

The United Provinces: free or free and sovereign?

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Abstract

In article 1 of the Twelve Years Truce of 1609 the Archdukes Albert and Isabelle declared, both in their own names as well as in the name of the King, that they wanted to conclude a treaty with the States General of the United Provinces “in their capacity”, so *qualitate qua*, and that they will consider these provinces as “free lands, provinces and states”, as to which they “do not pretend”, which means as to which they do not claim any rights or competencies.

In the Treaty of Munster from 1648 it is king Philip IV who declares and recognises that the States General of the United Provinces and the provinces themselves with all the associated territories, towns and dependent lands, are “free and sovereign states, provinces and lands”, as to which he does not pretend to have any rights, nor will he or his issue pretend any right in the future.

Whereas in 1609 only the terms “free lands, provinces and states” were used, in 1648 the “free” is supplemented with “sovereign”. The problem which I would like to address is, therefore, the question if this difference in terminology has any special meaning or whether the treaty making parties meant the same in both cases.

To answer this question I will start by looking at the terminology used during the negotiations by the parties and their negotiators. It appears, generally speaking, that during the years 1606 – 1609 the provinces used the terms free and sovereign interchangeably. Still, the discussions on the renouncement of the (internal) sovereignty, or the preservation of certain signs of such sovereignty by the Archdukes, also show that the parties did not fully agree on this.

The question of sovereignty would be raised again during the peace negotiations in the forties of the 17th century. Philip IV accepted that the negotiators had the rank of ambassador. As a consequence the recognition was a *fait accompli*. Some skirmishes took place about the final wording of articles 1 and 3 of the treaty, but the recognition of the demanded sovereignty as such no longer created any grave problems. With regard to the theory behind the terminology we can see, particularly with Grotius, a remarkable approach towards both the concept of external as well as the concept of internal sovereignty. Opinions differ concerning the influence in the Netherlands of ideas originating from Bodin and the concept of sovereignty developed by him and other French authors. It is, however, certain that Bodin’s concept of sovereignty was known and that the term sovereignty was used next to older terms, such as *summa potestas* or *majestas imperii*.

During the period in which the peace negotiations of Munster took place the States General were also confronted in a different matter with the question what sovereignty really meant. During a protracted legal procedure between them and the German Order about the “preservation of sovereignty” of the seigniory of Gemert, also the terms freedom, sovereignty, superiority and, besides those terms, neutrality, were used.