



*Gender and the Monarchy in
Belgium: Succession and the
Exercise of Constitutional and
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Abstract: This article explores the gendered dimensions of the Belgian monarchy by focusing on three distinct topics. First, the article addresses the matter of succession to the throne. In Belgium, the exclusion of women from succeeding to the monarchy came to an end in 1991, but the first female monarch has yet to ascend to the throne. Next, the article examines the gendered dimensions of the way in which Belgium's recent monarchs have exercised their role. As the King's political role is limited, this article also considers the symbolic role of the King, which carries over to his private and family life. After the crisis known as the "royal issue" in the early 1950s, there has been only one constitutional crisis in Belgium that directly involved the monarchy: the refusal of King Boudewijn (Baudouin/Baldwin) to assent to the law legalizing abortion in 1990. The refusal concerned not only the exercise of the constitutional role of the monarch, but also a key issue of the women's movement, and this article examines the development and significance of this crisis. Finally, the article analyses the current controversy concerning the refusal of the former king, Albert II, to recognize an extramarital daughter. Men's refusal to take on responsibility for (some of) the children they father is a classical theme of feminist indignation. Arguably, the former king's attitude on this matter in his private and family life affects the symbolic power of the monarchy.

Keywords: Belgium; monarchy; gender; succession; constitutional power; symbolic power

Introducing the Belgian Monarchy

Belgium gained its independence in 1830, at a time when republicanism was still an exception in Europe.¹ The National Congress's² choice for a (constitutional) monarchy is therefore generally interpreted as a safe choice, inspired by the wish not to displease the absolute monarchies of Prussia, Austria, and Russia when the future of the new state was still uncertain.³ The choice of the first monarch, Leopold of Saxe-Coburg-Gotha, was likewise determined by the sensitivities of the main powers of the time. In particular, Leopold enjoyed the support of England, as he was the widower of a British princess.⁴ The current king, Philip, is Belgium's seventh monarch. Leopold I ruled from 1831 until his death in 1865. He was succeeded by his eldest surviving child, who ruled as Leopold

¹ The First French Republic had been replaced in 1804 by the regime of Napoleon Bonaparte.

² The National Congress was the first constituent power of Belgium.

³ Robert Senelle, Miel Clement, and Edgard Van De Velde, *Handboek voor de Koning* (Tielt: Lannoo, 2004), 22.

⁴ In 1832, he would marry a French princess, Louise, with whom he had four children.

II until his death in 1909. As Leopold II's son—also called Leopold—died at a young age, his three daughters did not qualify for the throne on account of their sex, and his two extramarital sons did not qualify for succession on account of their “illegitimate” status, the third king was Albert I, the second son of Leopold's brother Philip.⁵ He ruled from 1909 until his death in 1934. Albert's successor was his eldest child Leopold, who ruled as Leopold III until 1951, when he abdicated the throne in favour of his second child and eldest son Boudewijn (Baudouin/Baldwin). This was the result of a political crisis between the King and the government during World War II, when the royal family was deported by the German occupation to Germany and Austria, and the King's duties were taken over by a regent, his brother Charles. In 1950, a non-binding referendum on the question of whether King Leopold III could return to Belgium showed a sharp divide between the Flemish and Francophone parts of the population, with 72% of the former in favour of the King's return, which a majority of the latter opposed. The transfer of power to the then twenty-year-old Boudewijn was a political solution to a situation that was escalating toward violence.⁶ This episode is known as the “royal issue.” When Boudewijn died childless in 1993, he was succeeded by his brother Albert, who ruled as Albert II until 2013, when he abdicated in favour of his eldest child, Philippe.

Today, the political role and power of the Belgian monarch is very limited. All powers that are granted by the Constitution or by statutes to “the King” are in fact exercised by the Ministers, with the government being responsible to Parliament, not to the King. This includes the assent and promulgation of bills adopted by Parliament, as well as the promulgation of Royal Decrees. All acts of the King that may have any political impact fall under the rule of Ministerial responsibility, which for written acts takes the form of the countersignature by a Minister.⁷ The main political role of the King is exercised in the immediate aftermath of federal elections, when the King, following unwritten constitutional practice, holds a round of consultations that generally include the leaders of the main political groups, and can appoint either a “formateur” in charge of forming a government, or an “informateur” in charge of exploring the possibilities for a viable government.⁸ The King's room for manoeuvre in such situations is *de facto* limited, however, by the political contours that result from the elections.⁹

The symbolic role of the monarchy in Belgium is generally presented as the embodiment of the unity and continuity of the nation.¹⁰ In a state in which tensions between the Flemish and Francophone communities are a fixture of the political agenda, and which has been undergoing centrifugal pressure since the 1970s, it is not rare to hear the claim that

⁵ Albert's father Philip, and his elder brother Boudewijn, had predeceased Leopold II.

⁶ On 30 July 1950, three people died in riots. On 1 August, Leopold agreed to the abdication. On 11 August Boudewijn became Royal Prince, ruling with the Regent Charles. In July 1951, Leopold abdicated, and Boudewijn succeeded him as King.

⁷ André Alen, ed., *Treatise on Belgian Constitutional Law* (Deventer: Kluwer, 1992), 61.

⁸ The combination of a political landscape without any “Belgian” political parties (all parties are either Flemish or Francophone), and an electoral system of proportionate representation, makes coalition governments a permanent feature of Belgian federal politics. Variations of the formateur/informateur theme occur, such as the appointment of “mediators,” “negotiators,” etc. See: Senelle, Clement, and Van De Velde, *Handboek voor de Koning*, 190–200.

⁹ Senelle, Clement, and Van De Velde, *Handboek voor de Koning*, 48.

¹⁰ Senelle, Clement, and Van De Velde, *Handboek voor de Koning*, 18.

abolishing the monarchy would mean the end of Belgium. In addition, the monarchy is valued as a matter of international prestige.¹¹ While the specialized press closely follows the public and private lives of the members of the Belgian royal family, the degree to which they are a topic of general conversation is limited in comparison to some other European royal families.¹² An indicator of this is the announcement by the commercial television channel VTM in December 2016 that they were stopping their weekly show “Royalty” that had been reporting on the Belgian and foreign royal families for twenty years, “on account of decreased interest of the audience in the royal family.”¹³

Opinion survey research shows that around two thirds of French-speaking Belgians and between 40% and 45% of Flemish Belgians express clear support for the monarchy.¹⁴ 40% of French speakers and 20% of Flemish even support an expansion of the powers of the King. Only 10% of French-speaking Belgians and 25% of Flemish Belgians say that they favour a republic. The same survey shows that the political attitude most connected to a position in favour of the monarchy is a “Belgicist” (as opposed to separatist) attitude.

In its endeavour to explore the gender dimensions of the contemporary Belgian monarchy during the last few decades, this article will address first the ability of women to succeed to the throne. In Belgium, the historical exclusion of women from the throne came to an end in 1991, but the first female monarch has yet to ascend to the throne. Next, the article analyses the gendered dimensions of the way in which Belgium’s recent monarchs have exercised their role. As the King’s political role is limited, this discussion also includes the symbolic role of the King, which carries over to his private and family life. As it happens, after the “royal issue” in the early 1950s, there has been only one constitutional crisis in Belgium that directly involved the monarchy. King Boudewijn’s refusal to assent to the law legalizing abortion in 1990 concerned the exercise of the constitutional role of the monarch.¹⁵ It also concerned a key issue of the women’s movement. The article thus examines the development and significance of this crisis. Finally, it looks at the recent controversy concerning the refusal of the former king, Albert II, to recognize an extramarital daughter. Men’s refusal to take on responsibility for (some of) the children they father is a classical theme of feminist indignation. Arguably, the former king’s attitude on this matter in his private and family life affects the symbolic power of the monarchy.

¹¹ In a 2014 opinion poll, 76% of Walloon respondents and 59% of Flemish respondents agree with the statement that the monarchy is important for the international prestige of Belgium. Bart Maddens, Jaak Billiet, Koen Abts, Chris Gaasendam, Bart Meuleman, and Marc Swyngedouw, “De houding van de Belgen tegenover de Monarchie,” Centre for Sociological Research, 2014, CeSO/ISPO/2016-5.

¹² Through those same popular media, it would seem that the Belgian public is probably better informed about and more interested in the lives of the British royals than those of the Belgian royals.

¹³ “VTM stopt met ‘Royalty’,” *Het laatste Nieuws*, 9 December 2016, <https://www.hln.be/showbizz/tv/vtm-stopt-met-royalty~a6cfd4d4/>.

¹⁴ Maddens, et al., “De houding van de Belgen tegenover de Monarchie.”

¹⁵ Translations of Section 109 of the Belgian constitution generally refer to the king “sanctioning” or “signing” laws. Such “sanctioning,” however, goes beyond merely applying a signature to the law (as is the case in Luxembourg), and is instead equivalent to the English-language practice of granting royal assent. Thus, for clarity and consistency, assent has been used throughout this article.

Succession to the Throne: Doing Away with the Salic Law (1991)

Belgium signed the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and ratified the treaty in 1985. Upon ratification, the following reservation was made concerning article 7 CEDAW¹⁶ (equality in political and public life):¹⁷

The application of article 7 shall not affect the validity of the provisions of the Constitution as laid down in article 60, which reserves for men the exercise of royal powers, and in article 58, which reserves for the sons of the King or, where there are none, for Belgian princes of the branch of the royal family in line to the throne, the function of ex officio senators as from the age of 18 years, with entitlement to vote as from the age of 25 years.¹⁸

At the time, the relevant part of Article 60 of the Belgian Constitution, unaltered since 1831, read as follows:¹⁹

The constitutional power of the King transfers through hereditary succession to the natural and legal progeny, in direct line, of H.M. Leopold George Christian Frederick of Saxe-Coburg, from man to man, according to primogeniture and with permanent exclusion of the women and of their progeny.

This was an application of the *Lex Salica* (Salic Law), a Germanic tribal code dating from the time of the Merovingian king Clovis (466-511 CE). The rules on inheritance of this code as applied to the succession to the throne were revived in France during the Hundred Years' War (1337-1453) to neutralise English claimants to the French throne.²⁰ Its stickiness beyond this period may be explained by a European context in which prioritizing male over female successors to the monarchy was widespread. Arguments that were advanced to justify the preference for male heirs included considerations of stability and the idea that men make for better leaders than women.²¹

¹⁶ Belgium made an additional reservation to article 15 CEDAW, in order to maintain a transitory provision regarding the 1976 introduction of the equal legal capacity of married women: "The application of article 15, paragraphs 2 and 3, shall not affect the validity of the interim provisions enacted for couples married before the entry into force of the Act of 14 July 1976 concerning the reciprocal rights and duties of husbands and wives and their marriage contracts, in cases where, in accordance with the option available to them under the Act, they have declared that they are maintaining *in toto* their prior marriage contracts."

¹⁷ In particular, article 7 (b) CEDAW stipulates the right to hold public office and perform all public functions at all levels of government.

¹⁸ United Nations Treaty Series, vol. 1402, 376.

¹⁹ Translation from Dutch is my own. The original reads: "De grondwettelijke macht van de Koning gaat bij erfopvolging over op de natuurlijke en wettige nakomelingschap, in rechte linie, van Z.M. LEOPOLD-JORIS CHRISTIAAN-FREDERIK VAN SAKSEN-COBURG, van man op man, volgens recht van eerstgeboorte en met altijddurende uitsluiting van de vrouwen en haar nakomelingen."

²⁰ Christine Alice Corcos, "From Agnatic Succession to Absolute Primogeniture: The Shift to Equal Rights of Succession to Thrones and Titles in the Modern European Constitutional Monarchy," *Michigan State Law Review* 4 (2012): 1587, 1602–1603. The pertinent section of the code read: "Of the Salian land let no portion pass to a woman, but all the land of this nature, let belong to the virile sex."

²¹ Corcos, "From Agnatic Succession," 1598–1599.

A first, failed, attempt to amend Article 60 of the Belgian Constitution with the aim of introducing gender equality occurred in 1978, at the time of the discussions in parliament at the end of the legislature about the list of constitutional provisions that would be open for revision by the next parliament.²² Two separate proposals were submitted to add Article 60 to the list, with the sole aim of admitting women to the throne on an equal footing with men. While the Chamber of Representatives accepted the proposal, the government and the Senate rejected it. They argued that this would detract from the intended focus of the constitutional reform, which related to the first steps toward the reform of Belgium from a unitary to a federal state.²³ Some also said that it was undesirable to open up debate on such a divisive issue as the monarchy,²⁴ while others said that it would be wrong in times of change and communitarian tension to touch upon “the one institution that embodies reconciliation in the country.”²⁵ Some senators expressed fear that opening up this article for amendment might start the debate on the abolition of the monarchy.²⁶ As a result of the rejection by the Senate, the provision was not included on the list, and hence not available for revision in what would become the constitutional reform of 1980.

When Parliament ratified CEDAW in 1985, the reservation on Article 7 proposed by the government was justified by the latter with a short and formal reference to the Constitution,²⁷ and was not the object of any parliamentary discussion.

In 1987, Article 60 was added to the list of constitutional provisions that were open for revision by the next constituent assembly, and in 1991, the government proposed a revision that would provide for equal access of women and men to the throne.²⁸ The government advanced two arguments for this proposal. In the first place, it referred to “societal evolution,” pointing out that Belgium was the only Western monarchy still applying the Salic Law: “In the other Western monarchies, women are entitled to succeed to the throne either in the absence of male offspring (Denmark, Great Britain, Luxemburg, Monaco, Spain), or as a matter of full

²² Revision of any provision of the Belgian Constitution is possible only if the previous Parliament (the “pre-constituent assembly”) has declared that this provision would be open for amendment during the next legislature. This requires a majority vote in each House of Parliament, as well as a declaration by the King (Article 195 Constitution). After such declaration by the pre-constituent assembly, Parliament is automatically dissolved, and elections will take place. Hence, this is one of the last acts of an outgoing Parliament. The newly elected Parliament (the “constituent assembly”) is then free to revise the constitutional provisions listed. Any revision requires a special double two-thirds majority of both houses: at least two thirds of the members must be present, and any revision must secure at least two thirds of the total votes cast.

²³ Belgian Chamber of Representatives, Session 1978-1979, 519/4, p. 29. The constitutional reform of 1980 would become known as the second Reform of the Belgian State. It created embryonic regional parliaments.

²⁴ Belgian Chamber of Representatives, Session 1978-1979, 519/4, p. 30. Reference was made to the divisive character of the referendum on the return of Leopold III after World War II.

²⁵ Belgian Senate, Report of the Plenary Meeting of 14 November 1978, p. 182: “terwijl ... precies de monarchie en de dynastie nog elementen zijn waarover geen betwisting schijnt te bestaan en die in ons land nog een verzoening mee kunnen helpen tot stand brengen.”

²⁶ Belgian Senate, Report of the Plenary Meeting of 14 November 1978, p. 181.

²⁷ In fact, the government stated that they were “obliged” to make this reservation (in Dutch: “Bij de toetreding van de Belgische Staat tot het Verdrag, zal de Regering anderzijds verplicht zijn een voorbehoud te maken aangaande artikel 7 betreffende de toegang van de vrouwen tot de overheidsambten”): Belgian Senate, Session 1980-1981, Doc. 729/1, 6.

²⁸ The parliamentary documents do not report any discussion in this regard: Belgian Senate, Session 1987-1988, Doc. 647/1 and 2; Belgian Chamber of Representatives, Session 1987-1988, Doc. 1020/1.

equality on account of primogeniture (Netherlands, Norway, Sweden).²⁹ In addition, reference was made to “the numerous international legal sources guaranteeing equality of the sexes.”³⁰

However, nothing points to any strong women’s mobilization around this issue. In fact, the Council of Ministers approved the point in a meeting on 8 March, which is International Women’s Day, yet in response to a press question on this, the Prime Minister replied that “this fact had escaped the government.”³¹

The proposal did not meet with any opposition either in Parliament³² or in society, where it generated hardly any public debate.³³ While the Prime Minister stated that the process toward the government’s proposal had included “cooperation of the Royal Court,”³⁴ it was later revealed that King Boudewijn himself was the initiator of the proposal.³⁵ Non-academic sources speculated that his motives might include other considerations than gender equality. In particular, it was said that the childless monarch did not consider his brother’s second son, Prince Lawrence, to be a suitable candidate to the throne.³⁶ Whatever truth value this claim may have, it is a fact that Lawrence is the main loser of the constitutional amendment. Under the old system, he was third in line to the throne, after his father and his elder brother, the current King Philip, who at that point was still childless.³⁷ The new system degraded him (then)³⁸ to sixth in line by inserting his sister Astrid and her offspring.³⁹

The new provision, currently Article 85 of the Belgian Constitution, reads in its relevant part:

²⁹ Belgian Chamber of Representatives, Ordinary Session 1990-1991, Doc. 1531/1, 1. In Dutch: “een maatschappelijke evolutie,” and “In de andere Westerse monarchieën zijn de vrouwen gerechtigd tot de troonopvolging, hetzij bij gebreke van mannelijke nakomelingen (Denemarken, Groot-Brittannië, Luxemburg, Monaco, Spanje), hetzij op voet van volledige gelijkheid volgens het eerstgeboorterecht (Nederland, Noorwegen, Zweden).”

³⁰ Belgian Chamber of Representatives, Ordinary Session 1990-1991, Doc. 1531/1, 1. In Dutch: “de talrijke internationale rechtsbronnen die de gelijkheid der geslachten waarborgen.” Introducing the proposal in the parliamentary commission, the Prime Minister added that “until now, Belgium has several times had to make a reservation to internationale treaties” (Belgian Chamber of Representatives, Ordinary Session 1990-1991, Doc. 1531/2, p. 2). In Dutch: “tot nog toe heeft België immers meermaals voorbehoud moeten maken bij international verdragen.”

³¹ “De koning zal ook een koningin kunnen zijn,” *De Tijd*, 9 March 1991. In Dutch: “Martens zei dat de regering ‘er niet aan gedacht heeft dat het vrijdag internationale vrouwendag was.’”

³² The vote was unanimous, with the exception of a small number of abstentions, which were motivated by objections to the institution of the monarchy as such, or its concrete form in Belgium. See: Report of the Vote in the Chamber of Representatives, 17 April 1991, p. 2633 (2 abstentions); Report of the Vote in the Senate, 12 June 1991, p. 2441–2442 (3 abstentions and their motivations).

³³ See: Mario Danneels, *Laurent, zondaar van Laken* (Antwerpen: Van Halewyck, 2012).

³⁴ “De koning zal ook een koningin kunnen zijn,” *De Tijd*, 9 March 1991. In Dutch: “hij voegde eraan toe dat er ook medewerking was geweest van het Hof zelf.”

³⁵ Danneels, *Laurent*.

³⁶ Danneels, *Laurent*.

³⁷ The four children of King Philip and Queen Mathilde were born in 2001 (Elisabeth), 2003 (Gabriel), 2005 (Emmanuel) and 2008 (Eleonore).

³⁸ Taking into account the four children of King Philip, the five children of Princess Astrid, and the child of Astrid’s son Amedeo (Anna-Astrid, 2016), Prince Lawrence is currently twelfth in line of succession.

³⁹ At the time of the constitutional amendment, Princess Astrid and Prince Lorenz had two children: Amedeo (1986) and Maria Laura (1988), and she was pregnant with her third child (Joachim, 1991). The family would later be completed with Luisa Maria (1995) and Laetitia Maria (2003).

The constitutional powers of the King are hereditary through the direct, natural and legitimate descent from H.M. Leopold George Christian Frederick of Saxe-Coburg, by order of primogeniture.⁴⁰

A transitional measure stipulated that

These provisions will be applied for the first time to the progeny of H.R.H. Prince Albert Felix Humbert Theodore Christian Eugene Mary, Prince of Liège, Prince of Belgium.⁴¹

As a result, the rights to the throne of the then Crown Prince Albert (later King Albert II) were preserved, to the detriment of his elder sister Princess Josephine-Charlotte. During the discussion in the Belgian Senate Commission, the government explained that her exclusion from the throne was intentional, on account of the fact that she was married to the monarch of another state, the Grand Duke of Luxemburg.⁴² The government wished to avoid the peculiar political situation that would result if she were to ascend to the Belgian throne.

Both the Chamber and Senate unanimously approved the constitutional amendment. Given the consensus, there was little parliamentary debate. One issue that arose during the discussions in the Chamber Commission was the desirability of adding the words “or Queen” wherever the word “King” occurred in the new constitutional provision.⁴³ The Prime Minister replied that this was undesirable because the word “King” occurred in several constitutional provisions that had not been opened for revision by the pre-constituent assembly in 1987. Rather than creating inconsistency in the terminology across the Constitution, he considered it desirable to interpret the term “King” as a gender-neutral term. In that respect, he referred to similar provisions in the Constitution of The Netherlands (which at the time was ruled by the third female monarch in a row, Queen Beatrix).

The application of the new constitutional text upon the abdication of King Albert II did not make any difference, as his eldest child was a son, the current King Philip. However, as Philip’s eldest child is a daughter, Crown Princess Elisabeth, it is expected that the next monarch of Belgium will be a queen.

The King’s Conscience versus his Constitutional Role: The Abortion Crisis (1990)

After the major constitutional crisis that is known as the “royal issue” and which led to the abdication of Leopold III in favour of his son Boudewijn, the latter caused another constitutional crisis that became known as the “mini royal issue.” The qualifier “mini” suggests a minor issue, yet potentially the matter could have been huge, and might easily have led to the

⁴⁰ A second paragraph (see also next footnote) stipulates (as before) that “[t]he descendant mentioned in the first paragraph who marries without the King’s consent or, in his absence, without the consent of those exercising the King’s powers in cases provided for by the Constitution shall be deprived of his right to the crown.”

⁴¹ It was added that “for this purpose, the marriage of H.R.H. Princess Astrid Josephine Charlotte Fabrizia Elisabeth Paola Mary, Princess of Belgium, with Lorenz, Arch Duke of Austria-Este, is considered to have obtained the permission referred to in the second paragraph.”

⁴² Belgian Senate, Session 1990-1991, Doc. 100-31/2°, 4.

⁴³ Belgian Chamber of Representatives, Ordinary Session 1990-1991, Doc. 1531/2. In that situation, the successor to the Belgian monarchy (her son) would be the same as the successor to the Luxemburg monarchy.

abdication of another monarch and a fundamental questioning of the sustainability of the monarchy. However, before the public and most politicians were aware of the matter, a technical solution in constitutional terms had already been found. This solution was able to gather consensus, and in that manner the crisis was contained in a matter of days.

This was the only time in the post-World War II era that the exercise by a Belgian monarch of his explicit constitutional role caused a crisis. As it happened, this crisis was centred around the highly gendered topic of abortion.

The issue was the refusal of the deeply Catholic King Boudewijn to assent to the bill voted by parliament that would legalize abortion. Until 1990, abortion remained a criminal offence in Belgium. Women's movements' campaigns for the legalization of abortion confronted strong resistance from Catholic organizations, including Christian-Democratic political parties, which were almost always part of the governing majority. Yet from 1974, anticipating legal change, the Minister of Justice asked prosecutors no longer to prosecute cases of abortion. As a political majority in support of legal change took a long time to realize, however, prosecutions resumed in the 1980s, increasing pressure toward legalization.⁴⁴ In 1988, the government agreement among the five political parties that were to make up the government included a clause that left the matter of a potential change to the laws criminalizing abortion up to parliament, "and this with respect for the freedom of conscience of each and everyone."⁴⁵ This allowed for the legalization of abortion despite the opposition of the Christian-Democrats. The latter did not support the legalization of abortion and would vote against it in parliament, but they no longer vetoed it either, as they could have by making it a breaking point in the government negotiations. The result was the approval by parliament, on 29 March 1990, of a bill that legalized abortion in the first twelve weeks of pregnancy in the case of a "state of necessity" (*noodsituatie*) for the woman.⁴⁶ After the first twelve weeks, the law allows abortion only in case of a serious threat to the woman's health or in case it is certain that the child will suffer from an incurable affliction.

Under the Belgian Constitution, however, the approval by both houses of Parliament is not sufficient for a law to take effect. Article 109 of the Constitution reads, "The King sanctions and promulgates the laws." The royal sanction, or assent, is the act by which the King, as a branch of the legislative power, declares his agreement with the text that is adopted by Parliament. The promulgation is the act by which the King, as the head of the federal executive power, confirms the existence of the law and orders its implementation. The royal sanction takes the form of a signature, and the promulgation takes the form of a fixed formula. Both take place on the same day, and that date becomes the official date attached to the name of the Act. Once promulgated, the Act can be published in the Official Gazette (*Moniteur Belge/Belgisch Staatsblad*), and will enter into force ten days later, unless stipulated otherwise.

The day after the Belgian Parliament's approval of the bill legalizing abortion, King Boudewijn explained to the Christian-Democratic Prime Minister that he could not possibly

⁴⁴ Dirk Heirbaut, "De vrouwen(on)rechtsgeschiedenis van Napoleon tot vandaag: een verhaal van voortdurende vooruitgang?," in *Recht en gender in België*, ed. Eva Brems and Liesbet Stevens (Brugge: Die Keure, 2011), 49.

⁴⁵ Xavier Mabille, "Le débat politique d'avril 1990 sur la sanction et la promulgation de la loi," *CRISP/CH* 1275 (1990): 5: "et ce dans le respect de la liberté de conscience de chacun."

⁴⁶ Act of 3 April 1990 on the interruption of pregnancy, amending articles 348, 350, 351, and 352 of the Criminal Code and abolishing article 353 of the same Code, *Belgisch Staatsblad*, 5 April 1990.

reconcile the approval of said bill with his conscience. In this conversation, as well as in conversations with other members of the government, the King made clear that nothing would be able to change his mind, and that he was willing to abdicate if that was what it would take to preserve his conscience. The Prime Minister then asked the King to amend the letter the latter had prepared and that stated his position, in such a way as to ask the government to find a solution that would both respect his conscience and guarantee the proper functioning of parliamentary democracy.⁴⁷ In other words, the King did not want to stand in the way of the legalization of abortion as this was the result of the democratic process. Yet he did not want to be an accomplice in what he considered to be a grave sin, and in his opinion the formal acts of sanction and promulgation of the abortion bill would constitute such complicity.

The King's letter, dated 30 March 1990, and read by the Prime Minister to the united chambers of Parliament on 6 April, has a very personal tone, including the phrase, "To those who are surprised by my decision, I ask the following question: 'Is it normal that I am the only Belgian citizen who is obliged to act against his conscience in such an important matter? Does freedom of conscience exist for all except for the King?'"⁴⁸ The letter states that his "conscientious objection does not imply any judgment about the proponents of the bill."⁴⁹ However, after the letter was read in parliament, the press reported that the Member of Parliament who was the main initiator of the bill, Lucienne Herman-Michielsens, was deeply hurt.⁵⁰ In particular, she was hurt by a passage in the letter expressing "deep concern" (*de sérieuses appréhensions*) about the provision that allows abortion after twelve weeks when the child would suffer from an incurable affliction. On this, the King wrote, "Has it been considered how this message will come across to disabled persons and their families?"⁵¹ The King's stated concern was for "respect of the life of the most vulnerable."⁵² The final sentence of his letter, however, mentions the perspective of the women undergoing abortion. He states that his position "does not in any way mean that I have no understanding of the very difficult and sometimes dramatic situation in which some women find themselves."⁵³ While the gendered dimension and, more particularly, the impact of abortion legislation on women, were thus on the table, the phrasing of the letter gives the impression that it was added as an afterthought. And indeed, in the King's opinion, the rights or interests of women in this matter were secondary to what he considered to be the primary right or interest, that of the unborn child.

Behind the scenes, the Council of Ministers consulted with constitutional lawyers to devise a solution. The normal functioning of the institutions would require the government

⁴⁷ Jan Van Den Berghe, *God in Laken: het Belgische koningshuis en het katholicisme* (Antwerpen: Manteau, 2009), 262.

⁴⁸ Mabille, "Le débat politique," 15–16. Translation from French is my own. The original reads: "A ceux qui s'étonneraient de ma décision je demande: 'serait-il normal que je sois le seul citoyen belge à être forcé d'agir contre sa conscience dans un domaine essentiel? La liberté de conscience vaut-elle pour tous sauf pour le Roi?'"

⁴⁹ "Mon objection de conscience n'implique de ma part aucun jugement des personnes qui sont en faveur du projet de loi."

⁵⁰ Bert Cornelis, "In geweten gegriefd," *Het Laatste Nieuws*, 7-8 April 1990.

⁵¹ "A-t-on songé comment un tel message serait perçu par les handicapés et leurs familles?"

⁵² "Du respect de la vie de ceux qui sont les plus faibles."

⁵³ "Mon attitude ne signifie pas que je sois insensible à la situation très difficile, et parfois dramatique, à laquelle certaines femmes sont confrontées."

either to support and take responsibility for the King's veto, or to resign.⁵⁴ As both situations would lead to a severe political crisis, the search was for a creative legal approach that would accommodate the King's wish without generating a political crisis. The resulting scenario relied on two provisions, (then) Articles 82 and 79 of the Constitution. Article 82 (now 93) reads: "If the King finds himself unable to reign, the ministers, having had this inability stated, immediately convene the Houses. The Regent and Guardian are appointed by the joint Houses." It was decided to interpret the situation as one in which the King was unable to reign on account of his conscience. As he could not assent to the bill, the King could not perform his function as a branch of the legislative power. Article 82 had also been applied when Leopold III had been deported by the German occupier. Hence, the interpretation of the provision—presumably intended to cover a scenario in which the King lost the possession of his mental faculties—had already been extended to the physical and political inability of the King to reign. This was further extended in 1990 to the King's moral inability to reign.⁵⁵ This extension made the leap from accounting for circumstances of *force majeure*, beyond the monarch's will or power, to accounting for a situation of his own making. From the perspective of the government, however, the King's refusal to assent to a bill was an external fact not dissimilar to scenarios of *force majeure*.⁵⁶

Stretching the conditions for application of Article 82 (now 93) of the Constitution was not sufficient though, as the solution this provision prescribed—that is, appointing a Regent or a Guardian—was not considered a suitable option. As the King was "unable" only to sanction and promulgate a single bill, that procedure was seen as unnecessarily burdensome. It was feared that allowing the matter to stretch out over some time would seriously aggravate the crisis. In addition, there was the risk that any regent chosen from within the royal family might also refuse to assent to the abortion bill.⁵⁷ Instead, application was made of the arrangement intended for the situation of the death of a monarch. Then Article 79 (now article 90) of the Constitution reads:

Upon the death of the King, the Houses meet without being convened at the latest on the tenth day after his death. If the Houses have been dissolved previously, and if the act of dissolution convenes them to meet later than the tenth day following the King's death, the members of the former Houses take up their seats again until the meeting of those who will replace them.

From the death of the King until the oath is sworn by his successor to the throne or by the Regent, the King's constitutional powers are exercised, in the name of the Belgian people, by the ministers meeting in council, and under their responsibility.

Accordingly, in a letter dated 3 April 1990, the Prime Minister proposed this solution to the King, stating that "in application of Article 79 of the Constitution, the constitutional power of the King during the period of impossibility to govern, is exercised by the ministers meeting in council and under their responsibility."⁵⁸ He added that he would "propose to them to

⁵⁴ Senelle, Clement, and Van De Velde, *Handboek voor de Koning*, 133.

⁵⁵ André Alen, *Handboek van het Belgisch Staatsrecht* (Deventer: Kluwer, 1995), 119.

⁵⁶ Senelle, Clement, and Van De Velde, *Handboek voor de Koning*, 134.

⁵⁷ Senelle, Clement, and Van De Velde, *Handboek voor de Koning*, 135.

⁵⁸ Mabilie, "Le débat politique," 16–17: "Pendant la période d'impossibilité de régner, conformément à l'article 79

sanction and promulgate the bill on the termination of pregnancy” and that afterwards he would propose to the Council of Ministers and to the Parliament “that the King resume the exercise of His constitutional powers, after deliberation of the United Chambers, finding that the impossibility to govern has come to an end.” In a letter in reply of the same date, the King explicitly approved this scenario.⁵⁹

Still on the same day, the Council of Ministers confirmed the King’s inability to govern and decided to sanction and promulgate the bill. The next day, 4 April, the Council of Ministers decided, in application of Article 82 of the Constitution, to call for a joint meeting of the Houses of Parliament the next day. That same 4 April, the King wrote another letter to the Prime Minister, stating that his impossibility to govern had come to an end. On 5 April, Parliament, after some debate, confirmed this.

In his letter to the King of 3 April 1990, the Prime Minister announced that the government would work toward a new structural solution that would avoid similar problems in the future.⁶⁰ However, to this day, the system of royal sanction and promulgation remains the same in Belgium. Neither Boudewijn, nor any of his successors, have so far refused to assent to another law. When a government that did not include any Christian-Democrats proposed the legalization of euthanasia in 1999, it is reported that King Albert II expressed his unease to members of the government, and asked them to “find a solution.”⁶¹ Yet faced with unwillingness from the government to discuss the matter, the King decided not to follow in his brother’s footsteps, and performed his constitutional role.⁶²

In some Catholic circles, however, the example of Boudewijn is considered a model of Catholic statesmanship. This became clear when the Spanish bishops in 2005 urged the Spanish King Juan Carlos to invoke a conscientious objection against the law opening up marriage to same-sex couples.⁶³

An opinion poll conducted at the time of the crisis (on 4 April 1990),⁶⁴ shows that a small majority of Belgians (52.4%) agreed that the King has the right to refuse to assent to a law on moral grounds. A larger majority of 60.2% thought that the King had not endangered “the principle of the monarchy as such”⁶⁵ through his action. 77% agreed that the King did not have to abdicate the throne. And 70% thought that Parliament should simply return the King his powers, as it did the next day.

That the incident did not significantly taint King Boudewijn’s reputation became clear upon his sudden death from heart failure in 1993, when tens of thousands of Belgians flocked to Brussels to view his remains, in a rare expression of massive Belgian popular support for a

de la Constitution, les pouvoirs constitutionnels du roi sont exercés par les ministres réunis en Conseil, et sous leur responsabilité.”

⁵⁹ Mabille, “Le débat politique,” 17: “Je leur proposerai de sanctionner et de promulguer le projet de loi sur l’interruption de grossesse.”

⁶⁰ Mabille, “Le débat politique,” 17: “que le Roi reprenne l’exercice de ses pouvoirs constitutionnels après une délibération des Chambres réunies constatant que l’impossibilité de régner a pris fin.”

⁶¹ Steven Samyn and Martin Buxant, *Koning zonder land: de toekomst van de Belgische monarchie in woelige tijden* (Amsterdam: De Bezige Bij, 2011), 107: “polst de koning op welke manier er een oplossing kan worden gevonden.”

⁶² Samyn and Buxant, *Koning zonder land*, 107–109.

⁶³ Rudy Pieters, “Spaanse koning moet voorbeeld van Boudewijn volgen,” *De Morgen*, 12 May 2005.

⁶⁴ Dimarso survey, reported in *Het Laatste Nieuws*, 5 April 1990.

⁶⁵ “Het beginsel zelve van de monarchie in België.”

monarch.

While the King's showing a human face may have gained him sympathy, commentators claim that the episode at the same time tarnished the institution of the monarchy, by affecting its "credibility as an impartial arbiter or a neutral conciliator."⁶⁶ To the extent that the legitimacy of the institution of the monarchy relies on the monarch's position above party politics and as a factor of unity, the abortion crisis affected that legitimacy.⁶⁷ Indeed, the King in this crisis aligned himself with the Catholic position on abortion, and with the Christian-Democratic position on the abortion bill. At the time, the disruption caused by the incident was framed mostly along ideological lines, with humanists describing the King's letter as similar to "a letter of the Cardinal" and a "slap in the face" of their community.⁶⁸ There was little or no attention to the gendered dimensions of the incident, to understand the King's rejection of an important cause of the women's movement. The incident could be seen as a "slap in the face of women" just as much as it was a slap in the face of humanists, yet at the time, such framing was not a central part of the narrative.

From the perspective of King Boudewijn, the issue was a matter of his freedom of conscience, and of the absolute protection of human life. It would not be fair to depict the King as an opponent of women's rights. In the last three years of his reign, King Boudewijn was very much committed to the fight against many types of exclusion and injustice, including in particular violence against women and enforced prostitution. The King's personal visit in 1992 to a centre for victims of enforced prostitution raised the profile of that issue on the political and justice agenda to an unprecedented level. His investment in the matter was such that a Filipina woman who was a victim of enforced prostitution gave witness at the King's funeral in 1993. Earlier, the King had also supported the cause of women's participation in politics.⁶⁹ However, an analysis of King Boudewijn's engagement with "women's issues" concludes that his commitment to a number of women's causes was detached from any support for feminism or the women's movement. Instead, it was founded principally in his religious beliefs, which emphasized amongst other things the protection of vulnerable and oppressed individuals, in addition to family values.⁷⁰ Such a position has little room for central emancipatory concepts such as autonomy and self-determination. In this case, the King's position "above" the ideological and other divisions in society also seems to have resulted in a lack of connection with fundamental changes in society, including in particular those regarding the position of women.

⁶⁶ Piet Van Brabant, "Baudouin moins neutre," *La Libre Belgique*, 9 April 1990: "il y perd une partie de sa crédibilité en tant qu'arbitre impartial ou conciliateur neutre." See also: Dirk Achten, "Hoeveel minder," *De Standaard*, 6 April 1990.

⁶⁷ Senelle, Clement, and Van De Velde, *Handboek voor de Koning*, 132.

⁶⁸ Bert Cornelis, "In geweten gegriefd"; Laurent Panneels, "Brief van kardinaal," *De Morgen*, 7-8 April 1990.

⁶⁹ Amongst others in a public speech in 1985; Machteld De Metsenaere, "Boudewijn en de vrouwenproblematiek," *Bijdragen tot de Eigentijdse Geschiedenis*, 5 (1998): 207, 211.

⁷⁰ De Metsenaere, "Boudewijn en de vrouwenproblematiek."

The King's Personal Life and his Symbolic Role: The Child Recognition Affair (1999-2020)

For twenty-first-century constitutional monarchs with strictly limited political power, symbolic power is crucial for the legitimacy of their institution. As mentioned earlier, in the specific context of Belgium, a divided society, this is commonly expressed in terms of the Crown as a symbol of unity and stability.

The case of Boudewijn and the abortion crisis suggests that when a King allows his private views to interfere with the exercise of his public function, the symbolic power of the monarchy may be affected. Yet the problem is more complex than this. When power is vested in an individual *qua* individual and in a family *qua* family, it is inevitable that the behavior of such individuals in their private and family lives will affect their symbolic power. In the case of King Albert II, his widely-condemned behaviour as a father towards an extramarital child had a negative impact on his role as a "Father for the Nation." Once again, the stumbling block for the monarchy is a highly gendered one.

Albert II was King of Belgium for twenty years (1993-2013), but lived most of his life not expecting to ever be King. Indeed, it was the childlessness of his elder brother Boudewijn, and then the latter's unexpected demise, that caused him to ascend to the throne at the age of 59.⁷¹ From the 1960s through the 1980s, the media reported numerous extramarital affairs by both parties in Prince Albert's marriage with Princess Paola. It was later revealed that one of Albert's affairs, with a married woman, had lasted sixteen years and had resulted in 1970 in the birth of a daughter, Delphine Boël. In 1969, there were concrete plans for Albert and Paola to divorce, and for Albert to start a new life with his new family. Yet these were not put through in the end, and until her eighteenth birthday, Delphine did not know that "friend of the family" Albert was her father. The public at large learned about the existence of an extramarital daughter through a short anonymous passage in a biography of Queen Paola in 1999.⁷² This attracted huge media interest, and in his annual televised Christmas message of 1999, the King referred to "a crisis in their couple" that the Queen and himself had lived through thirty years before. This "confession" was widely appreciated by commentators and by the general public.⁷³

Yet for Delphine Boël, this did not close the chapter. She felt a need for recognition, which she expressed in interviews and in her biography⁷⁴ as a wish that King Albert admit to her existence and to the fact that she is his daughter.⁷⁵ In 2013, she started legal proceedings. The first step toward legal recognition of King Albert's paternity was a contestation of the legal paternity of Jacques Boël. Despite DNA evidence that Jacques Boël is not Delphine's father, and despite a preliminary Constitutional Court ruling in Delphine's favour on the matter of admissibility, the Brussels Family Tribunal ruled against Delphine's request in March

⁷¹ While Albert was first in line to the throne during Boudewijn's reign, it was widely expected that Boudewijn would be succeeded not by Albert, but by Albert's son Philip. The unexpectedly early death of Boudewijn interfered with that scenario.

⁷² See: Mario Danneels, *Paola van "la dolce vita" tot koningin* (Leuven: Van Halewyck, 1999).

⁷³ Marc Reynebeau, "Een geste is nooit zo simpel als ze er met miljoenen op toekijken," *De Standaard*, 27 June 2005.

⁷⁴ See: Delphine Boël, *De navelstreng doorknippen* (Antwerpen: Wever & Bergh/Agora Uitgeverijcentrum, 2008).

⁷⁵ Jan van den Berghe, *God in Laken*, 306.

2017.⁷⁶ In their reasoning, Jacques Boël is and must remain the legal father because he has taken on the social role of the father, regardless of biological reality. Commentators criticized the judgment as “class justice.”⁷⁷ Yet even stronger was the criticism of the intransigent attitude of the (former) King, refusing to publicly recognize his child. Several leading commentators argued that Albert II had damaged the institution of the monarchy on account of a serious shortcoming in terms of moral authority.⁷⁸ Their reasoning is that the legitimacy of the monarchy is precarious, and relies on strong moral integrity, which Albert failed to show by not recognizing his daughter. Not only, in this opinion, should a monarch abide by the same moral standards as other citizens, but indeed, on account of their “key constitutional function” (*grondwettelijke sleutelrol*), the royal family should abide by higher standards.⁷⁹ They are supposed to set an example, and it is said that the legitimacy of the monarchy relies on their ability to do so.

In November 2018, this saga continued with a ruling by the Court of Appeal in favour of Delphine, ruling that Albert had to provide a DNA sample in order to establish his paternity.⁸⁰ After dismissal of his appeal in Cassation,⁸¹ Albert finally underwent the DNA test, and publicly admitted paternity of Delphine Boël in January 2020.⁸²

For an institution that relies on hereditary succession, it is understandable that the recognition of paternity is a sensitive topic. While there is room for discussion on the matter, I argue that an interpretation of the term “legitimate descent” in Article 85 of the Constitution as excluding extramarital offspring would be in violation of the European Convention on Human Rights. In fact, it is in the case of *Marckx v. Belgium*, one of its famous early breakthrough cases, that the European Court of Human Rights ruled in 1979 that discrimination against “illegitimate” children was not acceptable under the Convention.⁸³ Hence, now that Delphine Boël’s paternity is established, she should take her legal place in the order of succession to the throne. It is to be noted however, that as the youngest child of Albert II, the chance of her succeeding to the throne is extremely small.⁸⁴

It is ironic that human rights lawyers across Europe associate Belgium with the *Marckx* judgment that gave equal rights to extramarital children, while a Belgian (former) king almost forty years later stubbornly refused to join the changed legal and ethical consensus. One critical commentator remarked that “he is applying the moral standard from the time that kings could, on the basis of their power and status, impregnate women without an apology.”⁸⁵ Though strongly worded, this quote effectively captures the gendered dimensions of Albert II’s ethical

⁷⁶ Tribunal de Famille Bruxelles francophone (12^e ch.), 28 March 2017, *Journal des Tribunaux*, 2017, 300.

⁷⁷ Bart Eeckhout, “Standpunt,” *De Morgen*, 30 March 2017.

⁷⁸ Bart Eeckhout, “Standpunt”; Bart Sturtewagen, “Tijd om het juiste te doen,” *De Standaard*, 26 October 2016.

⁷⁹ Sturtewagen, “Tijd om het juiste te doen.”

⁸⁰ Milan Schreuer, “Former Belgian King Ordered to Give DNA for Paternity Test,” *The New York Times*, 5 November 2018, <https://www.nytimes.com/2018/11/05/world/europe/belgium-king-paternity.html>.

⁸¹ Cass., 13 December 2019.

⁸² “Koning Albert II geeft toe dat hij biologische vader van Delphine Boël is,” *De Morgen*, 27 January 2020.

⁸³ ECtHR, *Marckx v Belgium*, 13 June 1979.

⁸⁴ Currently, she would be ranked sixteenth in the order of succession, after her half-siblings, their children and grandchildren (the number of the latter is, moreover, likely to grow before succession will be on the agenda again).

⁸⁵ Hugo Camps, “Tegenwind,” *De Morgen*, 30 March 2017: “Hij past de morele standaard toe uit de tijd dat koningen vanuit hun macht en status vrouwen konden bezwangeren zonder excuus.”

lapse, as well as the manner in which it implicates, through the institution's heavy historical load, the monarchy itself.⁸⁶

Conclusion: The Gendered Monarchy

In its exploration of the gender dimensions of the Belgian monarchy, this article started with the issue of succession to the throne. Indeed, as long as women are excluded from access to the office of head of state, such manifest gender inequality overshadows any other gender dimension of the institution. That matter has, however, been settled in Belgium since 1991. And while the monarchy *de facto* has remained a male monopoly until today, Belgians know that the sex of their head of state now depends only on the reproductive practice within the royal family, rather than on constitutional preference. It is worth noting that Belgium had its first female head of government only in 2019,⁸⁷ thus showing that from the point of view of access to the highest functions, hereditary succession is not necessarily less friendly for women than the democratic power struggle.⁸⁸

Manifestly, succession to the throne is not the full story of the gendered monarchy. In a way, it is only the beginning. This article has chosen not to engage in a “difference feminism”-inspired analysis of the balance between “male” and “female” qualities in the perception and reality of the monarchy.⁸⁹ Instead, it has focused on the actions of the king with regard to issues with a high gender load, in both his public and his private life. The Belgian case easily lends itself to such an analysis, as the most prominent legal controversies surrounding the monarchy in recent decades are issues with just such a high gender load.

Both Boudewijn, in the exercise of his constitutional role, and Albert II, in his private life, took actions that arguably affected the symbolic power of the monarchy. In the first case, the gendered topic—abortion—was a divisive one. The division between the Catholic priority for the unborn life and the humanist priority for women's autonomy merged/intersected with a division between different views of “women's issues,” namely a paternalist emphasis on protecting women as a vulnerable group versus a second-wave feminist emphasis on women's self-determination and emancipation. Boudewijn damaged the symbolic power of the monarchy by committing the error of bias. On a divisive matter, he took sides: with Catholicism and against humanism, as well as (less explicitly) with paternalism and against emancipation. This arguably affected the perception of the monarchy as a neutral factor of unity.

The gendered topic with which Albert II was confronted—the recognition of an

⁸⁶ Historically, arranged marriages of monarchs went hand in hand with extramarital affairs and “illegitimate” children of the monarch. Leopold I, Leopold II, and Leopold III are known to have each fathered several children outside their respective marriages.

⁸⁷ Sophie Wilmès became Belgium's first female Prime Minister in October 2019 as head of a caretaker government pending coalition negotiations. This government acquired full powers as a minority government on a limited mandate to tackle the COVID-19 crisis in March 2020.

⁸⁸ As illustrated amongst others in The Netherlands, which has never had a female prime minister, yet was ruled by three successive queens between 1890 and 2013.

⁸⁹ That does not mean this is not an interesting field of study. See: Cynthia Herrup, “The King's Two Genders,” *Journal of British Studies* 45, no. 3 (July 2006): 493–510; Liesbet van Zoonen, “Koning Willem-Alexandra? Gender trouble in de monarchie,” *Tijdschrift voor Genderstudies* 2, no. 3 (1999): 33–42.

extramarital child—is not a divisive one. Belgian law has long recognized equal rights of extramarital children, and Belgian societal values point toward the recognition of Delphine Boël as “the right thing to do.” In this case, Albert II damaged the symbolic power of the monarchy by committing the error of being out of touch with the societal consensus, which no longer accepts that men fail to take up responsibility for any children they have fathered. On a matter testing an individual’s moral values, he chose to forego what is widely considered the “ethical option.” This arguably affected the perception of the monarchy as an institution of moral leadership.