

Chapter 7

Uncertainty and Cleavages at Stakes: Do the Belgian Constitutions of 1831 and 1993 Stabilize Political Power?

Nathalie Schiffino and Steve Jacob

1 Introduction

In our modern States, Constitutions underlie political power and its institutional settings. Two different texts lay the foundation of the Constitutional history of Belgium: the Constitution of 1831 and that of 1993. Each arose during a period of historical change. In 1831, in the shadow of decolonization from the Netherlands, the Constitution created a unitary State. In 1993, in a context of the Europeanization of politics, the Constitution declared a federal State. Over the years, the Belgian polity has undergone dramatic changes. What is puzzling about Belgium is that the constitution-making process has consistently remained in a State of uncertainty. In spite of path dependency and lesson-drawing, constitutional lawmakers, it seems, have not been able to avoid drafting decisions under a veil of ignorance.

In reality, from the nineteenth to the twenty-first century, the Belgian State overcame several deep cleavages. To guarantee the viability of the State as it now exists, political elites opted for deep Constitutional changes. The in-depth revisions of the Constitutions aimed at adapting the institutional settings to the evolution of the cleavages and their impact on society. Assuming this was a rather rational choice made by the decision-makers involved, we conjecture they manage both the political and the constitutional processes.

Yet, as we shall see in this chapter, uncertainty was at work at the time of drafting and adopting both Constitutions, in 1831 and in 1993. Moreover, from the nineteenth to the twentieth century, conditions of uncertainty under which constitutional choices were made remain unchanged. To put in a nutshell, at different times,

N. Schiffino (✉)

Université Catholique de Louvain, Louvain-la-Neuve, Belgium
e-mail: nathalie.schiffino@uclouvain.be

S. Jacob

Département de Science Politique, Université Laval, Québec, Canada
e-mail: steve.jacob@pol.ulaval.ca

the veil of ignorance hung similarly before the drafters' eyes. Indeed, we posit that cleavages and the necessity for consociationalism (to overcome cleavages) partly explain this veil of ignorance at different stages of Belgian history. Thus, we put forward a tension between the rationality (albeit limited or bounded) of the drafters and the uncertainty of the context in which their decisions were embedded.

Section 2 focuses on the historical overview surrounding the Constitution in 1831. It explains the emergence of both cleavages and consociationalism. In Sect 3, we investigate the content of the Constitution of 1831 and that of 1993. This approach aims to explain how different texts share similar characteristics when drafted and adopted under uncertainty. In Sect 4, we discuss the results of the content analysis of the two Constitutions. Three main sets of explanatory factors will be highlighted: foreign surveillance in 1831 and EU membership in 1993, cleavages and consociationalism, and unframed devolution. In doing so, the Belgian case study gives a hand into theorizing the veil of ignorance, the general purpose of this book.

2 Historical Context of the Drafting and Adoption of the Constitutions

2.1 What Issues and Historical Events Led to the Drafting and Adoption of the 1831 Constitution?

In 1831, a national revolution triggered constitutional work. Domestic political issues cannot be disentangled from international turmoil at a time when civil wars were spreading throughout Europe. Among these wars, "Les Trois Glorieuses" or "La Révolution de Juillet" in France, the revolutionary movements in Germany and Italy, and the November uprising in Poland illustrate the mobilizations and upheavals that began to sprout across Europe in 1830. The Belgian and Greek revolutions were both leading toward independence, from the Netherlands and the Ottoman Empire, respectively. As such, they were each required to draft and adopt a Constitution for these new States.

The general historical context for the drafting and adoption of the Constitution cannot ignore domestic economic and social issues. During the nineteenth century, Belgium developed industry (notably the sectors of textiles and coal mines), railways (Cockerill), river traffic, and harbors. The first decade of Belgian independence was characterized by a difficult economic conjuncture (Witte et al. 2005: 125–143), and the nascent State was obliged to consolidate its financial and monetary policies. Moreover, social claims accompanied industrial developments in spite of the fact that social classes, especially the working class, were not yet organized for a class struggle (Mabille 1992: 96). At this moment in time, religion persisted as the main domestic social issue. As early as 1830, Liberals (traditionally secular) and Catholics formed two dominant pillars, each corresponding to a political family (political parties were created until 1846 and 1884), with its own advocacy groups, its own press, etc.

Divergent visions emerged regarding the role of the State and the Church to organize education, charity, and the supervision of citizens in general. To secure the independence of the State, and to favor its stability, these political families put their philosophical differences aside. The period from 1830 through 1839 became known as the so-called unionist period. Catholics and Liberals agreed to remain united, rather than at odds, on this important domestic issue. This acquiescence was a necessary condition in order for the Belgian State to be recognized by the Great Powers (France, the United Kingdom, Germany, and Russia). In 1830, they could not know where this cleavage would lead them in the future. This uncertainty is taken into account when we analyze the drafting and adoption of the Constitution.

Besides, in 1830, conflict over linguistic or cultural cleavage was not yet obvious. It was the French-speaking elite who participated in the revolution, gained the independence for the State, and engaged in drafting and adopting the Constitution. Further, it was the French language that distinguished Belgian citizens from their Dutch-speaking colonizers. French was also the language commonly spoken by the elites, should they live in the North or in the South of the country. However, it is important to point out that local idioms were already present. Observers were already expressing uncertainty as how to tackle the Flemish and "Picard" dialects.

To summarize the global sources of uncertainty at the time of the drafting and adoption of the Constitution, we point to several notable elements. First, on an international scale, the need to maintain a stable Europe mortgages Belgium's future (Witte et al. 2005: 74–80). Were it to be considered as a divided and unstable brand-new country, its independence would be compromised. Rather, domestic issues were managed and decided upon by Liberals and Catholics through negotiation. Their goal was to anesthetize the potentially conflict-inducing effects of cleavages. The main Constitutional choices, such as opting for a parliamentary monarchy as a regime, were made largely based on international constraints in order to limit uncertainty.

2.2 *Who Were the Drafters and the Adopters?*

Why Did They Get Involved in the Process?

Did They Have Divergent Interests?

The drafters of the Constitution in 1830 can be separated into two groups (Mabille 1992: 104–108). On October 6, 1830, the new government asked a Commission to draw up a first draft of the country's constitution. The 12-members Commission, composed mostly of jurists, worked on the draft from October 12 to 16, 1830. We consider this Commission a first group of drafters.

At the same time, the government prepared the election of the so-called National Congress. It was a unicameral parliament created with a sole objective: to discuss the first draft prepared by the commission, to amend the proposal, if necessary, and finally to put it to a vote. On November 3, 1830, 46,099 Belgians voted

for the 200-person National Congress. Among the voters, 38,429 had paid the poll tax. A further 7,670 voters possessed a degree that qualified them to vote. The 200 congressmen, elected that day, constituted a second group of drafters and adopters of the Constitution. Their profile was mixed up diversity and homogeneity. From a geographical perspective, they represented heterogeneous ridings (e.g., rural and urban). The provinces where they were elected covered the whole spectrum of possible demographic configurations. But in terms of social class, all 200 were part of the Belgian elite. They formed a homogeneous group of decision-makers, all French-speakers, although they differentiated themselves into either the Catholic or Liberal block.

It is highly relevant questioning the motivations of the drafters and adopters of the Constitution of 1831. These lawmakers wanted to ensure rights, power, and autonomy for the pillars they belonged to. At the same time, they did not know how the Belgian State and Belgian society were to evolve along the lines of existing cleavages. Considering Rokkan's writings on liberation struggles (Rokkan 1970), and Lijphart's analysis of consociationalism (Lijphart 1999), we know that three main cleavages delineate crucial pillars in Belgium: religious, economic, and linguistic. In 1831, the religious cleavage fundamentally divided the Catholics and Liberals. Along the economic cleavage, the working class and the *bourgeoisie* opposed one another, most notably from the mid-1830 onward. The linguistic cleavage divided the French-speakers and the Dutch-speakers especially since 1840.

There are many illustrations of the motivations of the Congressmen in the midst of the prevailing uncertainty. We can have a greater understanding as to what motivated the drafters and the adopters of the Constitution in 1831 based on discourse among their contemporaries and investigations by historians. For instance, the Archbishop de Méan wrote a letter to congressmen on December 13, 1830, calling for the Catholic Church's recognition in the Constitution. The clergy declared that depriving Catholics the freedom of religion, education, and organization could trigger crises within the new State.

The objective interests of the adopters of the Constitution can be inferred from their position in the structure of political, economic, and preceptorial power (Imbeau 2009; Imbeau and Jacob 2011). They share different ideologies that they want to protect and preserve. Equilibrium was to be found between secular and non-secular structures. The adopters belonged to a mono-linguistic elite, but they knew those who spoke the prominent dialects formed a social and cultural patchwork that had to be carefully handled. They formed part of the nobility or the upper middle class and, as such, their economic and knowledge resources were patent. But the first years of the 1830s were marked by monetary and financial crises while the working class cried for reforms, notably education for the underprivileged. From an individual point of view, these elements highlight potential sources of uncertainty. We can find some *souvenirs* of the congressmen that illustrate these sources. Several *mémoires* dating from this period still provide valuable piece of information, including for example works by Louis de Lichtervelde, Theodore Juste, and Jacques van den Heuvel.

2.3 *How Did the Drafting and Adoption Processes Actually Evolve? What, When, Where, How?*

The National Congress met for the first time on November 10, 1830, in the "Palais des Etats Généraux" in Brussels, the newly proclaimed capital of the nascent country. Of the 200 members, 152 were present. Louis De Potter, the eldest member of the government, formally installed the Congress, with his official speech evoking the terms freedom, equality, and constitutional rights. From his *souvenirs*, it seems that there was not a general consensus on what to say at that moment. The National Congress was meant to be an ad hoc forum; its primary function was to vote on the Constitution while the government managed social and economic programs. Both were considered to be temporary organs, with the government intended to be in place until February 1831 and Parliament until September 1831. This exemplifies that decision-makers were uncertain about the period of time during which they could exert power. They were uncertain whose prerogative it would be to make future decisions and in which sense that would happen.

In the days following November 10, 1830, the congressmen gathered again and voted on the main features of the State: They confirmed the already-declared independence, they opted for a Constitution and representative monarchy, and they excluded any chance of the Netherlands providing a ruling King.

Weeks later, on December 4, 1830, Congressmen began to debate the project of the Constitution as such. From the project prepared by the commission, mentioned above, they preserved 108 articles in their original form. They modified articles relating to the composition of the future Parliament. They elected to install a bicameral parliament composed of directly elected members. They also changed articles relating to the relationship between the State and the Church, guaranteeing freedom of religion and freedom of education. Their debates were influenced by positions such as the one formulated by the Archbishop in December 1830. On February 7, 1831, they ended their debate and adopted the Constitution.

Throughout this process, those participating in the National Congress, as well as their contemporaries and many historians, considered them as a real authority exerting real political power in the sense of the "Veil of Ignorance Project" (VOIP). Debate and negotiation prevailed. The Constitution of 1831 was changed only twice in the years that followed. In 1893, plural suffrage and proportional representation were put into place. In 1921, the political elite enacted universal suffrage for the people. It was not until 1970, and the preparation of the Constitution to determine a federal State in 1993, that new constitutional changes were adopted in Belgium. This timeline highlights the importance of considering, in the rest of our chapter, these two moments of constitutional history in Belgium: 1831 and 1993. The latter will be investigated in the sections two and three as a mirror effect of the Constitution of 1831.

3 Description of the Content of the Constitution in Terms of a Power Relation Framework

3.1 *Description of the Constitutional Text*

The Constitution of 1831 is composed of 4,982 words and 209 power relations. This Constitution is one of the shortest among the texts studied by the VOIP. The density of the power relations in the text is 41.95. By comparison, the Constitution of 1993 counts 14,478 words, marginally longer than the average Constitution scrutinized by the VOIP. The density of the Constitution of 1993 is 39.50. It is striking to note that this figure is lower than the mean power relations (per thousand words) in other case studies investigated by the VOIP (cf. Imbeau and Jacob 2015). What is more, noting the number of power relations (572), we see this is well above average, and far more than twice the number of power relations in the Constitution of 1831.

In 1831, the Belgian Constitution was structured in eight main categories. Considering the importance of territorial demarcations, especially following a revolution, the first title concerns territory, highlighting the importance of this feature within the State's recognition. The first article is also crucial because it frames the unitary character of the political regime. The first sentence of the Constitution, article 1, states: "Belgium is divided into provinces." One of the major revisions in the Constitution of 1993 is the reformulation of article 1. From 1993 until the present day, this first article has proclaimed: "Belgian is a federal State composed of regions and communities." The provinces remain, but they are presented later in the text, in article 5, which designates the provinces to the Walloon and Flemish regions.

In 1831 and 1993, the second title of the Constitution pertains to Belgian citizens and their rights. In 1831, and after, the Belgian Constitution was held up as a model for its promotion of (individual) freedom in a partly authoritarian Europe (Mabille 1992: 116). In 1993, the principles of equality, freedom, habeas corpus, the abolishment of the death penalty, and other conditions of citizenship remain unchanged.

The third title in both the 1831 and the 1993 Constitutions pertains to political authorities. It is the largest section of the Constitution, regardless of the period. This title begins with the declaration that all power comes from the Nation. This power follows directly from the legislature, which denotes the importance of the parliamentary character of the regime, developed before either the executive or the judiciary branch. In the Constitution of 1993, the adjective "federal" is added to the descriptions of both the legislative and the executive. An additional chapter concerns regions and communities. The judiciary is detailed within the articles into the different courts and their respective competences.

The fourth title in the Constitution of 1831 and the fifth title in the Constitution of 1993 are about finance and taxation. In the 1993 edition, a title has also been added about international relations. It lists the competent powers in matters of international treaties.

The following title (fifth in 1831 and sixth in 1993) relates to public forces: the army and the police (civic guards, mentioned in 1831, no longer exist in such a form). These articles concern the coercive, yet legitimate (because constitutionally guaranteed), power of these authorities.

The last titles in 1831 and in 1993 are about peculiar measures (the flag, laws to be adopted to fulfill the task in 1831, etc.) and last but not least, rules outlining the revision of the Constitution. A rigid procedure, corresponding to Lijphart's model of consociationalism (1999), was put in place requiring the presence of half of elected members and a majority in the vote in each linguistic group, plus two-third votes in both Chambers, are required to approve a revision to the Constitution.

3.2 Statistical Results from the Content Analysis

As mentioned, the number of power relations vastly increased in the Constitution between 1831 and 1993: from 209 to 572. This is linked to the creation and multiplication of competent authorities within the federal State. Belgium changed from a unitary frame with centralized legislative, executive, and judiciary powers to a federal structure in which the federal State shares competencies with legislative and executive organizations in three regions and three communities that do not always overlap. As a result, these new structures increased the number of power relations between these authorities and the judiciary (Table 1).

In 1831 and 1993, around 85 % of these power relations pertain to authority, i.e., political power as such (86.6 % in 1831 and 84.3 % in 1993). The second type of power appears to be knowledge, with approximately 8 % (7.7 % in 1831 and 8.2 % in 1993). The statistical distance of the economic power (just 1.9 % in 1831 and 1 % in 1993) from the political and preceptorial powers could be explained by several factors mentioned below.

In 1831, Parliament was composed of elites, as previously said. They did not worry about their future wealth and were not behind a veil, as defined in the VOIP, regarding their socioeconomic future. Even if the economy needed to be consolidated at a time of crisis, elites were the privileged, the business owners, and participated in industrial developments. In 1993, wealth issues were handled by the corporatist system settled in Belgium after the Second World War. While elites revised the Constitution at the "political Parliament," they did not have to

Table 1 Type of power per source of power in the Belgian Constitution of 1831 (proportions)

	Social power	Instrumental power	Total (N)
Authority	0.38	0.48	0.87 (181)
Wealth	0.00	0.02	0.02 (4)
Knowledge	0.02	0.05	0.08 (16)
Indeterminate	0.01	0.03	0.04 (8)
Total (N)	0.42 (87)	0.58 (122)	1.00 (209)

Table 2 Type of power per source of power in the Belgian Constitution of 1993 (proportions)

	Social power	Instrumental power	Indeterminate	Total (N)
Authority	0.42	0.42	0.00	0.84 (482)
Wealth	0.01	0.01	0.00	0.01 (6)
Knowledge	0.03	0.05	0.00	0.08 (47)
Indeterminate	0.00	0.06	0.00	0.06 (37)
Total (N)	0.46 (263)	0.54 (308)	0.002 (1)	1 (572)

worry about socioeconomic issues because these were dealt with in the so-called social Parliament instituted by the Social Pact of 1944. Moreover, these lawmakers belonged to the upper class, their incomes and education standing well above the average Belgian (Table 2).

It is highly interesting that figures denote similar trends in the nineteenth and twentieth centuries, except for the number of power relations, as such. The Constitutions of 1831 and 1993, though settling different patterns of regimes (unitary at first, followed by a federal system), keep similar statistical features in terms of power and, potentially, the opacity of the veil of ignorance.

3.3 *What Agents Are Identified in the Constitution?*

The legislative branch is a major agent in the Constitution of 1831, mentioned as "legislative power," or, more often, "the Chambers," "the Chamber of the Representatives," "the Senate," as well as by the terms "president," and even "members." The legislative branch is present in both collective and individual dynamics. For instance, the Constitution identifies ten members of a chamber as a relevant group to ask for the secrecy of parliamentary debates. It also specifies conditions under which a member of the Parliament cannot exert his mandate.

The same dual logic, collective and individual, is applied to a second category of agents: "Belgians" constituting the "Belgian Nation." "Citizens" are mentioned as the one who pay the poll tax and who elect the Representatives. Sometimes it refers to all of them, as a collective group, for example regarding the fundamental right of association, and at others it refers to each of them, such as the individual right of depositing a petition signed by several others.

After the legislative branch, the next major agent appears to be the King. He is always mentioned with his prerogatives: the Constitution announces his capacities within the State. However, one article (article 64) stipulates the capacities of the King depend on a Minister, a member of the executive, who endorses the responsibility of the King's capacities.

Other agents related to the State are as follows: "the civil servants," "the Courts," and "the Judge" (again with a collective or individual label), the "Courts of Auditors" and, more scarcely, "the Minister." Apart from the centralized State, two agents are mentioned several times in the Constitution in 1831: "Provinces" and "Communes" (i.e., municipalities).

Interestingly, "the priest" also appears to be an agent in the Belgian Constitution. He is free to write to his superiors and publish his acts without State intervention or intrusion, as any interference on the part of the State could hamper the freedom of the Church.

Also, significantly, "foreign armies" appear in three units of analysis. At the time of independence, the foreign armies were forbidden by the Constitution to work for the Belgian State, to cross its borders and to occupy its territory without permission. The Constitution assertively handles the uncertainty raised by foreign States over the future of Belgium.

Comparatively, the Constitution in 1993 always favors the legislative branch as the major agent, applying the same dynamics as before. The legislative branch henceforth corresponds to several agents: the federal level and those of the other jurisdictions (i.e., federated entities). Further, the executive branch is much more present than in the original Constitution, both at the federal and federated levels. The "federal government" is individually distinguished from its members: ministers and secretaries of State. The King, as per tradition, remains a clearly identified agent. There are also new terms introduced: "regions" and "communities." They form an intermediary level between the federal State on one hand and "provinces" and "communes" on the other hand. "Courts," "judges," and "priests" remain agents within the Constitution, but the judiciary is described more in terms of its different courts. Thus, there is a dramatic increase in the number of political agents exerting authority identified in the Constitution. Power is more fragmented and dispersed among them.

Moreover, "Belgians" still appear to be "each one" and "electors." They are divided along gender lines: "women" and "men" are both mentioned. "Children" are also identified as agents in the Belgian Constitution.

Another important change is that armies are not the sole foreign agent that is mentioned. "Institutions of international public law" and citizens of a member State of the "European Union" are also presented in the text. The Constitution grants them the right to exert specific power.

3.4 What Capacities Do These Agents Have?

Generally speaking, the Belgian Constitutions in 1831 and in 1993 enhanced power through procedures, rather than granting power to some individuals over others. Statistically, the capacity to act over events or things (instrumental power) is higher than the capacity to act over other agents (social power) in both Constitutions.

What is puzzling regarding the VOIP hypothesis is that political power is primarily concerned with events or things, but not persons. Instrumental power dominates (58 % in 1831 and 54 % in 1993) over social power. How can we explain such a reversal in regard to the second hypothesis of the VOIP theoretical framework? We conjecture that cleavages and consociationalism provide explanations to this puzzling situation.

As demonstrated by the theory on consociationalism, in a deeply divided society such as Belgium, a group (actually a majority) cannot explicitly dominate another one: "consociational democracy violates the principle of majority rule" (Lijphart 1969: 214). In formal rules, especially Constitutions, that dictate the fundamentals of the polity, neither the majority nor the minority should appear as prevalent agents. To avoid such trends, persons or groups are not mentioned in the Constitution. Power relations are structured in terms of activities that are either permitted or prohibited. In a nutshell, in such a specific context, power relations are concerned with procedures rather than singling out individuals or groups. Procedures aim at reducing the risk of conflicts without identifying individuals as potential sources of these conflicts. Article 54 provides a striking illustration of this trend. It describes the so-called alarm bell procedure preventing the Flemish from adopting a law that could be harmful to the interests of the Walloons, and vice versa. However, it does so without specifically mentioning individuals.

3.5 What Capacities Does the Text Take from These Agents?

In this regard, the Belgian case study shows a second intriguing aspect that contradicts the third hypothesis of the VOIP, but which is coherent with our findings outlined previously. The vast majority of power relations (92 % in 1831 and 96 % in 1993) aims to give actors the capacity to act, rather than to prevent them from acting (these results are not reported in our tables).

In 1831, agreement between the competing groups within the nascent State implied building positive, rather than negative, power relations. Stability in domestic affairs was necessary to guarantee the viability of Belgium on the international stage. Groups cannot afford to prevent themselves from acting and thus introduce negative power exchanges. Consociationalism prevails, based on compromise, on negotiations leading to agreement (Lijphart 1969). The Constitution thus balances the capacities of the agents to conduct such positive power relations.

In 1993, devolution implied that regions and communities, provinces and communes were recognized as equal to the (henceforth federal) State. The federal constitution was not written in the perspective of preventing the federated entities to act, but rather to enhance their autonomy. As shown in the literature, the purpose was to increase self-government, especially within the regions (Keating 1998, 2009).

However, by 1993, we notice that social power catches up with instrumental power. The statistical difference between them decreases from 42 % compared with 58 % in 1831 to 46 % in comparison with 54 % in 1993. Similarly, the proportion of instrumental power diminishes if we consider that, in the first Constitution, 48 % of power relations are political (authority) and instrumental, compared with the proportion in the 1993 Constitution, which is 42 %. The devolution process explains an increase in the capacity of one agent to make another do its bidding. The federal State recognizes the federated agents' ability to act. This is coherent with the increase in the number of agents and the fragmentation of power mentioned above.

4 Discussion

On a global scale, Belgium possesses one of the highest scores (84 %) of authority as source of power, occupying second place in the VOIP ranking following only the USA (85 %). The veil of ignorance that hangs before the congressmen is opaque. Our analysis confirms the influencing agents in the Constitution use authority as a primary resource. Two factors account for it.

First, in 1831, Belgium was under the control of foreign States. Its future was uncertain because it depended on the will of those foreign powers. Had great powers considered the Belgian State as a threat, they would have prevented its independence. In 1993, Belgium was a member of the European Union (EU), a body that keeps an eye on Belgium's political process, as it does all of its members. The EU cannot let one of its member countries allow divisions along regionalist problems go too far. Had the EU considered the Belgian devolution as a threat, it would have limited its dynamics. The international context in the nineteenth and twentieth centuries is obviously different. Decolonization and Europeanization are different political processes. Yet, both embedded Belgium in institutional constraints that influence the opacity of the veil of ignorance that hung before the drafters' eyes.

Second, in 1831, Belgium favored "agreement," to use Brennan and Buchanan's words, or "consociationalism," to employ Lijphart's terminology, in its handling of domestic divisions. This was the case in the nineteenth century and especially during the so-called unionist period. In the contemporary period, this is still the case. In 1993, consociationalism still helps Belgium in overtaking cleavages. In 1831 and in 1993, internal divisions endangered the polity and increased the uncertainty of decision-makers about their future and the future of the polity. Recent literature still shows that consociationalism remains a technique in Belgium to decide when deep conflicts threaten the stability or even the very survival of the polity, which corresponds to moments of uncertainty (Deschouwer 2006).

From a theoretical perspective, this would entail the veil of ignorance is more opaque when a Constitution is adopted under international constraints that cannot be managed by the State, and under domestic cleavages that have the potential to trigger unmanageable conflicts.

This could also attest to politicians being the main agents. In 1831 and in 1993, decision-makers opted for a representative democracy with delegates holding the decision-making power. In contrast to the Swiss case, for instance, no participatory instruments are planned for or employed. Citizens are mentioned in the texts in terms of their rights, but no direct instruments of democracy are prescribed to favor participation. From the same perspective, "private" actors are "ignored" in the texts. From a theoretical point of view, this is coherent with the scientific literature contending the prevalence of the "cartel of elites" within a consociative democracy (Lijphart 1969).

In turn, this power sharing of the elites explains the rigidity of the Constitution, one criterion mentioned by the consociationalist theory. The "cartel of elites" promoted the stability of the Constitution and of the political arrangements to limit

changes for which the impacts were unknown. This is most notably the case for the Constitution of 1831 from its adoption until 1970. Our paper has contrasted two periods: the first, a period of Constitutional stability and scarce revisions taking place only in 1893 and 1921; and a second, a period of greater instability building the federal State through several Constitutional revisions in 1970, 1980, 1988, and, finally, 1993. But, even in this case, the mechanisms of rigidity were promoted (special majorities, alarm bell procedure, etc.).

In circumstances where State independence must be protected, or where devolution is a never-ending process, the veil of ignorance remains opaque. To international constraints and domestic cleavages as explanatory factors, we could add a third one related to the contemporary period: the presence of an unframed devolution process. "The steering capacity of a small group of political elites reluctant to abandon political control, the presence of institutional asymmetries, the initially dual nature of dividing competencies and the slow development of intergovernmental relations" (Swenden and Jans 2006: 877) are sources of uncertainty during any routine phase of the political process, but also at the initial moment of a Constitution's adoption.

5 Concluding Thoughts

The "Veil of Ignorance Project" to which this chapter contributes states that the higher proportion of power relations related to authority, the more opaque the veil of ignorance becomes. Actually, there was a large amount of uncertainty weighing on Belgian congressmen when they adopted both Constitutions because, more than wealth or knowledge, ultimately, their political authority was at stake. The VOIP asserts that in such circumstances, lawmakers tend to put the Constitution ahead of their own private interests. According to Brennan and Buchanan (1985: 35), uncertainty introduced in any choice among rulers or institutions serves the function of making potential agreement more, rather than less, likely.

Our statistics show that in Belgium, the dominant type of power emerges from political source, i.e., authority. At a time of building a new State (in 1831) or at a time of reforming the structures of this State through an ongoing process of federalization (in 1993), the drafters and adopters of the Constitution were uncertain about their future power position. The veil of ignorance in Belgium is opaque in this regard. The more opaque the veil at the moment of drafting and adopting the Constitution, the more the Constitution refers to authority, setting aside questions over wealth and knowledge. Therefore, our case study gives a confirmation of the first hypothesis of the VOIP (Imbeau and Jacob 2015: xx).

Our case study does not, however, confirm the second and third hypothesis of the VOIP. Both entail that uncertain constitutionalists will favor social over instrumental power relations and that the Constitution will deny capacities, rather than assign them in a context of ignorance. On the contrary, the Belgian case study illustrates a dominance of instrumental and positive power relations, both in 1831 and in 1993. We relied on two types of explanatory factors to bridge this gap. The

first source of uncertainty is related to foreign constraints determining Belgium's constitutional choices: foreign surveillance in 1831 and EU membership in 1993. The second source relies on domestic features weighing on constitutional decisions: cleavages and consociationalism in 1831 as well as in 1993, and the presence of an unframed process of devolution.

This chapter helps us to understand how elites at two different periods of time managed to shape a State with two contradicting visions: unitarian in 1831 and federalist in 1993. Comparing these Constitutions draws a general picture of the Belgian drafting and adoption process. Future works are needed to investigate, more deeply, constitutional material drafted and adopted since 1993 and leading to creation of today's Belgian State.

As we have witnessed, notably in 2010–2011, Belgium has maybe reached some limits in its ability to function smoothly. The weight of the current devolution process must be taken into account to fully grasp the veil of ignorance. Obviously, the revision of the Constitution in 2011 still shows that the drafters face opacity in their ability of building a State that permanently experiences the strength of its cleavages and thus divisions. In the future, political stability will be challenged by the will and the ability of the decision-makers to conclude compromises within institutional constraints.

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