

LAURENT WAELKENS  
(KU Leuven)

## The Royal Commission for Old Laws and Ordinances of Belgium at the Service of Legal Historians \*



### Abstract

Belgium became independent in 1830. In this constitutional monarchy, legal norms would find their place in a hierarchy of norms of which the constitution formed the pinnacle. In practice, the country renewed only a part of its legal norms. Many sources predating 1830 remained in force. Which ones? Which measures did they include? With the aim of putting these *anciennes lois et ordonnances* in order, a Royal Decree of 18 April 1846 established a royal Commission for Old Laws and Ordinances of Belgium (Commission royale des anciennes lois et ordonnances de Belgique), which was composed of politicians and professors of law faculties. Initially, the Commission was at the service of judicial practice. Its activities were considerably diminished by the First World War and it was only in 1950 that it took up its full range of activities again. At that time, the Commission was invested in exclusively by legal historians, who reoriented it to serve the science of legal history. Since 1846, the Commission has decided to divide the publication of legal texts into three collections: the ordinances, the customs, and the treaties. In each division, it distinguished between acts regarding the old Netherlands and those regarding the Principalities of Liège, Stavelot, and Bouillon. The volumes concerning Liège, Stavelot, and Bouillon were finished in 1878. The publication of the ordinances of the other territories were organised into three series: (1) the Burgundian period (1381–1506), (2) the Habsburg and Spanish period (1506–1700), and (3) the Austrian period (1700–1794). The series concerning the Austrian period was completed in 1942. For the second series, the ordinances of Philip II are still being dealt with. Work on the first series was only begun in the twentieth century and the editors have reached the period of Philip the Good (who died in 1467). The publication of customs was divided into thirteen series according to the old principalities of the Southern Netherlands which were situated in the current territory of Belgium. The jurisprudence of the courts of justice that were submitted to the homologation of the Great Council of Malines between the seventeenth and eighteenth centuries was edited first. Currently, eighty quarto volumes have been published. Two volumes of homologated customs remain to be published. In the meantime, the Commission has added older documents to its field of action, which allow the following of the evolution of customary law at the end of the Middle Ages. There are, for example, volumes dedicated to appeals to the Parliament of Paris against the Council of Flanders,

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\* Lecture given in Cracow on 25 June 2013, at the colloquium “The Edition of Legal-Historical Sources: Doctrine – State – Law”. English translation by Line Leys, KU Leuven Department of Legal History. An overview of the history of the Commission can be found in M. Duynstee, R. Feenstra and L. Waelkens, *Repertorium bibliographicum institutorum et soldalatum iuris historiae*, Kortrijk 2000, p. 39–40 and p. 430; bibliography p. 179–184, p. 257–259 and p. 335–339.

published starting from Parisian files. The third series has never been started, as the Commission provisionally abandoned the publication of the treaties of the old principalities. The Commission also edits the Bulletin of the Royal Commission for Old Laws and Ordinances of Belgium (*Bulletin de la Commission royale des anciennes lois et ordonnances de Belgique*), which appears sporadically. In this Bulletin, one finds preparatory studies concerning the editing of legal sources and the editions of texts which are too short to merit an entire volume. Without the Bulletin, the entire set of the Commission's publication consists of about two hundred and fifty quarto volumes and about twenty octavo volumes.

**Key words:** legal-historical source, Belgium, the Netherlands, Liège, Commission for Old Laws and Ordinances of Belgium, the secession of Belgium, Belgian law, customary law, ordinance

**Słowa kluczowe:** źródło historyczno-prawne, Belgia, Niderlandy, Holandia, Liège, Komisja dla Starych Praw i Ordonansów Belgii, secesja Belgii, prawo belgijskie, prawo zwyczajowe, ordonans

When the map of Europe was redrawn at the Congress of Vienna (1815), the borders of the Netherlands were thoroughly redefined. A new United Kingdom of the Netherlands was founded on the territories of the former Batavian Republic, the Habsburg Netherlands and the Prince-Bishopric of Liège. The crown devolved to the House of Orange. There were two capitals: The Hague and Brussels. However, the United Kingdom of the Netherlands would not survive long. In 1830, a revolt broke out in the southern part of the Kingdom and led to the secession of Belgium. A revolutionary Provisional Government took over the rule and assembled a democratically elected National Congress. In 1831, the constitution was voted in and Leopold of Saxe-Coburg was sworn in as the country's first king. In 1839, a peace treaty was concluded with the Netherlands.

The Belgian constitution of 1831 opted for a clear hierarchy of norms. Acts of Parliament would become the highest norm and the decisions of the Parliament would not be tested against the constitution. It was determined in the constitution that this Parliament had to regulate an entire series of matters according to law as soon as possible. These issues included printing press offences, finances, provinces and municipalities, the judiciary, pensions, bankruptcy and deferment of payment, the organisation of the army and the revision of the law codes... Until these new laws were drawn up, the country would make use of the existing law. This reorganisation of Belgian law, which was a tough job, was never completed. The courts and tribunals, however, were given the task of meticulously respecting the constitutional order. From the beginning, they were confronted with situations concerning old law, in which parties invoked the application of the law of the Ancien Régime. There is even a series of judgments, dating from these first decades of the history of Belgium, in which the courts and tribunals applied Roman law out of the conviction that this old law was applicable in civil cases beside the "French" *Code civil* of 1804 until the Parliament would have reviewed the civil law.<sup>1</sup> This situation led to legal uncertainty. Both politicians and magistrates strove for the establishment of a body which would present a clear image of the old law that was still applicable. Furthermore, in the 1840s, displeasure concerning the new regime arose in

<sup>1</sup> About this subject, see for example G. Macours, *De visie van de belgische rechtspraak op de subsidiaire rol van het oude Romeinse recht, Een verkennend onderzoek* [in:] *Houd voet bij stuk, Xenia iuris historiae G. Van Dievoet oblata*, eds. F. Stevens, D. Vanden, Leuven 1990, p. 253–289. The comprehensive *Les Pandectes belges, Répertoire général de législation, de doctrine et de jurisprudences belges*, Brussels 1878–1933 also provides an entry entitled *Droit romain*.

some districts. The expropriation of ecclesiastical goods in 1795 had led to the abolition of popular education, which turned the countryside into a place of squalor and increasing ignorance. Quite a few people wished to return to the law that had been in effect before the French Revolution. By means of a Royal Decree of 18 April 1846, a new commission was established within the Ministry of Justice: the Royal Commission for Old Laws and Ordinances of Belgium, which would determine which legal norms dating from before 1830 were still applicable.<sup>2</sup> It was intended that it would become a mixed commission of politicians, magistrates and legal scholars who would publish a corpus of old law for the benefit of the judiciary.

In the preparations for the Royal Decree, we notice that despite its clear judicial slant, the Commission was immediately given a legal historical mission as well: it had to publish all of the legal sources which had been in force in all of the regions of Belgium before their annexation to the French Republic and especially the sources from 1750 onwards. Its ultimate goal was to compile a corpus of all “our” old legislation. The Commission was also allotted a political role. In 1856, Antoine de Cuyper wrote that the Commission did not intend to publish a collection for some erudite researchers, but to build a monument to our nationality. The publication of old sources would show the country’s old patents of nobility and uncover the foundations of the nation.<sup>3</sup> In this context, inspiration was derived from the *Monumenta Germaniae Historica*, the publication of which was meant, among other things, to contribute to the construction of a new fatherland after the Napoleonic wars and the collapse of the Holy Roman Empire. In the setting up of this monumental legal historical work, nationalism played a part as well.<sup>4</sup> Between 1810 and 1829, Eyre and Staham published the *Statutes of the Realm* by the Record Commission. They had been commissioned to do so by the Record Commission itself. In France, work was being done on the edition of the *Ordonnances des rois de France de la troisième race* (Paris, from 1811 onwards) and the *Recueil general des anciennes lois françaises depuis 420 jusqu’à la Révolution de 1789* (Paris, from 1820 onwards). Each of these books aimed at the shaping and historical anchoring of the new nineteenth-century nations.

The first Commission was presided over by Matthieu Leclercq (from Liège), a former Minister of Justice and procurator general of the Court of Cassation. The vice-president was Jean Raikem, who was also a former minister and procurator general of the Court of Appeal in Liège. Its members were Antoine de Cuyper (from Flanders), justice of the Court of Cassation; Alphonse Delebecque (from Brussels), Advocate General of the Court of Cassation; Louis Colinez, Advocate General of the Court of Appeal of Ghent; François Grandgagnage, justice of the Court of Appeal of Liège; Liège-based lawyer Henri Delrée; and Brussels-based jurist Jean-Baptiste de Jonghe. Furthermore, three archivists were admitted into the Commission: general state archivist Louis-

<sup>2</sup> J.-M. Yante, *Gestion et valorisation de l’héritage historique, artistique et culturel en Belgique (XIX<sup>e</sup>–XX<sup>e</sup> siècles)* [in:] *National Approaches to the Governance of Historical Heritage over Time. a Comparative Report*, ed. S. Fisch, Amsterdam 2008, p. 50–62, especially p. 52–53.

<sup>3</sup> Some historical elements are treated on the Commission’s website: [http://justice.belgium.be/fr/information/bibliotheque/commission\\_royale\\_pour\\_la\\_publication\\_des\\_anciennes\\_lois\\_et\\_ordonnances/histoire](http://justice.belgium.be/fr/information/bibliotheque/commission_royale_pour_la_publication_des_anciennes_lois_et_ordonnances/histoire) (access: January 31, 2014).

<sup>4</sup> H. Bresslau, *Geschichte der Monumenta Germaniae Historica*, Hannover 1921 (reprint: Hannover 1976), p. 1–33.

Prosper Gachard; Mathieu-Lambert Polain, an archivist from Liège; and Jules de Sain-Genois, the librarian of the University of Ghent. In 1858, two members who had passed away, Delrée and Delebecque, were replaced by Godefroid Stas, a former judge in Liège and justice of the Court of Cassation, and Charles Faider, a former Minister of Justice who had married a woman from Liège. This strong presence of people connected with Liège was significant and would have a considerable influence on the first activities of the Commission.

During the first meeting, which took place on 14 July 1846,<sup>5</sup> the members made plans to publish three types of legal sources: ordinances, customary law and treaties. With regard to each of these sources, a distinction would be made between the law of the Southern Netherlands and the texts that concerned the princedoms of Liège, Stavelot and Bouillon. The members who had ties with Liège were a strong faction in the Commission and pressed for this division and for the priority that would be given to the sources from Liège. The territory of Liège was a driving force behind the formation of the Belgian nation. Of old, the prince-bishopric of Liège was part of the Rhineland. As a monarch, the prince-bishop had held a seat in the Reichstag. Many bishops of Liège had also been archbishop of Cologne, bishop of Regensburg, Freising, Münster, Hildesheim... During the French Revolution, however, the tide turned. Liège mass-produced “Model 1777” muskets, as well as parts for French arms manufacturers and ammunition. It also delivered thousands of field guns. From 1795 onwards, the proceeds of this arms industry could be profitably invested in an unusual amount of immovable properties in Liège which were nationalised and offered for sale. It was not just the public domain which was appropriated as ecclesiastical property and sold. The goods of the five abbeys *intra muros* and the great abbeys of Saint-Hubert, Saint-Trond, Stavelot, etc. were privatised as well. These privatisations were regularised by the Concordat of 1802. At the Congress of Vienna (1815), it was of great importance for Liège that it would not be annexed once again to Cologne, which was Catholic. An alliance with the protestant House of Orange guaranteed the retention of the property that had been secularised. Between 1815 and 1830, Liège collaborated closely with traders and bankers from the Northern Netherlands. a political union, however, was not established. When the Belgian Revolution broke out in Brussels in 1830, the inhabitants of Liège again took the initiative. As soon as it was certain that the ties with Holland would be broken, they offered enormous financial support to the new state of Belgium so as to be certain that they could prevent the revocation of the Concordat in the new state as well.<sup>6</sup>

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<sup>5</sup> The conclusions were published in the publication entitled *Procès-verbaux de la Commission royale des anciennes lois et ordonnances de Belgique*, which was renamed in 1913 and has since been known as the *Bulletin de la Commission*...

<sup>6</sup> The importance of Liège in the young nation is illustrated brilliantly in N. Caulier-Mathy, N. Haesanne-Peremans, *Une vie au fil des jours. Journal d'un notable politicien et naturaliste. Michel-Edmond de Selys-Longchamps (1823–1900)*, Brussels 2008, LXV + 1747 p. Edmond de Selys-Longchamps, who inherited ecclesiastical goods that had been privatised, managed one of the largest Belgian fortunes. In his diary, one discovers, day by day, the concerns of a man from Liège who attempted to become and stay Belgian. After the famine of 1847–1850, when some were striving for the re-establishment of Catholic education, Selys-Longchamps became actively involved in politics in Brussels in order to manage and retain his fortune in a manner befitting a good *paterfamilias*. When the educational crisis began and people called for the restora-

At first, the Commission focussed its attention on ordinances. With regard to the *Recueils des Ordonnances des Pays-Bas*, three series were planned: (1) 1381–1506, the Burgundian period; (2) 1506–1700, the Habsburg period and the Spanish period; (3) 1700–1794, the Austrian period. For the districts of Liège, there was a different subdivision. The *Recueil des Ordonnances de la principauté de Liège* would comprise three series: (1) the period 974–1506, (2) the period 1507–1684 and (3) the period 1684–1794. There was a separate *Recueil des Ordonnances de la principauté de Stavelot*, as well as a separate *Recueil des ordonnances du duché de Bouillon*.

In the young Royal Commission for Old Laws and Ordinances, the members who had ties with Liège took the lead. They wished to be the first to prove that the territory of Liège had been, historically, a “Belgian” region. Between 1855 and 1878, all of the volumes of the monumental *Recueils des Ordonnances* of the prince-bishopric of Liège, of Stavelot and of Bouillon appeared. a supplement concerning Bouillon appeared later, in 1977.

The publication of the ordinances of the Southern Netherlands were next in line. Between 1860 and 1942, the third series, containing the ordinances of the eighteenth-century Austrian Netherlands, was finished. The second series, which featured the ordinances of the Habsburg and Spanish periods (1506–1700), was published between 1893 and 1914. Work on the first series would only begin in 1965, and is still in progress today.

The second set of sources which enjoyed the attention of the Commission consisted of the old customary law, or the local administration of justice. The publication thereof was commenced in 1858. The work with regard to these collections of customary laws was split up into thirteen series that concerned old jurisdictions, of which the territory corresponded at least partly to that of Belgium in 1858. These areas were duchies, counties, castellanies, towns... For the Southern Netherlands, the main sources were the texts which had been used for the confirmation of customs in the sixteenth and seventeenth centuries. In the mid-sixteenth century, all of the courts were summoned to write down their case-law and have it checked by the Great Council of Mechlin, which was the highest court under the Burgundians and Habsburgs. With regard to the documents from that period, the Commission strove for the publication of both the draft customs and the customs that had been confirmed by Mechlin. In addition, private notations of customary law were considered. The customs of the Country of Liège, which had never fallen under the Great Council of Mechlin, would be published separately. Finally, the customary law of areas that had stayed sovereign for a long time, such as Tournai and Mons, would be published. Under the influence of the librarian Jules de Saint-Genois from Ghent, the customs of the town of Ghent appeared in 1868 as the first volume concerning customary law. However, it was Liège that received the most attention in the early stages of the publication of the customs as well. Between 1870 and 1897, all of the volumes dedicated to the customs of Liège, Limburg and the Overmaas region, Looz, Saint-Trond, Maastricht, Namur and Philippeville appeared. Liège once again sought to demonstrate that it was home to the best Belgians. The customs of Mechlin, three volumes concerning Hainaut, the customs of Brussels, Leuven, Antwerp and Kempenland, and some thirty

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tion of Catholic education, he became a senator (in 1855), and by the time the school issue reached its apogee, he was the president of the Senate (1880–1884).

volumes concerning the customary law of the County of Flanders were also published before the First World War. In total, sixty-eight impressive quarto volumes of old customary law appeared before 1914.

The third series devised by the Commission members of 1846, namely the series concerning the treaties that were concluded by the old districts, was never started.

In the nineteenth century, the Commission was mainly urged on by politicians and magistrates from Liège. The presidents in that period were Matthieu Leclercq, procurator general of the Court of Cassation; from 1881 until 1888 Guillaume de Longe, the first president of the Court of Cassation; from 1888 until 1893 Charles Faider, procurator general of the Court of Cassation; and from 1894 until 1904 Louis Crahay, justice of the Court of Cassation. In the first half of the twentieth century, the same policy was continued between 1906 and 1911 by its president, senator Count Thierry de Limburg-Stirum and from 1911 to 1922 by Jules Lameere, the first president of the Court of Cassation. The latter, however, was forced to practically stop the activities of the Commission, because its budget became too small after 1914. In the minutes of the meetings, budgetary problems crop up continuously. The next president, Baron Paul Verhaegen, Chamber President of the Court of Cassation, could not turn the tide either. In the interwar period, the Commission still existed formally, but its only publications were the last volume of the ordinances of Emperor Charles V in 1922 and the customs of Tournai in 1923. Then there was a media silence and the publication of the imposing quarto series came to a stop.

In 1950, there was a strong revival under the presidency of Jules Simon, a justice of the Court of Cassation and professor at the University of Ghent. He breathed new life into the Royal Commission for Old Laws and Ordinances of Belgium. However, after forty years in the desert, his Commission re-emerged as a completely different institution. The political character of the publications was relegated to the background, as were the continuous validations of the Belgian nation. The scientific character of the publications was brought to the fore: henceforth the Commission would be first and foremost dedicated to legal history. This is also evident from the personality of the presidents after Jules Simon. Between 1953 and 1968, the Commission was led by professor François-Louis Ganshof, a legal historian of the University of Ghent; the subsequent presidents were professor John Gilissen (legal history at the Université Libre de Bruxelles) between 1968 and 1987, and professor Philippe Godding (Université Catholique de Louvain) between 1987 and 2002. Since 2002, the Commission has been presided over by professor Serge Dauchy (Facultés Universitaires de Saint-Louis Brussels and Faculté de droit Lille).

This major change in direction became clear in the Commission's appointment of new members as well: henceforth, the commission would only be staffed by legal historians and archivists, and would clearly be completely dedicated to legal history. In this manner, legal history was given a permanent place within the Ministry of Justice. Major legal historians were given a forum to publish magisterial collections of sources. Since the fresh start in the fifties, the publication of the first series of ordinances which was planned in 1846 has begun: those of the Burgundian period (1381–1506), which were henceforth without political importance, but turned out to have a high scientific value. The seventh volume in this series appeared in 2010 and concerned the ordinances of

Philip the Good. In the series concerning customary law, a volume of notations of customary law from the region of Tournai appeared in 2006.

Under the influence of legal historians, the Commission has included, besides the ordinances, customs and treaties, a fourth domain in its activities: the history of the administration of justice. Two new series concerning the publication of the old administration of justice were set up: a prestigious quarto series with critical editions and an octavo series with chronological lists of the administration of the old councils of justice (Conseils de Justice). In the first series, important editions concerning appeals against the Council of Flanders which were treated by the Parliament of Paris (1454–1521) and about the administration of justice in the consistory court of Cambrai in Brussels (1438–1459) have already appeared. In 2008, an important work of Georges de Ghewiet (1651–1745) about the administration of Tournai and the Parlement de Flandre of Douai was added to the series. In the series of chronological lists, a first important eight-volume study dedicated to the Great Council and the Parliament of Mechlin (1465–1580) was published. With regard to the history of the administration of justice, the Commission has placed emphasis on the future publication of sources concerning the administration of justice of the Council of Brabant in the fifteenth century and the Secret Council in the sixteenth and seventeenth centuries.

As has already been mentioned above, the reports of the activities of the Commission were published from the beginning under the title *Procès-verbaux des scéances*, and from 1913 onwards as the *Bulletin de la Commission royale des Anciennes Lois et Ordonnances de Belgique*. Shorter historical texts, preparatory work concerning forthcoming publications, old correspondence with regard to the legal sources and court documents appeared among the minutes of the sessions. The *Bulletin* also published smaller texts which were of importance to the legal history of Belgium. During the difficult years of the interwar period, the publication of the *Bulletin* became the most important activity of the Commission. Gradually, it started to accept scientific articles which were not directly related to forthcoming publications of sources. Most of the studies then concerned the history of legal proceedings and of criminal law. After 1950, when the Commission mainly became a legal historical institution, the *Bulletin* followed this evolution. It has become a reputable legal historical journal. It does, however, only accept studies that concern that concern the legal history of the regions that compose the Belgian nation. Further, the journal specialises in the publication of material concerning the history of the administration of law. For the fiftieth issue, the jubilee issue of 2009, each member of the Commission contributed a legal-historical piece.<sup>7</sup>

With this *Royal Commission for Old Laws and Ordinances of Belgium* the Belgian legal historians have a well-functioning institution which takes the publication of old legal sources to heart. Besides the pieces that appeared in the *Bulletin*, the Commission has thus far provided publications of some two hundred and fifty quarto volumes and some twenty octavo volumes. The largest problem with which the Commission is confronted is that the available sources are numerous, while the scholars who find the time to compose monumental editions can be counted on the fingers of one hand. The legal historian who applies himself to the edition of legal sources does find an excellent platform, which

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<sup>7</sup> The most recent issue of the *Bulletin* is the double issue 50–51 of 2010–2011.

guarantees prestigious publications and can offer the assistance of a Commission that is exceptionally well-versed in the science of legal history.

## Streszczenie

### Królewska Komisja dla Praw Dawnych i Statutów Belgii a służba historyków prawa

Belgia uzyskała niepodległość w 1830 r. W przyjętym ustroju monarchii konstytucyjnej poszczególne źródła prawa miały swoje miejsce w hierarchii aktów prawnych, w którym konstytucja zajęła naczelne miejsce. W rzeczywistości tylko część spośród norm prawnych została znowelizowana. Wiele źródeł prawa sprzed 1830 r. pozostało w mocy. Należało znaleźć odpowiedź na pytanie: które z nich pozostały w mocy po 1830 r. i w jakim zakresie? Celem uporządkowania wzmiankowanych *anciennes lois et ordonnances* królewskim dekretem z dnia 18 kwietnia 1846 r. została powołana Królewska Komisja dla Praw Dawnych i Statutów Belgii (Commission royale des anciennes lois et ordonnances de Belgique), składająca się z polityków i profesorów prawa. Początkowo Komisja służyła praktyce prawniczej. Jej działalność uległa zahamowaniu wraz z wybuchem I wojny światowej i wróciła do pełnej aktywności dopiero w roku 1950. Wówczas w Komisji zasiedli głównie historycy prawa. W 1846 r. zdecydowano, że Komisja będzie publikować teksty aktów prawnych w trzech różnych zbiorach: statutów, prawa zwyczajowego oraz traktatów. W każdym ze zbiorów zachowano podział aktów na dotyczące dawnych Niderlandów oraz księstw: Liège, Stavelot i Bouillon. Tomy dotyczące księstw Liège, Stavelot i Bouillon zostały ukończone w roku 1878. Publikacja statutów pozostałych terytoriów została zorganizowana w trzech seriach: (1) okres burgundzki (1381–1506), (2) okres habsbursko-hispański (1506–1700) oraz (3) okres austriacki (1700–1794). Cykl poświęcony epoce austriackiej został ukończony w 1942 r. Seria dotycząca okresu habsbursko-hispańskiego nadal jest przygotowywana. Prace nad pierwszą serią rozpoczęły się dopiero w XX w., lecz redaktorzy dotarli już do okresu panowania Filipa Dobrego (zmarł w 1467 r.). Publikacja prawa zwyczajowego została podzielona na trzynaście tomów, w nawiązaniu do trzynastu księstw Południowych Niderlandów, stanowiących terytorium obecnej Belgii. W pierwszej kolejności zostało opracowane orzecznictwo sądowe przedkładane do zatwierdzenia Wielkiej Radzie Mechelen między XVII a XVIII w. Według obecnego stanu dotychczas zostało opublikowanych 80 tomów w formacie *quarto*. Na wydanie nadal oczekują dwa tomy zatwierdzonych zwyczajów. Komisja sukcesywnie dodawała do swojego pola zainteresowań badawczych coraz starsze dokumenty, obrazujące rozwój prawa zwyczajowego u schyłku wieków średnich. Przykładowo można wskazać na tomy poświęcone odwołaniom od rozstrzygnięć Rady Flandrii kierowanym do Parlamentu Paryskiego. Prace nad trzecią częścią zbioru nigdy się nie rozpoczęły, jako że Komisja tymczasowo zarzuciła ideę edycji traktatów dawnych księstw. Komisja publikuje także „Biuletyn Królewskiej Komisji dla Praw Dawnych i Statutów Belgii” („Bulletin de la Commission royale des anciennes lois et ordonnances de Belgique”), który ukazuje się nieregularnie. W czasopiśmie tym są publikowane wstępne rezultaty prowadzonych badań oraz edycje tekstów, które są zbyt krótkie, by poświęcić im odrębny tom. Poza „Biuletynem...” na dotychczasowy dorobek Komisji składa się około 250 tomów w formacie *quarto* oraz 20 w formacie *octavo*.