UNDERSTANDING FEDERAL INSTITUTIONAL ARCHITECTURE

Dynamics of Belgian Federation

Key words

Federalism, federations, divided society, conflict management, Belgium, distribution of powers

Author

Ms. Nina Sajić is a PhD candidate in International Relations at University of Kent, England, UK

Correspondence

ns411@kent.ac.uk

Field

International relations

Summary

Federations are not static; they are constantly being modified and adjusted to accommodate pressures, both from outside and from within. Creation of federal structures is a “matter of concrete actions at specific times.” Federal structures were created in Belgium because of the need to deal with existing conflicts. In Belgium, federation was intended to ease internal tensions and prevent any potential for conflict. As Deschouwer notes, federation was not the result of “a deliberate choice, but of incremental conflict management.” This article analyses federal institutional design of Belgium. It sheds light on the internal dynamics that paved the way for federalisation of Belgium. The purpose of this article is to understand the main features of the Belgian federal architecture, how it functions and how it has evolved over time.

DOI

10.5937/pol1713053S

UDC

341.231.14(493)

Paper received on

11.05.2017.

Paper accepted for publishing

on

20.06.2017.

Federalism is a “flexible and adaptable system of governance;” in some countries, it involves “a delicate balance between territorially defined regions and groups, so that these changes in its institutions and practices may engender division and conflict.”¹ Federalism and federation are often used interchangeably in the literature, however scholars such as King, Burgess, Watts, Gagnon to name but a few, emphasise the necessity to make clear distinction between these two concepts. Federalism is to be regarded as some form of political philosophy or an ideology,² or as a normative term or principle that perpetuates both union and decentralisation.³ In other words federalism advocates the idea of what Elazar calls “*self-rule plus shared rule*,”⁴ and federation represents institutionalisation of that idea, a descriptive term⁵ that is to be “*regarded primarily as an institutional arrangement as opposed to an ideological perspective*.”⁶ However, the distinction between federalism and federation is not a clear-cut, nor it should be, as King rightly points out “*widely observed, but ...it is useful*”⁷ as institutions originate from philosophies and reflect them and because “*some form of federalism is always implicit in any given federation at any given time*.”⁸

¹ Richard Simeon, “Adaptability and Change in Federations,” *International Social Science Journal* 53, no. 167 (March 2001): 145.

² Preston King, *Federalism and Federation* (London: Croom Helm, 1982), 75.

³ Ronald L. Watts, *Comparing Federal Systems* (London, Montreal and Kingston, Ont.: McGill-Queen’s University Press, 1999), 6.

⁴ Elazar, *Exploring Federalism*, 12.

⁵ Watts, *Comparing Federal Systems*, 6.

⁶ King, *Federalism and Federation*, 8.

⁷ *Ibid.*, 75.

⁸ *Ibid.*, 76.

The article begins with brief historic overview of the creation of the Belgian state, and then it analyses the Belgian federal structure, including salient features of its executive and legislative powers both at the central level and at the level of the federated units. The article further investigates distribution of powers and concludes by looking at the current state of affairs in Belgium.

HISTORIC OVERVIEW OF THE CREATION OF THE BELGIAN STATE

From the early 1500s, before becoming an independent country, the territory of today’s Belgium or part of it was under the rule of different monarchies and kingdoms, including the Habsburgs, Spain, Germany, France and the United Kingdom of the Netherlands. Independent Belgium was created in 1830 after a revolution with violent street fights in Brussels. The revolt was against centralist aspirations of the Dutch king, who wanted to impose Dutch as the only official language.⁹ However, language was not the only reason why the southern part of the United Kingdom of the Low Countries (i.e. Belgium) wanted to be independent. According to Deschouwer, religion was another motivating factor; the southern part was predominantly Roman Catholic, and the northern part was mostly Protestant.¹⁰

⁹ Guy Verhofstadt, (Prime Minister of the Kingdom of Belgium), “Plenary Speech,” in *Federalism in a Changing World: Learning from Each Other*, edited by Raoul Blindenbacher and Arnold Koller (Montreal and Kingston: McGill-Queen’s University Press, 2003), 573

¹⁰ Deschouwer, “Kingdom of Belgium,” 49.

However, those who created the new state, “made the same mistake,”¹¹ imposing French as the official language, even though more than half of the new country spoke Dutch. According to the first national census conducted in Belgium in 1846, 57 per cent of the population spoke Dutch and 42.1 per cent spoke French.¹² Yet the political, cultural and economic life of the new state was controlled by the French-speaking elite.¹³ While Belgium as whole was heterogeneous, most of its population lived in linguistically homogenous territories; for example, 95 per cent of the population in Antwerp spoke Dutch or Flemish while in Liege, 94.4 per cent spoke French or Walloon.¹⁴ Although the first Belgian Constitution stated that the use of language was unconditional, French became the language of the administration and the judiciary. This posed problems for Dutch speakers, especially during court proceedings, in secondary and higher education, and in the army etc. Speaking to the king in 1912, a man summed up years of tension between Walloons and Flemings as the following: “No, Sire, there is no such thing as a Belgian soul. The fusion of Flemings and Walloons is not to be desired and, if one were to desire it, one would have to admit that it is not possible.”¹⁵

¹¹ Verhofstadt, “Plenary Speech,” 573.

¹² Arstide R. Zolberg, “The Making of Flemings and Walloons: Belgium: 1830-1914,” *The Journal of Interdisciplinary History* 5, no. 2 (Autumn, 1974):181.

¹³ Wouter Pas “A Dynamic Federalism Built on Static Principles: The Case of Belgium,” in *Federalism, Subnational Constitutions and Minority Rights*, ed. Alan G. Tarr, Robert F. Williams, and Josef Marko, (Westport, Connecticut, London: Praeger 2004), 158.

¹⁴ Zolberg, “The Making of Flemings,” 182.

¹⁵ Shepard Clough, *A History of the Flemish Movement in Belgium: A Study in Nationalism*

Tensions escalated during the First World War, with Flemish soldiers being subordinated to francophone officers, while the Flemish elite collaborated with German forces to have a right to Dutch language courses.¹⁶ Flemish soldiers represented 80 per cent of front-line troops, but officers were exclusively French-speakers;¹⁷ linguistic difficulties led to a massive loss of Flemish soldiers, for example, on the battlefield in Dixmude.¹⁸

According to Erk, the first major event causing political conflict in Belgium after World War II was the return of Leopold III to the throne.¹⁹ In 1950, a referendum was organised to decide if King Leopold III, who apparently met with Hitler during World War Two, could return to the country and resume the throne after being absent during the liberation of Belgium from German occupation; 57 per cent of the population (of these, 72 per cent were Flemish) voted in favour of his return. However, in the face of strong francophone opposition, Leopold III was forced to give the throne to his son Baudouin.²⁰

Dissatisfaction, especially among the Flemish people over their status in the Kingdom, continued to be high after World War II. One source of on-going tension was language. Flemings had demanded cultural autonomy for the first time in 1937, reacting to

(New York, 1930), 128.

¹⁶ Deschouwer, “Kingdom of Belgium,” 49.

¹⁷ Pierre Joye and Rosine Lewin, *L'Église et le Mouvement Ouvrier en Belgique* [The Church and the Labour Movement in Belgium], (Brussels: Société Populaire d'Éditions, 1967), 196.

¹⁸ Jan Erk, “Sub-state nationalism and the left-right divide: critical junctures in the formation of nationalist labour movements in Belgium,” *Nations and Nationalism* 11, no. 4 (2005): 562.

¹⁹ Ibid.

²⁰ Ibid.

the prevailing social, cultural and linguistic hegemony of the French language.²¹ In fact, recognition of Dutch as one of the three official languages of Belgium, followed by gradual cultural autonomy could not have been possible without “the mobilising force of the Flemish Movement.”²² The Flemish Movement is a designation introduced by historians, and Zolberg says the term exaggerates its unified character;²³ the movement was never institutionalised and thus should not be regarded as an organisation, but rather as an idea or intellectual, political and cultural campaign for the recognition of the Flemish culture and the Dutch language, started by Flemish intellectuals in the 19th century.

According to Pass, this struggle for the recognition of the Flemish culture and Dutch language was also “a struggle for social development and liberation of lower classes.”²⁴ He goes on to argue that for the Flemish Movement, language “became the ethnic marker for mobilization because of the link between the relative backward social position of the Flemish middle class with a mother tongue that was held to be inferior.”²⁵

²¹ Hugues Dumont et al., “Kingdom of Belgium,” in *Distribution of Powers and Responsibilities in Federal Countries*, ed. Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, (Quebec: McGill-Queen’s University Press, 2006), 36.

²² Wilfried Swenden and Theo Maarten Jans, “Will It Stay or Will It Go? Federalism and the Sustainability of Belgium,” in *The Politics of Belgium: Institutions and Policy under Bipolar and Centrifugal Federalism*, ed. Marleen Brans, Lieven De Winter, and Wilfried Swenden (London and New York: Routledge Taylor & Francis Group, 2009), 16.

²³ Zolberg, “The Making of Flemings,” 206.

²⁴ Pas “A Dynamic Federalism Built on Static Principles,” 159.

²⁵ Ibid

Some of the Flemish Movement’s demands were met in two laws on language.²⁶ The 1932 law provided for the use of language in municipalities based on the 1846 census, and the law of 1963 established four language areas and determined the boundaries of the linguistic regions (a Dutch-language area, French-language area, German-language area, and the bilingual area of Brussels-Capital).²⁷

Contrary to popular belief, neither the French-speakers (Walloons) were happy with the state of affairs in the Kingdom. They were most concerned with the growing Flemish economic dominance, so in the 1960s, they started to demand more autonomy in this field. As Van Dam argues, they were not focused on “cultural injustice” like the Flemish Movement, but on growing socioeconomic discrepancies between Wallonia and Flanders.²⁸ In other words, the regional Walloon identity and consciousness are not rooted in “a cultural consciousness of the ‘people’ as in Flanders” but to “an economic ‘class’ consciousness.”²⁹

The violent trade union strike in the winter of 1960/1961 mostly affected Wallonia and Brussels; it led to an even stronger polarisation of Belgium between Walloons and Flemings and to the emergence of a Walloon separatist

²⁶ Roland Willemyns, “The Dutch-French Language Border,” *Journal of Multilingual and Multicultural Development* 23, no. 1-2 (2002): 37.

²⁷ German speaking Community, Web site. http://www.dg.be/en/desktopdefault.aspx/tabid-2831/5384_read-35156/ (accessed 21 February, 2015).

²⁸ Denise Van Dam, “Histoire de mouvement Wallon,” [History of the Walloon Movement], in *Où va la Belgique? Les Soubresauts d’une Petite Démocratie Européenne*, ed. Marco Martiniello and Marc Swyngedouw (Paris: L’Harmattan, 1998), 81.

²⁹ Ibid.

movement the Walloon Popular Movement (*Mouvement Populaire Walloon*).³⁰ However, Walloon nationalism, as Erk observes, has been weak and could be best described as “a regional movement mobilised around a linguistic core that has been dominated by its most powerful subgroup, the socialist trade unions.”³¹ The socialist pillar is probably as important in Flemish identity as the French language.

A few years later, in 1968, demonstrations broke out at the Catholic University of Leuven. The university had a Flemish and a French section. Flemish students protested against the aspiration of the French section to expand; demonstrations soon spread to all Flemish educational institutions.³² The violent demonstrations led to the resignation of the Belgian Government and probably speeded up negotiations on the reform of the Belgian state.

CREATION OF FEDERAL STATE

From 1970 to the present, the Kingdom of Belgium has undergone six state reforms; the most recent finished in 2014. The 1970 state reform created three cultural communities: Flemish, French and German. These had limited powers such as community language

and broadcasting. One of the novelties of this first reform was the introduction of the “Alarm Bell Procedure.”

The amendments of the Constitution in 1980 established two official regions, Wallonia and Flanders, and three communities Dutch, French and German-speaking. Flanders decided to merge the institutions (Government and Council) of the region with the ones of its community, while the French Community retained a Government and Council separate from those of Wallonia; this is still the case today. Powers of the regions and communities were extended to health policy, employment, economic development, public investment, housing policy and structural planning.³³ The Court of Arbitration (since 2007 the Constitutional Court) was created during this stage and given limited powers.

The status of Brussels, even though it was intended to be resolved in the second state reform, was not decided until the third constitutional revision of 1988-89. As the Flemings represent the minority in Brussels, they refused to see Brussels as a region with the same powers as Flanders and Wallonia, for fear of being marginalised by two francophone regions. They requested that Brussels have the status of capital under the control of the central Government.³⁴ In response, Walloon politicians said Brussels should become a third region with the same powers as Flanders and Wallonia. In the end, the status of Brussels

³⁰ Erk, “Sub-state nationalism,” 564.

³¹ Jan Erk, “Le Québec entre la Flandre et la Wallonie: une comparaison des nationalismes sous-étatiques Belges et du nationalisme Québécois,” [Québec between Flanders and Wallonia: a comparison of the Belgian sub-state nationalism and Québécois nationalism], *Recherches Sociographiques* 48, no. 3 (2002): 504-505.

³² Rolf Werenskjold, “Chronology of Events of Protests in Europe 1968,” in *Between Prague Spring and French May: Opposition and Revolt in Europe, 1960-1980*, ed. Martin Klimke, Jacco Pekelder, and Joachim Scharloth (New York, Oxford: Bergham, 2013), 283.

³³ Wilfried Swenden, Marleen Brans, and Lieven De Winter, “Introduction,” in *The Politics of Belgium: Institutions and Policy under Bipolar and Centrifugal Federalism*, ed. Marleen Brans, Lieven De Winter, and Wilfried Swenden (London and New York: Routledge Taylor & Francis Group, 2009), 3-4.

³⁴ Dumont et al., “Kingdom of Belgium,” 37.

became a compromise between two divergent positions.³⁵

The third reform also resulted in giving substantial legislative powers to regions and communities in education, scientific research, transport and public works.³⁶ During this stage, a new system of financing the regions and communities was introduced; funding no longer came from grants but from shared and joint taxes.³⁷

The fourth state reform of 1993 is often cited as marking the birth of a fully-fledged federal state of Belgium. The first article of the revised Constitution reads as follows “Belgium is a Federal State which consists of Communities and Regions.”³⁸ Communities and regions were given vast competencies and powers, including extensive powers in international relations.

With these state reforms, regions in Belgium continued to expand their political and fiscal autonomy. Negotiations on the sixth state reform, which lasted over a year and half, were closely related to the formation of the Federal Government after the 2010 elections and resulted in the so-called “the butterfly agreement.”³⁹

³⁵ Ibid.

³⁶ Government of the Kingdom of Belgium, Web site.

³⁷ Patrick Peeters, “Rapports: The Fifth Belgian State Reform (‘Lambermont’): A General Overview,” *European Public Law* 9, no.1 (2003): 2.

³⁸ Constitution of the Kingdom of Belgium, Constitutional Court of the Kingdom of Belgium, <http://www.const-court.be> (accessed 1 February, 2015).

³⁹ Rutger Goeminne et al., “Transfer of powers in the sixth state reform: Copernican revolution?” *Belcon Law* (Blog), 1 December, 2014, <http://belgianconstitutionallawblog.com/2014/12/15/transfer-of-powers-sixth-state-reform/> (accessed 21 February, 2015).

The Belgian Constitution does not *per se* define the official language(s) of the country, but Article 4 stipulates that Belgium comprises four linguistic regions: the Dutch-speaking Region, the French-speaking Region, the bilingual Region of Brussels-Capital and the German-speaking Region. A municipality can only be part of one linguistic region, and the boundaries of the linguistic regions can be changed only by special law requiring a majority of each linguistic group to agree.⁴⁰

The result of all these reform is a three-level structure consisting of the federal state, regions and communities in the top level, provinces in the second and communities making up the third or bottom level of administration. It is important to note here the federal state and the regions and communities are on an equal footing; there is no hierarchy, nor does one set of legislation surpass the others. This represents one of the particularities of the Belgian federal system.

Within the federal state, legislative power is exercised by Parliament and the King. All laws passed by Parliament must be signed and proclaimed by the King. In 1990, King Baudouin I refused to sign the law on abortion, as it was against his Catholic beliefs. To avoid a constitutional crisis, the Government declared him unable to govern; the Government then assumed the powers of the King and promulgated the law. This was the first time in Belgian history that a King refused to sign a law after it had been passed by Parliament.⁴¹ The role of the King is more limited than this

⁴⁰ Article 4 of the Belgian Constitution.

⁴¹ Paul L. Montgomery, “Belgian King, Unable to Sign Abortion Law, Takes Day Off,” *The New York Times*, 5 April 1990, <http://www.nytimes.com/1990/04/05/world/belgian-king-unable-to-sign-abortion-law-takes-day-off.html> (accessed 1 February 2015).

example suggests; he generally acts in an advisory nature in the interests of unity. According to popular belief, the King is one of three glues keeping the country together; the other two are Brussels-Capital and social security. The importance of the King's role for keeping the country together can be disputed; the Flemings, who strongly supported the King in the 1950s, see the current King as "pro-Francophone." The same could be argued for social security, which until the sixth state reform was exclusively federal responsibility; with the reform, some of its responsibilities were transferred to the regions and communities.

The other legislative body, the Federal Parliament, is composed of the House of Representatives and the Senate. With the latest state reform, the real legislative power in Parliament is restricted to the House of Representatives, except for matters of an institutional character, such as the revision of the Constitution and laws that are institutionally related. The House of Representatives has 150 members, directly elected from 5 Flemish districts (79 seats), 5 Walloon districts (49 seats) and the Brussels-Halle-Vilvoorde electoral district (22 seats). The sixth state reform allows federated units to have more say in the structure of the federation and the distribution of powers has been altered. Even though the Senate can no longer participate in all legislative procedures, the federated units are able to "co-decide about the fundamental rights of the people, the organization of federal Belgium and the division of power."⁴² The reformed Senate is

composed of 60 members (down from 71), of whom 50 are appointed by and from the Parliaments of the Regions and Communities (the Flemish Parliament appoints 29, the Walloon Parliament 8, the Parliament of the French Community 10, the French-speaking community of the Parliament of Brussels-Capital-Region 2, and the Parliament of the German Community 1). The remaining 10 seats are reserved for co-opted Senators (6 appointed by Dutch-speaking Senators and 4 by French-speaking Senators). Seats reserved for Senators by right (children of the King or descendants of the royal family) have ceased to exist.

A protective mechanism, a kind of veto power known as the "alarm bell procedure," is given to the language communities in Article 54 of the Constitution. If three quarters of the members of a language community consider a proposal (except budgets and laws requiring a majority) is discriminatory or can gravely damage the relations between the communities, the proposal is referred to the Council of Ministers. The Council has 30 days to give its opinion, which is then submitted to the House involved for a vote. It is often argued that this exceptional procedure was introduced to protect the francophone minority.⁴³

Even though the federal executive power *de*

2014,
<http://belgianconstitutionallawblog.com/2014/12/01/reform-senate-fresh-start-step-towards-end-bicameralism/> (accessed 21 February 2015).

⁴³ Kris Deschouwer, "And the Peace Goes on? Consociation Democracy and Belgian Politics in the Twenty-First Century," in *The Politics of Belgium: Institutions and Policy under Bipolar and Centrifugal Federalism*, ed. Marleen Brans, Lieven De Winter, and Wilfried Swenden (London and New York: Routledge Taylor & Francis Group, 2009), 40.

⁴² Sabine de Bethune, former President of the Senate, statement 28 November 2013, found in Benjamin Magnus et al., "Reform of the Senate: Fresh Start or step towards the end of bicameralism," Belcon Law (Blog), 1 December

jure (Article 37 of the Constitution) belongs to the King, *de facto* it lies with the Federal Government. The Council of Ministers cannot be composed of more than 15 members; “with the possible exception of the prime minister,” it has to have same number of Dutch-speaking and French-speaking members (Article 99 of the Constitution). Although the Constitution stipulates that the King formally appoints (and dismisses) members of the Government, the actual composition is a result of negotiations and agreements between the major political parties. The King does, however, retain the right to refuse a proposition. His role in the Federal Government formation is ceremonial, but he may act as an informal mediator, as in the political crises following the 2007 and the 2010 elections.

Table 1 shows some of the basic features of the Parliaments of the regions and communities, including the number of members, how they are elected, and the number of federal senators elected by each parliament.

The Parliaments of the Communities and the Regions, with an exception of Brussels-Capital Region, pass laws in the form of decrees. The laws voted on by the Parliament of the Brussels-Capital-Region are in the form of ordinances; they have the same force as federal laws and decrees, except under certain circumstances when federal laws and decrees prevail. They are subject to limited supervision by federal authorities in the following circumstances: to protect the international role of Brussels and to protect its role as the capital of the country.⁴⁴ In these circumstances, the Federal Government can suspend ordinances

passed by the Brussels-Capital Region. The six members of the Flemish Parliament elected from Brussels, do not vote on laws that relate to the Flemish regional matters. In 2011, the Parliament of the French Community decided to change its name to the “Wallonia-Brussels Federation.” and to use it alternatively with the name of the Community. This provoked a strong reaction from Flemings. Neither Flanders nor the Federal state recognise the new name.⁴⁵

The Flemish Government consists of a maximum of ten Ministers and the Minister-President. At least one Minister must reside in the Brussels-Capital Region; he/she cannot take part in decisions related to the powers of Flanders as a region, only on the powers belonging to the Flemish community. The current Government that was constituted in 2014 has nine ministers including the Minister-President.

⁴⁴ Mark Van Hoecke and Michiel Elst, “Basic Features of Legal System,” in *Introduction to Belgian Law*, ed. Hubert Bocken and Walter De Bondt (The Hague, London, Boston: Kluwer Law International, 2001), 34.

⁴⁵For more on the reaction from Flanders see “Belgian Politicians Begin ‘Battle of Brussels,’” *EurActive.com*, 5 April 2011 <http://www.euractiv.com/elections/belgian-politicians-battle-bruss-news-503779> (accessed 1 February 2015).

	FLANDERS /FLEMISH COMMUNITY	WALLONIA	BRUSSELS- CAPITAL REGION	FRENCH COMMUNITY	GERMAN COMMUNITY
No. of members House of Representa tives	124	75	89	94	25
Election	118 directly elected in Flanders; 6 Dutch-speakers directly elected in Brussels	Directly elected in the region	Directly elected in the region	75 elected representatives of the Walloon Parliament and 19 French- speaking elected representatives of the Parliament of the Brussels-Capital Region	Directly elected
Legislation	Decrees	Decrees	Ordinances	Decrees	Decrees
Seat	Brussels	Namur	Brussels	Brussels	Eupen
No. of senators elected from	29	8	2	10	1

Table 1: Legislative Branch of Regions and Language Communities in Belgium

	FLANDERS/ FLEMISH COMMUNITY	WALLONIA	BRUSSELS- CAPITAL REGION	FRENCH COMMUNITY	GERMAN COMMUN.
Number of members	Max 10 + minister- president	Max 8 + minister- president	4 ministers + minister- president	Max 7 + minister- president	3 ministers + minister- president
Composition	At least 1 minister from Brussels		2 French- speakers and 2 Dutch-speakers, 3 State Secretaries (at least 1 must be Dutch- speaking)	At least 1 minister from Brussels	
Ministers	Minister of Foreign Policy and Immovable Heritage, Minister of Education, Minister for Budget, Finance and Energy, Minister of Local and Provincial	Minister of Public Work, Health, Social Action and Heritage, Minister of Economy, Industry, Innovation and Digital Economy, Minister of Local	Minister President (Local Authorities, Spatial Development, Urban Policy, Monuments and Sites, Student Affairs, Tourism, Civil Service, Scientific Research, Port of Brussels,	Minister of Education and Early Childhood, Minister of Higher Education, Media and Scientific Research, Minister of Youth Aid, House of Justice, Promotion of Brussels, Minister of Sport, Minister of Budget, Public Service	Minister of Local Government, Minister of Culture, Media and Tourism, Minister of Education and Minister of Social Affairs

	Government, Civic Integration, Housing, Equal Opportunities and Poverty Reduction, Minister of Mobility, Public Works, the Vlaamse Rand, Tourism and Animal Welfare, Minister of Welfare, Public Health and Family, Minister of Work, Economy, Innovation and Sport, Minister of Environment, Nature and Agriculture, Minister of Culture, Media, Youth and Brussels Affairs	Authorities, Cities, Housing and the Energy, Minister of the Environment, Land Planning, Mobility and Transport, Airports and Animal Welfare, Minister of Employment and Training, Minister of Budget, Public Service and Simplification of Administration, Minister of Agriculture, Nature, Rural Areas, Tourism, Sport and Sport Infrastructures ¹	Waste Management), Minister responsible for Finance, Budget, External Relations and Development Cooperation, Minister responsible for Employment, Economy and Firefighting and Emergency Medical Assistance, Minister responsible for Mobility and Public Works, Minister responsible for Housing, Quality of Life, Environment and Energy, ²	and Simplification of Administration, Minister of Continuing Education, Youth, Women's Rights and Equality	
Seat	Brussels	Namur	Brussels	Brussels	Eupen
Special limitations	Brussels-residing minister(s) do(e)s not take decision on matters related to the powers of Flanders				

Table 2: Executive Branch of the Regions and Language Communities of Belgium

¹ Wallon Government, Web site. <http://gov.wallonie.be> (accessed 10 February, 2014).

² Brussels-Capital Region, Web site. <http://be.brussels/about-the-region/the-government-of-the-region> (accessed 15 February, 2016).

The Walloon Government consists of a maximum of eight Ministers plus the Minister-President. Ministers in the Walloon Government can also be the Ministers in the Government of the French community. The Government of the Brussels-Capital Region consists of the Minister-President and four Ministers (two French-speakers and two Dutch-speakers), three State Secretaries (at least one of whom must be Dutch-speaking). The Government of the German-speaking community consists of a Minister-President and three Ministers. The seats of the Government of the Regions and Communities are the same as of their respective Parliaments.

It is important to note that the Constitution of the Kingdom of Belgium regulates the structure of federated entities, as the regions and the communities do not have their own constitutions. The federated units have limited constitutive autonomy, mostly in elections and in the composition and functioning of their legislative bodies. With the sixth state reform, the German language Community and the Region of Brussels-Capital were given limited constitutive autonomy as well. For more than 20 years, Flemish political parties and academics have been discussing the creation of a Flemish constitution but without success.¹

¹The initiatives included "Proposition of Constitution For Flanders" (1996), "Charter of Flanders" (2004 and 2012) (See Sarah Lambrecht, "Movement towards a Flemish Constitution: the Charter for Flanders, another failed attempt," *Perspectives on Federalism* 6, no. 2 (2014), http://www.on-federalism.eu/attachments/184_download.pdf (accessed 21 February 2015); Olivier Van der Noot, "Subnational Constitutions: The Belgian Case in the Light of the Swiss Experience," *Perspectives on Federalism* 6, issue 2 (2014), http://www.on-federalism.eu/attachments/188_download.pdf (accessed 21 February 2015); "Charter for Flanders" <http://www.vlaanderen.be/int/sites/iv.devlh.vlaanderen.be.int/files/documenten/Charter%20For%20Flanders.pdf> (accessed 21 March 2017).

DISTRIBUTION OF POWERS

Distribution of powers in most federal states is defined by the Constitution. A structured division of powers is typical of most federal democracies; it is designed to protect "the integral authority of both the general and the constituent governments as well as the existence of their respective communities."² Interplay of geographic, historical, economic, security, demographic, linguistic, cultural, international and other factors affect distribution of powers in a federation.³ Lijphart argues that in deeply divided societies, the interests and demands of different communities and groups can only be accommodated by applying the model of power sharing.⁴ Critics of power sharing claim democracies based on this model are neither effective nor truly democratic, but they fail to present a solid alternative that would be widely accepted by all the parties concerned especially in multinational states.⁵ Watts identifies three approaches to the distribution

² John Kincaid, "Introduction," in *Handbook of Federal Countries*, eds. Ann L. Griffiths and Karl Nerenberg (Montreal and Kingston: McGill/Queen's University Press, 2005), 9.

³ Ronald L. Watts, "Comparative Conclusions," in *Distribution of Powers and Responsibilities in Federal Countries*, ed. Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, (Quebec: McGill-Queen's University Press, 2006), 324.

⁴ Arend Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy* 15, no. 2 (April 2004): 96.

⁵ *Ibid.*, 98.

of powers: a limited set of exclusive and concurrent powers are specified and residual powers remain with the federated units; powers of federated units are specified and residual powers remain with the central government; exclusive powers of the central government and federated units are specified, as well as concurrent powers with residual authority.⁶ While powers reserved exclusively for the centre could be listed, such as national defence, foreign affairs, monetary and fiscal policy, VAT, central bank etc., it is almost impossible to make an accurate generalisation about shared powers and powers reserved for federated units, as their distribution differs across federations.

In most “integrated” federations, federated units retain residual powers, whereas the centre only has enumerated powers.⁷ According to Peeters, if a federated unit does not hold residual powers, it does not have constitutional autonomy.⁸ Notwithstanding the absence of constitutional autonomy, federated units can have some form of “institutional” or “constitutive” autonomy, as is the case in Belgium.⁹

Article 35 of the Belgian Constitution provides that “federal authority only has competencies in the matters that are formally assigned to it by the Constitution,” while for the various regions and communities, each has “its own field of concern.” However, since the powers of the federal authority are not

clearly listed in the Constitution or in a special law, this article has no legal force.¹⁰ Therefore, within the Belgian federal arrangement, residual powers remain with the federation, and only enumerated powers are given to its federated units. Distribution of powers between the federal state and its federated units has been a gradual process, taking place over the six state reforms mentioned earlier. From the cultural matters that were given to the cultural communities during the first state reform, to individual matters such as health and social services (housing policy, structural planning), as well as economic development and employment policy given to the communities in 1980, powers were extended to education, which was given to the communities; transport and public works were given to the regions during the third state reform.¹¹

In the fourth state reform, communities were given expanded powers in social assistance policies, with regions receiving more powers in transport, road construction, certain aspects of foreign trade, energy and agriculture. Both communities and regions were given foreign policy powers (including treaties) in all spheres of the domestic jurisdiction.¹² The extensive powers of the communities and the regions in international relations are based on the principle *in foro interno in foro externo*. This was introduced in the third state reform for communities, but

⁶ Watts, *Comparing Federal Systems*, 36.

⁷ Patrick Peeters, “The Constitutional and Institutional Autonomy of Communities and Regions in Federal Belgium,” in *Constitutional Dynamics in Federal Systems*, ed. by Michael Burgess and G. Alan Tarr (Montreal and Kingston, London, Ithaca: McGill-Queen’s University Press, 2012), 164.

⁸ *Ibid.*, 165.

⁹ *Ibid.*

¹⁰ This Article was introduced during the state reform of 1993. There has been no agreement so far on the enumerated powers that are to be given to the federal authority.

¹¹ Government of the Kingdom of Belgium, Web site.

¹² A excellent overview of the gradual evolution of Belgian federalism through the distribution of powers is given in Swenden, Brans, and De Winter, “Introduction,” 3-6.

during the 1993 state reform, it was expanded to regions as well. This principle basically means the competencies given to the regions and the communities internally, are also given to them externally. The “Lambermont Accord” of the fifth state reform extended the powers of the regions in areas of agriculture, fisheries, foreign trade and development aid; it also gave them more fiscal responsibility.¹³

In addition to splitting the Brussels-Halle-Vilvorde electoral district and the reform of the Senate (discussed above), in the sixth state reform the extensive transfer of powers to the Regions and Communities worth of 20 billion of euros was enshrined in the Butterfly Agreement.¹⁴ The communities are now responsible for family and child allowances, care of the elderly and mental health and preventive health measures.¹⁵ Regions were given more powers in the energy and environment sphere, in economic and industrial policy (including equity funds, licensing of commercial establishments), agriculture (Office of Intervention and Restitution in each region, agriculture disaster fund), urban planning, housing and regional development, certain aspects of employment policy, mobility and road safety.¹⁶

Until recently, the field of justice was not included in the state reforms. With the sixth

state reform and the “butterfly agreement” of 2011, federated entities have been given responsibilities to enforce penalties, provide first line legal assistance and pursue juvenile criminal law.¹⁷ The judicial system remains federally organised; five judicial areas are subdivided into 12 judicial districts. The High Council of Justice is composed of a Dutch-speaking and a French-speaking college (equal numbers of members); among other activities, it nominates judges and prosecutors, organises training for judges and prosecutors and monitors their work. The King appoints the judges.

The most important aspect of the recent wave of reforms is the financing of the regions and communities, with the regions being given more fiscal autonomy. With the Special Finance Act of January 2014 the regions are entitled to raise regional supplementary tax on personal income;¹⁸ they also have tax powers (tax reductions and tax credits) and jurisdiction in the following areas: private homes, protection of property against theft or fire, maintenance and restoration of protected monuments, services paid for with service vouchers, expenditure on energy saving, expenditure on the renovation of housing in positive action zones in large cities, renovation of social housing.¹⁹ One of the particularities of the distribution of powers in Belgium is that

¹³ Constitutional Court of the Kingdom of Belgium, “The Fifth State Reform”, http://www.belgium.be/en/about_belgium/country/history/belgium_from_1830/formation_federal_state/fifth_reform_of_state/ (accessed 21 February 2015).

¹⁴ Belgium Federal Public Service Finance, Belgian Stability Programme 2014-2017: The Sixth State Reform, http://programmemedestabilite.be/en/Institutional_reform.htm (accessed 25 February 2015).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Goeminne et al., “Transfer of powers.”

¹⁸ Ferdy Foubert and Jos Goubert, “Belgium-Changes Enacted to Regional Taxation Powers, Taxation of Nonresidents,” Flash International Executive Alert 2014-073 (KPMG, 29 July 2014), <http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/flash-international-executive-alert/Documents/flash-international-executive-alert-2014-073-jul.pdf> (accessed 26 February 2015).

¹⁹ Belgium Federal Public Service Finance, Belgian Stability Programme.

is based on the principle of jurisdictional exclusiveness, which means that only one authority can have jurisdiction over an issue with an exception of several cases such as taxes and scientific research, where the federal level prevails.²⁰

CURRENT STATE OF AFFAIRS

Belgium continues to be polarised and segmented country. Political crises arising from the non-formation of the central governments following the 2010 elections (it took 541 days for Belgium to form its government, often cited as the world record²¹) illuminated the deep divisions in its political landscapes. It also showed the lack of mutual trust among the key political figures. According to Swenden in consociational decision-making, trust is the “oil” which makes the process go smoothly; “without it gridlock and polarisation are more likely to surface and to remain a feature of politics, notwithstanding the arrival of a (fragile) agreement.”²²

Fragmentation of the political culture in Belgium began long before the country became a federal state with the emergence of the ethno-regionalist parties following the creation of language borders.²³ Between 1968 and 1978, the state-wide political parties in Belgium, including Socialists, Liberals and Christian Democrats broke up along linguistic lines under pressure coming from rising ethno-regionalist parties.²⁴

Belgium experienced a short period

of relative political stability, but 2007 represented a critical juncture, marking “the beginning of a new period of instability and gridlock and fierce discussions about language, territory and even the survival of the country.”²⁵ According to Swenden, several things triggered the change: firstly, socio-economic factors, notably the strong division between the two language communities on the economic future of the country and economic discrepancies between Flanders and Wallonia; secondly, crises related to the federal design, including the small number of units and their bipolar dynamics, dual federalism in an interdependent environment, federalism without a master plan; thirdly, a polarised system of political parties, expressed as “We the (divided) parties.”²⁶

The failure of the Government to find a compromise solution on the boundaries of the electoral district of Brussels and the constant reshuffling of the Government led to early elections in June 2010. After this date, the largest party both in Flanders and in the country overall has been the Flemish nationalist New Flemish Alliance (N-VA).²⁷ N-VA was not part of the Government formed in 2011 but won even more seats in the elections of 2014 and is now part of the Federal Government. The party advocates more autonomy for Flanders, a thorough reorganisation of the Belgian federal design into a loose confederation, and, eventually, the full independence of Flanders.²⁸ Demands for more autonomy and full independence are increasingly voiced in Flanders. As Deschouwer observes, the main argument put forward by Flanders is that the Belgian state is

²⁰ Dumont et al., “Kingdom of Belgium,” 42.

²¹ e.g. Swenden, “Conclusion.”

²² Ibid., 370.

²³ Swenden and Jans, “Will It Stay or Will It Go?” 17.

²⁴ Ibid.

²⁵ Ibid., 1.

²⁶ Swenden, “Conclusion,” 371-376.

²⁷ Deschouwer, *The Politics of Belgium*, 2.

²⁸ Ibid.

inefficient and cannot function properly, and “since it cannot really be changed, it must disappear.”²⁹

Not surprisingly, there are divergent views on EU affairs. For example, the Flemish parties N-VA and Vlaams Belang (a separatist party) and some of the Flemish Christian Democrats say the regions should receive more autonomy to be able to respond effectively to EU integration and economic globalisation, while Walloon parties argue Belgian interests and those of its regions can be best defended at the EU level only with a strong central state.³⁰

CONCLUSION

Crises and tensions continue to resurface in Belgium, especially during elections, thus questioning the success of federalism as a tool of conflict management. A failure of Belgium to form a government at the central level for more than a year after the elections in 2010 caused many to question the functionality and efficiency of its federal arrangements. The political crisis was seen as a window of opportunity for those advocating centralisation to criticise its federal institutional design.

The issue of the failure and success of federations has been widely discussed in the literature on federalism.³¹ Elazar lists seven

factors that can contribute to the failure of a federation: a federal arrangement imposed from the outside, the ascendancy of a “strong man” leader, ethnic conflicts, a lack of resources, absence of federally inclined political culture, a lack of sufficient common interests and an unbalanced federal arrangement.³² Notwithstanding the existence of some of these factors in Belgium, it is still too early to say whether this multinational federation has been successful, as it has existed as such for barely 20 years. Burgess on the other hand argues that success or failure of a federation is difficult to judge, as it is impossible to establish a firm set of criteria that would enable such assessment.³³

Complex federal institutional architecture of Belgium requires a high degree of mutual cooperation, mutual trust and a common will for the system to function. Functionality of multinational federations also necessitates federal loyalty, also known as *Bundestreue* or *loyauté fédérale*, which represents “the commitment to work together to achieve the objectives and fulfil the needs of the federal polity.”³⁴ Although in the Belgian constitution there is a direct reference to federal loyalty (Article 143), it will take longer for Belgium to operate at its best.

Federal arrangements in Belgium have been dynamic and developed gradually with federated units gaining more powers with each state reform. Federal institutional design is not a fixed arrangement, but a constantly evolving process that must accommodate various endogenous and exogenous pressures. Transfer of powers in Belgium was a result of

²⁹ Ibid., 15.

³⁰ Jan Beyers and Peter Bursens, “How Europe Shapes the Nature of the Belgian Federation: Differentiated EU Impact Triggers Both Cooperation and Decentralization,” *Regional and Federal Studies* 23, no. 3 (2013): 272.

³¹ Thomas M. Franck, *Why Federations Fail*, (London: London University Press, 1968); Michael Burgess, *Comparative Federalism Comparative Federalism: Theory and Practice*, (London and New

York: Routledge, Taylor and Francis Group, 2006). Elazar, *Exploring Federalism*.

³² Elazar, *Exploring Federalism*, 240-243.

³³ Burgess, *Comparative Federalism*, 269.

³⁴ Kincaid, “Introduction,” 9.

democratic negotiations and difficult compromise. Although tensions still resurface from time to time in Belgium, they are not as high as the ones that preceded the introduction of its federal structures. Thus, federalism in Belgium, has managed to accommodate cultural and linguistic differences and at the same time kept the territorial integrity and sovereignty of the country.

REFERENCES

- Beyers, Jan and Bursens, Peter. "How Europe Shapes the Nature of the Belgian Federation: Differentiated EU Impact Triggers Both Co-operation and Decentralization." *Regional and Federal Studies* 23, no. 3 (2013): 271-291.
- Burgess, Michael. *Comparative Federalism: Theory and Practice*. London and New York: Routledge, Taylor and Francis Group, 2006.
- Clough, Shepard. *A History of the Flemish Movement in Belgium: A Study in Nationalism*. New York, 1930.
- Deschouwer, Kris, "Kingdom of Belgium." In *Constitutional Origins, Structure, and Change in Federal Countries*, edited by John Kincaid and Alan Tarr, 49-75. Montreal; Ithaca: McGill-Queen's University Press, 2005.
- "And the Peace Goes on? Consociation Democracy and Belgian Politics in the Twenty-First Century." In *The Politics of Belgium: Institutions and Policy under Bipolar and Centrifugal Federalism*, edited by Marleen Brans, Lieven De Winter, and Wilfried Swenden, 33-49. London and New York: Routledge Taylor & Francis Group, 2009.
- Dumont, Hugues, Lagasse, Nicolas, Van der Hulst, Marc, and Van Drooghenbroeck, Sebastien. "Kingdom of Belgium." In *Distribution of Powers and Responsibilities in Federal Countries*, edited by Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, 34-65. Quebec: McGill-Queen's University Press, 2006.
- Elazar, Daniel J. *Exploring Federalism*. Tuscaloosa: The University of Alabama Press, 1987.
- Erk, Jan. "Le Québec entre la Flandre et la Wallonie: une comparaison des nationalismes sous-étatiques Belges et du nationalisme Québécois," [Québec between Flanders and Wallonia: a comparison of the Belgian sub-state nationalism and Québécois nationalism]. *Recherches Sociographiques* 48, no. 3 (2002): 499– 516.
- Sub-state nationalism and the left-right divide: critical junctures in the formation of nationalist labour movements in Belgium." *Nations and Nationalism* 11, no. 4 (2005): 551-570.
- Franck, Thomas M. *Why Federations Fail*. London: London University Press, 1968.
- Joye, Pierre and Lewin, Rosine. *L'Église et le Mouvement Ouvrier en Belgique* [The Church and the Labour Movement in Belgium]. Brussels: Société Populaire d'Éditions, 1967.
- Kincaid, John. "Introduction." In *Handbook of Federal Countries*, edited by. Ann L. Griffiths and Karl Nerenberg, 3-14. Montreal and Kingston: McGill/Queen's University Press, 2005.
- King, Preston. *Federalism and Federation*

London: Croom Helm, 1982.

Lijphart, Arend. "Constitutional Design for Divided Societies." *Journal of Democracy* 15, no. 2 (April 2004): 96-109.

Pas, Wouter. "A Dynamic Federalism Built on Static Principles: The Case of Belgium." In *Federalism, Subnational Constitutions and Minority Rights*, edited by Alan G. Tarr, Robert F. Williams, and Josef Marko, 157-177. Westport, Connecticut, London: Praeger 2004.

Peeters, Patrick. "Rapports: The Fifth Belgian State Reform ('Lambermont'): A General Overview." *European Public Law* 9, no. 1 (2003): 1-12.

"The Constitutional and Institutional Autonomy of Communities and Regions in Federal Belgium." In *Constitutional Dynamics in Federal Systems*, edited by Michael Burgess and G. Alan Tarr, 164-173. Montreal and Kingston, London, Ithaca: McGill-Queen's University Press, 2012.

Simeon, Richard. "Adaptability and Change in Federations." *International Social Science Journal* 53, no. 167 (March 2001): 145-152.

Swenden, Wilfried, Brans, Marleen, and De Winter, Lieven. "Introduction." In *The Politics of Belgium: Institutions and Policy under Bipolar and Centrifugal Federalism*, edited by Marleen Brans, Lieven De Winter, and Wilfried Swenden, 1-14. London and New York: Routledge Taylor & Francis Group, 2009.

Swenden, Wilfried and Jans, Theo Maarten. "Will It Stay or Will It Go? Federalism and the Sustainability of Belgium." In *The Politics of Belgium: Institutions and Policy under Bipolar*

and Centrifugal Federalism, edited by Marleen Brans, Lieven De Winter, and Wilfried Swenden, 15-32. London and New York: Routledge Taylor & Francis Group, 2009.

Van Dam, Denise. "Histoire de mouvement Wallon" [History of the Walloon Movement]. In *Où va la Belgique? Les Soubresauts d'une Petite Démocratie Européenne*, edited by Marco Martiniello and Marc Swyngedouw, 73-84. Paris: L'Harmattan, 1998.

Van Hoecke, Mark and Elst, Michiel. "Basic Features of Legal System." In *Introduction to Belgian Law*, edited by Hubert Law Bocken and Walter De Bondt, Walter, 23-48 (The Hague, London, Boston: Kluwer Law International, 2001).

Verhofstadt, Guy. (Prime Minister of the Kingdom of Belgium). "Plenary Speech." In *Federalism in a Changing World: Learning from Each Other*, edited by Raoul Blindenbacher and Arnold Koller, 572-576. Montreal and Kingston: McGill-Queen's University Press, 2003.

Watts, Ronald L. *Comparing Federal Systems*. London, Montreal and Kingston, Ont.: McGill-Queen's University Press, 1999.

"Comparative Conclusions." In *Distribution of Powers and Responsibilities in Federal Countries*, edited by Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, 322-350. Quebec: McGill-Queen's University Press, 2006.

Werenskjold, Rolf. "Chronology of Events of Protests in Europe 1968." In *Between Prague Spring and French May: Opposition and Revolt in Europe, 1960-1980*, edited by Martin Klimke, Jacco Pekelder and Joachim

Scharloth, 283-309. New York, Oxford: Bergham, 2013.

Willemyns, Roland. "The Dutch-French Language Border." *Journal of Multilingual and Multicultural Development* 23, no. 1-2 (2002): 36-49.

Zolberg, Arstide R. "The Making of Flemings and Walloons: Belgium: 1830-1914." *The Journal of Interdisciplinary History* 5, no. 2 (Autumn, 1974): 179-235.

РАЗУМИЈЕВАЊЕ ФЕДЕРАЛНЕ ИНСТИТУЦИОНАЛНЕ АРХИТЕКТУРЕ

Динамика белгијске федерације

Кључне ријечи

*Федерализам, федерације,
подијељено друштво,
управљање конфликтима,
Белгија, расподела овлашћења*

Аутор

Ауторка је докторанткиња из
области међународних односа
на Универзитету у Кенту,
Енглеска, Уједињено
Краљевство

Кореспонденција

ns411@kent.ac.uk

Област

Међународни односи

Сажетак

Федерације нису статичне, оне се стално модификују и прилагођавају да примају притиске, како споља тако и изнутра. Стварање федералних структура је "ствар конкретних акција у одређено вријеме". Федералне структуре створене су у Белгији због потребе за суочавањем са постојећим сукобима. У Белгији, федерација је предвиђена да олакша унутрашње тензије и спријечи било какав потенцијал за сукоб. Као што Дешоувер напомиње, федерација није резултат "намјерног избора, већ постепеног управљања сукобима". Овај рад анализира федерални институционални дизајн Белгије. Он освјетљава унутрашњу динамику која је утрла пут за федерализацију Белгије. Сврха овог рада је да разумије главне карактеристике белгијске федералне архитектуре, како функционише и како је еволуирала током времена.

DOI

10.5937/pol1713053S

UDK

341.231.14(493)

Датум пријема чланка

11.05.2017.

Датум коначног прихватања

чланка за објављивање

20.06.2017.