



THE ROYAL INSTITUTE OF
INTERNATIONAL AFFAIRS | European
Programme

RIIA Conference – Governing Together in the New Europe,
Robinson College, Cambridge UK, 12-13 April 2003

Belgian Federalism
Basic Institutional Features and Potential as a Model for the European Union

Wilfried Swenden

Postdoctoral Fellow of the Fund for Scientific Research (Flanders/Belgium)
University of Leuven (KULeuven), Belgium and Visiting Scholar, Center for European
Studies, Harvard University, USA

Until 15 December 2003:
Minda de Gunzberg Centre for European Studies
27 Kirkland Street at Cabot Way
Cambridge, MA 02138 USA
Tel.: 001 617 495 4303 (x 297)
Fax: 001 617 495 8509
E-mail swenden@fas.harvard.edu

or

Department of Political Science
University of Leuven (KULeuven)
Edward Van Evenstraat 2B
B-3000 Leuven
Belgium
E-mail: wilfried.swenden@soc.kuleuven.ac.be
Web-Page: <http://www.kuleuven.ac.be/facdep/social/pol/iieb/index.htm>

© Royal Institute of International Affairs,2003

Published in Great Britain in 2003 by the Royal Institute of International Affairs,
Chatham House,10 St James 's Square,London SW1Y 4LE
(Charity Registration No.208223)

All rights reserved. No part of this publication may be reproduced,stored in a retrieval system,or transmitted by any other means without the prior written permission of the copyright holder. Please direct all enquiries to the publishers.

The Royal Institute of International Affairs (Chatham House)is an independent body which promotes the rigorous study of international questions and does not express opinions of its own. The opinions expressed in this publication are the responsibility of the author.

Introduction

This paper summarizes the main institutional features of Belgian federalism from a comparative perspective and critically assesses the potential contribution of Belgian federalism as an institutional model for EU multi-level governance.

Together with Spain, Belgium is the European Union's newest federal or 'quasi-federal' state. Unlike the federal EU member-states of Germany and Austria, Belgium is a multi-national federation. Unlike Germany, Austria and Spain, Belgium is marked by the absence of federation-wide political parties: national-policy making operates under consociational rules which prescribe the co-operation of political parties representing a majority of the electorate within the Dutch- and French-speaking communities.

Its multi-national character, the absence of polity-wide political parties, and the presence of certain asymmetrical features seem to make Belgium a good candidate for institutional transfer to the European Union. However, the bipolarity of the Belgian federation, and the centrifugal character of its federal model, as well as the method of allocating competences is at odds with the current institutional make-up of the European Union. In addition, while Belgium has managed to develop a unique brand of federalism which thus far has been capable of controlling domestic nationalist conflict, the Belgian system has certain drawbacks which do not make institutional transfer desirable from a normative point of view.

1. The Belgian Constitutional Order: Who Decides?

Belgium transformed itself from a unitary into a federal state in the course of one political generation (Alen and Ergec, 1994). While Belgium had been multi-national in character from its creation in 1831, ethno-linguistic tensions among French- and Dutch speakers did not give rise to a demand for devolution until the post-Second World War era. During the entire nineteenth century, and for the first half of the twentieth century, French was used as the language of politics, business and administration, even if it was spoken only by a majority of the people who live in Brussels and Wallonia (Witte,

Craeybeckx and Meynen, 2000). However, as the franchise was extended, the demographic preponderance of the Dutch-speaking population would translate into political weight. As a result, the 1930s saw a number of language laws which made Dutch and French the sole languages of administration in Flanders and Wallonia respectively, and turned Brussels, at least formally speaking, into a bilingual national capital. Thus, while Belgium was not a federal state until 1993, the internal restructuring of the country towards a clear identification of territorial homogeneous linguistic entities was a process that began in the 1930s and was completed with the formal demarcation of the linguistic border in 1962-1963. Three important sociological events fuelled the demand for devolution.

First, the 1960s saw the emergence of a class of Flemish politicians who had been educated entirely in Dutch-speaking schools and/or universities and who were thus more vocal in demanding a strict observance of the language laws.

Secondly, while Wallonia had been the industrial heart of Belgium, the decay of post-war coal and steel industries shifted the bulk of socio-economic policy-making to Flanders. Unlike Wallonia, Flanders did not have to go through a painful restructuring of its heavy industries. It was more successful in attracting foreign direct investment and developing medium-sized enterprises and service industries. Both factors considerably strengthened the political resources of the Flemish political classes.

Thirdly, political tensions centred on the official demarcation of the language borders: since Brussels had a bilingual statute and Flanders and Wallonia were monolingual, French-speaking citizens living in the (Flemish) suburban municipalities around Brussels took an interest in extending the borders of the capital so as to secure their linguistic survival (Lorwin, 1966). Conversely, leading Flemish political elites did not want to extend bilingualism to the French-speaking 'minorities' who live in these areas: a policy of bilingualism, they feared, would lead to a process of Frenchification, similar to that which had occurred in Brussels.¹ The strength of the Flemish political classes was such that they could push through their territorial view on language politics; reducing the linguistic rights of French-speakers in the suburban municipalities to that of

¹ In 1831, the Belgian capital was still a predominantly Flemish-speaking city; by the 1960s it had become French-speaking for approximately 85 percent of its (much extended) population.

linguistic ‘facilities’ in schooling (kindergarten and primary education), local judiciary and administration, and confining the borders of bilingual Brussels to the 19 municipalities (Swenden, forthcoming).

The political tensions in the lead up to and aftermath of demarcating the linguistic borderline stimulated the rise of ethno-linguistic parties, most prominently, the Flemish People’s Union (VU) and the French-speaking Front of Democratic Francophones (FDF). The success of these regionalist parties eroded the voter support for the traditional Belgian parties (Christian Democrats, Liberals and Social Democrats) who were still ‘unitary’ in character. As a result, the relationships among the Dutch- and French-speaking members of the main parties became increasingly strained, as they proposed divergent strategies to reclaim the electorates which they had lost. Ultimately these tensions contributed to the break-up of the traditional parties along linguistic lines, a process that started in 1968 with the Christian Democrats and was completed in 1978 with the split of the Belgian Socialist Party (Deschouwer, 1999). With the exception of the bilingual electoral district of Brussels-Halle-Vilvoorde, Dutch- and French-speaking parties no longer compete against each other.

The split of the parties along linguistic lines has enabled the previously unitary parties to harden their electoral profiles on regionalist issues, only to close ranks again after elections have been held. Indeed, the organizational break-up of the political parties along linguistic lines (each with their own party president, party conference, party executive) did not mark the end of Belgian consensual policy-making (Huysse 1986). Rather, consensual decision-making became more visible, as it was no longer primarily intra-party, but rather shifted to the extra-party arenas (coalition-making, decision-making in the national parliament and executive between ideologically related parties drawn from both linguistic groups). Thus, a first remarkable feature of the Belgian federalization process is that the split of the traditional political parties *preceded* the devolution of powers to the sub-national Regions and Communities. Yet, as far as the traditional party families and even the regionalist parties (VU and FDF) are concerned, a willingness to ‘work’ the system prevailed. With the exception of the extreme-right wing Vlaams Blok which would not become a relevant political force until 1991, all parties

mentioned have participated in national coalition governments and lent their support to at least one of the constitutional rounds which have shifted powers to the Regions.

Since Belgium developed from a classic unitary decentralized entity, into a federal state, regional institutions (parliaments and executives) have not been involved in deciding on their competences, they have been indirectly involved, as the party elites and MPs represent regionally concentrated political parties. Even in the fully fledged federal state which Belgium has become since 1993, however, the federal parliament alone decides on the assignment of regional competences. Only international treaties which affect the domestic competences of the regions require the consent of the affected regional parliaments. This said, the prevailing decision-making rules at the centre ensure that the federal parliament cannot decide against the interests of either language community.

First, proposals for changing the catalogue of regional competences usually emerge as the result of intense negotiations among party representatives of both language groups, the contours of which may have already been set at the beginning of the federal government formation process. The federal government itself comprises an equal number of Dutch and French-speaking members (not counting the federal Prime Minister), and must assemble a majority within both linguistic groups in parliament. Moreover, the Cabinet decides by consensus (Lijphart 1999).

Secondly, constitutional amendments which pertain to regional interests (e.g. expanding the catalogue of regional competences) require not only a two-thirds majority in both federal parliamentary houses (Chamber of Deputies and Senate), but also a majority within both linguistic groups in each of the legislative chambers. A detailed set of regional competences, including the provisions setting out the financing mechanisms of the communities and regions can be found in these so-called 'special majority laws' with a quasi-constitutional status, rather than in the federal constitution proper.

The most recent constitutional reform (2000-2001) sought to involve the members of the regional parliaments and executives, by means of a so-called Conference on the State Reform (COSTA). Although COSTA paved the way for some minor constitutional changes, key decisions were eventually prepared by leading figures of the regional and especially federal executives. This said, as the policy scope of the regions has

considerably increased, and particularly, because the main regional legislatures have only been directly elected since 1995, in future rounds of constitutional change, a stronger involvement of leading politicians with a regional public mandate (especially regional ministers or party group leaders in the regional parliaments) could be anticipated.

Finally, it should be noted that unlike in Spain, where the so-called Statutes of Autonomy only entered into force with the prior consent of the affected regional electorates, the profound transformation process of the Belgian state was never put to a public vote. Unlike in Spain, Canada, Australia or Switzerland, the referendum has not been used as an instrument of constitutional change. (Consultative) referendums can be used at the municipal level, but they are out of the question at the federal level. Referenda do not fit well with the more elitist policy culture of Belgium. In addition, the sole nation-wide (consultative) referendum to have occurred in Belgium; that on the return from exile of King Leopold III in 1950 in spite of his alleged collaboration with the Nazis in World War II, almost ended in a national tragedy. While a nation-wide majority voted in favour of the King's return, a majority of the electorate in Brussels and Wallonia voted against. A typical compromise emerged: the monarchy as an institution was upheld, but Leopold III abdicated in favour of his son Beaudouin (Lorwin 1966).

2. Institutional Architecture: Institutional Asymmetry, but No Asymmetry in Competences

Belgian federalism is peculiar in that it not only uses 'regional territory' as the basis of its federal structure, but also comprises a non-territorial component. Federations typically bring together a number of territorially defined entities, in the Belgian case these are the three Regions: the Flemish Region (Flanders), the Walloon Region (Wallonia) and the Brussels Capital Region (Brussels). Each Region has its own parliament and executive, and is entrusted with constitutionally assigned powers.

Yet, as the analysis above indicated, the Belgian party system is bipolar and structured around two major linguistic communities. Using language, rather than territory as a criterion, Belgium is divided into three linguistic Communities: the Flemish Community (thus bringing together the Dutch-speakers who live in Flanders and in

Brussels), the French Community (assembling the French-speakers who live in Wallonia and in Brussels) and a tiny German-speaking Community in the east of the country. In theory, each of these Communities has its own parliament and executive, and is entrusted with constitutionally assigned powers.

In practice, there is a significant overlap between the concept of a Region and a Community. If we ignore the special case of Brussels and the German-speaking Community, Communities are also territorially structured. For instance, the principle of ‘personality’ only works as far as Brussels goes, since the French Community has no authority over (the relatively small group of) French-speakers who live in the Flemish Region and the Flemish Community has no say over (the even smaller group of) Dutch-speakers who live in the Walloon Region. Because the group of Dutch-speakers who live in Brussels as a share of the total group of Dutch-speaking Belgians is so small, the Flemish Community and Region have even merged their institutions. Consequently, there is only one Flemish government and parliament, catering for Regional competences (for citizens located in the Flemish region) and Community competences (addressing all inhabitants of the Flemish region and the Dutch-speakers in Brussels). Since the group of French-speakers who live in Brussels as a share of the total group of French-speaking Belgians is substantially larger, the French Community and Walloon Region have *not* been merged. Separate Regional and Community parliaments and governments continue to exist, although the French Community parliament is entirely composed from MPs who have been directly elected to the Brussels and Walloon regional parliaments respectively. In sum, the frequently made assumption that Belgium is a major example of asymmetric federalism primarily pertains to the incomplete congruence between Regional and Community borders: Brussels is a Region but not a Community, and the German-speakers have been recognised as a Community but not as a Region. However, unlike in Spain or the United Kingdom, the competences which have been assigned to each of the Regions or each of the Communities are almost identical. For example, although the German-speaking Community is almost hundred times smaller than the Flemish Community, both Communities share similar powers in educational or cultural policies (Agranoff 1999; Bogdanor 1999; Swenden 2002).

3. Division and Character of Federal and Regional Competencies

Belgium developed from a unitary into a federal state. Therefore, the constitution, and to a much larger extent, the federal laws adopted with a ‘special majority’, specify the competencies of the Regions and Communities. Where no constitutional article listing the powers of the federal government has been approved, the residual power, i.e. the powers or competencies which have not been assigned to either level of government, remain in federal hands.

In practice, the competences which have been assigned to the regional level are very detailed and extensive in scope. The following list of Community and Regional competences emerged from five consecutive rounds of constitutional reform in 1970, 1980, 1988-1989, 1993 and 2000-2001. The constitution mentions the following powers as belonging within the *Communities*’ sphere of competence: cultural issues, education – but not minimum standards for diplomas, beginning and end of mandatory scholarship or pensions - and the use of language. Federal laws adopted with a special majority add arts, youth policy, tourism, preventive health care and some parts of welfare policy to the list of Community powers. In terms of expenditure, education is by far the most important Community competence. Special majority laws list regional economic development including employment policy, industrial restructuring, environment, nature conservation and rural development, housing, land-use planning and urban renewal, water resources and sewage, energy policy (except for national infrastructure and nuclear energy), road building, waterways, regional airports and public local transport, local and provincial government, agriculture and external trade as the main *Regional* competences. Extracting the Community and Regional competencies from the total list of public competences leaves defence, justice, internal security, taxation policy and social security as the only federal competencies. These federal powers are by no means insignificant: social security (including, for instance, unemployment insurance, pensions and the bulk of health care) is by far the most important expenditure, not only at the federal level, but for Belgian public policy as a whole.

The extensive legislative autonomy of the Regions and Communities is paralleled by autonomous Regional and Community administrations. Belgium does not adopt the system of 'administrative federalism' so characteristic of the German federal model (Jeffery 1999; Börzel 2002). In Belgium, federal laws are implemented by federal departments or agencies and Regional or Community laws are implemented by regional departments or agencies. A second feature which sets Belgian federalism apart from the German variant relates to its characterization as a dual federation: unlike in Germany, there is scarce evidence of concurrent federal legislation, joint action programmes or framework legislation. Consequently, with one minor exception, i.e. the power of the Regions to raise income taxes, Belgian federal and regional law stand on equal footing; both are subordinate only to the constitution.

However, as far as fiscal autonomy goes, the autonomy of the Regions and Communities does not live up to their legislative and administrative responsibilities. Regions and Communities receive a fixed share of federal income tax receipts and almost the entire receipts of federal VAT. The Regions have some autonomous tax capacity, but these taxes generate only about 10 to 15 per cent of what they spend. The most recent round of constitutional reforms provided Regions with the possibility of levying a surcharge or deducting federal personal income tax rates with a small percentage (similar to the income tax capacity of the Scottish parliament after devolution; see Bogdanor 1999). For political reasons, only the latter option seems realistic. At present the socio-economically more affluent Flemish Region is likely to be the first to make use of it. By comparison, Communities will never be able to raise their own revenue, partly a consequence of the personality principle, as the inhabitants of Brussels are not required to declare themselves as belonging either to the Dutch or the French Community. Regions, which are defined on a strictly territorial basis, do not face such a restriction.

After a transition period which ended in 1999, federal block grants are redistributed among the Regions and Communities in proportion to their population figures. If the destination principle (or principle of 'juste retour') were observed, the Flemish Region would stand to benefit more, while the Brussels Capital Region and Wallonia in particular would lose some of their resources. All in all, the size of inter-regional transfers which can be attributed to the method of allocating federal block grants

is relatively limited. Social security, which is expressed primarily on the basis of individual, rather than territorial need, generates a much larger flow of inter-regional transfers. The devolution of health care and child allowances is among the top-priorities of Flemish politicians representing centre-right political views; most of the French-speaking politicians are strongly opposed to this idea.

4. Intergovernmental Relations, Conflict Prevention and Judicial Review

Notwithstanding a desire to separate responsibilities of the Regions, Communities and federation as neatly as possible, a limited degree of competence overlap cannot be avoided (Hooghe, forthcoming). Consequently, sporadic co-operation between representatives of various federal and Community or Regional governments is required. One recent example was a proposal by the Federal Minister for Pensions to increase the retirement age of teachers. The federal minister cannot act alone as a decision to increase the retirement age of teachers affects the educational and budget policies of Communities. So far, the Community ministers have not fully endorsed the plan of the federal minister, and intergovernmental negotiations seeking to reach an outcome that is acceptable to all the stakeholders are still underway. Another example pertains to the difficulty of operating different environmental standards for water quality in each of the three Belgian Regions. Lower standards in one Region could affect the more demanding environmental targets of another Region, insofar as they relate to the same river or canal. A requirement to inter-regional co-operation emerges on almost a daily basis, and Belgian federalism has responded to such a need in various ways.

First, it should be recalled that there is a strong inter-linkage between federal and regional level policy, as members of the federal executive and parliament are embedded within regionally concentrated parties. As a result, there is only one (regional) party executive which must control what is happening at the federal and regional policy levels. Any potential conflict of interest between the two levels requires a common intra-party strategy first, prior to negotiations with parties from the other linguistic group. Furthermore, so far, the federal and regional governments have almost always been composed of party politically congruent coalitions. For example, between July 1999 and

May 2003 the federal government comprised the Flemish Greens, Social-Democrats and Liberals and the French Greens, Social Democrats and Liberals. The first three (supplemented with a small moderate Flemish nationalist party) also make up the Flemish government while the latter three are coalition-partners in the Walloon regional government. All six parties also participate in the Brussels regional government (Swenden 2002). Broad, inclusive and congruent coalitions facilitate the creation of compromises, and unlike in Spain for instance, have minimised the need for competence adjudication by judicial means.

Secondly, Belgian federalism features several characteristics of ‘intra-state federalism’, i.e. mechanisms which secure the input of the Regions in federal policy-making and prevent the federal government from proposing legislation that violates the interests of the French-speakers, the largest minority at the federal level. First, the best known example pertains to the federal executive itself, which decides by consensus and must comprise an equal number of Dutch and French-speaking ministers. Secondly, a parliamentary alarmbell procedure enables federal bills to be lifted up to the federal executive when a majority of the French-speaking MPs in parliament believes that the legislative proposals harm their interests. Thirdly, both of the chambers of the federal parliament are divided in two linguistic groups each time so-called ‘special majority bills’ are voted upon. Such types of bills cannot be passed without two-third majorities within each of the linguistic groups in both parliamentary chambers.

Given that the political parties are split along linguistic lines, and the decision-making rules in the federal executive and lower house already secure the protection of the French-speaking minority, the added value of the Senate as a ‘house of the Regions and Communities is limited. Current Belgian Prime Minister Guy Verhofstadt has proposed to drastically reform the Senate by 2007 (Verhofstadt 2002). A majority of the current senators are directly elected, simultaneously with the lower house. A smaller group are elected by and from among the Community legislators. Since *all* federal MPs represent regionally concentrated parties and both parliamentary houses can be split up in language groups, senators are not likely to advance different points of view from their party colleagues in the lower house. The Prime Minister would like to reduce the powers of the Senate (only constitutional amendments, special majority laws and international treaties

that touch upon the interests of the Communities would require its consent), and to see the second chamber composed solely of Community senators, i.e. 70 senators who are entirely elected by, but no longer necessarily from within, the Community legislatures. Half of the senators would represent the Dutch Community, 34 senators would represent the French Community and only one senator would represent the (tiny) German-speaking Community. It remains to be seen to what extent a Senate that is exclusively composed of Community senators would provide a different voice in federal lawmaking than the federal lower house, given that directly elected MPs and senators are accountable to the same regional party executives and electorates. Furthermore, the politicians with most influence in policy-making at the regional level tend to be members of the regional executives, rather than members of the regional parliaments (see next paragraph). Therefore, the reformed Senate is more likely to play a prominent role in co-ordinating federal-state relations, if it contains some of the leading members of the regional executives, a possibility under the revised Senate scheme.

Thirdly, in addition to the presence of mechanisms for intra-state federalism at the federal executive and parliamentary level, a so-called Deliberation Committee exists which brings together leading representatives from the federal and regional executives. The Committee comprises 12 members: 6 of whom represent the federal government, 6 the Regional and Community governments; the latter equally divided between Dutch- and French-speaking representatives. The Committee decides by consensus (Alen 1995). In addition, a number of sectoral or inter-ministerial conferences co-ordinate views among specialist ministers or civil servants from different policy levels in selected policy fields. The most elaborate co-ordination mechanisms exist in EU affairs, as the EU impinges on many policy areas which, under the Belgian constitution, are within the (exclusive or shared) competence domain of the Regions or Communities (Kerremans and Beyers, 2001). Arguably, no federal EU member-state has followed as radical an approach as Belgium, since a regional minister – and a regional minister alone – may represent the Belgian viewpoint in the EU Council of Ministers, without requiring the consent of the federal government. The Belgian regions have worked out a rotation principle, allowing a six monthly shift in the representation within the relevant EU Council meetings: e.g. the “Belgian viewpoint” within the Environmental Council is

alternately represented by an environmental minister of the Flemish, Walloon and Brussels' Regional governments. Ultimately, the regions must be able to speak with one voice, as the EU Treaty does not allow member-states to cast a split vote, a principle that is reminiscent of the voting procedures in the German Bundesrat (in which Länder must cast a homogeneous vote as well).

Fourthly, as the above examples make clear, Belgian federalism incorporates a number of institutional mechanisms which minimize the likelihood of judicial conflict. Paradoxically, notwithstanding the absence of truly 'transnational' political parties, the number of inbuilt veto points at the centre is so strong that any progress in federal policy-making requires that the viewpoints of national (French-speaking minority) or regional (Dutch-speakers in Brussels) minorities cannot simply be ignored (Deschouwer 1999; Lijphart 1999; Swenden 2002). The degree of detail which characterizes the rules dividing competences would, one might think, give the judges of the Belgian Constitutional Court a lot of work. In practice, the Belgian Court of Arbitration has only played a limited role, as politicians have already removed most of the obstacles that could lead to judicial litigation. True, the relatively modest role of the Constitutional Court is also the product of its relatively short history – the Court did not start operating until 1984 - and of its rather limited competences (the Court cannot control the compliance of federal and regional laws with all articles of the constitution, but only with the principles of equality, freedom of education and ideology, and most importantly, with the distribution of competences as spelled out in the constitution or in special majority laws).

5. Belgian Federalism: Assets and Liabilities

What are the main assets of Belgian federalism?

First, the Belgian process of devolution has been able to contain acute tensions between the Dutch- and French-speaking groups. The last twenty years have witnessed relatively few demonstrations on a grand scale that can be linked *directly* to the malfunctioning of the federal system or to tensions between the multi-ethnic groups. Each of the last three federal governments has been able almost to complete their four year legislative terms,

which provides some evidence of institutional stability. By devolving powers which are close to the heart of the cultural (e.g. education) or socio-economic (e.g. industrial policy) preferences of the Communities or Regions, political elites have been able to devise policies according to their own regional preferences (De Rynck 2002). On the other hand, the willingness among representatives of the Flemish centre-left parties to maintain a strong federal redistributive role (social security in particular) balances the desire of some Flemish centre-right party leaders to devolve certain parts of social security policy to the Regions.

Secondly, Belgian federalism has often been criticized for being extremely costly. Certainly, the federalization process (particularly the period between 1970 and 1988) has shifted attention away from necessary macro-economic policy reforms. However, federalism has been able to reduce some of the costly proto-federal practices aimed at concealing disputes between the two Communities in a unitary context. For instance, by offering comparable amounts of money to both linguistic communities, irrespective of assessing the objective need of such grants, expenditure programmes could not always be justified on the basis of objective need (e.g. a subway need not be built in Charlerloi just because one is constructed in Antwerp). Furthermore, public finances are in better shape today than in the 1980s: for several consecutive years the federal government has been running a small budget surplus, and the total public debt ratio, which at 105 percent of GDP remains very high, is decreasing: nevertheless the percentage was as high as 135 in the early 1990s. The Maastricht criteria served as a useful stick, but the experience of other 'Euro member-states' demonstrates that running budget surpluses, and reducing total public debt ratios is by no means easy in the present socio-economic context.

Thirdly, notwithstanding the devolution of powers to the Regions and Communities, the Belgian population at large has been more willing to identify with Belgium. If we allow citizens to express their loyalty either exclusively with their Region or with Belgium, or equally with both, or more with the region than with Belgium or vice versa (the so-called 'Moreno' question), the share of citizens who have been willing to shift their identity to the Belgian end of the continuum has increased, rather than decreased over time (Moreno, Arriba and Serrano, 1998; De Winter 2002). The shift is most remarkable in Flanders. Unlike their grandparents or even their parents, young adult

Dutch-speakers who live in Flanders cannot reasonably invoke any discriminatory practices which may be linked to the language which they speak. Belgian federalism provides them with sufficient ‘contexts of choice’ (Kymlicka) enabling them to prosper in their public or private life (Kymlicka 1995).

The merits of Belgian federalism must be weighted against some significant weaknesses:

Firstly, although comprising three Regions and three Communities, Belgian politics is in essence bipolar in character (Alen and Ergec, 1994). (The German-speaking Community, representing only 70,000 people is too small on its own to have any major impact on national policy-making). The bipolarity not only relates to the party system, it is also expressed in the presence of two separate spheres of public communication: there are no significant newspapers or weeklies, radio- or TV-channels that cater for the needs of the Dutch and French Communities. Both Communities are living increasingly side-by-side. In the wake of federal elections, some issues are frequently presented as two-player games. Had the 10 provinces, instead of the Regions and Communities been used as the basic units of Belgian federalism, what is currently presented as a north-south transfer in health care expenditures could then be portrayed as a considerable transfer from (Dutch- and French-speaking) Eastern to (Dutch- and French-speaking) Western provinces. Federal policies would not necessarily be assessed in the current zero-sum terms.

Secondly, federalism is as much a process as a structure. Thus far, the process has been a decentralizing one, but it is not clear whether politicians with a regional electoral mandate can be persuaded to advocate a recentralization of policy competences if the need were to arise. Put differently, the *finalité politique* of Belgian federalism is absent, but there is a certain danger that the competences of the centre will be ‘hollowed out’ even further (Hooghe, forthcoming).

Thirdly, the costs of Belgium’s federalization process are not distributed evenly between the federal level and the regions. As the main income raiser and debt manager, the federal government is under more pressure to keep its budget under control than the

regional governments. Belgium's membership of the Euro-zone, requires it to respect the Maastricht criteria, and given the country's high overall public debt ratio, to generate a balanced budget, instead of a budget deficit that does not exceed three percent of its GDP. A certain paradox emerges as, on the one hand, the public at large is concerned with strengthening internal security and the justice apparatus, and upholding the core values of the social security system. These competences are federal, but the extra money that may be needed to generate effective internal security, justice and social security policies must be measured against the federal objective of keeping the budget tight and reducing the public debt ratios. Regional governments are less constrained by these objectives.

Fourthly, Belgium has been repeatedly characterized as a 'partitocracy' (De Winter, Della Porta and Deschouwer 1996). Parties and party elites are central to forging national compromises which make the system work. The party rank and file have been increasingly involved in pre-selecting candidates for public office but a recent change of the electoral law increasing the size of the electoral districts, as well as the more prominent role of the media, underscores the relevance of only a handful of party bosses in managing the political system. The composition of the federal Constitutional Court provides one further illustration of a high degree of party politicization: the Court is composed of an equal number of Dutch and French-speaking judges; one judge must have proven knowledge of German. Half of the judges are appointed by the federal lower house; the other half by the federal Senate, each time requiring two-third majorities. While the required consent of the federal parliament to the composition of a Constitutional Court is common practice among federal states, the additional provision that half of the Court's judges must have had at least five years of parliamentary experience certainly is not.

Fifthly, Belgian federalism, while ingenious and at times fascinating for a constitutional lawyer or political scientist is also utterly complex, and it is not possible here to do full justice to the complexity of the institutional system. The bicomunal and regional institutions that operate in Brussels provide the most elegant (or most disturbing) example of such complexity. Of course, complex societies often require complex

institutional answers (a simple Westminster system could produce horrible consequences if it were applied to the Belgian society).

Finally, the system has been operating relatively smoothly because regional and federal party elites have been willing to co-operate and build congruent coalitions at both levels of government. On 18 May 2003 Belgians voted for the first time in federal elections that were not held in tandem with regional elections. Consequently, politicians may be willing to give up their strategy of co-ordinating federal and regional politics simultaneously or may only be able to do so at a higher cost. Furthermore, empirical evidence demonstrates that the Flemish and Walloon party systems, at least until the federal elections of 18 May 2003, were increasingly divergent. As a result, Belgian voters may restrict the opportunity of congruent coalition building in the federal and regional arenas, since the national political landscape may be quite dissimilar to the two regional political landscapes. Politicians who are not willing to tolerate a certain degree of incongruence, even if it means that they should play the role of opposition party at one level and governing party at another, are running a risk of driving their electorate to the extremes. When coalition-building completely disregards voter preferences, levels of apathy may also increase. In this sense, some of the major challenges to the long term viability of Belgian federalism still lay ahead (Swenden 2002).

6. Belgian Federalism: Institutional Transfer to the European Union?

As asserted at the outset, Belgium and the EU have certain features in common. First, as a Union of 15 member-states, the inter-state component is remarkably strong: the central roles of the European Council and Council, the involvement of member-states in nominating commissioners and ECJ judges, and the over-representation of the smallest members states in almost any Community institutions demonstrate this. In the absence of significant transnational parties, the national executive (and therefore leaders of parties in national government) have secured themselves a central position in EU policy-making. Although important decisions, not least decisions to change the competencies of the European Union require unanimity, in other areas, the principle of unanimity has been relaxed. This seems to be the logical consequence of operating a political system which

consists of more than 10 players. Indeed, within the Belgian context, the Flemish-speaking majority has accepted a veto-right for the French-speaking minority at the national level. Such a right of mutual veto is only workable because there are just two important players, and because the institutional mechanism which operates in Brussels provides the Dutch-speaking minority in that Region with similar rights.

Secondly, Belgian and EU 'multi-level-governance' share certain features of institutional asymmetry. However, in the case of Belgium asymmetry refers more explicitly to the differential notions of Regions and Communities, less so to differences in the regional assignment of competences. The latter aspect seems more important to the EU case, as Schengen and the Euro provide some examples of policy areas in which not all of the EU member states participate. The enlargement of the EU, only seems to increase this tendency. In this sense, the EU can learn more from devolution in Spain or the United Kingdom, than from the Belgian example (even if in Spain, institutional asymmetry has reduced rather than increased in the first two decades since the Autonomous Communities came into operation).

Thirdly, on a positive note, the Belgian case illustrates that the presence of strong regional or territorial identities has not prevented the emergence of a growing Belgian identity. Identities can be complementary, they are not necessarily exclusive. A case could be made that the Belgian national identity was thicker at the outset of the federalization process than the European identity has ever been in the EU context. However, the EU is not yet engaged in redistributive policies on a massive scale, and perhaps therefore, EU identity may not (yet) require the same degree of thickness which is needed for effective policy making in the Belgian context.

Fourthly, Belgium has sought to spell out regional competences in the greatest possible detail, only to find out that even then inter-regional co-operation is required. Furthermore, a detailed listing of competences has been made possible, because the Belgian constitution has been relatively easy to amend: two-thirds majorities in each of the federal legislative houses are required, but neither a referendum nor the consent of the regional legislatures is required. Compared with the Belgian constitution, the EU Treaties remain more open-ended in ascribing the objectives and competences of the European Union. However, a detailed listing of competences would only make sense if the

procedure for amending the constitutional Treaties were significantly relaxed, an option which most of the member-states are not willing to contemplate. The Belgian federal government and the regions have realized this, and therefore, unlike some of the German Länder at the outset of the Convention debate, have not argued for embedding a tight ‘*Kompetenzkatalog*’ in a rigid constitutional Treaty. After all, the Belgian experience also demonstrates that, in the end, the daily *management* of policy competences has been of greater relevance for explaining institutional stability. In this sense, the strong inter-linkages between federal and regional party elites and the procedural involvement of the stakeholders (including the regions) cannot be sufficiently emphasized.

Finally, the elitist policy making culture (which was a feature of Belgian politics prior to the federalization process and should not therefore be causally linked to the latter), the bipolarity of Belgian federalism and the absence of federal political parties are peculiar weaknesses of the Belgian institutional model. The European Union only shares the first and third of these features with Belgium. An analysis of each phase of the EU policy cycle (agenda-setting and policy-formulation through the EU Council, decision-making through Council and European Parliament, and perhaps most strikingly policy implementation) demonstrates that the main repositories of EU legitimacy, i.e. the member-states, are strongly involved. Conceptualizing the EU as an elitist endeavour only goes as far as it pertains to a lack of involvement of individual EU citizens and national or regional parliaments in EU policy-making. However, the European Commission’s White Paper on Good Governance suggested improving the access of representatives from various civil society groups and stakeholders into the EU’s public policy making process. Rather than advocating European-wide referendums (which although still majority constraining, could hardly be thought of as requiring the consent of a majority of citizens living in *each* of the member-states), the Belgian example illustrates that those who hold legitimacy, in the case of the EU, individual member-states and their national governments, should strive to explain the limits and opportunities of federal, or EU policy-making to their citizens. This requires a need for political dialogue among elites and citizens beyond regional (Belgium) or national (EU) boundaries and a commitment not to exploit European or national policy making for short term political

advantage (For a wonderfully provocative analysis of how this could be achieved, see Van Parijs; 2000).

References:

Agranoff R. (1999), *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos)

Alen A. (1995), *Handboek van het Belgisch Staatsrecht* (Antwerp: Kluwer)

Alen A. and Ergec R. (1994), *Federal Belgium after the Fourth State Reform of 1993* (Brussels: Ministry of Foreign Affairs)

Bogdanor V (1999), *Devolution in the United Kingdom* (Oxford: Oxford University Press)

Börzel T.A. (2002), *States and Regions in the European Union. Institutional Adaptation in Germany and Spain* (Cambridge: Cambridge University Press)

Deschouwer K. (1999), 'From consociation to federation: how the Belgian parties won?' in Deschouwer K and Luther Kurt R., eds., *Party Elites in Divided Societies* (London: Routledge)

De Rynck S. (2000), *Changing Public Policy: the Role of the Regions. Education and Environmental Policy in Belgium* (Bern/Berlin: Peter Lang)

De Winter L., (2002), 'De Ondraaglijke Lichtheid van het Belg of Vlaming zijn: het enigma van ethno-nationale identiteiten in Vlaanderen' in Swyngedouw Marc and Billiet Jaak, *De Kiezer heeft zijn Redenen. 13 Juni en de politieke opvattingen van de Vlamingen* (Leuven: Acco), pp. 215-233.

De Winter L., Della-Porta D. and Deschouwer K., (1996), 'Comparing similar countries: Italy and Belgium', in *Res Publica: Belgian Journal of Political Science*, vol.2, pp. 215-235

Hooghe L. (forthcoming) 'Belgium: Hollowing the Center' in *Does Federalism Matter? Political Institutions and the Management of Territorial Cleavages*, edited by Nancy Bermeo and Ugo Amoretti, (Baltimore: Johns Hopkins Press)

Huyse L. (1986), *De Gewapende Vrede. De Belgische Politiek na 1945* (Leuven: Kritak)

Jeffery C. (1999), *Recasting German Federalism. The Legacies of Unification* (London: Pinter)

Kerremans B. and Beyers J. (2001), 'The Belgian Permanent Representation to the European Union: Mailbox, Messenger or Representative?' in Kassim H., Menon A., Peters B.G. and Wright V., *The National Co-ordination of EU Policy. The European Level* (Oxford: Oxford University Press), pp. 191-210

Kymlicka W. (1995), *Multicultural Citizenship* (Oxford: Oxford University Press)

Lijphart A. (1999), *Patterns of Democracy* (New Haven: Yale University Press)

Lorwin V. (1966), 'Belgium: Religion, Class and Language in National Politics' in Robert A. Dahl, *Political Oppositions in Western Democracies* (New Haven, 1966)

Moreno L., Arriba A and Serrano A. (1998), 'Multiple Identities in Decentralized Spain: the case of Catalonia', *Regional & Federal Studies*, vol.8, no.3, pp. 65-88

Swenden W. (2002) 'Asymmetric Federalism and Coalition-making in Belgium', in *Publius: the Journal of Federalism*, vol.32, no.3, pp. 67-87

----- (forthcoming), ' "Personality vs. Territoriality": Belgium and the Framework Convention for the Protection of National Minorities' in Alexander H. Morawa, *European Yearbook of Minority Issues* (Dordrecht: Kluwer)

Swenden W. and Brans M. (under review) 'Making Sense of the Brussels Labyrinth: Governing a Multinational and increasingly Multi-cultural City Region'

Van Parijs P (2000), "Must Europe be Belgian? On Democratic Citizenship in Multilingual Polities" in Hampster-Monk I., ed., *The Demands of Citizenship* (London: Cassell)

Verhofstadt G. (2002), "Politieke Vernieuwing", Transcript of Speech delivered on 26 April 2002, Brussels (can be downloaded in Dutch or French from the Prime Minister's website. See http://premier.fgov.be/topics/reports/report_renewal-politics/renouveau-politique.pdf for the French text version.

Witte E., Craeybeckx J., Meynen A., (2000) *Political History of Belgium* (Brussels, VUB Press)