselmo) are only cited intermittently.

Van Den Broeck suggested that the genre of the *disputatio*, used in teaching for Roman or canon law, was reflected in publications, not unlike those of Cornelis van Bynkershoek (1673-1743), the structure and presentation of whose *Quaestionum Iuris Publici Libri Duo* resembles that of Wynants’s posthumously published selection of 226 *Decisiones* of the Council of Brabant (1732, 1744, whereby the publisher followed the classification in legal questions of Stockmans’ earlier collection)⁵⁵⁵, which I mentioned in the introduction to the present article⁵⁵⁶. This could well apply to the fiscal work of Wynants, wherein the author combined arguments presented before the Council of Brabant.

⁵⁵⁴ T. HERZOG, ‘The Uses and Abuses of Legal Pluralism: A View from the Sideline’, in *Law and History Review*, 42.2 (2024), p. 211-222, <https://dx.doi.org/10.1017/S0738248023000160> [Accessed 15 February 2025].

⁵⁵⁵ DE WYNANTS, *Decisiones*, p. viii; J. BRITZ, Mémoire sur l’ancien droit belge. Première partie, in *Mémoires de l’Académie royale de Belgique*, 20.1 (1847), p. 298, <https://dx.doi.org/10.3406/marb.1847.1083> [Accessed 15 February 2025]

⁵⁵⁶ F. DHONDT, ‘Cornelis Van Bynkershoek Verhandelingen van Staatszaken, 1740’, G. MARTYN, L. BERKVENs and P. BROOD (eds.), *Pro Memoria*, XXI.2 (2020), p. 72-75,

B. *In Autographo*⁵⁵⁷: the Mystery of the Many Manuscripts

Jan Van Den Broeck's overviews of eighteenth-century legal erudition in the Austrian Netherlands opens with the judicious remark that many works have never been published at all, or – in Wynants's case – only posthumously⁵⁵⁸. He lists several explanations: some treatises were meant for purely administrative and internal use; others were rather personal or intimate. However, the legal historian inquired whether the interested audience in the eighteenth century would have been big enough to justify publishing at all! Only the creation of the Brussels Academy by Maria Theresia in 1772 would have stirred up interest for legal history, as many historical prize questions had a legal dimension⁵⁵⁹.

The occasional errors⁵⁶⁰ as well as the considerable number of copies of Wynants's treatises might be explained by the communicative process sketched higher in the introduction: either by a limited audience for *ius proprium*-publications (a consequence of the variety of customary norms) or by a desire to avoid censorship or obstacles in one's career as advisor of the sovereign. The curious circulation of his work is all the more striking since public law was rarely taught throughout the period,

<https://dx.doi.org/10.5117/PM2019.2.015.DHON> [Accessed 15 February 2025]. Britz (1806-1867) stated that Wynants's *recueil*, jointly with that of Coloma and du Laury would still have had 'authority' in his own day, BRITZ, 'Mémoire sur l'ancien droit Belgique', p. 231, <https://dx.doi.org/10.3406/marb.1847.1083> [Accessed 15 February 2025].

⁵⁵⁷ DE WYNANTS, *Decisiones*, iv, viii.

⁵⁵⁸ The KBR conserves notes by Neny on a copy of the *Mémoires*, just as d'Hovyne and DE WYNANTS, 'Mémoire'. with 'Remarques faites par Monsieur le Conseiller de Wynants', s.d. KBR, Manuscripts, 107, 150 p. originally belonging to the library of F. V. Goethals. VAN DEN BROECK, *De Rechtsleer*, p. 11. Wynants dates the memoir of d'Hovyne (1596-1671) 'before the Peace of the Pyrenees' (1659). Yet, since the manuscript refers to the said treaty, he puts forward an 'execution' in 1662. Similar problems can be signalled with regards to the various copies of his own 1730 *Mémoires*, which at sometimes seem to refer to Maria Theresia as sovereign (1740-1780).

⁵⁵⁹ VAN DEN BROECK, *Historiografie*, p. 10, 29 (*Académie impériale et royale des Sciences et Belles-Lettres de Bruxelles*, sponsored by de Neny).

⁵⁶⁰ E.g. 15 'xbre' (december) for the Barrier Treaty (concluded on 15 November 1715), DE WYNANTS, *Mémoires*, f. 126.

with the exception of 1723-1724, when Charles VI had created a chair for the matter in Leuven⁵⁶¹.

C. Wynants and the Common Good, Preserved by the Judge

As highlighted before, the abundance of sources of law in the early modern period made it hard to establish a hierarchy to the benefit of princely legislation. Wynants did actively promote a more robust central authority, while respecting the implicit and explicit contract with the sovereign. Van Den Broeck stressed that Wynants, contrary to his son in law Neny, was in favour of the establishment of *Intendants*, following the French model, as the Austrian Netherlands briefly experienced later, during the War of the Austrian Succession (1744-1748)⁵⁶². Referring to an unfinished memoir preserved in the manuscript collections of the State Archives, Van Den Broeck noted that Wynants had advocated for the establishment of '*Inspecteurs et censeurs publics*'. This stance opposed the prevailing tendency of local elites within the estates of Brabant and Flanders to interfere extensively in matters belonging to the sovereign's domain⁵⁶³. Portraying Wynants as a 'disciple' of Van Espen, Van Den Broeck also points to another unfinished manuscript, warning against expansion of the Court of Rome's jurisdiction and activities⁵⁶⁴.

⁵⁶¹ E. NYS, Une chaire de droit public et de droit des gens à l'ancienne Université de Louvain, in *Revue de Droit International et de Législation Comparée*, 1913, p. 372-380; G. VAN DIEVOET, De institutiones juris publici universi van A. Bauwens, professor van publiek recht te Leuven in 1723-1724, in G. ASAERT (ed.), *Recht en instellingen in de oude Nederlanden tijdens de middeleeuwen en de nieuwe tijd: Liber amicorum Jan Buntinx*, Leuven, 1981, p. 527-548. CROON, *Orde en informatie*, p. 145; VAN DEN BROECK, *De Rechtsleer*, p. 48. According to Croon, it was possible to follow private courses of public law, CROON, *Orde en informatie*, p. 44.

⁵⁶² DHONDT, *Verlichte Monarchie*, III, p. 75; VAN DEN BROECK, *De Rechtsleer*, p. 63-64. Croon nuanced this: Wynants would have abhorred of any decisional power for these *Intendants*, CROON, *Orde en informatie*, p. 148-153. Chancellor of Brabant Van der Haeghen forcefully opposed such an institution in 1734: '*le gouvernement de France [...] despotique, est très-odieux dans ces pays et fait horreur à ces sujets*', cited by GACHARD, *Tome troisième*, p. LIV.

⁵⁶³ G.A. DE WYNANTS, 'Mémoire touchant l'établissement des intendants et subdéléguez' (1728), BRUSSELS, Belgian State Archives, Manuscripts, 2172.

⁵⁶⁴ VAN DEN BROECK, *De Rechtsleer*, p. 77-78.

Throughout Wynants's manuscripts, however, the author is not only defending the sovereign, but foremost his judges, as before him Bodin and, during his own lifetime, Montesquieu⁵⁶⁵. The court councilor in Vienna is a staunch guard of judicial independence, as we can see in his treatment of the *Oude Stock Bosschen* (II B (2) d)). For instance, in his remarks on *chef-président* Hovyne's treatise on the institutions of the Spanish Netherlands, Wynants states that:

'it is a false supposition that the Council of Brabant would in any ways depend on the estates of the same Province. The former have pledged (*font serment*) to uphold their privileges. However, are they under the latter's orders, are they accountable of their actions or conduct? *Rien moins*'⁵⁶⁶.

This aligns perfectly with the reasoning previously outlined regarding taxation: the consent of the estates is essential to authorize the legislative act enabling tax collection, serving as a necessary complement to the sovereign's will. Conversely, however, the estates' perimeter of action was restricted to taxation. Wynants agreed with Hovyne's statement that:

'les qu'elles [sic] convocations et assemblées ne se font d'ordinaire que par nul autre sujet que pour leur demander quelque aide ou subside dans la nécessité publique et de l'état. Car ils n'ont rien à voir dans la politique et ne doivent avoir aucune part dans l'administration des affaires publiques, non plus de police que de justice, et à quoi il faut toujours prendre soigneux égards à les en retenir et éloigner'⁵⁶⁷.

⁵⁶⁵ H.A. LLOYD, *Jean Bodin, 'This Pre-Eminent Man of France': An Intellectual Biography*, Oxford, 2017, <https://dx.doi.org/10.1093/oso/9780198800149.001.0001> [Accessed 15 February 2025]; K.F. CALLANAN and S. RUTH KRAUSE (eds.), *The Cambridge Companion to Montesquieu*, Cambridge, 2023, <https://dx.doi.org/10.1017/9781108778923> [Accessed 15 February 2025].

⁵⁶⁶ Wynants, *remarques on Hovyne*, KBR, Manuscripts, 107, f. 37. Hovyne, who graduated in law in Leuven in 1611, pleaded before the Grand Council in Malines, where he was *maître des requêtes* (1628) and *avocat fiscal* (1638). Member of the Council of State in 1647, Hovyne succeeded Pierre Roose as *chef-président* of the Privy Council in 1653. Hovyne is portrayed in the *Biographie nationale* as an '*espagnolisé*', irritated by and opposed to constitutional privileges in Brabant. E. VAN ARENBERGH, HOVYNE (Charles De), in *Biographie Nationale*, Bruxelles, 1886, IX, col. 563-567; CROON, *Orde en informatie*, p. 57-59.

⁵⁶⁷ DE HOVYNE and DE WYNANTS, 'Mémoire', p. 6.