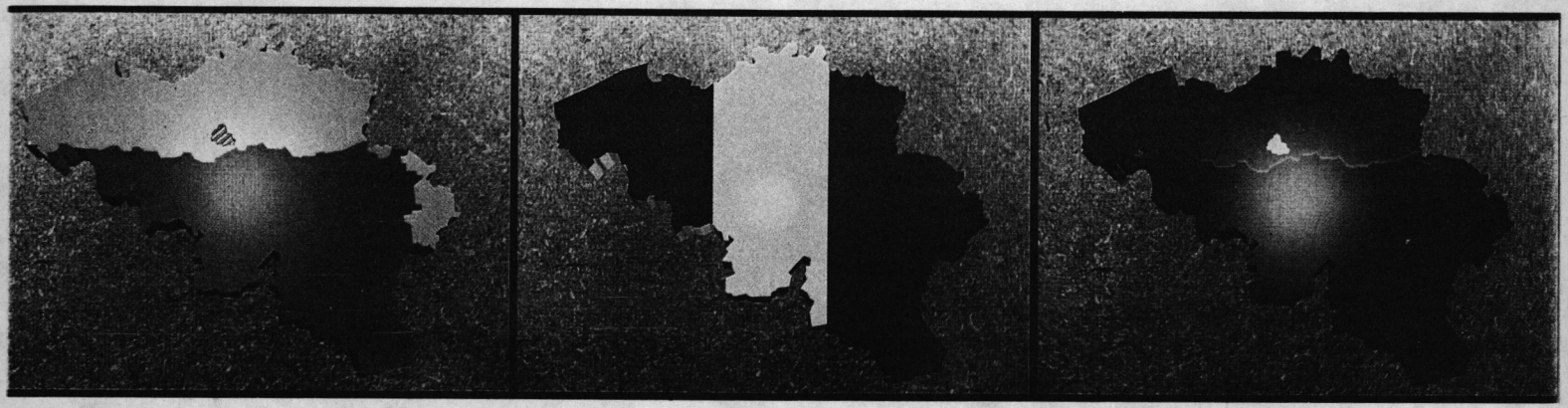
TEXTS AND DOCUMENTS



BELGIUM: BIPOLAR AND CENTRIFUGAL FEDERALISM

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MINISTRY FOR FOREIGN AFFAIRS,
EXTERNAL TRADE AND COOPERATION FOR DEVELOPMENT

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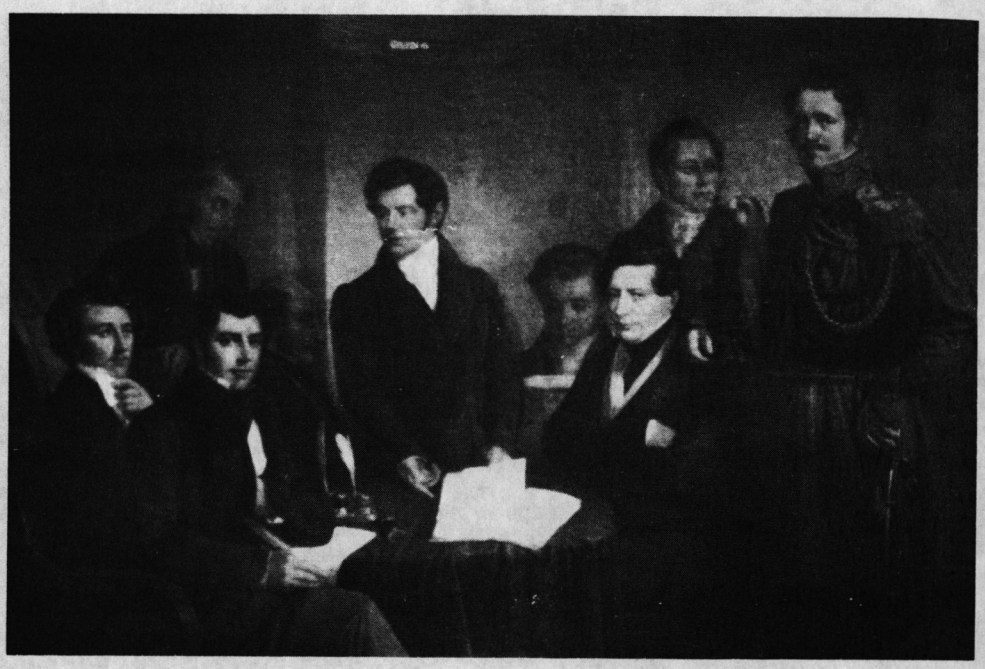

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THE "PROVISIONAL GOVERNMENT" 1830-1831

I. THE UNITARY DECENTRALIZED STATE OF 1831

1. The Belgian Constituent Assembly of 7 February 1831 conceived Belgium as a state under the parliamentary democratic rule of law based on a flexible separation of powers, as a constitutional monarchy and a **unitary decentralized state** (1). Only this latter characteristic will be considered in more depth here.

2. The structure of the unitary decentralized state as it remained wholly intact right up to 1970 - central state government, the provinces and the communes (municipalities or boroughs) - was comparatively straightforward and transparent; so much so that the territorial organization of the state was referred to as the "**triple circle doctrine**," mirroring what at central government level was known as the "trias politica" or "triple powers doctrine" (2).

3. The foundation of the **State** is, in 18th century terms, the Nation: "All powers stem from the nation" (3). To hold regional partisanship in check, the Constitution provided that "the members of both (legislative) Houses represent the nation, and not merely the province or subdivision of a province which elected them" (4). On the basis of its unique position among the central state authorities - namely, the body invested with full powers to revise the Constitution and the power to interpret or apply many constitutional provisions in execution of the Constitution - the national legislature, the "representative of the sovereign nation" designated itself "sovereign representative of the nation" (5).

4. In seeking to break with Jacobin centralism, the Belgian Constituent Assembly did not confine the **provinces** (6) and **boroughs** (7) to being purely territorial subdivisions of the State, as can be seen from their inclusion in Title III of the Constitution, after the listing of the powers of the central State authorities (8).

Provincial (and) borough institutions (9) are nonetheless regarded as **subordinate governments**. And while, as entities with distinct legal personality from that of the State they have competence over "all matters of provincial and communal interest" (10), this indeterminate authority is not thereby unlimited, for it falls to the national legislature with its unlimited competence to determine - directly or indirectly - what is of provincial and communal interest. Consequently, the circle of borough - and even more so, provincial (11) - interests has been considerably diminished by the national authorities, with local authority "autonomy" increasingly ousted in favour of "co-management," i.e. involvement by the higher tiers of government (12) in the conduct of policy. Provincial and communal by-laws and regulations, together with all administrative acts indeed, are subject to judicial review (13); they are also subject to administrative oversight by the higher authority which may act either preventively where its approval, authorization or advice is required, or repressively by suspending or quashing the measure "to prevent infringement of the law or injury to the general interest" (14).

II. FROM 1831 TO 1970

5. It is clear that the unitary decentralized State - the simplest of all forms of state - could be sustained only for so long as the political and social structure on which it was based retained a relatively **internally consistent outward appearance**. Such was the case in 1831. The Belgian Constitution was the creature of a predominantly French-speaking middle class which succeeded in retaining power through an electoral system based on property qualifications and the theory of national sovereignty (15).

6. The constitutional principle that "**there is free choice of the use of the languages spoken in Belgium**" which "may only be regulated by law (16) and only in the case of acts by the public authorities and of judicial matters" (17) is a striking example of this. In the eyes of the National Congress it was clear that the way lay open for a future statutory instrument to impose the exclusive use of French. Hence, a Provisional Government Decree of 16 November 1830 did indeed make French the sole official language for statutes and decrees (18), and it was not until 1967 that an authentic Dutch version of the Constitution was produced (19).

At the outset, the Flemish Movement reacted with extreme moderation, calling simply for recognition of Dutch on an equal basis with French in Flanders. The "Equal Treatment Law" of 18 April 1898, under which acts of parliament are voted on, sanctioned, promulgated and published in French and Dutch (20), was an important victory for the

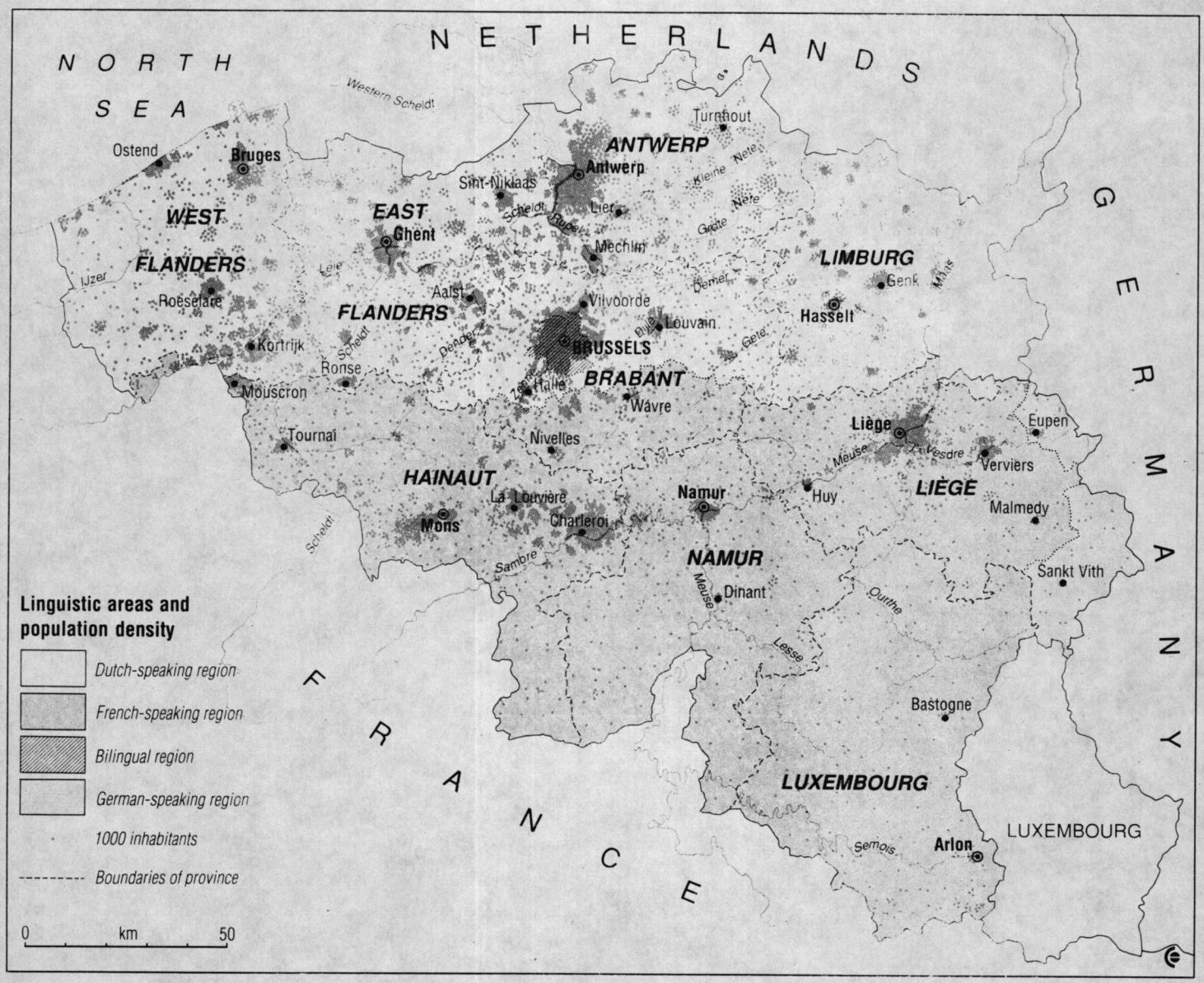
Movement. The extension of the voting franchise by the constitutional revisions of 1893 and 1921 strengthened the power of the Flemish Movement through an electoral system which, from 1921 onwards, operated on the principle of proportional representation (21). The Walloon Socialist leader, Jules DESTREE, presaged the danger in a lengthy letter to King Albert, written in 1912 and containing the famous words: "(Sire). You reign over two peoples. In Belgium there are Walloons and Flemings; there are no Belgians" (22).

7. Following on from the linguistic legislation of 1932 and the work of the Harmel Centre (23), the 1962-1963 laws on languages laid the foundations of the **territoriality principle**, providing that in monolingual linguistic regions the use of a given language - that of the monolingual linguistic region - was compulsory for all public administrative acts, regardless of the tier of government from which they emanated (24).

The language laws of 1962 (25) and 1963 (26) - now coordinated by the Royal Decree of 18 July 1966 (27) - demarcated the language boundary, re-defined the administrative boundaries of provinces, administrative districts and boroughs accordingly and divided the country into four linguistic regions: three monolingual linguistic regions - the French-speaking region, the Dutch-speaking region and the German-speaking region - and the bilingual region of Brussels-Capital (Greater Brussels). All public administrative acts in the monolingual linguistic regions must, in principle, be accomplished solely in the language of that region; French and Dutch are on a completely equal footing only in the bilingual Brussels-Capital region.

8. This division of Belgium into **four linguistic regions** was to be enshrined in the Constitution in 1970, such that any change to the boundaries of the four regions so fixed (28) requires a law passed by a special majority (29). Their fundamental importance to the structure of the Belgian State requires a further word about these four linguistic regions: the Dutch-speaking region comprises the four Flemish provinces of Antwerp, West Flanders, East Flanders and Limburg, together with Flemish Brabant (the administrative districts of Louvain and Halle-Vilvoorde); the French-speaking region comprises the four Walloon provinces of Hainaut, Luxembourg, Namur and Liège except for those boroughs falling within the German-speaking region, and Walloon Brabant (the administrative district of Nivelles); the German-speaking region comprises 9 boroughs in the Province of Liège; the bilingual Brussels-Capital region comprises the 19 boroughs of the metropolitan area of Greater Brussels, part of which - the City of Brussels - is the capital of Belgium and the seat of government (30).

Finally, the coordinated laws on the use of languages in administrative matters provide **linguistic facilities** for the inhabitants of the 27 boroughs contiguous to a different linguistic region: this entitles citizens to request that the communal authorities use a language other than that of the region in which the boroughs are located (31). Since the 1988 constitutional revision, the rules on the use of languages in administrative matters, in education and in industrial relations between employers and their employees can be amended in these "communes with facilities" only by a statute passed by special majority (32).



9. It is noteworthy that the **European Court of Human Rights** has considered the principle of territoriality on which Belgian linguistic legislation is based, as an objective factor of general concern, such that any difference in treatment arising out of it does not count as unlawful discrimination (33). In connection with the same principle of territoriality which, incidentally, underpins the general institutional structure of the Belgian State, the same Court has held that the parliamentary election system "which entails the need for linguistic minorities to cast their votes for persons capable of and ready to use the language of their region" did not necessarily constitute a threat to the interests of those minorities, particularly not where the political and legal systems offered multiple guarantees, as is the case in Belgium (34).

10. The Belgian institutional system, in fact, consists of a **complex system of checks and balances** (34). It could hardly be otherwise in a country where, at national level, the 212

and 106 seats of the House of Representatives and Senate, respectively, are filled by directly elected members and apportioned by proportional representation according to the size of the population in each electoral district - that figure being higher in the Dutch-speaking region than in the other linguistic regions (35)(36); a country where, in the Brussels-Capital Region (37), the inverse proportion is even higher - namely, a French-speaking majority and a Dutch-speaking minority (38).

For these reasons, the first reform of the State - the constitutional revision of 1970 (39) - incorporated a series of provisions to protect minorities, summarily analyzed below.

11. A new (40) type of **special majority law** was introduced, defined as "an act of Parliament passed on a majority vote in each linguistic group in each of the Houses (of parliament), on condition that the majority of members of each group are present and that total votes in favour within the two linguistic groups attain two-thirds of votes cast." This requirement for a statute passed by a special majority in each of the linguistic communities applies only to those cases exhaustively enumerated in the Constitution, all of which relate to the application of the constitutional principles of the structure of the State, substantially increased in number during successive State reforms. This constitutional requirement was clearly intended to forestall the growth of a body of fundamental laws governing the structure of the State against the wishes of either of the country's two main Communities - hence the requirement for the assent of both the French and Dutch linguistic groups of each legislative chamber.

12. To prevent any legislation initiated (41) in either legislative chamber "of such a nature as to have a serious effect on the relations between the two (major) Communities" being adopted by majority vote of a single linguistic group - chiefly the Dutch linguistic group, which holds a majority in both - an "**alarm-bell procedure**" was introduced (42). The "alarm bell" is sounded by a reasoned motion signed by at least three quarters of the members of one of the linguistic groups and results in the suspension of parliamentary procedure. The Cabinet must then give its reasoned findings on the motion and invite the House before which it was tabled to reach a decision either on those findings or on the bill, amended as may be. The preventive action of the procedure is clear (43): the Cabinet, comprised of equal numbers of each linguistic group (No. 13), will endeavour to reach a consensus solution on the problem and avert a government crisis.

13. Just as the "alarm-bell procedure" is chiefly designed to protect the interests of the French-speaking minority in the national legislature, **equal representation in the Cabinet** offers its assurances in the central executive: "With the possible exception of the Prime Minister, the Cabinet comprises an equal number of French-speaking and Dutch-speaking ministers" (44). The very number of by-laws, regulations and decisions which the Constitution (45), statute (46), regulation, and even more so the custom of Belgium's coalition governments (47), require to be discussed in Cabinet suffices to show the importance of the equal representation rule. With the possible exception of the Prime Minister, the parity principle does not apply to Secretaries of State: albeit members of the Government, they have no seat in the Cabinet (48), thus allowing the Dutch demographic majority to be reflected to some extent in the composition of the government.

14. An "**ideological alarm-bell procedure**" operates within each Community Council: a reasoned motion signed by a given number of councillors may declare the provisions of a decree sponsored by the executive or a private member contains provisions which discriminate on ideological and philosophical grounds; if the motion is declared admissible, discussion of the contested provisions is held in abeyance until each of the two Houses of Parliament have declared the motion to disclose no cause of action (49).

Without prejudice to the **general principle of non-discrimination** (50), a number of special provisions have come into existence in execution of constitutional provisions (51) which, through different measures - notably the use of cultural facilities and means of expression - are designed to protect **ideological and philosophical** opinions against executive power (52) in cultural matters. The 1988 revision of the Constitution extended the right to institute proceedings directly in the Court of Arbitration to have legislation quashed in ideological and philosophical matters (53), notably for breach of the principles of equal treatment and non-discrimination, to any individual proving **locus standi**.

15. Finally, as regards protection of the Dutch-speaking minority, a parallel can be seen to have developed since 1970 in the **Brussels regional institutions** with the safeguards established at national level for the French-speaking minority, namely an "alarm-bell procedure" in the deliberative body, and equal representation, with the exception of the President, in the executive branch. This was already the case in the Brussels metropolitan authorities between 1971 and 1989, the year of the first direct elections to the Council of the Brussels-Capital Region. The governing bodies of the Brussels-Capital Region - the Council and the Executive - today exercise both the regional powers and duties and those of the metropolitan area (54). In addition to all other safeguards (55), the exercise of both types of competence are subject to the two formal guarantees referred to - the "alarm-bell procedure" in the Council (56) and equal representation in the Executive (57).

In the third round of State reforms, the parallel with the national structures was pushed to a point where the posts of "Regional Secretaries of State" were created in the executive institutions of the Brussels-Capital Region. They are not part of the Executive as such, but may attend all or part of its meetings (58).

16. The description of the arsenal of safeguards (Nos. 11-15) suggests that much of their justification lies in the **bipolar structure of the State**: despite the division of Belgium into four linguistic regions (8), three Communities and three Regions (see infra., chapter III), the "Belgian problem" seems to reside in the coexistence of two major Communities - one French-speaking, one Dutch-speaking - within the same national territory. The national structures incorporate the necessary guarantees of balance at all appropriate points, therefore. The elected members (59) of both Houses of Parliament, in which are vested, together with the King, national **legislative** power, belong either automatically (60) or by their own choosing (61), to either the French or Dutch linguistic group (62)(63); given the predominance of the Dutch-speaking linguistic group (No. 10), an alarm-bell procedure was provided (No. 12) which, for similar reasons, also operates within the Council of the Brussels-Capital Region (No. 15). The principal organ of national executive power - the Cabinet - contains equal numbers of French-speaking and Dutch-speaking Ministers, with the possible exception of the Prime Minister (No. 13) - again a situation mirrored in the

Executive of the Brussels-Capital Region (64). The higher organs of **judicial power** - the Court of Arbitration (65), Court of Cassation (66) and Council of State (67) - must have equal numbers of French- and Dutch-speaking judges on the bench. In the State central administrative departments whose remit runs nationwide (68), and in the local services established in Brussels-Capital (69), posts from a certain grade upwards must be equally divided between employees in the French-speaking service and those in the Dutch-speaking service; comparable provisions exist for the departments of the Executive of the Brussels-Capital Region (70)(71).

17. It has been said that the exercise of national authority is far more than "**the joint management of the State**," as a consequence of which provision needs to be made to strengthen national political structures as well as a "national" basis for political parties and the social and economic consultative bodies, largely divided at the present time (72).

Clearly, a bipolar federal structure may bring the federal state to a standstill, if the powers of each of its two constituent entities cancel out those of the other (73). It is no less a fact that, as a general rule, federal systems count at least eight to ten constituent subunits with their own traditions, and that Belgium's nine provinces - more than the three Communities and the three Regions - offer that base (73). Finally, while it is true that certain electoral techniques, such as national elections based on a single type of constituency for the entire country, may help provide the national legislature and government with a "national political substrate" (74), it is equally without doubt that, just as the role of the monarchy as a barrier capable of keeping centrifugal forces within acceptable limits (75) must not be under-estimated, bipolarity is a substantive sociological fact which cannot be modified through institutional reform (76) alone. How, for example, could political parties be compelled to reunite across language borders? Even if constitutional methods can be envisaged to encourage them to do so, they will be inefficacious without at least a minimum degree of acceptance of the ideas of "State" and "Nation..."

III. THE REFORM OF THE STATE IN THREE SUCCESSIVE CONSTITUTIONAL REVISIONS (1970-1980-1988)

18. As with bipolarity (Nos. 16-17), the centrifugal tendency of Belgian federalization also constitutes an exception to normal federal practice, which is the quest for unity by the voluntary alliance of previously sovereign units. This centripetal tendency is the reason why most federal constitutions explicitly state what are to be the exclusive federal powers, leaving residual competence to the federated entities. By contrast, Belgian **centrifugal federalism** tends rather to enumerate the powers vested exclusively in the federated entities, leaving residual competence with the national authority. Such, indeed, is the situation which obtains at present.

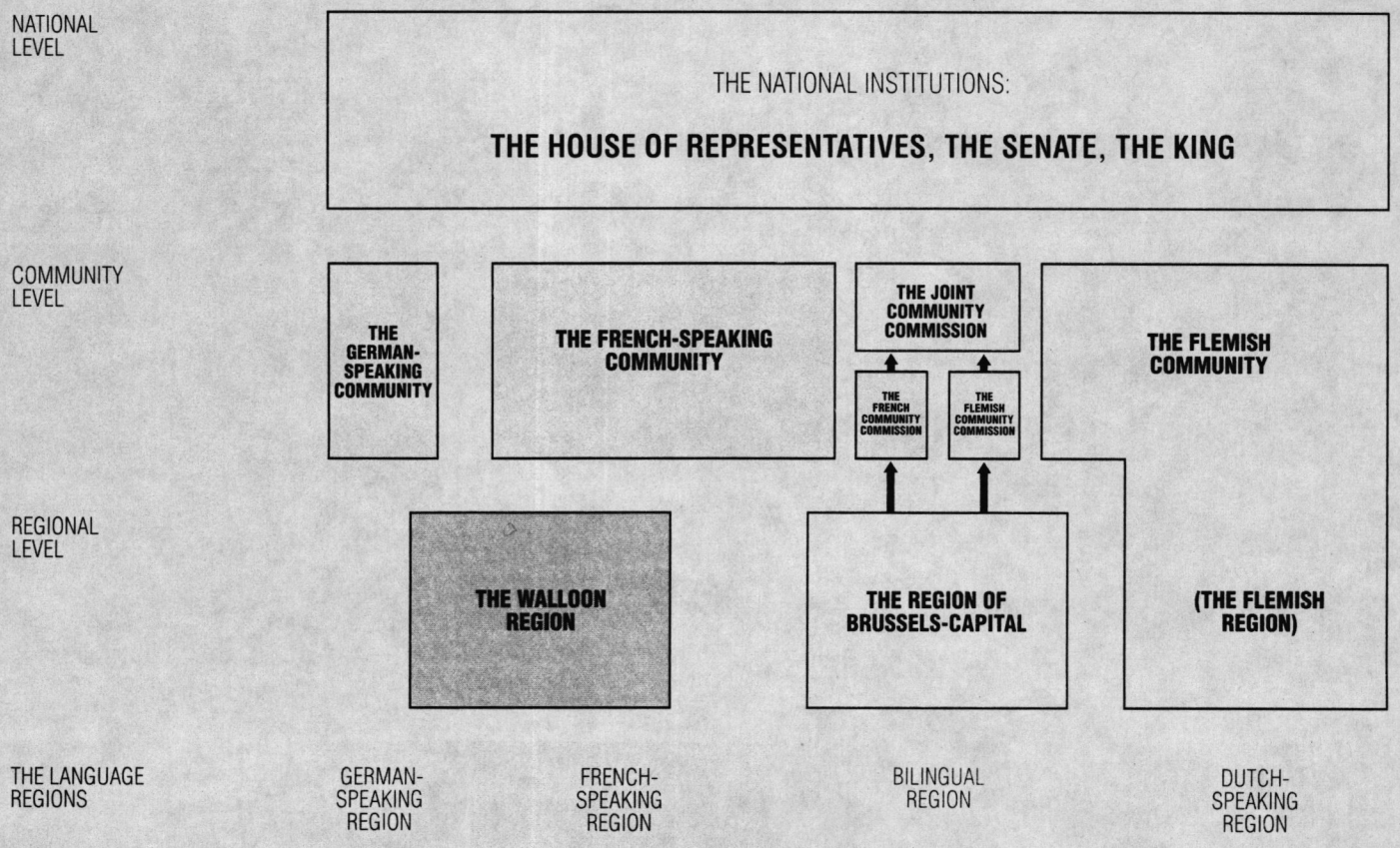
19. What centrifugal federalism means is that the setting up of Communities and Regions is slowly but surely turning the unitary decentralized Belgian state (Nos. 1-4) into a federal state.

At the time when Prime Minister G. EYSKENS uttered in his parliamentary address of 18 February 1970 the historic words: "**The unitary State**, with its structure and functioning as currently regulated by the law, **has been overtaken by events**" (77), the demerger of the Belgian broadcasting authorities and departments of state education was already a reality and the cardinal constitutional provisions of the first State reform - commenced in 1967 (80) and completed in 1971 - were in the process of being framed. The Communities and Regions were to "take their place in renewed State structures more appropriate to the situations specific to the country," as Prime Minister EYSKENS also said in the same address.

20. Communitarization was a response to a long-standing demand of the Flemish Movement, whose labours had always been directed towards genuine recognition and development of their own language (No. 6) and culture

Source: According to J. BRASSINNE / CRISP 1989

The institutions of Belgium



Hence the 1970 (82) Constitution gave recognition to three "cultural Communities" (81) - the French, Dutch (83) and German (84) cultural communities - each equipped with its own institutions (85) vested with the powers to enact "decrees" (86) with legislative force for the territories under their authority in matters relating to cultural affairs and (to a more limited extent, however) affecting education and the use of languages (87).

In the 1980 Constitutional revision (88), "cultural autonomy" mutated into "Community autonomy" following the extension of their powers to the "personalized" matters (89) and the possibility of having their own executive bodies (90). In the 1988 revision of the Constitution (91), the autonomy of the Communities was further strengthened by the embodiment in the Constitution of formal guarantees relating to education (92), assigning virtually exclusive responsibility for education (93) to the Communities, and even the power to conclude treaties in matters falling within their competence (94).

21. If communitarization was principally a response to Flemish desires, **regionalization** sought to address the wishes of the French-speaking part of the country. The Walloons placed their faith in an autonomy chiefly over social and economic matters through which they hoped to resolve the economic crisis which had principally hit their region. The French-speaking community of Brussels, by far the majority in the Brussels-Capital Region (No. 10), militated for the Region to be accorded equal status with the Walloon and Flemish Regions as a region in its own right.

The outcome of the 1970 constitutional revision was the recognition of three Regions: the Walloon Region, the Flemish Region and the Brussels Region. The constitutional provision concerned (95) was, however, a rule with no clearly-defined content, to which substance could be given only by laws passed by a special majority. The lack of political agreement over the status of the Brussels Region - should it be regarded as a region in its own right? where should its boundaries lie? what protective measures were required for the Flemish minority?... - explains why it was not until 1980 that the special implementing legislation could be enacted for the Walloon and Flemish Regions and 1989 for the Brussels Region. Meanwhile, a "preparatory regionalization" - based on an Ordinary Law, incidentally - had been in operation since 1974; conversely, an immediate start was made with the implementing measures for cultural autonomy after 1970.

Unlike the constitutional provisions relative to the Communities which, following their inclusion in 1970 were amended in both 1980 and 1988 (96) - the constitutional provision concerning regionalization underwent no further amendment after 1970. That was due to the resolute opposition of French-speakers who refused even to incorporate this provision in a declaration of constitutional revision (97), fearful of seeing it throw the established tripartite regionalization of 1970 into question. The consequence of this was that, while the constitutional provision in question was not formally revised, its scope was modified and amplified, implicitly but unquestionably, as a consequence of the revision of other constitutional provisions (98). Three examples will suffice to show how.

The 1970 constitutional provision having vested no express legislative authority in the Regions, unlike the Communities, and Belgian public law providing that legislative authority could be exercised only by bodies invested with that power by the Constitution, a

new constitutional provision was enacted in 1980 providing that the power to make "decrees" may be conferred on the regional bodies by a special-majority law (99). That was subsequently done for the Walloon Region and Flemish Region (100), but not for the Brussels-Capital Region, which was given the power to make "ordinances" - a new legal norm in Belgian public law: like the decree, an ordinance may repeal, amplify, amend or replace prevailing legislative provisions (101) and is subject to the same judicial control by the Court of Arbitration (102); unlike decrees, ordinances are subject to limited judicial review (103) as well as, in certain cases, limited administrative control by the national authorities "to protect Brussels' international role and its function as the capital" (104).

The 1970 constitutional provision concerning regionalization expressly provides that the competences of the Regions - to be fixed by a special-majority law - may not encroach on Community matters. In point of fact, the Constituent Assembly made a clear distinction between Community and Region. And yet the constitutional provision concerning the

Communities was amended in 1980 to enable the organs of the French Community to also exercise the powers of the Walloon Region, and the organs of the Flemish Community to exercise those of the Flemish Region (105), by special-majority law. This constitutional revision was chiefly a response to Flemish desires, seeking there by to further emphasize the bipolarity of Belgium (No. 16). Given the predominant wish of French-speakers for a tripartite regionalization, the constitutional provision was put into operation "asymmetrically": the provision was never put into operation by the francophones (which is why the organs of the French Community remain separate from those of the Walloon Region in the exercise of their respective powers) (106), but was by the Flemings. The competences of the Flemish Community and those of the Flemish Region are now administered by the same bodies - the Flemish Council and the Flemish Executive (107) - although the Community and Region have not "merged" in any legal sense of the term (108).

The final illustration relates to the 1988 revision of the constitution, in which the designation "Brussels Region" was changed to "Brussels-Capital Region" in another amended constitutional provision (109). In addition to regional competences, the organs of the new Region also exercise the competence of the Greater Brussels metropolitan area (109), together with,in a slightly amended composition, the personalized matters common to both linguistic Communities in the bilingual Brussels-Capital Region (110). The constitutional separation of community and regional matters has once again been overtaken by the vesting of community powers in the bilingual Brussels-Capital Region - not in legislative matters, and with a direct structural link to the French and Flemish Communities - to the linguistic groups within the bodies of the Brussels-Capital Region (111). Complicated though the system may be, it is not exceptional from the viewpoint of comparative law (112).

22. The financing of the Communities and Regions has always been a stumbling block in Belgium.

Prior to 1980 they were financed entirely out of endowments (appropriations from the national budget) allocated to them on a horizontal budgetary scale, the formula of which could be decided by the Communities and Regions autonomously. This system was clearly not an adequate template for proper financial accountability.

The desire for greater financial autonomy was an increasingly pressing demand, particularly from the Flemings who rightly felt disadvantaged by the fixed-scale allocation of financial resources (113). This aspiration was partially met in two ways by the second round of State reform in 1980. Belgian public law providing that fiscal power belonged solely to the authorities in whom that power was vested by the Constitution, the Communities and the Regions were included in the Constitution as being authorities with particular powers of taxation (114). This power, which has remained unchanged to the present day, should not be over-estimated, however. Partly because it is the only concurrent competence shared by the Communities and Regions, meaning that they cannot levy taxes on matters already taxed by the State, and that any Community or Regional tax may be repealed by an ordinary statute if the national authority were to wish to levy taxes on the same matter (115), for example; and partly because the Court of Arbitration has held that the exercise of taxing powers by a Community or Region may not exceed the limits inherent

in the broader view of the State as an economic and monetary union in which all internal customs duties and taxes of equivalent effect are prohibited (116). In addition to vesting the power of taxation in the Communities and Regions, a new system of financing public expenditure was introduced in 1980, maintaining the endowment system but at the same time conferring authority to levy additional taxes, likewise hedged around with multiple restrictions. This system having been repealed (117), it need not be considered further in this context.

It was replaced by an entirely new system of financing public expenditure, introduced in 1988 by the third round of State reform. The Constituent Assembly of 1988-89, seeking greater stability in the matter, provided that the financing system of the Communities (118) and Regions (119) had to be fixed by a special-majority law. That law (120) prescribed an immensely complicated system with provisions extending beyond the year 2000! Its broad lines are described below (121).

Despite the substantial growth in the financial resources of the Communities (387.8 billion Belgian francs in 1989) and the Regions (260.9 billion Belgian francs in 1989) and hence a large measure of autonomy as regards appropriations (+650 billion Belgian francs, or 40% of total State expenditure net of debt service charges), and despite the abolition of the system of endowments disliked by Flanders, their independent revenue-raising powers remain tightly constrained. The greater part of their revenue derives from "transfers from national taxation revenue," no longer allocated by fixed-scale criteria as endowments had been, but on locational criteria or the "fair return" principle. The Regions alone are entitled to levy surcharges or grant tax refunds or remissions, and even then only within strict confines, notably designed to preserve economic and monetary union (122). Over and above the power of taxation vested in the Communities and Regions by the Constitution, subject to the restrictions already referred to, the Regions - unlike the Communities - enjoy a limited additional power of taxation (123). Finally, the financing system also included the element of solidarity, an essential feature of any federal state (124).

23. The final major innovation, introduced in the 1980 constitutional revision, was the setting up of a **Court of Arbitration** (125) which, according to one of its own judgments, is "a constitutional court of limited jurisdiction" (126).

This is an important innovation, since the view taken by case law since the founding of the Belgian state is that it is for the legislature itself, not the courts, to ensure that legislation is not unconstitutional. The first break in case law with this traditional "inviolability of the law" occurred in 1971 with the adoption by the courts of the principle that the courts have a duty not to enforce statutory provisions of municipal law which conflict with directly applicable international treaties (127). The second breach was inevitably bound to occur following the State reform in which Community and Regional legislative organs were added to the national legislature with power to enact legal rules - "decrees" (128) - having the same force as national statutes. Were each legislative body to have been left free to decide whether their rules were in compliance with the rules regarding allocation of competences fixed by the federal Constitution, the result would have been differing interpretations of a single national Constitution, throwing the unity of the State itself into question. A different solution had to be found, therefore, since the general rule for resolving conflicts between

rules of law - namely, that the higher law prevails over the lower law - was made inapplicable by conferring equal standing on statute and decree. The fact that the settlement (129) of jurisdictional conflicts between statutes and decrees, or between decrees **inter se**, was not left to the ordinary courts but entrusted to a new institution - the Court of Arbitration - and then only as late as 1980, can be attributed to the doctrine of the "inviolability of the law" referred to earlier, and by the desire of the Constituent Assembly to vest that power in a single institution to achieve consistency of precedent. The legislative chambers nonetheless retained some of their innate mistrust of "government by the courts" partly by limiting the Court of Arbitration's powers to controlling whether or not the various legislative bodies have complied with the allocations of powers contained in the Constitution and the enacting laws, and partly by building balance into the Court, half of whose members are senior judges, legal officers and academic lawyers, the other half former MPs (130).

The Court of Arbitration, which was officially inaugurated on 1 October 1984 and sat to hear its first case on 19 March 1985, has not failed in its entrusted task of maintaining balance in a multiform state (131). The Court has paid particular attention not only to the unity of the State, but also to a liberal interpretation of community and regional responsibilities, to emphasizing the exclusivity of the allocation of competences contained in the Constitution and the statutory instruments, and a liberal construction of the "rules on the allocation of competences" which are the basis of its control. The Court has, for example, taken the view that the "implicit powers" of the Communities and Regions (132) cannot extend to regulating matters reserved to the national legislature by the Constitution (133) (such as fundamental rights and liberties) unless expressly so permitted by the laws on the reform of the State. In the majority of cases, these statutes are special-majority laws, which confers on them a special status (134). The Court has also held that the new structure of the Belgian state is founded on economic and monetary union, "by which is meant that institutional framework of an economy built on constituent units and characterized by an integrated

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THE COURT OF ARBITRATION

market (so-called economic union) and a single currency (so-called monetary union)" (135). A view subsequently shared, moreover, by a special law of 1988 which invested the economic and monetary union with legal status as circumscribing the economic competences (136)(137) of the Regions. Finally, the Court of Arbitration has rarely made use of its power to suspend the application of legislation against which annulment proceedings have been brought.

It is partly as a result of the confidence thus earned that the Court of Arbitration's jurisdiction was widely extended in the 1988 constitutional revision. In addition to fixing its Statute in a special-majority law (138), the right to institute proceedings for annulment in the Court (139), hitherto reserved solely to governmental authorities, was extended to "any person proving an interest," including natural persons and private law bodies corporate. Most important, however, is the extension of the Court of Arbitration's powers of judicial review, hitherto confined to determining whether legislation was consonant with the rules on allocation of competences, to reviewing the compliance of legislation with three exhaustively-enumerated fundamental rights (140) - the principle of equality, the principle of non-discrimination, and freedom of education (141). The chief reason for so extending its competence lay in the transfer of virtually exclusive competence over education to the Communities in the 1988 constitutional revision (142): the minorities in Wallonia and Flanders were calling for more detailed and comprehensive formal guarantees on education to be written into the Constitution (article 17), after which the Court of Arbitration would become the competent jurisdiction to control compliance with those guarantees by the various legislative organs. It is also of note that the undoubted distrust manifested by the Constituent Assembly of 1980 towards the Court of Arbitration had given way by 1988 to a very broad measure of confidence, considering that control of compliance with the principle of equality, is an autonomous basis of control, for which reason the Court of Arbitration would seemingly have the power to sanction discrimination of a legislative nature against the exercise of any fundamental right (143)(144).

24. The Belgian Constitution of 1831 comprised 139 articles. The two constitutional revisions of 1893 and 1921 concerned with extending the franchise and the three constitutional revisions of 1970, 1980 and 1988 concerning the reform of the State, have wrought fundamental changes to the Belgian Constitution - not only to its length (145), but also and above all to its substance (146). From a purely formal viewpoint, it could even be called a stable Constitution: in 1990, 102 of the original 139 articles of the 1831 Constitution remain in force unchanged. Most of these articles relate to fundamental rights (20 articles), the King (22 articles), the functioning of the national legislature (13 articles) and the judicial power (13 articles).

Note, however, that the present legislative chambers which, until dissolved, are empowered to revise the Constitution (147), may still revise 28 of the 102 provisions mentioned above, and that the purport of the provisions so far unamended may be changed by other amended provisions (148). For example: what significance still attaches to "All powers stem from the nation" (149) or "The members of both Houses represent the nation" (150) when all elected parliamentarians are divided into a French-speaking and Dutch-speaking linguistic group and in many cases represent their respective Communities (151)?

Furthermore, the chambers sitting as the Constituent Assembly may still adapt the fundamental rights - Title II of the Constitution - to the European Convention for the Protection of Human Rights and Fundamental Freedoms, after which the Court of Arbitration's powers of judicial review could be extended to all the fundamental rights (152). Finally, the 1988 constitutional revision is no more than a single phase of the third State reform, two of the three phases of which have now been completed. The governmental accord provides for yet a third phase which, if carried through in full as provided in the governmental accord, will be extremely radical.

This third phase will focus on solving three problems: direct elections to the Community and Regional Councils (153), and the proposed reform of a bicameral system in which the House of representatives and the Senate at present have virtually identical powers, in order to curtail the number of MPs; the attribution of residual competence to the Communities or Regions, at present allocated only specific albeit extensive responsibilities (154); and finally the external, or foreign policy, functions of the Communities and Regions (155). Detailed consideration of each of these points goes beyond the scope of this report (156), which must confine itself to noting that the trend **towards a less stable Constitution** which has developed since 1970, together with increasingly more wide-ranging declarations of revision of the Constitution, is continuing unabated. It may rightly be considered that the regulation of Community relations more than ever calls for the stringent amendment procedure of the Constitution, which has remained unamended since 1831 (157).

IV. BELGIUM: A FEDERAL STATE

25. For constitutional lawyers, federalism is the legal form, reflected in the institutions of a state, of a balanced relation between the power of the central order of government and the

autonomy of the constituent units (158). The characteristics particular to each state are decisive in this regard and each form of state system is **a sui generis** construct (159). As regards the "Belgian enterprise," the bipolar (Nos. 16-17) and centrifugal (No. 18) nature of the reform, which deviate from general federal practice, have already been emphasized.

26. In the past, and especially following the first round of constitutional revisions in 1970, the question in Belgium was whether the new state structure was or was not **a federal system** (160). It can be said that following the third reform of the state (1988-89) no reasonable doubt can remain on the matter. A short analytical comparison with the essential elements of a federal system, notably internal autonomy and participation, suffices to prove the truth of this view (161).

27. A distinguishing feature of the federal state, and what makes it more complex than the unitary state, is the **existence of two distinct legal orders**, that of the general government and that of the subnational units, each having its own systems of laws and legislative and executive organs. Such is the case in Belgium, where the Communities and Regions are "**authorities of the same level as the national authority**" (162) organized on the vertical system under which, subject to any express provision to the contrary embodied in the Constitution or enacted by special-majority statute pursuant to such a provision, the competent legislative authority - State, Community or Region - is also the executive power, and vice versa (163).

28. The Communities and Regions, indeed, have distinct legal personality (164), having both their **own legislative and executive organs** as well as **legislative power and financial autonomy**.

28.1. Each Community and Region has its own **legislative assembly**, "the Council," and **executive body**, "the Executive," the composition and functioning of which are fixed by special-majority law (165). Unless and until a reform is operated in this area (166), the three "major" Councils (167) are comprised of members of the national parliament (168) on the basis of the linguistic group to which they belong (169). Paradoxically, the two "minor" Councils are directly-elected for a fixed term with no possibility of early dissolution (170), while the stability of the "major" Councils depends on that of the Houses of the national parliament, since their members are also sitting national MPs. The members of the Executives are elected by majority vote (171)(172) of the Council (173) from among serving Council members (174) and are responsible to the Council concerned, which nonetheless may only force a resignation of the Executive by means of a "motion of constructive lack of confidence" (175).

28.2. The Communities and Regions are invested with legislative power equal to that of the national legislature. In many areas of social life sole authority to legislate by "decrees" (176) having the force of statute throughout the territory for which they are responsible (177) lies with the Communities and Regions, rather than the national legislature. Decrees may repeal, amplify, amend or replace prevailing statutory provisions in the allocated areas of responsibility, and escape review by the ordinary courts and the administrative courts (178); for that reason they have been placed under the control of a quasi-constitutional court, the Court of Arbitration (No. 23). The equipollence of national

and community and regional laws, moreover, cannot be considered inconsistent with what is described as ageneral principle of federalism expressed in the rule "Bundesrecht bricht Landesrecht." In point of fact, this rule applies only to concurrent competences (179) which, in Belgian public law, are the exception to the rule (180)(181). The Court of Arbitration has emphasized in its judgments **the exclusive nature of the competences allocated both rationae materiae and rationae loci** (182). Considering that some aspects of one competence may be the exclusive purview of one authority while other aspects of the same competence may fall under the sole responsibility of another authority (183), or again since the Communities and Regions, like the national authority, have the instruments needed to exercise their substantive powers, it is possible for cumulative and parallel measures to be enacted in the same area by and at distinct levels of authority184 without any one law being subordinate to any other. Should the policy of one authority conflict with that of another, with neither acting **ultra vires** of its powers, the Court of Arbitration and Council of State will apply the proportionality rule, which is thus developing into a criterion of competence: this states that no authority may, in administering a policy entrusted to it, take such radical steps without a minimum of good cause for doing so that another authority is seriously obstructed in the effective prosecution of its own policy (185). The responsibilities of the Communities and Regions, albeit **restrictively allocated**, are very broad. The Communities have responsibility for cultural affairs (186), education (187), personalized matters (188), international cooperation in such matters (189), and the use of languages in administrative matters, education and industrial relations between employers and their employees (190). The Regions have exclusive or partial competence over land use and planning, the environment, rural redevelopment and nature conservation, housing, water policy, economic policy (191), energy policy, subordinate authorities (192), employment policy, public works and transport policy (193). While these competences may be exclusive, they are not conferred **in toto**: some excepted aspects are devolved neither to the Communities nor Regions but remain vested in the general government authority (194). It would, however, be incorrect to construe Community and Regional responsibilities narrowly since they are allocated powers. The Court of Arbitration places a restrictive interpretation on the exceptions to Community and Regional responsibilities reserved to the national authority such that they cannot prejudice the scope of Community and Regional competences (195). The Court also considers that the responsibilities allocated to the Communities and Regions should be interpreted liberally such that (the narrowly-construed exceptions aside) they should be regarded as transferred "globally" and "in their entirety" (196). The focus of the current debate on residual competence (24) still tends to centre too greatly on the mistaken tenet that allocated responsibilities should be construed restrictively, while residual competences should be liberally interpreted (197). In connection with the same problem, account must also be taken of the centrifugal nature of the Belgian federalization process, which tends to preserve the allocated character of Community and Regional competences (198), and to leave residual competence vested in the national authority.

28.3. The Communities and Regions have substantial **financial resources** with which to finance the responsibilities allocated to them (199). From the view point of comparative federal law, the Belgian Communities and Regions are in no wise inferior to the federated states of America or Australia, the German Länder, the Canadian provinces or the Swiss

cantons (200). Their powers of revenue allocation are sufficiently extensive. And while their powers to raise tax revenue may be somewhat restricted (201)(202), they are by no means unique in that: in modern federal financing systems, generation of the larger sources of income stems from the legislative power of the federation, while public expenditure is broadly a function of the federated units (203).

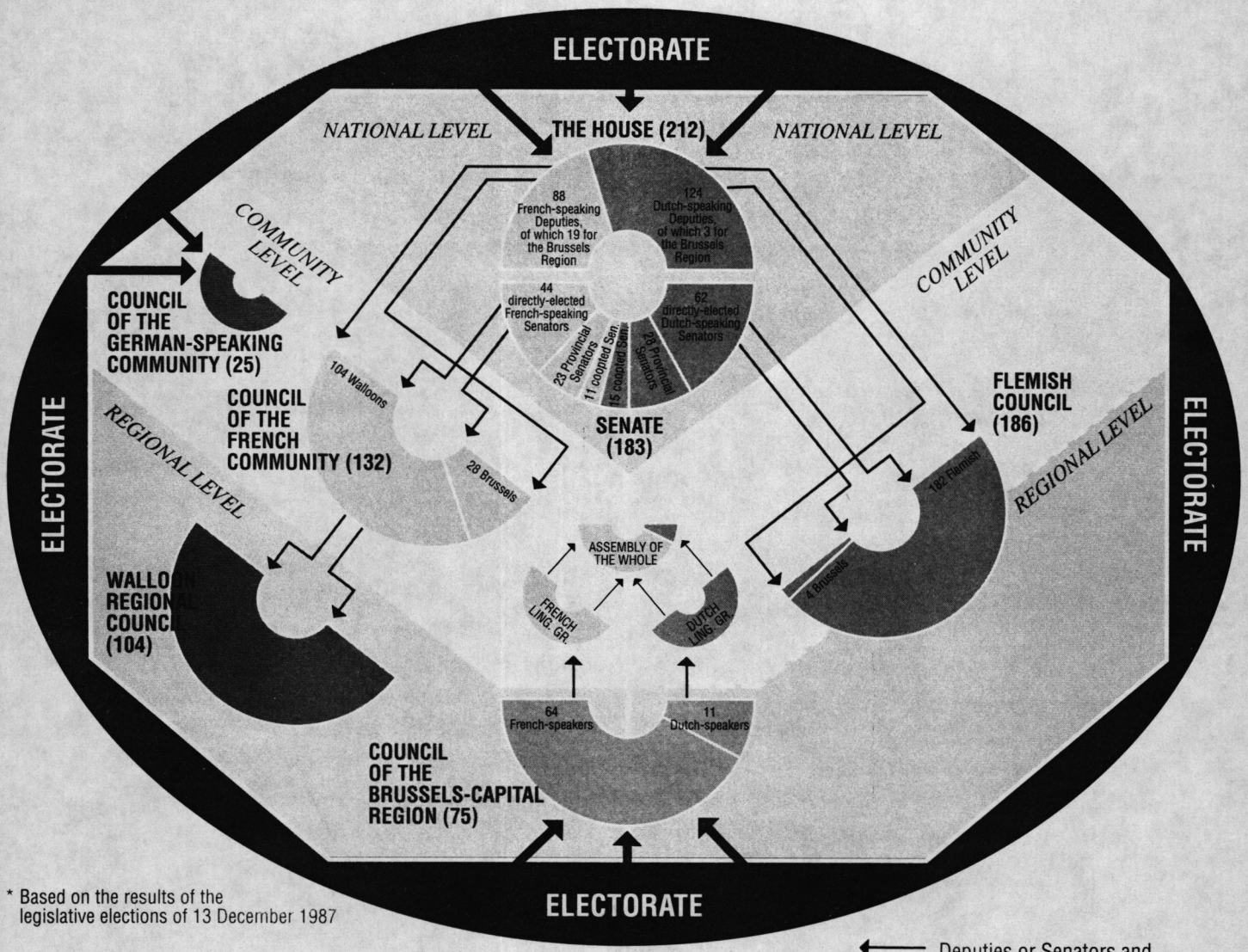
29. The autonomous powers of the constituent units aside (No. 28), **participation** in federal decision-making is another essential characteristic of a federal state: the federal constitution, which embodies the allocation of responsibilities between the federal authority and the constituent units can be amended only with the assent - or at least the involvement - of the federated entities; the legislative organ of the union is comprised of the constituent units as such, in principle on an equal footing, giving them an effective say in the framing of federal laws (204).

The Belgian bicameral system has not yet adjusted to the structure of a federal state: unlike the situation in a federal state, the House of Representatives and Senate, whose responsibilities are virtually identical, are composed in almost the same way. The reform of the bicameral system and the possible creation of a "second Chamber of States" are programmed for the final phase of the third reform of the State (205).

National constitutional and legislative authority is exercised collectively by the King, the House of Representatives and the Senate (Nos. 2 and 21). Consequently the Communities and Regions as such have no say either in amending the Constitution nor in framing national legislation. Since, however, the principal Councils of the Communities and Regions are comprised of directly-elected MPs (No. 28), the Flemish Community, French Community, Flemish Region and Walloon Region all have a say - if only an indirect one - in federal decision-making by the national legislative chambers. It is also inconceivable that the national parliament could pass laws against the interest of either Community: firstly because of the "alarm-bell procedure" (No. 12), and secondly because of the qualified majorities necessary to vote constitutional revisions and special-majority laws (No. 11). The Communities and Regions whose status - organs and competences (No. 28) - are embodied in the Constitution and special-majority laws thus enjoy formal protections against the national authority (206). Finally, the role of the linguistic groups (No. 16) in framing special-majority laws must not be disregarded. The Council of State considered that "the linguistic groups are no less fundamental constituents of our current political structures than the Community Councils" and" perform essential tasks on behalf and for the benefit of the respective Communities" (207).

30. To the classic principles of autonomy (No. 28) and participation (No. 29), modern federalism has added a third principle, that of **cooperation** (208). "**Dual federalism**" in which the union and the federated units are seen as completely juxtaposed autonomous authorities and in which the separation of their respective spheres of responsibility has ultimately excluded cooperation in the exercise of their functions, has been obliged to give way to the general finding that complete separation of the levels of authority was impossible and that inter-dependence and mutual influence in the exercise of powers was inevitable. The emphasis now lies more on complementarity and cooperation than separation and autonomy between the constituent authorities of modern federations (208). Public finance

The power to legislate, make decrees and ordinances: The composition of the assemblies*



* Based on the results of the legislative elections of 13 December 1987

Deputies or Senators and members of one or two Councils

Source: According to J. BRASSINNE / CRISP 1989

and the allocation of revenues have played a key role in the development of this type of "**cooperative federalism**" (209), which itself has encouraged cooperation to manifest in different, often informal, ways such as intergovernmental conferences (210). Given that cooperative federalism not infrequently leads to a marginalization of parliamentary control and a proportionate rise in the responsibilities of the executive branch, extreme developments of cooperative federalism have come under harsh criticism (211). The social reality, however, is that in the Federal Republic of Germany, for example, cooperation developed spontaneously and informally into a "genuine system" before being institutionalized in certain areas by the Constitution (212).

Belgium has experienced a similar development (213). Over and above the legal equality of statutes and decrees (No. 28), exclusivity of competences (No.28) was considered as the precondition for preserving the autonomy of the Communities and Regions. The inevitable interferences between the exercise of State, Community and Regional responsibilities prompted the emergence between 1980 and 1988 of certain forms of cooperation not based on written law, such as the "management agreements" in health policy, for example. The strict autonomy of the respective authorities often created a legal obstacle to associating the bodies of one authority in the operations of those of another authority, for example. The merit of the third reform of the State was to eliminate certain legal objections rooted in the principle of autonomy and to widen the scope for cooperation. Hence, Belgian public law as it stands today recognizes a variety of forms of cooperation between the State, the Communities and the Regions (213), such as: the possibility of reciprocal representation in management and decision-making bodies (214); cooperation agreements, which may even on occasion be mandatory (215); a multitude of concerted agreement procedures, more particularly at executive level, ranging from simple "consultation" to "concerted agreement" (216); a consultation committee (217) and inter-Ministerial conferences (218) comprised of members of the national Government and those of the Executives of the Communities and Regions (219). A more detailed consideration of each of these forms of cooperation (220) goes far beyond the scope of this study. Admittedly, this area is not without its legal shortcomings and loopholes (221), such as the lack of any defined relation between cooperation agreements and the legal orders of the contracting units, or the imprecision as to the import of the various consultation procedures. The highest form of cooperation, the "second Chamber of States," is likewise lacking (No. 29). Just as the danger of "over-regulation" and "federal oligarchy" is very present, given that cooperation lies chiefly at the executive level. Over and above a substantially increased degree of Community and Regional autonomy, however, the third round of State reform rightly paid particular attention to the forms of cooperation, which may help attenuate any future conflicts and centrifugal tendencies (No. 18).

V. GENERAL CONCLUSION

31. In any overall assessment of the reform of the Belgian State, it is all too easy to emphasize the more negative aspects: its complexity, notably due to the fact that the three Communities are not wholly congruent with the three Regions (No. 28) (222); the proliferation of institutions in Brussels-Capital, for instance (No. 21); the language issue; the bipolarity (Nos. 16-17) and centrifugal character (Nos. 18-19) making any federal state system impossible. But things can be seen in another light, as the following list shows: the emphasis given to the international role of Brussels and its function as the capital (No. 21), in which any form of subnationality is excluded (223); the concept of economic and monetary union (Nos. 22-23); the solidarity manifested in a national social security scheme (No. 22); the various avenues of cooperation (No. 30); the control of language problems through a "pacificatory law" (224).

As explained earlier, any federal system is a "sui generis" construct (No. 25). Federal structures cannot be dissociated from their underlying geographical, economic, historical and even ideological factors (225). All these factors are manifest in Belgian federalism (No.

6 et seq.). It is self-evident that in a federal state of two constituents (Nos. 16-17), it is more difficult to maintain balance between the requirements of the autonomy of the units on the one hand, and an efficient central policy on the other. Which explains why the Belgian institutional system - at first sight immensely complex - is based on an interlocking set of balances (Nos. 10 et seq.). The fact that national consensus has been reached on this system is already a remarkable achievement in itself.

The proper constitutional functioning of the federal state clearly depends on the element of "cohesion" outweighing the element of "autonomy" (226). That means that, alongside the diversity of the constituent units, there must also be a feeling of belonging to one nation, "a national spirit which alone is capable of binding together the whole" (227). The federal authority and the constituent units, moreover, must each have regard to the other's interests; this is the "Bundestreue" obligation - an extremely rich source of reference for case law to fill the gaps in federal written law. "**Bundestreue**" is not a concept in itself, but rather the expression of general principles of law going to the essential foundations of all legal systems (228). It is to be welcomed that both the Court of Arbitration and the Council of State apply the principle of proportionality (No. 28) to their reviews of the allocation of competences, and that the special legislative assembly of 1988 followed the opinion of the Court of Arbitration regarding economic and monetary union (No. 23), mandatory compliance with which is a cardinal form of compulsory cooperation in the Belgian federal state. It has also been considered that, despite the fact that there is no "full faith and credit clause" on the Belgian statute-book, which means that the administrative acts and judicial procedures of a federated entity are recognized by the other federated entities, a minimum degree of confidence in the regulations of the other entities as regards the approval of temporary employment offices was seen as fully warranted (229).

ANNEXE

FORMS OF COMPETENCE VESTED IN THE COMMUNITIES AND REGIONS

A. COMMUNITY COMPETENCES

Articles 3c, 59b and 59c of the Constitution.

Art. 3c
Belgium comprises three communities: the French Community, the Flemish Community, and the German-speaking Community. Each community enjoys the powers vested in it by the Constitution or by such legislation as shall be enacted in terms thereof.

Art. 59b
§ 1. There is a Council and an Executive of the French Community and a Council and an Executive of the Flemish Community, the composition and functioning of which are regulated by law. The Councils are composed of elected representatives.
With a view to the implementation of article 107d, the Council of the French Community and the Council of the Flemish Community, together with their Executives, may exercise the forms of competence vested respectively in the Walloon Region and in the Flemish Region, in obedience to the conditions and methods laid down by the law.
The laws referred to in the preceding paragraph must be enacted in terms of the majority vote specified in Article 1, last paragraph.
§ 2. The Community Councils, each in its own sphere, shall regulate by decree:
1. cultural matters;
2. education, excluding:
a) the beginning and end of compulsory school attendance;
b) minimum criteria for the issuing of academic qualifications;
c) pension schemes;
3. cooperation between the Communities and international cultural cooperation,including the conclusion of treaties in matters covered by points 1 and 2 of this paragraph.
A law enacted in terms of the majority vote specified in § 1, final paragraph, shall define the cultural matters referred to in (1), the forms of cooperation referred to in (3), and the procedures for the conclusion of treaties referred to in (3) of this paragraph.
§ 2b. The Community Councils, each for its own account, shall regulate by decree the personalized matters, as also cooperation between the Communities and international cooperation, including the conclusion of treaties, in such matters.
A law enacted in terms of the majority vote specified in § 1, final paragraph, shall define these personalized matters, the forms such cooperation shall take, and the procedures for the conclusion of treaties.
§ 3. Furthermore, the Community Councils, each for its own account, shall regulate by decree, to the exclusion of the Legislature, the use of languages in the following areas:
1. administrative matters;
2. the education provided in schools which are set up, subsidized or recognized by the public authorities;
3. industrial relations between employers and their personnel, together with such business instruments and documents as are required by law and the regulations.
§ 4. The decrees issued in terms of § 2 have the force of law respectively in the French language region and in the Dutch language region, and also with regard to institutions established in the bilingual region of Brussels-Capital which, by virtue of their activities, must be considered as belonging exclusively to one or other of the Communities.
Such decrees as are promulgated in pursuance of § 3 shall have the force of law respectively in the French language region and in the Dutch language region, except as regards:
- boroughs or groups of boroughs which are adjacent to another language region and in which the law prescribes or permits the use of a language other than that of the region in which they are located. The regulations on the use of languages in the matters referred to in § 3 may be amended for such boroughs only by means of a law passed by the majority prescribed in article 1, final paragraph;
- departments whose activities extend beyond the language region in which they are established;
- national and international institutions designated by law, whose activities are common to more than one Community.
A law passed by the majority prescribed in article 1, final paragraph, shall designate the authorities for the bilingual region of Brussels-Capital in which shall be vested those competences not devolved to the Communities in the matters prescribed in § 2b.
§ 5 - § 8 (...)

Art. 59c
§ 1. There is a Council and an Executive of the German-speaking Community, the composition and functioning of which are regulated by law.
The Council is composed of elected representatives.
Article 45 applies analogously to the members of the Council.
§ 2. The Council shall regulate by decree:
1. cultural matters;
2. personalized matters;

3. education, within the limits set by article 59b § 2, 2;
4. cooperation between the Communities and international cultural cooperation, including the conclusion of treaties in matters covered by points 1, 2 and 3 of this paragraph.
These decrees have the force of law in the German-speaking Region.
The law lays down the cultural and personalized matters referred to in (1) and (2), as well as the forms of cooperation referred to in (4), and the procedures for the conclusion of treaties.
§ 3. On the motion of their respective Executives, the Council of the German-speaking Community and the Walloon Regional Council may, by mutual consent and by separate decree, decide that the Council and the Executive of the German-speaking Community shall, within the German-speaking Region, exercise completely or partially the competences vested in the Walloon Region.
These competences shall, as the case may be, be exercised by means of decrees, orders or regulations.
§ 4. The Council and the Executive of the German-speaking Community exercise, by means of orders and regulations, any other competence vested in them by law.
Article 107 applies to these orders and regulations.
§ 5 - § 7 (...)

Articles 4, 5 § 1 and 16 of the Special Institutional Reform Law of 8 August 1980:

Art. 4:
The cultural matters referred to in article 59b, § 2, 1 of the Constitution are:
1. the defence and promotion of the language;
2. the promotion of training for research workers;
3. the fine arts;
4. the cultural heritage, museums and other cultural and scientific institutions, excluding historic sites and monuments;
5. libraries, record libraries and kindred services;
6. radio and television broadcasting, with the exception of broadcasts by the National Government;
6b. support for the written press;
7. youth policy;
8. permanent education and cultural animation;
9. physical education, sport and open-air activities;
10. leisure and tourism;
11. preschooling in nursery and day care units;
12. further education and parascholastic training;
13. artistic training;
14. intellectual, moral and social training;
15. social advancement;
16. professional reconversion and retraining, with the exception of rules governing intervention in the expenses incurred by the selection, professional training and rehabilitation of personnel recruited by an employer with a view to founding a business enterprise or to the enlarging or retooling of an existing enterprise;
17. (Repealed).

Art. 5, § 1
The personalized matters referred to in article 59b, § 2b of the Constitutionare:

I. In the sphere of health policy
1. The policy covering treatment and care dispensed within and outside hospitals and clinics, except for:
a) organic (constitutional - Tr.) legislation;
b) financing such facilities when this is organized by the organic legislation;
c) sickness and disability insurance;
d) basic rules with respect to planning;
e) basic rules for the financing of infrastructural work, including heavy medical equipment;
f) national standards governing official approval, but only to the extent that they may have repercussions on the areas of competence referred to in b), c), d) and e), above;
g) definition of the conditions for, and designation of, a university (teaching) hospital, in accordance with the legislation governing hospitals.
2. Education in health care and hygiene, together with work and services centred on preventive medicine, except for prophylactic measures at national level.

II. In the sphere of aid to individuals:
1. Family policy, including all forms of aid and assistance to families and children.
2. Social assistance policy, except for:
a) organic rules and regulations governing the Centres Publics d'Aide Sociale (CPAS - social welfare centres);
b) definition of the minimum amount and the conditions governing the granting and financing of the legally-guaranteed minimum income, in accordance with legislation instituting the right to a minimum level of subsistence.
3. The policy on reception and integration of immigrants.
4. The policy on handicapped people, including their training, rehabilitation and vocational guidance, except for:

a) the rules and financing of allowances to handicapped people, including their personal files;
b) rules governing financial grants for the employment of handicapped workers, awarded to workers engaging disabled people.
5. Old-age policy, except for the definition of the minimum amount, the conditions surrounding the granting and financing of the income legally guaranteed to senior citizens.
6. The care and protection of minors, including their social and legal protection, except for:
a) the rules of civil law governing the status of minors and the family, as established by the Civil Code and the statutes by which the Code is amplified;
b) the rules of criminal law making acts in contravention of the protection of minors a punishable offence and establishing the penalties by which such breaches are sanctioned, including any provisions relating to legal proceedings, without prejudice to article 11;
c) the organization of juvenile courts and tribunals, their territorial competence and the procedures before them;
d) the determination of measures which may be applied to minors having committed an act classed as an offence;
e) for feiture or lapse of parental and guardian's authority over child benefit/family allowance and other social welfare allowances.
7. Social aid to prisoners with a view to their re-integration into society.

III. (Repealed)

Art. 16
§ 1. Formal assent to any treaty or agreement relating to cooperation in the matters referred to in article 59b, § 2 (1) and (2) of the Constitution and articles 4 and 5 of the present Law is given either by the Council of the French Community, orby the Flemish Council, or by both Councils together if both are involved.
§ 2. The treaties referred to in § 1 are tabled in the appropriate Council by the Executive of the Community.

B. THE FORMS OF COMPETENCE VESTED IN THE REGIONS

Articles 26b, 107d and 108c of the Constitution

Art. 26b
The laws enacted in implementation of article 107d shall determine the force in law of the rules which the bodies there by created shall apply in those matters theyshall specify.
Such laws may confer on those bodies the authority to issue decrees having the force of law within the competence and in the manner they shall determine.

Art. 107d
Belgium comprises three regions: the Walloon Region, the Flemish region and the Brussels Region.
The law confers on the regional bodies which it sets up, and which are composed of elected representatives, the power to rule on such matters as it shall determine, to the exclusion of those referred to in Articles 23 and 59b, within such competence and in accordance with such procedure as it shall determine.
Such a law must be passed with a majority vote within each linguistic group of both Houses, providing the majority of the members of each group are present and on condition that the total votes in favour in the two linguistic groups attain two thirds of the votes cast.

Art. 108c
§ 1. (...)
§ 2. The competences of the urban area to which the capital of the Kingdom belongs shall be exercised in the manner laid down in a law passed by the special majority provided in article 1, final paragraph, by the bodies of the Brussels-Capital Region established pursuant to article 107d.
§ 3. There are linguistic groups of the Council of the Brussels-Capital Region and Colleges, with responsibility for community matters; their composition, functioning, competences and, without prejudice to article 59b, § 6, their financing, are governed by a law passed by the special majority provided in article 1, final paragraph.
The said bodies:
1. shall have the same competences as the other administering authorities with respect to cultural, educational and personalized matters for their respective communities;
2. shall exercise the competences devolved to them by the Councils of the Communities for their respective communities;
3. shall mutually regulate those matters falling within point 1 which are of common interest.
The Colleges together shall form the full College which shall act as a body for consultation and coordination between the two communities.
(...)

Article 6, § 1 of the Special Institutional Reform Law of 8 August 1980

Art. 6. § 1
The matters referred to in article 107d of the Constitution are:

I. Area development planning
1. Town planning and regional land use and management
2. Alignment plans for the borough road network
3. The acquisition, development and equipment of sites for use by heavy industry, light industry and services, or other infrastructures to accommodate investors, including capital investment for the equipment of industrial estates in the vicinity of seaports and their availability to users;
4. Inner city redevelopment;
5. Redevelopment of disused industrial sites;
6. Land policy;
7. Monuments and sites.

II. The environment
1. Protection of the environment, including general and sectoral standards, subject to the general and sectoral standards prescribed by the national authorities where no European standards exist;
2. Waste policy, excluding the import, transit and export of radioactive waste;
3. Inspection and supervision of dangerous, unhealthy or objectionable premises, subject to domestic public policy measures concerning the protection of labour.

III. Rural redevelopment and nature conservation
1. The regrouping of agricultural holdings and rural redevelopment;
2. The protection and conservation of nature, except for the import, export and transit of non-indigenous plant species, together with non-indigenous animal species and their skins;
3. Tracts of countryside, parks and greenbelts;
4. Forests;
5. Hunting, except for the manufacture, trade in and possession of hunting weapons, and bird-snaring;
6. River fishing;
7. Fish farming;
8. Agricultural water engineering and non-navigable waterways, including their banks;
9. Flood control and drainage;
10. Polders and fenland.

IV. Housing
Housing and the inspection of dwellings which constitute a danger to public health and hygiene.

V. Water policy
1. The production and distribution of water, including technical regulations governing drinking water, subject to the minimum standards prescribed by the national authorities where no European standards exist;
2. Purification of effluent. This includes in particular the prescribing of general and sectoral conditions for the discharge of effluent subject to the minimum standards for discharge prescribed by the national authorities where no European standards exist;
3. Sewerage.

VI. Economic affairs
1. Economic policy;
2. Regional aspects of credit policy, including the creation and management of public credit institutions;
3. Market outlet and export policy, without prejudice to any national policy for coordination, promotion and cooperation in the matter through suitable institutions and instruments;
4. Complementary and supplementary assistance to agricultural undertakings: the Regions shall be associated in the management of the Agricultural Fund and the Agricultural Investment Fund;
5. Natural resources.
Provided that:
1. any regulation enacted by the region relating to tax concessions falling within the scope of national fiscal policy and granted pursuant to the Economic Expansion Laws shall be subject to the assent of the appropriate national authority;
2. the Cabinet may accord the State's guarantee to economic expansion matters ona proposal by the Executive concerned.
In economic matters, the Regions shall exercise their powers in accordance with the principles of freedom of movement of persons, goods, services and capital and the freedom of trade and industry, and in compliance with the general legal framework of economic union and monetary unity as established by or under the law and by virtue of international treaties.
To this end, the national authorities have the power to prescribe general rules concerning:
1. public contracts;
2. consumer protection;
3. the organization of the economy;
4. maximum limits for assistance to companies in economic expansion matters, which may be altered only with the assent of the Regions.

The national authorities, moreover, have sole powers over:
1. Monetary policy, both domestic and external;
2. Finance policy and the protection of savings, including the regulation and supervision of credit and other financial institutions and insurance and similar undertakings, holding companies and unit trusts, mortgage loans, consumer credit, banking and insurance law, and the formation and management of public credit institutions;
3. Prices and incomes policy;
4. Competition law and business practices law, except for the awarding of quality labels and registered designations of origin of a regional or local character;
5. Commercial and company law;
6. Conditions for the taking up and exercise of occupations;
7. Industrial and intellectual property;
8. Quotas and licences;
9. Weights and measures and standards;
10. Confidentiality of statistics;
11. the National Investment Corporation;
12. Labour law and social security.

VII. Energy policy

The regional aspects of energy, and in any case:
a) the local distribution and transmission of electricity by means of a grid with a nominal voltage less than or equal to 70,000 volts;
b) the public distribution of gas;
c) the use of coal-gas and exhaust gases from blast furnaces;
d) remote heating distribution systems;
e) development of spoil tips;
f) new sources of energy, excluding those derived from nuclear power;
g) the recovery of energy by industries and other users;
h) the rational use of energy.
Provided always that the national authorities shall have competence over matters whose technical and economic indivisibility requires identical treatment nationwide, namely:
a) the national infrastructure and facilities plan for the electricity industry;
b) the nuclear fuel cycle;
c) major infrastructural facilities for storage, transmission and generation of energy;
d) tariffs and charges.

VIII. The subordinate authorities

1. The operating methods, supervision and determination of the competences of the associations of boroughs set up as public utilities, and the application of the constitutional laws governing such associations;
2. The general financing of boroughs, conurbations and federations of boroughs and the provinces, except for the Province of Brabant;
3. The financing of public works to be carried out by the boroughs, conurbations and federations of boroughs, the provinces and other public corporations in matters falling within the competence of the Regions, except where those works relate to matters falling within the competence of the national authorities or the Communities. The appropriate Region for financing the public works to be carried out by the province of Brabant shall be determined by the geographical location of the work to be done.

IX. Employment policy

1. The employment of workers;
2. Programmes for putting registered full-time unemployed and equivalent persons back to work, excluding such employment programmes in the central administration and other departments of the national government or under its supervision.
The national authority will make a financial contribution for each registered full-time unemployed worker or person treated as equivalent under or by virtue of the law, engaged under a contract of employment in an employment programme, the amount of which, fixed by Royal Decree discussed in the Cabinet, shall correspond to the amount of unemployment benefit.
The financial contribution referred to in the preceding paragraph may vary with the period for which the person engaged for work has been unemployed. The amount of such contribution is fixed by agreement with the Regional Executives.
Without prejudice to the foregoing provisions, and until the expiration of the period of validity of the Interdepartmental Budgetary Fund established by Royal Decree No. 25 of 24 March 1982, the existing regulations shall continue to apply to the agreements referred to in section 5 of the said Decree No. 25 concluded before the entry into force of the law referred to in the final paragraph of article 115 of the Constitution;
The application of standards governing the employment of foreign workers.

X. Public works and public transport

1. roads and their ancillary structures;
2. waterways and their ancillary structures;
3. ports and their ancillary structures;
4. coastal protection;

5. dykes, embankments and moles;
6. ferry services;
7. the equipping and operation of public airports and airfields, excluding Brussels National Airport;
8. city and local public transport, including specialized scheduled services and taxi services;
9. pilot and buoyage services into and out of ports, together with sea rescue and salvage services.

The powers conferred in points 2, 3, 4 and 9 include the right to carry out works and activities, including dredging, necessary to the exercise of those powers within territorial waters and on the continental shelf.

NOTES

(1) For further details on the principal characteristics of the structure of the Belgian State, see: A. ALEN, Algemene beginselen en grondslagen van het Belgisch Publiek Recht. Boek I. De Instellingen, Brussels, Story-Scientia, 1988, pp. 77-91. See also: A. MAST, Une constitution du temps de Louis-Philippe, R.D.P., 1957, pp. 987-1030.

(2) See Belgian Constitution, articles 26 ("Legislative authority is exercised collectively by the King, the House of Representatives and the Senate), 29 ("The executive authority is vested in the King as laid down by the Constitution"), and 30 ("The judiciary authority is exercised by the courts and tribunals").

(3) Constitution, article 25 (1).

(4) Constitution, article 32.

(5) G. BERLIA, cited by F. DELPEREE, La vie de la Constitution, Ann. Dr., 1980, p. 128.

(6) Constitution, article 1: "Belgium is divided into provinces. These provinces are: Antwerp, Brabant, West Flanders, East Flanders, Hainaut, Liège, Limbourg, Luxembourg, Namur (...)."

(7) Following the merging of communes (municipalities) in 1975, the 2,359 existing communes were replaced by 589 new or enlarged communes: the average population per commune thus rose from 4,164 to 16,678 inhabitants and the average area from 13 to 52 km².

(8) Constitution, article 31: "Interests which are exclusively municipal or provincial are regulated by the municipal or provincial councils in accordance with the principles laid down by the Constitution."

(9) Chapter IV of Title III of the Constitution ("Concerning the authorities"). The other chapters in this Title are: "Concerning the Houses of Parliament (Chapter I); "Concerning the King and his Ministers" (Chapter II); "Concerning the judiciary power" (Chapter III); "The Prevention and Settlement of Conflicts" (Chapter III-B); "Concerning the regional institutions" (Chapter III-C).

(10) Constitution, article 108 (2) [2]; see also Constitution, article 31, cit.

(11) Also pursuant to the Provincial Law, article 85 (2) and (3): (The internal administrative regulations and police ordinances of the provinces) may not cover matters already governed by general statute or general administrative regulations. "They shall be automatically repealed where any matters dealt with thereby are subsequently dealt with in a general statute or general administrative regulations."

(12) A. MAST, A. ALEN and D. DUJARDIN, Overzicht van het Belgisch Administratief Recht, 11th ed., Brussels, Story-Scientia, 1989, Nos. 351-352.

(13) Constitution, article 107: "The courts and tribunals shall not apply any general, provincial or local decrees and regulations save insofar as they are in accordance with the law." The Law of 23 December 1946, moreover, established a Conseil d'Etat (Council of State), the administrative division of which adjudicates by way of judgments on appeals to quash administrative acts and regulations on the grounds of illegality (Coordinated Laws on the Council of State, article 14).

(14) Constitution, article 108 (2) [6].

(15) See, e.g., P. VERMEULEN, Hervorming van de Staat, T.B.P., 1975, p. 421.

(16) To some extent since 1970 also by decree of the French Community and Flemish Community (Constitution, article 59b § 3).

(17) Constitution, article 23.

(18) On changes in the legislation governing languages, see in particular P. MAROY, L'évolution de la législation linguistique belge, R.D.P., 1966, p. 449-501.

(19) Article 140 of the Constitution, included by the Constitutional revision of 10 April 1967, provides: "The text of the Constitution is drawn up in French and in Dutch." The Dutch text of the Constitution was published in the Moniteur Belge (Official Gazette) of 3 May 1967.

(20) Now article 1 of the Law of 31 May 1961 concerning the use of languages in legislative matters, the presentation, publication and entry into force of statutes and regulations (M.B., 21 June 1961).

(21) Constitution, article 48 (2), as amended by the Constitutional revision of 15 November 1920.

(22) J. DESTREE, Lettre au Roi sur la séparation de la Wallonie et de la Flandre, Editions de la Wallonie Libre, 1968, p. 16.

(23) Final report by the Centre for the search for a national solution to the social, political and legal problems of the various regions of the country, Doc. parl. (Parliamentary Reports), House of Representatives, 1957-58, No. 940, and particularly the following passages: "The Walloon Community and the Flemish Community must be homogeneous. Flemings moving to live in Wallonia and Walloon staking up residence in Flanders must mix in with the community. The personal aspect is thus sacrificed to the territorial aspect" (report of the cultural section, ibid., p. 310). "The Centre (...) acknowledges that two cultural communities exist within the Belgian nation (...). For them to develop to the full, these two communities must be homogeneous, which is to say that: 1) intellectual life, education and administration in them must take place in one language; 2) linguistic minorities living in them cannot live in voluntary isolation and must adapt to the community. Any compulsory bilingualism must be condemned" (General conclusions, ibid, p. 344).

(24) For a more precise explanation of the territoriality principle, see: A. ALEN, Algemene beginselen en grondslagen, o.c., p. 57-65.

(25) Law of 8 November 1962 reorganizing the boundaries of the provinces, districts and municipalities, and amending the Law of 28 June 1932 on the use of languages in administrative matters and the Law of 14 July 1932 concerning linguistic arrangements for primary and middle school education.

(26) Law of 2 August 1963 on the use of languages in administrative matters.

(27) Royal Decree of 18 July 1966 coordinating the Laws on the use of languages in administrative matters (M.B., 2 August 1966).

(28) As fixed on the aforesaid coordinated Laws of 18 July 1966, as amended by the Law of 23 December 1970.

(29) Constitution, article 3b, added by the Constitutional revision of 24 December 1970.

(30) Constitution, article 126.

(31) These are the "municipalities with special linguistic arrangements," of which there are four types: the 6 "peripheral boroughs" of Brussels (situated in the Dutch-language region, but with facilities for French-speakers); the 9 municipalities in the German-speaking region (with facilities for French-speakers); the 2 "Malmédy boroughs" (situated in the

French language region, with facilities for German-speakers) and the 10 "linguistic boundary boroughs" (6 in the Dutch-language regions - notably Fourons - with facilities for French-speakers, and 4 in the French-language region - notably Comines-Warneton and Mouscron - with facilities for Dutch-speakers).

(32) Constitution, article 59b, § 4, para 2, indent 1.

(33) E.C.H.R. 23 July 1968 concerning certain aspects of the linguistic arrangements for education in Belgium, Publ. Cour., Series A, vol. 6, § 7 and 42.

(34) E.C.H.R. 2 March 1987, Mathieu-Mohin and Clerfayt, Publ. Cour., Series A, vol. 113, § 57.

(35) Constitution, articles 47, 48, 49, 53 (1) and 54. The national population census of 1 March 1981 (M.B., 17 March 1984) attributed a population of 9.848.647 to Belgium, distributed as follows: 5.630.129 in the Dutch-language region (57.17%); 3.156.311 in the French-language region (32.05%); 997.293 in the bilingual Brussels-Capital region (10.13%); 64.914 in the German-speaking region (0.65%).

(36) In the recent legislative elections of 13 December 1987, 124 of the 212 members of the directly-elected House of Representatives belonged to the Dutch linguistic group (58.49%) and 88 to the French linguistic group (41.51%); of the 106 directly-elected senators, 62 belonged to the Dutch linguistic group (58.49%) and 44 to the French linguistic group (41.51%).

(37) The territory of this Region comprises the 19 boroughs of the administrative district of Brussels-Capital (article 2 (1) of the Special Law of 12 January 1989 concerning the Institutions of Brussels), which also form the bilingual region of Brussels-Capital (article 6 of the coordinated Laws on the use of languages in administrative matters of 18 July 1966; see supra, note 8) and the territory of the Brussels conurbation (article 61 of the Law of 26 July 1971 organizing conurbations and federations of boroughs).

(38) Following the first direct elections to the Council of the Brussels-Capital region on 18 June 1989, 11 of the 75 appointive seats went to Dutch-speakers (14.67%) and the remaining 64 to French-speakers (85.33%). Under articles 37, 38 and 44 of the Special Law of 16 January 1989 relative to the financing of the Communities and Regions, as regards the allocation among the appointed parties of the proceeds of the national taxes, localized in the bilingual Brussels-Capital Region, 80% is allocated to the French Community and 20% to the Flemish Community.

(39) Adde the "linguistic facilities" (point 8).

(40) Hitherto, a special majority - two thirds of members present and a majority of two thirds of the votes in each legislative Chamber - was required to revise the Constitution (article 131 of the Constitution) or to resolve certain problems relative to the monarchy, in particular the succession to the throne (Constitution, articles 61 and 62).

(41) Except for budgets which, generally speaking, have no legislative function,and for special-majority laws, which has in-built protection in the requirement of separate majorities by each linguistic group.

(42) Constitution, article 38b.

(43) It comes as somewhat of a surprise to find that this procedure has been applied only once since 1970, to a relatively unimportant 1985 bill on university education. Even though the procedure was aborted after its commencement by the prior dissolution of Parliament, a reasoned Cabinet opinion indicated that a consensus had been reached on the tabling of a general government bill to replace the disputed legislative initiative: see A. ALEN and D. DUJARDIN, Casebook Belgisch Grondwettelijk Recht, Brussels, Story-Scientia, 1986, p. 206-208.

(44) Constitution, article 86b.

(45) Constitution, articles 38b, 79 and 82.

(46) Already by 1987, over 600 separate statutory provisions required discussion by the Cabinet: M. LEROY, Les reglements et leurs juges, Brussels, Bruylant, 1987, p. 39, note 2.

(47) See the practical instructions on Cabinet procedure in A. ALEN and D. DUJARDIN, Casebook, op. cit. p. 532-533.

(48) Constitution, article 91b.

(49) As to the French Community and Flemish Community, see articles 4 to 6 of the Law of 3 July 1971 concerning the distribution of the members of the legislative chambers into linguistic groups and making various provision..., enacted under article 59b § 7 of the Constitution (the motion must be signed by at least one quarter of the members); as to the German-speaking Community, see articles 73 to 75 of the Law of 31 December 1983 on institutional reforms for the German-speaking Community, enacted under article 59c § 7 of the Constitution (motions must be signed by not less than 3 members of the 25-member Council). On instances in which the procedure has been applied (twice in the Flemish council and once in the Council of the French Community): see in particular J. DE GROOF, De bescherming van ideologische en filosofische strekkingen - Een inleiding, in A. ALEN and L.P. SUETENS, Zeven knelpunten na zeven jaar Staatshervorming, Brussels, Story-Scientia, 1988, p. 254-256.

(50) Constitution, article 6b, first sentence: "Enjoyment of the rights and liberties to which Belgians are entitled must be ensured without discrimination."

(51) Constitution, article 6b, second sentence: "To this end, laws and decrees shall guarantee amongst other things the rights and liberties of ideological and philosophical minorities." See also: Constitution, articles 59b § 7, and 59c § 7.

(52) Law of 16 July 1973 guaranteeing the protection of ideological and philosophical movements, the substance of which was re-enacted in the Decree of the Flemish Council of 28 January 1974 concerning the cultural compact. See on this: P. BERCKX, De cultuurpactwet. Onvoltooid en onbemind, Antwerp, Kluwer rechtswetenschappen, 1989.

(53) Constitution, article 107c § 2, implemented by the Special Law of 6 January 1989 on the Court of Arbitration.

(54) Constitution, articles 107d and 108c § 2, implemented by the Special Law of 12 January 1989 on the Institutions of Brussels.

(55) See on this: A. ALEN, Het Brusselse Hoofdstedelijk Gewest en zijn instellingen, T.B.P., 1989, p. 491-494.

(56) Articles 31 and 54 of the above mentioned Special Law of 12 January 1989.

(57) Articles 34 and 48 of the above Law.

(58) Article 41 of the above Law.

(59) This means the 212 members of the House of Representatives, all directly-elected, the 106 directly-elected Senators, those Senators - currently 51 - elected by the Provincial Councils and the at present 26 Senators co-opted by the two aforementioned categories of Senator. The only Senator by right - Prince Albert - is also the only member of parliament not to belong to a linguistic group.

(60) Being the members whose electoral constituency lies wholly within the Dutch-language region (the Dutch linguistic group), or within the French- or German-speaking region (the French linguistic group).

(61) According to the language in which the oath is taken for the other members of parliament: members elected directly by the electoral college for the - not yet divided - district of Brussels-Halle-Vilvoorde (which encompasses both the administrative district of Halle-Vilvoorde situated in the Dutch-language region and the bilingual region of Brussels-Capital); the Senators elected by the Provincial Council of Brabant (the only province whose territory encompasses several linguistic regions); the co-opted senators.

(62) Note that neither legislative chamber has a German linguistic group since the elected representatives of the German-speaking region automatically belong to the French linguistic group.

(63) Constitution, article 32b, implemented by article 1 of the abovementioned Law of 3 July 1971.

(64) See point 15 and article 34 of the Special Law of 12 January 1989 concerning the Institutions of Brussels: "The Executive shall comprise five members elected by the Council from amongst its number. In addition to the President, it shall comprise two members of the French-speaking linguistic group and two members of the Dutch-speaking linguistic group on the Council."

(65) Article 31 of the Special Law of 6 January 1989 concerning the Court of Arbitration: "The Court of Arbitration shall comprise twelve judges: six French-speaking judges whose shall form the Court's French-speaking linguistic group and six Dutch-speaking judges whose shall form the Court's Dutch-speaking linguistic group." See also article 35 of the Law, providing for an equality of clerks of the court.

(66) Article 43d of the Law of 15 June 1935 on the use of languages in legal proceedings (both on the bench and in the Law Officer's department).

(67) Article 73 § 1 of the coordinated Laws on the Council of State (on the bench, for junior civil servants in the Council and the coordination office).

(68) Article 43 of the coordinated Laws on the use of languages in administrative matters.

(69) Article 21 of the above laws.

(70) Article 32 of the Law of 16 June 1989 effecting various institutional reforms, giving application to the arrangements for the central departments of the State.

(71) As regards public utilities, it is specifically provided that one third of the members of their governing bodies must belong to the smallest linguistic group: articles 7 § 3 and 14 § 2 of the law of 28 December 1984 abolishing or reorganizing certain public utilities; article 36 § 1 of the aforesaid Law of 16 June 1989.

(72) O. COENEN, De besluitvormingsmechanismen op nationaal en gewestelijk vlak. Een federale staat zonder federaal gezag?, Res publica, 1984, p. 333-340.

(73) C.J. FRIEDRICH at the conference on "Le Fédéralisme et la Belgique," Res publica, 1971, p. 388-389.

(74) Compare W. DEWACHTER, De modernisatie van de besluitvormingsstructuur in België, in Politieke instrumenten ter bestrijding van crises, Louvain, Press Univ., 1983, p. 31-54, advocating the direct election of the Prime Minister.

(75) R. SENELLE, Rol en betekenis van de monarchie in een federaal België, in A. ALEN and L.P. SUETENS, Zeven knelpunten, op. cit., p. 33-49, which also appeared under the title "Rolle und Bedeutung der Monarchie in einem föderativen Belgien," Jahrbuch des Öffentlichen Rechts, 1987, p. 121-134.

(76) A. ALEN, Het Coudenberg-rapport, De Standaard, 23 December 1987. This newspaper article was written in response to the Coudenberg Report Naar een ander België?, Tielt, Lannoo, 1987.

(77) Ann. parl. (Parliamentary proceedings), Senate, 18 February 1970, p. 777-780, and House of Representatives, 18 February 1970, p. 3-5.

(78) Law of 18 May 1960 (M.B., 27 May 1960).

(79) Royal Decree of 25 September 1969 (M.B., 30 September 1969).

(80) With the adoption of the authentic Dutch version of the Constitution: see point 6, supra.

(81) Now simply called "Communities."

(82) Constitution, article 3c.

(83) Now called the "Flemish Community."

(84) Now called the "German-speaking Community."

(85) Constitution, articles 59b and 59c.

(86) The German-speaking Community's power to enact decrees was included in the Constitution only in 1983.

(87) However, the German-speaking Community has no powers as regards the use of languages, this power remaining arrogated in full to national government for the entire German-speaking region, the bilingual region of Brussels-Capital and the boroughs under special linguistic arrangements (point 8, supra).

(88) After the constitutional revision of 1 June 1983 for the German-speaking Community.

(89) Constitution, articles 59b, § 2b and § 4b.

(90) Constitution, article 59b § 1 and § 5.

(91) After the constitutional revision of 20 June 1989 for the German-speaking Community.

(92) Constitution, article 17.

(93) Constitution, article 59b § 2 (2): "education, excluding: a) the fixing of the beginning and end of compulsory school attendance; b) the minimum criteria for issuing certificates; c) pension schemes."

(94) Constitution, article 59b § 2 (3): this power, not to be confused with the power of assent - the power to assent by decree to treaties concluded by the King in Community affairs dates back to 1978 for the French and Flemish Communities and to

1983 for the German-speaking Community - is not, however, executory since the precise detailed procedures have yet to be settled by statute (a special majority Law for the French and Flemish Communities, and an ordinary Law for the German-speaking Community).

(95) Constitution, article 107d.

(96) Slightly later each time for the German-speaking Community: not until 1985 and 1989.

(97) Article 131 of the Constitution provides a three-stage procedure for the revision of Constitutional provisions: the three branches of the legislature (the King, House of Representatives and Senate) each designate the constitutional provisions to be revised in a declaration, which is published in the Moniteur Belge (Official Gazette); the two legislative chambers are then automatically dissolved and legislative elections held; the newly-elected Houses are then convened and pronounce judgement by special majority (see point 11, supra), in agreement with the King, on the points submitted for revision.

(98) Extensive use was nonetheless made of this "implied constitutional revision," which complies with neither the letter nor spirit of article 131 of the Constitution (see preceding note), in the three constitutional revisions of 1970, 1980 and 1988 effecting the reform of the State. This is illustrated by the treaty-making powers of the Communities (point 20), whereas article 68 of the Constitution - unamended since 1831 - provides that treaties must be made by the Sovereign and in most cases receive the assent of both Houses.

(99) Constitution, article 26b.

(100) Article 19 of the Special Institutional Reform Law of 8 August 1980.

(101) Article 7 of the Special Law of 12 January 1989 concerning the Institutions of Brussels.

(102) Article 9 of the same Law and articles 1 and 26 of the Special Law of 6 January 1989 on the Court of Arbitration.

(103) Article 9 of the abovementioned Special Law of 12 January 1989 provides that: "In the event of non-conformity they (the courts, tribunals and administrative instances) shall refuse to apply the ordinance."

(104) Article 45 of the Special Law of 12 January 1989.

(105) Constitution, article 59b § 1.

(106) Article 1 § 4 of the Special Institutional Reform Law of 8 August 1980 on empowers the Council of the French Community and the Walloon Regional Council likewise to decide by mutual agreement, through decrees passed by two-thirds majority vote of the votes cast in each Council, that the organs of the French Community shall exercise the competences of the Walloon Region. Article 59c § 3 of the Constitution makes similar provision with respect to the German-speaking Community which, subject to agreement between and by separate decrees of the Council of the German-speaking Community and the Walloon Regional Council, may also exercise within the German-speaking region part or all of the competences vested in the Walloon Region. Neither of these provisions have yet been implemented to date.

(107) Article 1 § 1 of the Special Institutional Reform Law of 8 August 1980.

(108) Both retain their separate legal personality (article 3 of the Special Law of 8 August 1980); their law-making rules, while having the same legal force, are of differing scope (Constitution, article 59b § 4 and § 4b; articles 2 and 19 § 3 of the Special Law of 8 August 1980); the Flemish Council and Flemish Executive are differently constituted according to whether they are transacting Community or regional business (articles 50 and 76 § 1 of the Special Law of 8 August 1980),suggesting that the same Flemish decree cannot dispose of Community and regional matters indifferently.

(109) See articles 48 et seq. of the Special Law of 12 January 1989 concerning the Institutions of Brussels, enacted in implementation of article 108c § 2 of the Constitution. See point 15, supra.

(110) See articles 60 et seq. of the Special Law of 12 January 1989 concerning the Institutions of Brussels, enacted in implementation of article 59b § 4 (2) of the Constitution.

(111) See articles 60 et seq. of the Special Law of 12 January 1989 concerning the Institutions of Brussels, enacted in implementation of article 108c § 3 of the Constitution.

(112) On the institutions of the Brussels-Capital Region, see R. ANDERSEN et al., La Région de Bruxelles-Capitale, Brussels, Bruylant, 1989, and P. VAN ORSHOVEN, Brussel anno 1989, R.W., 1989-90, P. 449-466; on federal capitals, see: D.C. ROWAT, The Government of Federal Capitals, University of Toronto Press, 1973.

(113) While the population of the Flemish Region (discounting the Flemish inhabitants of Brussels) varied between 56.38% (in 1975) and 57.57% (in 1987), the Flemish Community was allocated only 55% of Community budget appropriations and the Flemish Region only 51.14% (in 1975) to 52.94% (in 1987) of regional budget appropriations.

(114) Constitution, articles 110 § 2, 11 and 113.

(115) This interpretation was enshrined in the Law of 23 January 1989 in implementation of article 110 § 2 (2) of the Constitution (M.B., 24 January 1989).

(116) Court of Arbitration, Case No. 45 - Judgement No. 47, 25 February 1988, M.B. 17 March 1988 (partial quashing of a Walloon water tax). See C. VANDERVEEREN's commentary on this important judgement in R.W., 1988-89, p. 345-364.

(117) Article 69, paragraph 1, 1° of the Special Law of 16 January 1989 concerning the financing of the Communities and the Regions; Article 84 of the law of 31 December 1983, on the reform of the institutions of the German Community, implemented by the law of 18 July 1990. However, the majority of the financial resources allocated to the German Community remain a credit chargeable to the Kingdom's budget: see Articles 56-60c of the above-mentioned law of 31 December 1983.

(118) Constitution, article 59b § 6; with the exception of the German-speaking Region, however, whose general position is governed by an ordinary statute pursuant to article 59c of the Constitution.

(119) Constitution, article 115 (3).

(120) Special Law of 16 January 1989 concerning the financing of the Communities and Regions.

(121) A short but lucid summary can be found in J.C. SCHOLSEM, Les nouvelles regles de financement, J.T., 1989, p. 251-253.

(122) Article 9 of the Special Finance Law of 16 January 1989. A similar restriction applies for the same reason to loans contracted by the Communities and Regions: article 49 § 6 and § 7 of the same statute

(123) See A. ALEN and B. SEUTIN, De fiscale bevoegdheden van de gemeenschappen en de gewesten, T.B.P., 1989, p. 271-288.

(124) For the Communities: in educational matters, by taking account of the needs for each pupil; and for the regions: by providing for a national solidarity contribution for regions where the average per capita income tax revenue is less than the

average per capita income tax revenue for the Kingdom as a whole. Social security also remains the exclusive preserve of national government.

(125) Constitution, article 107c § 2.

(126) Court of Arbitration, Case No. 36 - Judgement No. 32, 29 January 1987, R.W., 1986-87, col. 2433-2453, reported by L. VERMEIRE.

(127) Court of Cassation, 27 May 1971, J.T., 1971, p. 460-474, opinion of W.J. GANSHOF VAN DER MEERSCH.

(128) For the "ordinances" of the Brussels-Capital Region, see point 21, supra.

(129) Conflicts of competence are prevented by the non-mandatory opinions of the legislation section of the Council of State on draft bills submitted to it: Constitution article 107c § 1, given effect by the coordinated laws on the Council of State.

(130) An excellent study of the Law of 28 June 1983 (since repealed) on the Court of Arbitration can be found in J. VELAERS, Het Arbitragehof, Antwerp-Apeldoorn, MAKLU, 1985. See also: L.P. SUETENS, Die Verfassungsrechtsprechung in Belgien. Der Schiedsgerichtshof, Jahrbuch des Öffentlichen Rechts, 1987, p. 135-153.

(131) On the Court's procedure, see in particular: R. ANDERSEN et al., La Cour d'Arbitrage. Actualité et perspectives, Brussels, Bruylant, 1988, and J. VELAERS, Het Arbitragehof: "Een grondwettelijk hof met een beperkte bevoegdheid." Een overzicht van dertig maanden werking (March 1985 - August 1987), in A. ALEN and L.P. SUETENS, Zeven knelpunten, op. cit., p. 143-212.

(132) These "implicit powers" are express in Belgium: article 10 of the Special Institutional Reform Law of 8 August 1980. See on this: G. CEREXHE, Les compétences implicites et leur application en droit belge, Brussels, Bruylant, 1989.

(133) See article 19 § 1 of the Special Law of 8 August 1980: "The matters prescribed in articles 4 to 11 are governed by decree, without prejudice to the powers reserved to statute by the Constitution."

(134) See on this body of precedent: A. ALEN, Algemene beginselen en grondslagen, op. cit, p. 283-286. The Court of Arbitration has, however, acknowledged its jurisdiction to ensure that such statutes violate neither the constitutional rules on competence nor articles 6, 6b and 17 of the Constitution: Court of Arbitration, Case No. 89 - Decision No. 8/89, 7 February 1990, M.B., 1 March 1990.

(135) Court of Arbitration, Case No. 45 - Judgement No. 47, 25 February 1988, M.B., 17 March 1988 (See point 22, supra.).

(136) Article 6 § 1, VI (3) of the Special Institutional Reform Law of 8 August 1980, as amended by the Special Law of 8 August 1988: "In economic matters, the Regions shall exercise their powers in accordance with the principles of freedom of movement of persons, goods, services and capital and the freedom of trade and industry, and in compliance with the general legal framework of economic union and monetary unity as established by or under the law and by virtue of international treaties." The same concept sets limits on the additional tax-levying power of the Regions, and on the powers of the Communities and Regions to contract loans: see point 22, supra.

(137) The author takes the view, having regard to the precedent of the Court of Arbitration, that economic and monetary union likewise represents a limitation on the other powers of the Regions and the Communities: A. ALEN, De bevoegdheidsverdeling tussen de Staat, de gemeenschappen en de gewesten. Enkele algemene bedenkingen na de derde Staatshervorming, T.B.P., 1989, p. 146. The Council of State is of the same mind: opinion of the Council of State, Legislation Section, in banc, 10 January 1990, L. 19.542/VR (unpublished).

(138) Special Law of 6 January 1989 on the Court of Arbitration. See on this: A. ALEN and F. MEERSSCHAUT, Het Arbitragehof, (nog steeds) een grondwettelijk hof in wording. Een commentaar op de bijzondere wet van 6 januari 1989, B.T.P., 1989, p. 211-232.

(139) Indirect referral to the Court of Arbitration through applications from other courts for preliminary rulings has been maintained, but in a modified form.

(140) The constitutional provisions on which the Court of Arbitration's powers of judicial review are based may be widened by a special majority law, but this was not done in the special implementing statute of 6 January 1989.

(141) Constitution, articles 6, 6b and 17. See point 14, supra.

(142) See point 20, supra.

(143) J. VELAERS, Het nieuw artikel 107c van de Grondwet en de bijzondere wet van 6 januari 1989 op het Arbitragehof, in A. ALEN and L.P. SUETENS, De hervorming van de instellingen - Tweede fase, Bruges, La Charte, 1989, p. 46.

(144) This has already occurred in the Court of Arbitration's first judgement avoiding an act for infringement of the principle of equality: Court of Arbitration, Cases No. 140-142 - Judgement No. 23/89, 13 October 1989, M.B., 8 November 1989, reported by D. LAGASSE, J.T., 1990, p. 7-10.

(145) Albeit the final article of the present Constitution is numbered 140, there are actually 153 provisions in the Constitution - a mere 14 more than in 1831 - including 6 provisions repealed and never replaced, and 19 additional provisions (b, c, d), 14 of which are concerned with the reform of the State.

(146) As regards the composition of the legislative chambers, for example, only one provision of the 1831 Constitution remains intact (article 59), and even that has lapsed.

(147) Following the statement of revision of the Constitution of 8 November 1987 (M.B., 9 November 1987).

(148) See the earlier references to articles 23, 68 and 107d of the Constitution (points 6, 20 and 21, supra.).

(149) Constitution, article 25 (See point 3, supra.).

(150) Constitution, article 32 (See point 3, supra.).

(151) Constitution, article 32b (See point 16, supra.).

(152) Existing constitutional provisions in most cases authorize the national legislature to specify the contents of fundamental rights. In delimiting the power of review of the Court of Arbitration (point 23), the government advanced the plausible view that there was only any point in an all-embracing power to control the constitutionality of all fundamental rights after those fundamental rights had been redefined to enshrine more specific guarantees: J. VELAERS, Het nieuwe artikel 107c van de Grondwet, op. cit., p. 47-49.

(153) For the moment, only the Council of the Brussels-Capital Region (for 5 years) and the Community of the German-speaking

Region are directly elected (for 4 years so far, but in the future for 5 years). The other Councils - the Flemish Council, the Council of the French Community and the Walloon Regional Council - are comprised of national MPs determined by the linguistic group to which they belong. See point 28, infra.

(154) The Constitution vests residuary power in educational matters in the Communities, the national authority having only a series of exhaustively listed competences in education. See point 20, supra.

(155) Three separate types of issue should be distinguished here: the power to make treaties (see point 20, supra); representation to international and supranational institutions; and the right of substitution or evocation of the national authority when the latter is likely to be bound at international level by the acts of the Communities or Regions.

(156) For a concise appreciation of the problem, see A. ALEN, De derde fase, in A. ALEN, De derde Staatshervorming (1988-1989) in drie fasen, T.B.P., 1989 (special issue), p. 149-153.

(157) A. MAST, Overzicht van het Belgisch Grondwettelijk Recht, 9th ed., Brussels, Story-Scientia, 1987, No. 435.

(158) A. MAST, Elementaire beschouwingen bij het vraagstuk van de omvorming van de Belgische eenheidstaat in een federale staat, R.W., 1961-62, col. 2329.

(159) ibid., col. 2335.

(160) See in particular, A. ALEN, De Belgische Staatsvorm na de Grondwetsherziening en de uitvoeringswetten, T.B.P., 1976, p. 212-215, and F. DELPEREE, La Belgique, Etat fédéral?, R.D.P., 1972, p. 607-660.

(161) See also, F. DELPEREE, La voie fédérale, J.T., 1989, p. 2-3.

(162) Compare point 4, supra: the provinces and boroughs are "subordinate authorities."

(163) A. ALEN, Algemene beginselen en grondslagen, op. cit., p. 298.

(164) Article 3 of the Special Institutional Reform Law of 8 August 1980; article 3 of the Special Law of 12 January 1989 concerning the institutions of Brussels; article 2 of the Law of 31 December 1983 on institutional reforms for the German-speaking Community.

(165) Except for the German-speaking Community whose status is governed by an Ordinary Law.

(166) See point 24, supra.

(167) The Flemish Council (currently 186 members), the Council of the French Community (currently 132 members), and the Walloon Regional Council (currently 104 members). As to "asymmetry" - one Council and Executive for the Flemish Community and Flemish Region and two different Councils and Executives for the French Community and Walloon Region, see point 21, supra.

(168) Notably the members of the House of Representatives and the directly-elected Senators: article 29 of the Special Institutional Reform Law of 8 August 1980.

(169) See supra, point 16. The Flemish Council comprises the directly-elected members of the Dutch linguistic group and the Council of the French Community the directly-elected members of the French linguistic group; the Walloon Regional Council consists of the directly-elected representatives of the Walloon Region.

(170) The Council of the Brussels-Capital Region (75 members) is elected directly every 5 years, in principle on the day of the elections to the European Parliament, by an electoral college comprised of all voters in the 19 boroughs falling within the Brussels-Capital Region (articles 10, 11 and 14 of the Special Law of 12 January 1989 on the institutions of Brussels). From 1973 to 1983, this Council was elected at the same time as the Legislative Chambers; since then, the autonomous German Community has been elected every 4 years (in 1986 and on 20 October 1990), whilst in the future it will be every 5 years, on the same day, in principle, as the election of the European Parliament (Article 6, paragraph 1 of the law of 6 July 1990 regulating the procedure through which the Council of the German Community is elected).

(171) Article 60 of the Special Law of 8 August 1980 (Executive of the French Community: 4 members; Walloon Regional Executive: 7 members); articles 35 and 41 of the Special Law of 12 January 1989 (Executive of the Brussels-Capital Region: 5 members and 3 Regional Secretaries of State); article 49 of the Law of 31 December 1983 (Executive of the German-speaking Community: 3 members).

(172) The 11 members of the Flemish Executive alone have 4-year terms of office running from October 1988, distributed pro rata among the political groups comprising the Council: article 65 of the Special Law of 8 August 1980.

(173) For the Executive of the Brussels-Capital Region, either by the Council as agreed by the two linguistic groups, or failing such agreement, by the two linguistic groups: article 35 of the Special Law of 12 January 1989.

(174) No such requirement is imposed for the Executive of the German-speaking Community, however: article 49 of the Law of 31 December 1983.

(175) Articles 71 and 74 (4) of the Special Law of 8 August 1980; article 51 of the Law of 31 December 1983; article 36 of the Special Law of 12 January 1989 (the position of minorities is guaranteed in the governing bodies of the Brussels-Capital Region).

(176) For the three Communities, see point 20; for the Regions, see point 21 (the Brussels-Capital Region legislates through "ordinances" rather than decrees).

(177) The powers of the French Community and Flemish Community are exercised - except as regards the use of languages - throughout the French-language and Dutch-language regions, respectively, and over the institutions established in the bilingual region of Brussels-Capital, which must be considered as belonging to one or other of the Communities (Constitution, article 59b § 4 and § 4b); the powers of the German-speaking Community are exercised throughout the German-speaking region (Constitution, article 59c § 2 and article 3 of the Law of 31 December 1983 on institutional reforms for the German-speaking Community).

(178) The "ordinances" of the Brussels-Capital region nonetheless remain subject to judicial review, albeit to a limited extent: see point 21, supra.

(179) See F. PERIN and A. PLUYMEN, Primauté du droit fédéral: "Bundesrecht bricht Landesrecht." Une controverse en droit belge?, J.T., 1983, p. 17-21.

(180) See point 21, supra, regarding the taxation-levying powers of the Communities and regions.

(181) Over and above concurrent powers in the strict sense (see Note 180), it may be that Communities and Regions must abide by basic national laws which they may do no more than amplify or apply: see, for example, point 23, supra, on the concept of economic and monetary union.

(182) The Court has thus, in principle, refused to countenance the existence of "contradictions" or conflicts between statutes not otherwise ultra vires as a result of the application of territorial factors: A. ALEN, Algemene beginselen en grondslagen, op. cit., p. 295-298.

(183) Hence, as regards protection of minors, the Communities have sole power to determine the competence of juvenile courts and tribunals rationae materiae, while the national legislature retains sole power to determine procedure (article 5 § 1, II (6) of the Special Institutional Reform Law of 8 August 1980). The Council of State has rightly said that such an allocation of responsibilities presupposes close cooperation and concerted action between the Communities and the national authority: opinion of the Council of State, Legislation Section, 24 April 1989, Doc. Parl., VI.R. 1988-89, No. 241/1, p. 41-43.

(184) See, for example, scientific research (article 6b of the Special Institutional Reform Law of 8 August 1980), the creation and management of public credit institutions (article 6 § 1, VI (1) [2] and (5) [2] of the above statute)...

(185) See A. ALEN, Algemene beginselen en grondslagen, op. cit., p. 292-293.

(186) Constitution, article 59b, § 2 (1), expanded in article 4 of the Special Institutional Reform Law of 8 August 1980, (in particular, fine arts, the cultural heritage, the media, sports, tourism,...)

(187) Constitution, article 59b, § 2 (2) (except for three items): see points 20 and 23, supra.

(188) Constitution, article 59b, § 2b, expanded in article 5 of the Special Institutional Reform Law of 8 August 1980, (health policy and aid to individuals, notably family policy, old-age policy, protection of minors, social assistance policy and policy on handicapped people, given that the basic legislation often remains a national prerogative in falling within the scope of social security).

(189) Constitution, article 59b, § 2 (3) and § 2b, expanded in article 16 of the Special Institutional Reform Law of 8 August 1980, (power of assent to treaties in these matters; the procedures relative to the power to conclude such treaties not yet having been fixed: see point 20, supra).

(190) Constitution, article 59b, § 3. The German-speaking Community, in which article 59c § 2 of the Constitution and articles 4 and 5 of the Ordinary implementing Law of 31 December 1983 vest the same powers as those vested in the French and Flemish Communities, is not vested with this power (see points 8 and 20, supra).

(191) Having regard, in particular, to a major restriction resulting from the principle of economic and monetary union (see point 23, supra).

(192) See also article 7 of the Special Institutional Reform Law of 8 August 1980 enacted in implementation of article 107d of the Constitution (for the broad titles of these powers: see annex).

(194) See in particular article 6 § 1 VI, final indent, of the Special Institutional Reform Law of 8 August 1980 (monetary policy; financial policy; prices and incomes policy; commercial law; company law; competition law and labour law; conditions for the taking up and exercise of occupations and eligibility for social security; industrial and intellectual property...).

(195) See in particular J. VELAERS, Het Arbitragehof: "Een grondwettelijk hof met een beperkte bevoegdheid," op. cit., p. 154.

(196) Ibid., p. 153-154. Without prejudice to any possible recourse to the "implicit powers": see point 23, supra.

(197) P. PEETERS, Vlottende residuaire gewest- en gemeenschapsbevoegdheden in de federale Belgische Staat: een zinvolle en haalbare kaart?, Federalisme en Democratie, 1989, No. 2, p. 17.

(198) Ibid., p. 16. See point 18, supra.

(199) See on this point 22, supra.

(200) Regional public expenditure accounted for between 31 and 62% of aggregate expenditure for these five federal States in 1980: V. VAN ROMPUY and E. HEYLEN, Openbare financiën in deelgebieden van federale landen, Leuven-Amersfoort, Acco, 1986, Table 0.1, p. 22. This share in Belgium amounted to 40% in 1989 (see point 22, supra).

(201) The following table depicts the structure of financial resources in federal states as reported by the Government to the Houses in the parliamentary debate on the Special Finance Law of 16 January 1989 (Doc. parl., House of Representatives, 1988-89, No. 635/20, p. 3, and Senate, 1988-89, No. 562/2c, p. 2):

	Switzerland ('80)	USA ('80)	Australia ('81)	Canada ('81)	FRG ('80)	BELGIUM ('89)
(%)						
Own resources	85.2	77.7	69.6	79.6	52.7	55.2 (a)
Shared tax revenue	—	—	—	17.6	—	44.8 (b)
Grants	14.8	22.3	30.4	20.4	29.7	—

(a) includes 5.9% exclusive tax component (regional taxes and radio/television licensing fee) plus 49.3% combined taxes (personal income tax): see Doc. parl., House of Representatives, 1988-89, No. 635/17, p. 172.

(b) V.A.T.

(202) For the German Community, most of its financial resources consist of a credit chargeable to the Kingdom's budget: see note 117.

(203) J. ANASTOPOULOS, Les aspects financiers de fédéralisme, Paris, L.G.D.J., 1979, p. 400.

(204) A. MAST, Elementaire bedenkingen, op. cit., col. 2329-2330.

(205) See supra, point 24. See on this, P.Ch. GOOSSENS, Le bicaméralisme en Belgique et son évolution, in Liber Amicorum F. Dumon, Antwerp, Kluwer rechtswetenschappen, 1983, Vol. II, p. 793-872, and La réforme du Sénat A.P.T., 1985, p. 2-81.

(206) The German-speaking Community is alone in having its status governed by ordinary statute under the Constitution; as is also the case for adjudication of conflicts of interest and prevention of conflicts of competence under the communitarization and regionalization processes.

(207) Opinion of the Council of State, Legislation Section, 25 June 1986, Doc. Parl., House of Representatives, 1985-86, No. 154/2, p. 2.

(208) J. ANASTOPOULOS, op. cit., p. 409.

(209) Ibid., p. 410.

(210) For an analytical typology of cooperation in cooperative federalism, see: A. ALEN and P. PEETERS, België op zoek naar een coöperatief federaal Staatsmodel, T.B.P., 1989, p. 349-351.

(211) G. KISKER, Kooperation im Bundesstaat. Eine Untersuchung zum koöperativen Föderalismus in der Bundesrepublik Deutschland, Tübingen, Mohr, referring to the danger of "oligarchical federalism" (p. 229).

(212) C. GREYWE-LEYMARIE, Le fédéralisme coopératif en République fédérale d'Allemagne, Paris, Economica, 1981, p. 10.

(213) See on this: A. ALEN and P. PEETERS, op. cit., T.B.P., 1989, p. 343-371, and A. ALEN, De samenwerking tussen de federale Staat en de deelstaten, Belgium-Federal Republic of Germany one-day constitutional seminar, Brussels, 17 November 1989, R.W., 1989-90, kol. 1303-1313.

(214) Article 92c of the Special Institutional Reform Law of 8 August 1980, inserted in 1988.

(215) Article 92b and 94 § 2 and § 3 of the Special Institutional Reform Law of 8 August 1980, as inserted and amended in 1988 and 1989.

(216) See in particular article 6 § § 2 to 7 of the 1980 Special Law.

(217) Articles 31 to 33b of the Ordinary Institutional Reform Law of 9 August 1980, as amended in 1989.

(218) Article 31b of the Ordinary Institutional Reform Law, inserted in 1989.

(219) See on this: A. ALEN and M. BARBEAUX, Le Comité de concertation gouvernement-exécutifs: bilan à la lumière de l'expérience, Colloquium "Les conflits d'intérêts," Namur, 30 and 31 January 1990 in Les Conflits d'intérêts, Namur, 1990, nr. 139-173.

(220) See: A. ALEN and P. PEETERS, België op zoek naar een coöperatief federaal Staatsmodel, op. cit.

(221) See A. ALEN, De samenwerking tussen de federale Staat en de deelstaten, op. cit.

(222) This is compounded by the fact that they are not all governed by the same basic legislation: the Special Institutional Reform Law of 8 August 1980 applies to all the Communities and Regions except the German-speaking Community, which is governed by the Law of 31 December 1983 on institutional reforms for the German-speaking Community, and the Brussels-Capital Region, governed by the Special Law of 12 January 1989 on the institutions of Brussels. Other than these statutes, those of most note are the Special law of 16 January 1989 on the financing of the Communities and Regions (excluding the German-speaking Community) and the Special Law of 6 January 1989 on the Court of Arbitration. The complete coordinated, annotated statutes on the reform of the Belgian State can be found in: A. ALEN and J. DUJARDIN, Staatshervorming. De nieuwe Grondwet en haar uitvoeringswetten (updated as at 1 December 1989), 3rd ed., Brussels, CEPESS/Story-Scientia, 1989, and La réforme de l'Etat. La nouvelle Constitution et ses lois d'exécution (updated as at 1 August 1989), 3rd ed., Brussels, CEPESS/Story-Scientia, 1990.

(223) Which is why the French Community and Flemish Community only have competence over "institutions" in the bilingual region of Brussels-Capital, and not directly over individuals (Constitution, article 59b § 4 and § 4b).

(224) Law of 9 August 1988 (M.B., 13 August 1988).

(225) A. MAST, Elementaire bedenkingen, op. cit., col. 2332.

(226) Ibid., col. 2335

(227) G. BURDEAU, Traité de Science politique, Vol. II, Paris, L.G.D.J., 1949, No. 294.

(228) See: A. ALEN and P. PEETERS, "Bundestreue" in het Belgisch grondwettelijk recht, introductory report to the Association of Flemish Jurists, "De goede trouw," Ghent, 28 April 1990 (not yet published).

(229) Opinion of the Council of State, Legislation Section, 21 April 1988, p. 12, L. 18.537/1, R.W. 1989-1990, kol. 1122-1156.

ABBREVIATIONS

Ann. Dr.	Annales de Droit (Law reports)
Ann. parl.	Annales parlementaires (Parliamentary reports)
A.P.T.	Administration publique (Public administration quarterly)
Cass.	Cour de cassation (Court of Cassation)
E.C.H.R.	European Court of Human Rights
CEPESS	Centre d'Etudes politiques, économiques et sociales (Centre for political, economic and social studies)
Doc. parl.	Documents parlementaires (Parliamentary background papers)
J.T.	Journal des Tribunaux (Court reports)
L.G.D.J.	Librairie Générale de Droit et de Jurisprudence (Legal textbook publisher)
M.B.	Moniteur Belge (Official gazette)
Publ. Cour	Publications of the E.C.H.R.
R.D.P.	Revue du Droit public et de la Science politique en France et à l'étranger (Review of public law and politics in France and abroad)
R.W.	Rechtskundig Weekblad (Flemish legal weekly)
T.B.P.	Tijdschrift voor Bestuurswetenschappen en Publiek Recht (Flemish public law magazine)
Vl. R.	Vlaamse Raad (Flemish Council)

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