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De man van 1848 - Dirk Donker Curtius

Waardt, M.J. van de

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Author: Waardt, M.J. van de

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Summary

This work presents a political biography of nineteenth century lawyer and statesman Dirk Donker Curtius. Donker advocated freedom of religion, speech and press through lawsuits, brochures and articles and found himself at the centre of power amidst the 1848 political and societal developments. This dissertation reveals that Donker had a larger role than assumed in the Dutch liberal discourse in development of the liberal movement prior to 1848 and practical implementation of reformist ideas thereafter. Specifically, this study of Donker's career argues that through his skilful and pragmatic service as Minister of Justice in the first years after the creation of the 1848 liberal constitution, he played a pivotal role in its consolidation and perpetuation.

Donker was born on the 19th of October 1792 in Den Bosch, capital of Brabant. As one of the Generality Lands, Brabant had no self-governance, but was directly controlled by the States-General of the United Provinces of the Netherlands. Donker grew up within the small protestant elite in the city Den Bosch, which was majority Roman Catholic. His

father Boudewijn pursued a modest career in city government, but when tensions rose between patriots and orangists, he decided to abstain from politics as much as possible.

Already at a young age, Donker encountered the consequences of the Batavian revolution and the influence of the French. In 1794, Den Bosch was taken by the French forces, and the family was forced to flee to Holland. The sociable and cheerful Boudewijn, who had a good rapport with the French generals, became quickly involved in government by taking up administrative and judicial positions in the Batavian Republic.

Despite his father's advancing career he could not evade increasing French dominance. When Napoleon ordered the sons of bourgeois families to serve in a military elite corps, Donker, adamant this decree was not meant for him, refused to report himself. A fierce altercation between his father and the prefect resulted in Donker being forcibly taken in custody and his abduction to a military compound in the French town of Metz. Here he unfolded himself as an advocate for the rights of his fel-

low companions and managed to perform as little duties as possible. Learning of the allied victory in Leipzig, he fled Metz and returned home.

After finishing law school, Donker took up a law practice in The Hague. His first recorded case in which the freedom of the press prominently appeared dates from 1820. In the following 28 years, he defended numerous clients who were accused of defamation, libel, slander and other press-related offences. His moment of fame arrived in 1839, when he successfully defended the editor of the *Arnhemsche Courant* in cassation before the Supreme Court, where his long-time friend De Kempenaer had been less fortunate before two provincial courts. In his defence Donker called the press ‘the queen of the world’, a qualification that would resonate even after his death.

Besides defending publishers and authors in court, Donker was also an active contributor to various newspapers. In 1828 he was involved in the publication of *De Bijenkorf*, which seized operations after the Belgian revolt. Its successor, *De Standaard*, was edited by Donker and his nephews. In both newspapers he expressed sympathy for the demands of the Belgian opposition and their liberal ideas: the introduction of ministerial responsibility, sovereign immunity, direct elections, judiciary reforms, open government and the abolition of noble privileges and trade protection. During the meagre liberal years in the 1830s, there is little evidence of any press-related activities, but by the end of the decade, Donker was involved in the

most radical newspaper of the day, the *Arnhemsche Courant*. Here he advocated his view on constitutionalism: his wish list of reforms should be laid down in an amended constitution. When Thorbecke’s followers took over the desks of the *Arnhemsche Courant*, Donker shifted attention to the *Vlissingsche Courant*, in which he voiced the same political agenda with a group of young liberal lawyers who he gathered around him.

Donker was definitely inspired by the liberalism of his Belgian counterparts. He not only stood in close contact with Belgian lawyers – as the only lawyer from the northern part of the kingdom – he also met with southern members of parliament, most notably on the eve of the Belgian revolt. It was through these contacts that Donker was influenced by the ideas of Benjamin Constant and Jeremy Bentham. Already in the 1820s he showed sympathy for the Belgian demands and realised a breakup of the United Kingdom was inevitable if the king would not give in to their claims. Donker’s Belgian influence remained visible throughout his career: many of the changes he initiated in the 1848 constitution were inspired by the Belgian 1831 constitution.

He also voiced his reformist ideas in brochures and pamphlets. His first – anonymous – publication was a response to a court case in which it was ruled that with respect to the interpretation of the law the judiciary was subordinated to the executive power. Similarly, in 1834, when he encountered that the water boards were still exercising their judicial competences from the *ancien régime*,

he was quick to publish his plea. Especially by the end of the 1830s Donker was very active as a publicist, gaining nationwide attention. In his brochures he argued that the old constitution was void after Belgium left the kingdom, pleaded for order in a new judicial context and made a draft for a new constitution. He even published on subjects which seemed a bit distant from his areas of expertise – such as the possibilities of the railways – but he managed to turn these topics into his familiar constitutional criticism. The culmination of his media offense took place in 1839, when he called upon his friend De Kempenaer to publish as many articles as possible in defence of the editor of the *Arnhemse Courant* to generate as much publicity as possible.

In the 1840s, under the first years of the reign of king William II, who initially took a more moderate stance towards reformist ideas, Donker unsuccessfully tried to get elected to parliament a number of times. He continued his career as a publicist and supported Thorbecke and his eight followers when they proposed amending the constitution in 1844. William II did not appreciate efforts from anyone other than himself to propose any constitutional changes and Donker's fierce support troubled the relations between the two. Meanwhile, Donker established relations with radical journalists, who campaigned for ar-reaching reforms, even beyond Donker's demands. More importantly though, his radical connections were well aware of compromising secrets concerning the king's liaisons, for which they bribed him.

1848 proved to be a watershed moment, not only for Dutch constitutional law, but also for Donker's career. When revolutions spread across Europe, king William II became more and more anxious. Combined with instability of his personal nature, the covert affairs surrounding his personal life that were about to be revealed and the tragic loss of his second son, he made a bold move. First, he bypassed his ministers to give the task of proposing the necessary amendments to the constitution to parliament, but when he realised this would not lead to a quick remedy for the tense political situation, he put all his hopes into the most liberal men in the country. Donker immediately took the initiative.

He advised the king on the composition of the constitutional commission and its mandate. Due to Donker, the commission could propose amendments without the prior approval of parliament. Moreover, they would name candidates for ministerial posts to replace the cabinet which resigned after being affronted by the king's moves. Having agreement on most issues concerning the constitution, the commission spent most of their time deliberating on candidates. Reaching agreement proved to be hard and the country ended up with a cabinet under the more moderate count Schimmelpenninck, who, confusingly enough, received a separate mandate from the king to form a government. In the meantime Donker accepted the position of Minister of Justice. Since all other ministers resigned, Donker was the

only acting minister in the crucial week after the king's volte-face.

When commission published their draft for the new constitution, Schimmelpenninck objected, deeming it to radical. Donker however, with the king on his side, prevailed and reconstituted the cabinet with more liberal ministers. With the latter's help he also managed to convince the Council of State of the necessity of the changes. He found a challenge in convincing the still conservative House of Representatives, whose members were apprehensive of too much popular influence. Donker felt the reluctance and made some last minute changes, including indirect elections for the Senate, which in the commission's proposal would be elected directly. The Senate itself, being even more conservative, could only agree after the king appointed a number of more reformist members. Meanwhile, Donker filed his resignation as a minister, formally because two minor proposals were rejected by the Senate, but actually meant to strengthen his position, an act premeditated with the king. He succeeded and the second reading of the House of Representatives proved no obstacle. More than a third of the articles of the original proposal changed in the final version and another third were changed textually. The adoption of the constitution can therefore be attributed to Donker's agility.

Repeatedly stating he saw himself as minister *ad interim*, Donker nevertheless gradually developed a governmental programme, mainly focussing on financial austerity. He

was therefore keen to accept a full ministerial position and got elected as a member of parliament. He entered the House of Representatives with a considerable delegation of Thorbecke's followers who thought Donker deviated from the doctrine of their leader. Donker, generally pragmatic, but sometimes tenacious and stubborn, refused to subject himself and give in to his principles. After two laws were voted down, he resigned as a minister after just six months. A year later his mandate as a representative also expired.

The new king William III nevertheless held him in high regard. When Donker's former cabinet colleagues also proved not to be able to handle parliament, he asked him to be the *formateur* of a new government. Donker immediately realised the presence of Thorbecke in a new cabinet was inevitable. He asked him for a governmental programme, but overplayed his hand when Thorbecke stubbornly refused to do so. Donker kept on opposing him, asking him for his ideas and proposals, but took an ever more marginal position in parliament.

After his parliamentary career, Donker was elected to the municipal council in The Hague, but otherwise his political influence seemed to have vanished. The tide changed however in 1853, when the catholic episcopal polity was reinstated and the protestant indignation rose. The king, showing public sympathy for the protestant outcry, exceeded the royal competences the newly constitution envisaged and Thorbecke and his ministers had no option but to

resign. William III was quick to ask Donker and his old nemesis Van Hall to form a government. A remarkable combination, but by accepting the king's desire, he showed he was not resentful by pursuing his aim: safeguarding 'his' constitution.

The cabinet proved to be successful in calming tempers, by calling for new elections and introducing a law on ecclesiastical organisations. In the three years of his second term as Minister of Justice Donker also managed to introduce laws on ministerial responsibility, on penal reform and on the right of association and assembly. When conservative forces called for the equal treatment of religious primary schools and personal tensions between ministers rose, the cabinet collapsed in the summer of 1856. Donker withdrew from public life and died, largely forgotten, in the Belgian resort town Spa in 1864.

This study's main thesis is that Donker is the most prominent voice of virulent liberalism before 1848 and the most instrumental politician in the adoption of the 1848 constitution. Although his contribution to the ideological development of early liberalism is limited, his main merit is the articulation of these ideas in court, brochures and newspapers. His ideas were derived from French and British thinkers such as Constant and Bentham, which he acquired by his contacts with his Belgian counterparts. His pleas for reform were nevertheless a repetitive stanza which he repeated in various forms for over twenty years: ministerial responsibility, direct elections and judicial reform. In

1848 Donker served as the most prominent adviser to the king, first when his old ministers left him and second when Schimmelpenninck refused to accept the draft constitution. As a minister he maintained order in troubled times. Meanwhile he played a crucial role in the establishment of the 1848 constitution. Thorbecke's influence on the adoption process was of minor importance, while later he was widely credited for the constitution. Unlike Donker, he was heralded by a group of liberal followers in parliament as their leader, that let to Donker standing alone. After Donker's retirement in 1856, Thorbecke continued to be in the political spotlights for another sixteen years, eventually overshadowing his role in the 1848 events.