UNDERSTANDING FEDERAL INSTITUTIONAL ARCHITECTURE
Dynamics of Belgian Federation

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

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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.
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.” 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, or as a normative term or principle that perpetuates both union and decentralisation. In other words federalism advocates the idea of what Elazar calls “self-rule plus shared rule,” and federation represents institutionalisation of that idea, a descriptive term that is to be “regarded primarily as an institutional arrangement as opposed to an ideological perspective.” 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” 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.”

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. 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.

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2 Preston King, Federalism and Federation (London: Croom Helm, 1982), 75.
4 Elazar, Exploring Federalism, 12.
6 King, Federalism and Federation, 8.
7 Ibid., 75.
8 Ibid., 76.

10 Deschouwer, “Kingdom of Belgium,” 49.
However, those who created the new state, “made the same mistake,” 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. Yet the political, cultural and economic life of the new state was controlled by the French-speaking elite. While Belgium as a 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. 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.”

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. Flemish soldiers represented 80 per cent of front-line troops, but officers were exclusively French-speakers; linguistic difficulties led to a massive loss of Flemish soldiers, for example, on the battlefield in Dixmude.

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. 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.

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

16 Deschouwer, “Kingdom of Belgium,” 49.
19 Ibid.
20 Ibid.
the prevailing social, cultural and linguistic hegemony of the French language. 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.” The Flemish Movement is a designation introduced by historians, and Zolberg says the term exaggerates its unified character; 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.” 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.” Some of the Flemish Movement’s demands were met in two laws on language. 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).

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. 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.”

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

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24 Pas “A Dynamic Federalism Built on Static Principles,” 159.
25 Ibid
29 Ibid.
movement the Walloon Popular Movement (*Mouvement Populaire Wallon*). 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.” 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. 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. 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. 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

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34 Dumont et al., “Kingdom of Belgium,” 37.
became a compromise between two divergent positions.\textsuperscript{35}

The third reform also resulted in giving substantial legislative powers to regions and communities in education, scientific research, transport and public works.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{39}

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.\textsuperscript{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.\textsuperscript{41}

The role of the King is more limited than this

\textsuperscript{35} Ibid.
\textsuperscript{36} Government of the Kingdom of Belgium, Website.
\textsuperscript{38} Constitution of the Kingdom of Belgium, Constitutional Court of the Kingdom of Belgium, \url{http://www.const-court.be} (accessed 1 February, 2015).
\textsuperscript{40} Article 4 of the Belgian Constitution.
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
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. 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.


<table>
<thead>
<tr>
<th></th>
<th><strong>FLANDERS/FLEMISH COMMUNITY</strong></th>
<th><strong>WALLONIA</strong></th>
<th><strong>BRUSSELS-CAPITAL REGION</strong></th>
<th><strong>FRENCH COMMUNITY</strong></th>
<th><strong>GERMAN COMMUNITY</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of members House of Representatives</td>
<td>124</td>
<td>75</td>
<td>89</td>
<td>94</td>
<td>25</td>
</tr>
<tr>
<td>Election</td>
<td>118 directly elected in Flanders; 6 Dutch-speakers directly elected in Brussels</td>
<td>Directly elected in the region</td>
<td>Directly elected in the region</td>
<td>75 elected representatives of the Walloon Parliament and 19 French-speaking elected representatives of the Parliament of the Brussels-Capital Region</td>
<td>Directly elected</td>
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<tr>
<td>Legislation</td>
<td>Decrees</td>
<td>Decrees</td>
<td>Ordinances</td>
<td>Decrees</td>
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<tr>
<td>Seat</td>
<td>Brussels</td>
<td>Namur</td>
<td>Brussels</td>
<td>Brussels</td>
<td>Eupen</td>
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<tr>
<td>No. of senators elected from</td>
<td>29</td>
<td>8</td>
<td>2</td>
<td>10</td>
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</tr>
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Table 1: Legislative Branch of Regions and Language Communities in Belgium

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<tr>
<th></th>
<th><strong>FLANDERS/FLEMISH COMMUNITY</strong></th>
<th><strong>WALLONIA</strong></th>
<th><strong>BRUSSELS-CAPITAL REGION</strong></th>
<th><strong>FRENCH COMMUNITY</strong></th>
<th><strong>GERMAN COMMUN.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of members</td>
<td>Max 10 + minister-president</td>
<td>Max 8 + minister-president</td>
<td>4 ministers + minister-president</td>
<td>Max 7 + minister-president</td>
<td>3 ministers + minister-president</td>
</tr>
<tr>
<td>Composition</td>
<td>At least 1 minister from Brussels</td>
<td>At least 1 minister from Brussels</td>
<td>2 French-speakers and 2 Dutch-speakers, 3 State Secretaries (at least 1 must be Dutch-speaking)</td>
<td>At least 1 minister from Brussels</td>
<td></td>
</tr>
<tr>
<td>Ministers</td>
<td>Minister of Foreign Policy and Immovable Heritage, Minister of Education, Minister for Budget, Finance and Energy, Minister of Local and Provincial</td>
<td>Minister of Public Work, Health, Social Action and Heritage, Minister of Economy, Industry, Innovation and Digital Economy, Minister of Local</td>
<td>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</td>
<td>Minister of Local Government, Minister of Culture, Media and Tourism, Minister of Education and Minister of Social Affairs</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td>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</td>
<td>Waste Management), Minster 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, (^1)</td>
<td>and Simplification of Administration, Minister of Continuing Education, Youth, Women’ Rights and Equality</td>
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<tr>
<td>Seat</td>
<td>Brussels</td>
<td>Namur</td>
<td>Brussels</td>
<td>Brussels</td>
<td>Eupen</td>
</tr>
<tr>
<td>Special limitations</td>
<td>Brussels-residing minister(s) do not take decision on matters related to the powers of Flanders</td>
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</table>

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

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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

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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 Lijiphart 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

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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

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\(^8\) 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”,
14 Belgium Federal Public Service Finance, Belgian Stability Programme 2014-2017: The Sixth State Reform,
15 Ibid.
16 Ibid.
17 Goeminne et al., “Transfer of powers.”
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 record\(^{21}\)) 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.”

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.

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. 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. 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.

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.” 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

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29 Ibid., 15.
33 Burgess, Comparative Federalism, 269.
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.

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НИНА САЈИЋ

ОРИГИНАЛНИ НАУЧНИ РАД

РАЗУМИЈЕВАЊЕ ФЕДЕРАЛНЕ ИНСТИТУЦИОНАЛНЕ АРХИТЕКТУРЕ
Динамика белгијске федерације

Кључне ријечи
Федерализам, федерације, подијељено друштво, управљање конфликтима, Белгија, расподјела овлашћења

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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 стvorene су у Белгији због потребе за овлашћењем 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 осветљава унутрашњу динамику која је утврдла пут за федерализацију Белгије. Сврха овог рада је да разумије главне карактеристике белгијске федералне архитектуре, како функционише и како је еволуирала током времена.

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