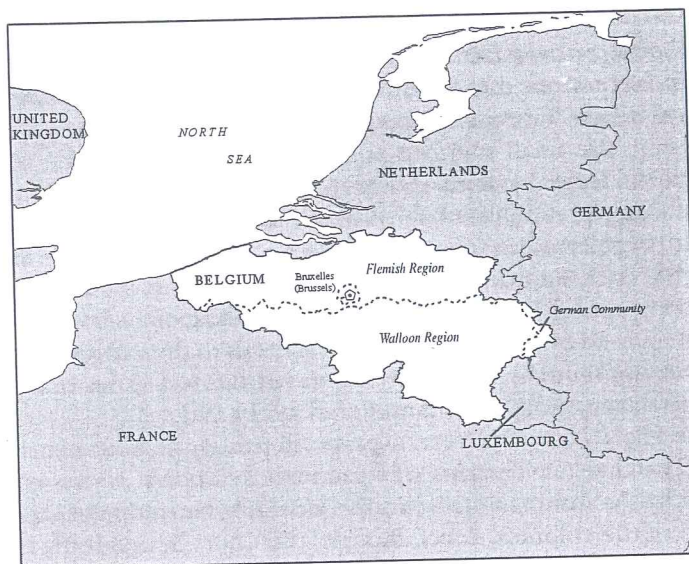




Belgium: Continuing Changes in a New Federal Structure

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The transformation of Belgium from a unitary to a federal state is quite a recent phenomenon from a legal point of view. It began in 1970 and has continued in successive waves in 1980, 1988–89, 1993, and 2001. Despite the recent changes, there continues to be political pressure for greater devolution of power away from the national government. At present, no one would hazard a guess where this movement will end and what form the result will take.

The changes in Belgium since 1970 have certain similarities to the evolution of the European Union, but in reverse. Both were pragmatic movements undertaken in small steps with no clearly defined goal at the outset, with the main difference being that the EU has become more centralized, while Belgium has become more decentralized.

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Belgian federalism has four primary traits: *dissociation*, *superposition*, *asymmetry*, and a *dual nature*. These characteristics were important in 1970, and still are so today.

1. *Dissociation*. Unlike most major federations, Belgian federalism does not stem from the association of formerly sovereign political entities, but from the devolution from a formerly unitary state. The centrifugal character of this development explains certain aspects of the distribution of powers between the federal state and the various "federated entities." The federated entities have only those powers that are expressly assigned to them; residual powers belong to the federal state. It was originally foreseen that this distribution of powers would be reversed. However, such an inversion would require the powers remaining with the federal order to be formally identified, restricting the Belgian government's future capacity to act in new areas of jurisdiction. This reversal of residual powers was considered too risky for the current political agenda. The distribution of powers is based on jurisdictional exclusivity – that is, for each issue one sole authority (either the federal order or the constituent units) is assigned to "legislate, execute, and finance" – and generally precludes overlapping jurisdictions. There do remain exceptions and compromises to this rule, however.

2. *Superposition*. Belgium distinguishes itself from classical federal models by having two distinct types of federated political entities: the language communities and the territorial regions. The three communities are the Flemish-speaking, French-speaking, and German-speaking communities. The "community phenomenon" was the result of Flemish demands, and has its roots in the minority status in which the Flemish language and culture was placed in the 19th and early 20th centuries. Community responsibilities include cultural matters, "personal" matters – that is, matters dealing with relations between individuals, such as youth protection – and, with some exceptions, education and the use of language.

There are also three regions: the Flemish, Walloon, and Brussels-Capital regions. The "regional phenomenon" was introduced in answer to pressure from the Walloons in the south of the country. Politicians from the south responded to the aging and decline of the Walloon economy in the 1960s by seeking further economic control and autonomy. Through successive reforms, regions have received such powers as land management in a broad sense (e.g., environment, land use), economic policy (e.g., employment, foreign trade, agriculture), and the organization and control of decentralized political entities (e.g., provinces and municipalities).

Each community and region has a legislature, called the council, and an executive, termed the government. As a result, the number of

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lawmakers in Belgian federalism has increased substantially, and consequently, so have the opportunities for conflict between their powers. In order to resolve such conflicts, a constitutional court (*Cour d'arbitrage/Arbitragehof*) was created in 1980. In addition, the federated entities and the federal state can draw up co-operation agreements with one another to overcome disagreements. If necessary, special institutional reform laws can actually require that such co-operation agreements be drawn up.

3. *Asymmetry*. Belgian federalism is also characterized by asymmetry, which produces and permits differences in the organization and powers of the federated political entities. As an example, the status of the Brussels-Capital region is not the same as that of the other two regions; in certain matters, it remains under the control of the federal state. Another example is that, under Article 137 of the Constitution, the councils of the French-speaking and Flemish-speaking communities may take on the powers of the Walloon and Flemish regions, respectively. Such a "fusion" has been carried out in Flanders, but not in the south.

The Constitution also permits the French-speaking community to transfer the exercise of some of its powers to the Walloon Region, in the unilingual French-speaking part of the country, and to the "French-language Community Commission" (*Commission communautaire française*) in Brussels. Some of these transfers have already been carried out, meaning that community powers are no longer identical in the north and south of the country.

4. *Dual Nature*. Finally, Belgian federalism has a dual nature (*la bipolarité*). The legal evolution of any federation is determined by the social forces present in the country. As another demonstration of its difference from other federations, the force in Belgium has a distinctly dual nature, with the two partners being the Flemish and Francophone communities.

These forces and the tensions they generate are the true engines of Belgian institutional evolution.

These forces and the tensions they generate are the true engines of Belgian institutional evolution. As a result, the successive institutional reforms have developed as pragmatic and consensual solutions to crises, rather than as a sequence of deliberate steps toward a clear and pre-established objective. The complexity of Belgian institu-

tions is the consequence of this pragmatism. But this complexity is also the price that has had to be paid, to avoid more extreme conflicts between the communities.

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