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PERSISTENT NONVIOLENT CONFLICT WITH NO RECONCILIATION: THE FLEMISH AND WALLOONS IN BELGIUM

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I

BYE-BYE BELGIUM?

On December 13, 2006, Belgium's French-speaking public television network RTBF interrupted its regular programming with breaking news that Flanders had declared its independence, the Belgian state was breaking apart, and the King had left the country for the Congo. Inspired by Orson Welles' *The War of the Worlds*, a ninety-minute news special followed that touched upon a possibility somewhat less fanciful than an invasion from Mars. CNBC reported it as news.¹ Some foreign embassies sent worried messages back home. Thousands of ordinary Belgians made panicked phone calls. The next morning many Belgian politicians condemned the show as a "bad joke" that might open a Pandora's Box by making discussable a topic that had long been somewhat taboo—the possible dissolution of the Belgian state because of the persistent conflict between the French-speaking Walloons and the Dutch-speaking Flemish.²

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This Article is also available at <http://www.law.duke.edu/journals/lcp>.

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1. Monique Juquois-Delpierre, *Fictional Reality or Real Fiction: How Can One Decide?: The Strengths and Weaknesses of Information Science Concepts and Methods in the Media World*, 5 J. INFO. COMM. & ETHICS SOC'Y 235, 237 (2007).

2. For political reactions reported the day after the program, see *Reacties. Vlaanderen*, DE STANDAARD, Dec. 14, 2006, available at http://www.standaard.be/Artikel/Detail.aspx?artikelId=DMF13122006_098&word=RTBF. The TV program was followed by a book, released the following day. PHILIPPE DUTILLEUL, *BYE-BYE BELGIUM (OPÉRATION BBB): L'ÉVÉNEMENT TÉLÉVISUEL* (2006). The word "Flemish" is used as a noun both to denote the people and the language, which today is a variant of Dutch. It also can be used as an adjective, for example, the "Flemish Region" or "Flemish Community."

The most striking feature of contemporary Belgium is a language cleavage that is territorial. Out of a population of about ten million, about forty percent speak French as their mother tongue and about sixty percent speak Dutch.³ In the south—the Walloon region—nearly everyone speaks French;⁴ in the north—Flanders—the language is Dutch.⁵ This linguistic divide has existed since the Roman Empire and has changed little since the eleventh century.⁶ In the center, the capital, Brussels, is officially bilingual, but the vast majority of its inhabitants are Francophones.

Any notion that the conflict between the Flemish and the Walloons was a thing of the past, of little contemporary relevance, was blown away by the controversy concerning the “Manifesto for an Independent Flanders Within Europe,” a 252-page report issued at the end of 2005.⁷ The argument of the Manifesto can be easily summarized:

1. Flanders and Wallonia have divergent needs and goals because they have profound differences—political, economic, social, and cultural.⁸
2. The two regions are artificially held together only by a “maladjusted and inefficient” federal governmental structure with antimajoritarian restrictions and “chaotic distribution of powers.”⁹
3. As a result of this structure, rational and efficient policymaking is impossible, and Flanders is unable to adopt those policies necessary to maintain economic competitiveness and so insure future economic growth in the face of the socio-economic challenges of an aging population, ever-growing globalization, and increased international competition.
4. A further result of this structure is that at the national level, bad compromises are negotiated that require the Flemish people to make “[e]xorbitant and inefficient” financial transfers¹⁰ amounting to over ten billion euros per year (about 1,734 euros for each Flemish

3. In one small area of Belgium, the East Canton region obtained from Germany after World War I, German is the principal language of about 70,000 Belgians.

4. Belgian French is standard French, not a separate language, although there are some variations in vocabulary.

5. The official language spoken in Flanders is now standard Dutch, not a separate Flemish dialect, although several local dialects still exist. See KENNETH D. MCRAE, 2 CONFLICT AND COMPROMISE IN MULTILINGUAL SOCIETIES 56–59 (1986).

6. *Id.* at 17.

7. REFLECTION GROUP “IN DE WARANDE,” MANIFESTO FOR AN INDEPENDENT FLANDERS WITHIN EUROPE (2005).

8. *Id.* at 35–100. See also generally Stefaan De Rynck & Karolien Dezeure, *Policy Convergence and Divergence in Belgium: Education and Health Care*, 29 W. EUR. POL. 1018 (2006).

9. REFLECTION GROUP “IN DE WARANDE,” *supra* note 7, at 101–06.

10. *Id.* at 132.

person) to Wallonia and Brussels.¹¹ If Flanders remains part of Belgium, these subsidies are likely only to increase.¹²

5. The only durable solution is the full independence of Flanders. Flanders is ready for independence because, by reason of its economic and social development since World War II, it has the identity and self-sufficiency necessary to be a full-fledged national community, with all the characteristics of an independent member state of Europe.¹³

The manifesto is neither shrill nor highly rhetorical. Instead, it has the dispassionate, analytic tone and impressive graphics of a report that might have been prepared by McKinsey and Company. Nor was it created and endorsed by persons thought to be extreme Flemish nationalists, such as the leaders of the Vlaams Belang. Instead, this manifesto was created and endorsed by people who can best be described as Flemish members of the business and academic establishments.¹⁴ The group was chaired by Remi Vermeiren, retired CEO of KBC Group Banking Corporation, and included Herman de Bode, the Chairman of McKinsey and Company in the Benelux and President of the Harvard Club of Belgium. The manifesto provoked an immediate outcry from the francophone community and was condemned by the francophone political parties and press. Because of a francophone client's protest, de Bode was forced to resign as chair of McKinsey.¹⁵

Belgium represents a remarkable example of an enduring ethnic conflict without any mass violence for over half a century. During the last thirty years a political elite within Belgium negotiated a series of compromises that stitched together a complex federal system that has held the country together.¹⁶ As a result, Belgium has constitutionally evolved from a highly centralized national state to one in which the French- and Dutch-language communities and the Walloon and Flemish regions have gained a considerable amount of autonomy. Today the long-standing language cleavage between the Flemish and the Francophones has been embedded into a federal structure of mind-boggling complexity that both reflects and reinforces the organization of political, social, and cultural life on the basis of language. The good news is that there has been

11. *Id.* at 155.

12. *See id.* at 132–77.

13. *Id.* at 19.

14. The report was “drawn up by” the “Reflection Group” of sixteen Flemish businessmen and academics who had studied Belgium's problems at the “Warande,” the elite Flemish club in Brussels located next to the residence of the American Ambassador to Belgium. So it is not a report “of” the Warande. The Manifesto also carries the names of an additional fifty people who “subscribe[d] to [its] conclusions . . . and principles.” *Id.* at 3, 17–18.

15. Luc Van Braekel, *McKinsey CEO Calls for End of Belgium, Resigns*, BRUSSELS JOURNAL, Dec. 13, 2005, <http://www.brusselsjournal.com/node/565/print>.

16. *See* Liesbet Hooghe, *Belgium: Hollowing the Center*, in *FEDERALISM AND TERRITORIAL CLEAVAGES* 62–66 (Ugo M. Amoretti & Nancy Bermeo eds., 2004) (noting that decentralization negatively correlates with frequency of violent protests).

practically no bloodshed.¹⁷ Whether or not Belgium survives as a single state, there will certainly be no civil war, and history suggests that violence is exceedingly unlikely.¹⁸ The bad news, as demonstrated by the political crisis following the 2007 federal elections, is that these state reforms brought no stability.

Belgium's internal conflict poses broader questions relating to the resolution of ethnic conflict. One question relates to violence: Why do some internal ethnic cleavages with territorial dimensions lead to violent breakups (for example, in Yugoslavia), while others are resolved peacefully (for example, in Czechoslovakia)? Obviously, this question has no single answer, but the study of Belgium can suggest some useful hypotheses and inform speculation.

The second question relates to federalism: To what extent can a nation with ethnic cleavages be created or held together through institutional design? Here the study of Belgium leads us to more-pessimistic conclusions. Federal structures allowing for decentralized decision-making may exacerbate centrifugal forces and hasten the eventual breakup of the nation. If this is so, what role can federal structures play in other countries with ethnic cleavages that have territorial dimensions where there is a history of violence? Iraq and the Congo come to mind.

This article is organized as follows: Because the present conflict can be understood only in historical context, section II uses a marriage metaphor to introduce a brief history of Belgium. Section III describes Belgium today and the current tensions between the Francophones and the Flemish. It lays out the remarkably complex structure of Belgium's present-day political institutions as the politically negotiated responses to a set of persistent problems. Section IV looks to the future: we speculate about whether there is sufficient "glue" to hold Belgium together and describe the range of possible outcomes. In section V, we offer some preliminary thoughts about the lessons from the Belgian experience.

II

BACKGROUND

A. The Metaphor

Although the linguistic frontier is centuries old, the Belgian state is of much more-recent origin. Belgium became a nation only in 1830, and its creation was

17. *See id.* at 62–64.

18. The closest the country ever came to widespread violent strife was in 1951. The conflict concerned the "royal question"—whether King Leopold III, who was thought to have collaborated with the Nazis, should retain the throne. There was a general strike in which a few protesters were killed. Because it appeared the country might be on the brink of civil war, a compromise was engineered in which Leopold III abdicated in favor of his son. *See* MCRAE, *supra* note 5, at 111–12. *See generally* JAN VELAERS & HERMAN VAN GOETHEM, LEOPOLD III: DE KONING, HET LAND, DE OORLOG (1994).

not the culmination of a single people, with a shared sense of Belgian identity, achieving nationhood. Instead, the new state was essentially the product of an arranged marriage between spouses who had little in common, the result of a nineteenth-century compromise among the Great Powers interested in creating a neutral buffer. The Flemish and the Francophones have lived together peacefully for a number of years, but today the spouses are leading increasingly separate lives. We offer the following metaphor to encapsulate the history of the relationship between the two groups, and to frame Belgium's current dilemmas.

A French-speaking woman from a sophisticated and prosperous bourgeois family married a Dutch-speaking Flemish man from peasant stock with little money. From the outset, there were tensions in the marriage. The wife's family has always believed she married beneath her station. Because her family had the money, during the early years of the marriage the husband found himself quite dependent on it. Language was a big problem. The wife insisted on speaking only French and expected her husband and even his family to become fluent in French if he and they were to succeed. She did not object to the husband's using his language with his peasant friends or out in the fields, but she disallowed its use in the house or at formal social occasions.

During most of the marriage, the wife and her family dominated the marital relationship, economically and socially. In the years following World War II, however, the economic position of the wife's family eroded substantially, while the husband and his family prospered. As a result, their economic positions were eventually reversed. Over time the husband became more insistent on using his own language when it pleased him, and he now takes greater pride in his family's history and achievements. However, the psychological postures of the spouses have not changed as radically as these external changes might suggest. The husband still has vivid memories of past mistreatment, and tends to see himself as the victimized underdog. He remains resentful of what he often sees as his wife's condescending attitude and continuing (and in his mind, undeserved) sense of superiority.

In recent years, by mutual agreement, the spouses have come to lead separate and largely independent lives, although their marital property remains commingled. Today, they quarrel a great deal about money. The husband resents the wife's profligate spending habits, her continued dependence on his wealth, and her unwillingness to work outside the home. They have sharply contrasting political views and social attitudes: the wife is a socialist, and the husband is more committed to markets. Although the spouses have always nominally shared the same religion (both are Catholic), the husband's family has always been more observant. Still, despite so many conflicts in their marriage, there is no history of violence or physical abuse.

Money has become a bone of contention. The husband has come to question whether his wife's extravagant spending habits will ever change, and he now regularly asks himself whether divorce might not be a preferred alternative. He is

especially concerned that her economic profligacy might soon lead to his financial ruin. The wife refuses even to discuss divorce, claiming that their marriage is indissoluble, and she insists that marital solidarity requires that he continue to use his resources to maintain her lifestyle. The husband also knows that were they ever to divorce, the negotiations would probably be acrimonious and difficult, and the costs to the husband would be substantial. The family has accumulated a great deal of debt, the marital property would have to be divided, and the husband knows he would probably have some spousal support obligations, at least during a transitional period. The husband is also concerned about the reactions of their neighbors to a divorce.

What worries the husband most about a divorce relates to its impact on their sophisticated and cosmopolitan, French-speaking, 16-year-old son, named Brussels, who is also a big spender. The husband realizes his wife would probably insist on having sole custody. While at times ambivalent about the son and resentful of his aristocratic pretensions, the husband feels an emotional attachment that would make it difficult for him to give up the child entirely. The husband would prefer some form of joint custody and would even consider emancipating the youngster, although he realizes that the son lacks the ability to support himself. He has told himself, "If there were ever a custody fight, I'm not so sure the child would elect to live with his mother, even though French is his mother tongue. My son is a big spender, and he knows who really has the money in this family."

B. The Creation of Belgium

From the late sixteenth century until the French Revolution, the territory that now makes up Belgium essentially consisted of an amalgam of provinces—some Francophone and some Flemish—controlled first by the Spanish and later by the Hapsburgs. For centuries, French was the language spoken in most of the southern provinces, while in the Flemish provinces in the north, the people spoke various Dutch-German dialects, except for a small bourgeois elite who also spoke French.

As a result of the French Revolution, from 1797 until 1814, this territory was absorbed and controlled by France.¹⁹ This generally benefited the Walloon region both economically and politically but was resented by the Flemish who felt linguistically and religiously constrained.²⁰ After the fall of Napoleon in 1815, the Great Powers decided at the Vienna Congress to make what is now Belgium part of the United Kingdom of the Netherlands, ruled by King William I of the House of Orange.

Within the southern part of the United Kingdom of the Netherlands, a strange coalition subsequently emerged whose members shared a deep resentment of Dutch rule, but for very different reasons. The liberal bourgeoisie

19. See E.H. KOSSMANN, *THE LOW COUNTRIES 1780–1940*, at 72–81, 686–87 (1978).

20. MCRAE, *supra* note 5, at 14.

and francophone aristocracy resented the use of the Dutch language and “foreign control.” The Catholic Church, especially influential in Flanders, resented and was suspicious of the Netherlands because it was seen as a Protestant state. In 1830, shortly after the successful insurrection in Greece and the July Revolution in France, this coalition of liberals and Catholics led a revolt against Dutch rule, which spread to working classes in Brussels.

With little bloodshed, a volunteer “Belgian” army (led by officers from France) forced the Dutch troops in Brussels to retreat after four days of fighting. The Dutch were never able to regain control. Although France wanted to reannex the Belgian provinces, Britain protested. A provisional government of the Belgian provinces proclaimed independence on October 4, 1830. On December 26, 1830, a London Conference of the Great Powers recognized the independence of the Belgian people and the new state. In 1831, the Belgian National Congress (dominated by the francophone bourgeoisie, consisting of Walloons and the Flemish elite) wrote a liberal constitution²¹ and created a unitary parliamentary state with a constitutional monarch. A German noble, Leopold of Saxe Coburg Gotha, (who was, among other things, Queen Victoria's uncle²²) was invited to become the first King of the Belgians. The Netherlands officially recognized Belgium's independence only in 1839 when the United Kingdom, Austria, France, Prussia, Russia, and the Netherlands signed the Treaty of London that both recognized the independent Kingdom of Belgium and (at the United Kingdom's insistence) agreed to its neutrality. The key point of this history is to suggest that before Belgium was created in 1830, there was no shared sense of “Belgian” identity, no sense of a single people seeking nationhood.²³

C. Francophone Dominance

Although the Flemish always outnumbered the French-speakers,²⁴ francophone Belgians dominated the new country politically, economically, and culturally. French was the language spoken both by the Walloons and by

21. The Belgian Constitution was arguably the most liberal in Europe. It recognized fundamental freedoms relating to speech, press, religion, education, assembly, and languages, and also included provisions relating to the separation of powers.

22. Leopold was to have close family connections to the monarchies in both Great Britain and France. Queen Victoria's mother was Leopold's sister. Leopold's first wife was Princess Charlotte Augusta, an heiress to the British throne as the only legitimate child of the British Prince Regent (later King George IV). She died, however, in 1817. In 1832, Leopold married Louise-Marie d'Orléans, daughter of King Louis-Philippe of France.

23. This is not to say that after the creation of Belgium, some historians did not attempt to reconstruct a Belgian history demonstrating the prior existence of some sense of peoplehood. For a discussion of the use of history to construct a Belgian identity, see generally Louis Vos, *Reconstructions of the Past in Belgium and Flanders*, in SECESSION, HISTORY AND THE SOCIAL SCIENCES 179 (Bruno Coppieters & Michel Huyseune eds., 2002).

24. There were 2.4 million Dutch-speakers and 1.8 million French-speakers in 1846. André Alen, *Nationalism–Federalism–Democracy: The Example of Belgium*, in 5 REVUE EUROPÉENNE DE DROIT PUBLIC 41, 45 n.24 (1993) (citing E.H. KOSSMAN, *DE LAGE LANDEN 1780–1940*, at 118 (2d ed. 1971)).

Flemish bourgeoisie. During the nineteenth century, the vote extended only to wealthy property owners, nearly all of whom were francophone. The Belgian National Congress was dominated by Walloons and the francophone Flemish elite.

The constitution created a strong, centralized government modeled after France. Although it contained words suggesting language liberty, the national policy established through legislation made French Belgium's "single official language."²⁵ It was contemplated that through "a policy of assimilation through legal and economic influence" French could be imposed in Flanders.²⁶ Initially, the Dutch language was suppressed in all public administration and in state-sponsored education. French was the only language used in the national government, in governmental administration, and in the courts.

From the outset, the Walloon region also dominated the new nation economically. With large coal reserves, this region was among the earliest in Europe to industrialize, and it experienced rapid economic growth during the nineteenth century.²⁷ Flanders, on the other hand, relied on subsistence agriculture. It had no modern industry: its famed textile facilities had never become fully mechanized and floundered in the nineteenth century. Crop failures led to a famine and contributed to massive unemployment and severe economic hardship.²⁸ As a result, some Flemish emigrated abroad, while others moved to the Walloon region to work in factories and integrated there.²⁹

Within Belgium, there was rampant social and economic discrimination against those who spoke Dutch. Francophone Belgians viewed the Flemish majority who could not speak proper French as uneducated, backward peasants, suitable to do manual labor but little else.³⁰ Because upward social mobility required knowledge of French, many Flemish learned French. Indeed, until well into the twentieth century, any well-educated Belgian had to learn

25. See MCRÆ, *supra* note 5, at 22. McRae translates the article in the original constitution as follows: "The use of the languages spoken in Belgium is optional (*facultatif*). It can be regulated only by law, and only concerning official acts and judicial matters." The Law of 19 September 1831 declared French to be the only official language for the proclamation of Laws and Resolutions. See also ANDRÉ ALEN & KOEN MUYLLE, 1 COMPENDIUM VAN HET BELGISCH STAATSRECHT § 266 (2008); Kris Deschouwer, *Kingdom of Belgium*, in CONSTITUTIONAL ORIGINS, STRUCTURE, AND CHANGE IN FEDERAL COUNTRIES 48, 49 (John Kincaid & G. Alan Taylor eds., 2005).

26. M. Camille Huysmanns, *The Flemish Question*, 9 J. ROYAL INST. INT'L AFF. 680, 680 (1930).

27. REFLECTION GROUP "IN DE WARANDE," *supra* note 7, at 63–64.

28. See MCRÆ, *supra* note 5, at 23–24.

29. See REFLECTION GROUP "IN DE WARANDE," *supra* note 7, at 64. This explains the large number of Flemish-sounding family names in Wallonia. All Flemish immigrants "Frenchified" over one generation.

30. See Luc Huyse, *Political Conflict in Bicultural Belgium*, in CONFLICT AND COEXISTENCE IN BELGIUM 107, 109–10 (Arendt Lijphart ed., 1981).

French, and some bourgeois Flemish even spoke French at home.³¹ Few Walloons ever bothered to learn Dutch.³²

D. The Evolution of Language Policy: The Flemish Movement

Needless to say, many Flemish resented their inability to use their own language, even in their dealings with the government. Until the 1870s, all trials in Belgium—criminal as well as civil—were conducted exclusively in French.³³ Sometimes, scandalous miscarriages of justice resulted. The best known case, which has become central to the Flemish narrative, involved the wrongful conviction and execution of two Flemish defendants accused of murder.³⁴ After they had been guillotined, another person confessed to the crime, and a subsequent investigation suggested that the defendants could not understand French, that their attorney knew no Dutch, and that the francophone judge had relied on a mistranslation of a conversation overheard by a jailer.³⁵ The public outcry eventually led to a change in the law in 1873, permitting both Dutch and French to be used in criminal trials in Flanders. In the decade that followed, laws were changed to permit Dutch to be used in administrative matters and in secondary education.³⁶

Between 1890 and 1920, contemporaneous with constitutional amendments that extended suffrage to men who were not property owners,³⁷ a “Flemish Movement” emerged.³⁸ A major focus of this movement related to language rights. Under pressure from the Flemish movement, a bilingual regime of sorts was established in Flanders. Laws were put on the books providing for greater equality between the French and Dutch languages, at least in Flanders. The 1898 “Law of Equality” nominally recognized the validity of both languages in official documents.³⁹ A 1921 law contemplated that municipal officials might be bilingual.⁴⁰ Nevertheless, these written laws did not substantially change actual

31. See MCRAE, *supra* note 5, at 39–40 (referring to a “domestic colonialism” and stating that “[t]his socioeconomic dimension of the linguistic boundary *within* the Flemish region has incontestably heightened linguistic tensions”).

32. This asymmetry persists. See Victor Ginsburgh & Shlomo Weber, *La Dynamique Des Langues En Belgique [The Dynamics of Languages in Belgium]*, 42 REGARDS ECONOMIQUES 1, 4 (2006).

33. ALLEN & MUYLLE, *supra* note 25, §§ 266–67.

34. MCRAE, *supra* note 5, at 24–25.

35. *Id.*

36. Dutch was legally permitted for use in administrative matters in 1878 and in secondary education in 1883. Allen, *supra* note 24, at 46 n.28 (citation omitted).

37. In 1893, the Belgian Constitution was amended to give non-property-owning men one vote, while allowing multiple votes to those who did own property. A 1920 amendment created universal male suffrage, by which all men had a single vote. Full suffrage was not extended to women until 1948.

38. There is a vast literature on the Flemish movement. See *generally* Theo Hermans, Louis Vos and Lode Wils, *THE FLEMISH MOVEMENT: A DOCUMENTARY HISTORY* (1992); Huysmanns, *supra* note 26; François Nielsen, *The Flemish Movement in Belgium After World War II: A Dynamic Analysis*, 45 AM. SOC. REV. 76 (1980).

39. See ALLEN & MUYLLE, *supra* note 25, § 266.

40. See MCRAE, *supra* note 5, at 150.

practices. The Walloon region remained exclusively francophone, and the Flemish areas were said to be bilingual; but even in Flanders, many government officials spoke only French.⁴¹

With respect to education, the hope in the nineteenth century was that the entire country would eventually become francophone. Although there were Church-supported primary schools in Flanders where Dutch was used, state-supported schools were predominantly francophone. A 1914 law explicitly recognized for the first time “the right” of children in elementary schools to be educated in their mother tongue, but there were still very few Flemish, state-supported, municipal primary or secondary schools.⁴² Change with respect to higher education also came slowly, as it was taught primarily in French during all of the nineteenth and more than half of the twentieth century. During World War I, the Germans occupied much of Flanders and allowed instruction at the University of Gent in Dutch. Notwithstanding pressure from the Flemish movement, the Belgian government waited until 1930—more than ten years after the war had ended—to allow the full “Netherlandization” of the University of Gent.⁴³

A critical change with respect to language policies occurred in 1932 and 1935, when for purposes of governmental activities, two monolingual regions were created on the basis of a territorial line dividing the country into two parts.⁴⁴ The use of language in administrative matters, primary and secondary education, and judicial matters was to be based exclusively on location—not the mother tongue of the individual citizen. In Flanders, Dutch became the only official language, and in the Walloon region, the official language was exclusively French. Brussels and certain border areas were said to be bilingual. In other words, on the basis of a territorial principle, Belgium was divided into two monolingual regions. With the exception of Brussels, the national language policy essentially became one of dual monolingualism, based on the principle of territorial location, not bilingualism, with language rights attaching to individuals.⁴⁵ Some commentators suggest that the latter alternative of making the entire country officially bilingual probably would have satisfied the Flemish movement at the time. But this alternative would have been politically impossible because of the reluctance of Francophones to provide Flemish language rights for those Flemish living in Wallonia, combined with the unwillingness of francophone bureaucrats to learn Dutch.

41. *See id.* at 28.

42. Huysmanns, *supra* note 26, at 688.

43. *See* MCRAE, *supra* note 5, at 28.

44. *See id.* at 150–51.

45. Alen describes the emergence of what he calls the “principle of territoriality” in linguistic legislation in 1932 and 1935. Alen, *supra* note 24, at 49. The language frontier became firm and final with the Language Act of 8 November 1962. ALEN & MUYLLE, *supra* note 25, § 271; MCRAE, *supra* note 5, at 152–56.

E. The Reversal of Economic Roles: Flemish Prosperity

For more than a century after the establishment of the Belgian nation, the Walloons were economically dominant. Today, Flanders is much more prosperous than the Walloon region. The relative wealth of the two regions has been reversed for two reasons. First, because of the decline of the coal and steel industries in Wallonia (which had been the region's backbone), jobs were lost and there was little foreign investment to create some alternative. In the meantime, Flanders enjoyed a period of industrial modernization. The Flemish port of Antwerp prospered, and new plants were built for thriving industries such as car assembly and shipbuilding. Foreign investment poured into the region.⁴⁶

By the mid-1960s, the Flemish gross regional product per capita surpassed that of Wallonia.⁴⁷ Today, the Flemish region of the country is substantially richer than the Walloon region. Now the per capita GDP of Flanders exceeds that of Germany, France, and the United Kingdom,⁴⁸ while that of the Walloon region is similar to the level of the poorest regions in France and Italy.⁴⁹ The unemployment rates⁵⁰ and the high-school drop-out rates⁵¹ in the Walloon region are both twice those of Flanders.

F. The Changing Institutional Structure

Since 1970, contemporaneous with the economic rise of the Flemish region, numerous constitutional revisions have transformed Belgium's governmental structure from a strong, unitary, national system into a federal structure of mind-boggling complexity, in which substantial power has devolved to monolingual, sub-national governmental units.

One scholar described this process of constitutional devolution, which came about through a series of negotiations at the national parliamentary level, as a "hollowing of the center, in which resources and competencies were bartered away to maintain peace."⁵²

Today, Belgium's constitution allocates power and responsibility to governments for each of three *language communities* (French, Flemish, and

46. REFLECTION GROUP "IN DE WARANDE," *supra* note 7, at 51–53.

47. Hooghe, *supra* note 16, at 57.

48. ORG. FOR ECON. CO-OPERATION & DEV., OECD ECONOMIC SURVEYS 2005: BELGIUM 102 (2005), available at http://www2.vlaanderen.be/ned/sites/werk/documenten/euro_oecd_ec_sv.pdf. In 2003, Flanders' per capita GDP was 116.9% of the EU-25 average, while the Walloon region's was only 85%.

49. Ludo Beheydt, *The Linguistic Situation in the New Belgium*, in LANGUAGES IN CONTACT AND CONFLICT: CONTRASTING EXPERIENCES IN THE NETHERLANDS AND BELGIUM 48, 53–54 (Sue Wright & Helen Kelly eds., 1995).

50. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 48, at 100.

51. REFLECTION GROUP "IN DE WARANDE," *supra* note 7, at 38.

52. Hooghe, *supra* note 16, at 56.

German)⁵³ and for three *territorially based regions* (Wallonia, Flanders, and Brussels Capital).⁵⁴ The communities and regions have separate, directly elected, parliamentary-style legislatures, a legislatively accountable executive body,⁵⁵ and broad and *exclusive* policy responsibility and authority in specified areas.

The communities have authority for education and schools, for all language policies, for cultural matters, including support of the arts, and for family and youth policies, among other things. The regions have authority for what are said to be the “territory-related issues.” These include a broad range of policies relating to economic development, the environment, agriculture, housing, water and energy, transport, and public works. The regions also have the authority to enter into international treaties with respect to matters concerning these regional competences. Although the regions have some taxing authority, revenues are raised primarily at the national level. Nevertheless, through block grants and other transfers, the expenditures of funds and the allocation of resources have been substantially transferred down to the regional and community level.⁵⁶

The Belgian federation is not hierarchical: the subunits have exclusive legislative and administrative powers within their areas of competence. The federal government cannot impose uniform standards on the regions or communities. All are on equal footing, subject to the constitution. This allows and even stimulates independent and autonomous policymaking.⁵⁷

As a result of these changes, political life in Belgium is now conducted along linguistic lines. No longer does any major political party operate on both sides of the linguistic frontier: because of internal conflicts relating to language and cultural autonomy, all three major parties—the Christian Democrats, the Liberals, and the Socialists—have now split into separate French-speaking and

53. The Flemish Community governs the Dutch-language area but is also competent for the Flemish organizations (for example, schools, museums, and the orchestra) in the Brussels Capital Region. The same goes for the French Community, which covers the French-language area, and the French organizations in the Brussels Capital Region. DE BELGISCHE GRONDWET, LA CONSTITUTION BELGE, DIE VERFASSUNG BELGIENS [Constitution] art. 127–28 (Belg.). The German-speaking Community consists of the German-language area. See ALEN & MUYLLE, *supra* note 25, § 253.

54. The Flemish Region comprises the Dutch-language area; the Walloon Region consists of the French- and German-language areas; and the Brussels Capital Region includes the bilingual-language area. See ALEN & MUYLLE, *supra* note 25, § 254.

55. Flanders decided early on to combine the language-based “Flemish community” parliament with the Flemish regional parliament. The result is that there are a total of six, rather than seven, parliamentary-style elected legislatures, each of which has a government. See ALEN & MUYLLE, *supra* note 25, §§ 257–59.

56. Hooghe, *supra* note 16, at 78–79. The latest reform in 2000 (Lambermont) transferred revenues from the income tax and the value-added tax to regions and communities, using a formula that enables the Francophones to pay for their community’s education deficit. See REFLECTION GROUP “IN DE WARANDE,” *supra* note 7, at 110–12 (discussing “the Lambermont jungle” and the resulting transfer of taxation authority to the regions).

57. Jan Beyers & Peter Bursens, *The European Rescue of the Federal State: How Europeanization Shapes the Belgian State*, 29 W. EUR. POL. 1057, 1060 (2006).

Flemish parties.⁵⁸ In the national elections, citizens must vote in geographically defined areas—choosing exclusively from party lists of their own language group. A person who lives in Flanders must vote for a Dutch-speaking party. Similarly, a person voting in the Walloon region must choose a French-speaking party. With the limited exception of the Brussels–Halle–Vilvoorde area,⁵⁹ these six parties do not compete in the national parliamentary elections.⁶⁰ Nor do political parties compete across the language line in the community and regional elections, except in the Brussels Capital Region.⁶¹

In the French-speaking areas, the French-speaking Socialist Party was the largest party for many decades, with the French Liberal Party typically second, although in the June 2007 elections the French-speaking Liberal Party for the first time displaced the Socialist Party as the largest. The francophone Christian Democrats typically run a somewhat distant third. In the Flemish areas, the Flemish Christian Democratic Party has most often been the largest party, although the Flemish Liberal party did better in the 1999 and 2003 national elections. The 2007 national elections again brought the Christian Democrats to the number-one position. The Flemish socialist party is typically smaller and lost many seats in the 2007 election. A fourth major Flemish party, the Vlaams Belang, is an extreme right wing Flemish nationalist (some say fascist) party that calls for Flemish independence and restrictions on immigrants and immigration. This party was even the largest in Flanders in the 2004 regional elections and the second largest in the recent 2009 regional elections.⁶² All this history suggests that ideologically, the socialist tradition is much stronger in the Walloon region, while the Catholic party is much stronger in the Flemish region.

At the national level, a variety of mechanisms ensure that neither the Flemish nor the francophone parties, acting on their own, can impose decisions on the other language group. A governing majority in Parliament always requires a coalition government, and the Belgian constitution requires that the cabinet have an equal number of ministers from each language group, apart from the Prime Minister. This means that the coalitions necessarily cross

58. As early as the 1930s, the Catholic Christian Democratic party had divided into two linguistic “wings”—one Flemish and one French-speaking—over the issue of Flemish cultural autonomy, and later in 1967, the Christian Democrats formally split into two separate parties as a result of the conflict surrounding the Catholic University of Leuven/Louvain. Similarly, in the 1960s and ’70s, as Walloon economic conditions declined, Walloon nationalist parties sprouted up, with federalist–socialist agendas, which threatened the larger Socialist Party and led to its division in the 1970s. The national Liberal Party also broke up along Flemish and francophone lines in 1968. Hooghe, *supra* note 16, at 59–61.

59. *See infra* IV.A.3.

60. Kris Deschouwer, *Falling Apart Together: The Changing Nature of Belgian Consociationalism: 1961–2001*, 37 ACTA POLITICA 68, 79 (2002).

61. Deschouwer, *supra* note 25, at 60.

62. There is also a French-speaking right-wing nationalist party (the FN), but it has only one representative.

language lines, and typically include at least four of the six major parties.⁶³ In what is known as the *cordon sanitaire*, the six major parties have agreed never to include the Flemish nationalists (the Vlaams Belang) in the governing coalition—not so much because of its persistent calls for Flemish independence as because of the Vlaams Belang’s fascist antecedents and racist hostility to immigrants. Each deputy in the national House of Representatives, elected for four year terms by proportional representation from party lists in geographically defined districts, is assigned to either the French group or the Dutch group, depending on the language of the electoral district.⁶⁴ Constitutional amendments and certain “special laws” require concurrent majorities from each language group as well as a two-thirds overall majority. Representatives also negotiate in the shadow of an “alarm bell procedure,” which, although rarely invoked, carries with it the threat that the government will fall. This procedure enables a seventy-five-percent majority of either language group to suspend the enactment of proposed legislation expected to adversely affect that language group. If invoked, the procedure requires that the matter be referred to the government for further consideration and negotiation, which must give motivated advice in thirty days.

III

BELGIUM TODAY: TWO PEOPLES IN A DIVIDED SOCIETY

Early in the twentieth century, King Albert I was told by a Walloon political leader, “[Sire,] You reign over two peoples. In Belgium, there are Walloons and Flemish; there are no Belgians.”⁶⁵ This statement is an overstatement if it is meant to suggest that a Belgian identity counts for *nothing*.⁶⁶ Some attitudes are held in common by those on both sides of the language divide, including a pragmatic willingness to compromise and a skepticism of government. Flemish and Walloons alike take pride in the restaurant scene in Belgium (which is said to have more Michelin stars per capita than France) and share a love for outstanding food and drink. Nevertheless, survey evidence suggests that for most, their identity as Belgians is thin, at least in comparison to their local or regional identity.⁶⁷ No one knows the words of the national anthem, and

63. See LIESBET HOOGE, A LEAP IN THE DARK: NATIONALIST CONFLICT AND FEDERAL REFORM IN BELGIUM 6 (1991). Since 60% of the population is Flemish, the unstated presumption has been that the prime minister will be Flemish—not since the 1970s has a Walloon had the top position.

64. Except for the Brussels–Halle–Vilvoorde district, which includes both the Brussels Capital region and some surrounding suburbs, all of the electoral districts are monolingual.

65. Jules Destrée, LETTRE AU ROI SUR LA SÉPARATION DE LA WALLONIE DE LA FLANDRE [LETTER TO THE KING ON THE SEPARATION OF WALLONIA AND FLANDERS], translated in ALEN, *supra* note 25, at 47.

66. See Wilfried Swenden & Maarten Theo Jans, “Will It Stay or Will It Go?” *Federalism and the Sustainability of Belgium*, 29 W. EUR. POL. 877, 889 (2006) (suggesting that the younger Flemish are more willing to identify with Belgium, possibly because they lack firsthand experience with linguistic discrimination).

67. Hooghe, *supra* note 16, at 65.

Belgium is one of least nationalistic countries in the world. One Belgian political scientist, suggesting a state might be defined as a network of communication,⁶⁸ expressed pessimism about Belgium's future: "In Belgium, there is little communication. There are separate media, extreme social segregation, separate political parties and more and more authority in separate hands."⁶⁹

Belgians are quick to note the real cultural differences between the Walloons and the Flemish. The conventional wisdom is that the Flemish are more disciplined and harder working, like the Northern European, Germanic cultures, while the Walloons take after the more fun-loving Latins in Southern Europe.⁷⁰ Some political and ideological differences are conspicuous: the socialist tradition is stronger in the Walloon region, and the Flemish are more committed to a market economy.⁷¹ Whereas nearly every Belgian is nominally Catholic, the Flanders region has a higher proportion of observant Catholics than the more secular Walloon region.⁷²

What seems incontestable today is that within Belgium, the language cleavage has been embedded into a governmental structure that reinforces the sense that there are "two peoples" who are likely, in time, to drift farther apart and not closer together. Ordinary citizens may participate in the political process only among their own language group. There are no mass media—that is, national newspapers, television stations, or radio stations—aimed at both the French- and Dutch-speaking communities. The daily newspapers are exclusively Dutch, French, or German.⁷³ Television and radio stations have been separate in Flanders and Wallonia since 1960,⁷⁴ and each community has its own public broadcasting organization regulated by its language community, not the national government.⁷⁵

The degree of residential and workplace segregation in the Flemish and Walloon regions is stunning. Belgians could be described as "living separately

68. See generally KARL W. DEUTSCH, NATIONALISM AND SOCIAL COMMUNICATION: AN INQUIRY INTO THE FOUNDATIONS OF NATIONALITY (1953) (presenting a theory of nationalism as linked with and dependent on social communication).

69. Because of promises of confidentiality involved in this and other interviews referenced in this article, *Law and Contemporary Problems* is unable to independently verify their content. These sources are on file with the authors.

70. See RUDY AERNOUDT, VLAANDEREN WALLONIË, JE T'AIME, MOI NON PLUS 17–35 (2006).

71. See Marleen Brans, Christian De Visscher & Diederik Vancoppenolle, *Administrative Reform in Belgium: Maintenance or Modernisation?*, 29 W. EUR. POL. 979, 992–95 (2006) (discussing the evidence on cultural differences between Flanders and Wallonia regarding organizational reforms in government).

72. MCRAE, *supra* note 5, at 65–71.

73. See *id.* at 249–51 (discussing the history of the press in Belgium).

74. Deschouwer, *supra* note 25, at 50; see also MCRAE, *supra* note 5, at 237–49 (discussing the history of Belgian broadcasting).

75. Belgian newspapers, however, are self-regulated by a single association, the Federation of Editors, BBC NEWS, COUNTRY PROFILE: BELGIUM, http://news.bbc.co.uk/2/hi/europe/country_profiles/999709.stm (last visited Apr. 2, 2009).

together.” Very few who reside or commute to work in Wallonia are Dutch-speaking or Flemish.⁷⁶ And vice versa: Flemish businessmen in prosperous southwest Flanders complain that because even unemployed Walloons are unwilling to commute to Flanders, they often hire workers from neighboring France.⁷⁷ Within Brussels (where French is spoken in 85% of homes, Dutch in between 10% and 20%⁷⁸), there is a modest degree of residential integration. The Brussels workplace tends to be more integrated because many Flemish people who live in Flanders commute to Brussels for work.⁷⁹

Although Belgium is a small country, Flemish and Walloons interact socially surprisingly little. Millions of Belgians are unable to communicate because they cannot speak each other’s language. The degree of linguistic segregation in the schools—from the elementary level through the universities—is striking. At all levels, the curriculum of any particular school is typically taught exclusively in either French or Dutch. Though some families intentionally cross-enroll their children so that they might better learn the other language, these are exceptions.

Nor is there a shared national commitment to make Belgians bilingual.⁸⁰ Elementary schools, beginning in the fourth grade, do offer a few hours per week of instruction in the other language, but few Walloons ever learn to speak Dutch with any degree of fluency. In the year 2000, researchers found that in Wallonia, 17% knew Dutch in addition to French.⁸¹ Only 7% were trilingual.⁸² The proportion of multilingual Flemish people was much higher: 57% knew French and Dutch, and 40% knew English as well.⁸³ Compared to a generation ago, it is our impression that fewer Flemish speak French fluently now, probably because of the increasing dominance of English.

IV

WHITHER BELGIUM?

The language cleavage is now embedded in and reinforced by Belgian’s federal structure. Does the current structure represent a stable equilibrium, or have these changes instead set into motion centrifugal forces that are likely to

76. The vast majority (about 90%) of all commuting is toward Brussels. Commuting between Flanders and Wallonia is very limited (about 1% of all commuting). REFLECTION GROUP “IN DE WARANDE,” *supra* note 7, at 63.

77. Confidential interview. *See supra* note 69.

78. Hooghe, *supra* note 16, at 57; Deschouwer, *supra* note 25, at 51.

79. *See* REFLECTION GROUP “IN DE WARANDE,” *supra* note 7, at 63; MCRAE, *supra* note 5, at 76–77.

80. Early in March 2007, the francophone socialist leader Elio di Rupo argued in favor of creating bilingual schools in Brussels and surroundings. This measure was opposed by the Flemish Minister of Education. *See* Frans De Smet, *Di Rupo wil tweetalige scholen langs taalgrens*, HET NIEUWSBLAD, Mar. 11, 2007, <http://www.nieuwsblad.be/Article/Detail.aspx?articleID=do19fctr>.

81. Ginsburgh & Weber, *supra* note 32, at 4.

82. *Id.*

83. *Id.*

lead to further devolution and possibly state separation? What are the divisive issues that might destabilize the present equilibrium? In Belgium, ethnic federalism has enabled the regions to develop a full range of separate governmental institutions that would seem to lower the costs of Flemish secession. What “glue” is there to hold the country together, particularly in the face of a serious economic or political shock?

A. The Issues

Belgium’s present-day federal structure can best be understood as a complex set of compromises that was the product of a series of protracted political negotiations that sought to deal with four problems, none of which has been completely put to rest.

1. Language and the Quest for Autonomy

The Flemish movement was originally concerned primarily with language rights and cultural equality. Francophone social dominance is at the origin of the conflict.⁸⁴ The combination of Flemish pressure, on the one hand, and francophone resistance to a bilingual regime that would require French-speaking government officials to learn Dutch, on the other, resulted in a scheme of territorial monolingualism that was established in the 1930s. Over time, however, the concerns of the Flemish movement broadened: “[I]t became gradually more nationalist and autonomist in response to the slow adaptation of the Belgian–francophone institutions and growing anti-Flemish sentiment among French-speaking politicians.”⁸⁵ In 1970, major constitutional reform was brought by the joint request of the Flemish, who wanted cultural autonomy, and the Walloons, who desired more autonomy for economic reform. It led to an asymmetric federalism with communities (linked to language and culture) and regions (linked to territory).⁸⁶ The process did not stop there, and between the 1970s and today, the Flemish parties succeeded, through negotiations, in creating a federal system that gives both sides the power to make policy for a broad range of issues.⁸⁷

84. DUTILLEUL, *supra* note 2, at 53 (quoting the journalist Guido Fonteyn).

85. Hooghe, *supra* note 16, at 59.

86. The fifth of five Flemish Resolutions of March 3, 1999, emphasizes the principle of language territoriality, as well as a demand for supervision rights for the regions on appointments in several federal institutions. See Op 3 maart 1999 worden er vijf resoluties i.v.m. de volgende staatsvorming aangenomen, Mar. 3, 1999, *available at* http://www.vlaamsparlement.be/vp/informatie/informatieek/informatiedossiers/vlaamsegrondwet/vijf_resoluties.htm.

87. This devolution involved a series of trades over time. The Walloons typically agreed to grant more authority to the regions and communities only if the Flemish agreed to provide greater subsidies for the Walloon region and francophone community. The 1993 Saint Michael Agreement and the 2000 Lambermont Agreement followed this pattern. See ELS WITTE, JAN CRAEYBECKX & ALAIN MENNEN, POLITIEKE GESCHIEDENIS VAN BELGIË: VAN 1830 TOT HEDEN 447–53 (2005); REFLECTION GROUP “IN DE WARANDE,” *supra* note 7, at 110–12.

The conflict today relates to the Flemish pressure to go farther. Many within Flanders want still greater autonomy and devolution to a confederal system, and some (as the Manifesto suggests) seek Flemish independence. Francophone Belgians object to further moves toward regional or communal autonomy. With respect to language rights, the Flemish vehemently insist on the principle of territoriality, while the Francophones (especially in the parts of Flanders adjacent to Brussels) now suggest that language rights be attached to the person of a citizen, entitling him to speak his own language in his dealings with government. In the thirties, the reverse was true. The Francophones demanded territorial monolingualism: French ought to be the exclusive language in the South, and Dutch in the North.⁸⁸ The Flemish now strongly oppose any deviations from the territorial principle and do not accept any official language other than Dutch on Flemish soil.⁸⁹ This conflict between territoriality and personality is at the heart of numerous debates between the two groups.⁹⁰

2. Minority Protection vs. Majority Rule

Belgian democracy is not based on majority rule but instead provides an example of a “consociational democracy,”⁹¹ in which proportional representation, executive power sharing and grand coalitions, and minority vetoes are key elements.⁹² At the national level in Belgium, in response to Francophones’ fear that they might be outvoted and dominated politically by the Flemish majority, Belgium has put in place a variety of institutional mechanisms that prevent Flemish domination through majority rule. Because of the alarm-bell procedure, the requirement of concurrent linguistic majorities for special laws, equal representation in the national government, and a multiparty political system that requires coalitions, the francophone political parties have considerable leverage in the national Parliament to ensure that their interests are taken into account in any negotiated deal.⁹³

88. See MCRAE, *supra* note 5, at 150–51.

89. For a summary of the history of the language conflict from the Flemish perspective, see the official site of the Flemish Government, http://www2.vlaanderen.be/taalwetgeving/eeuw_taalwetten.html (last visited Apr. 2, 2009).

90. See *infra* IV.A.3.

91. See Brendan O’Leary, *Debating Consociational Politics: Normative and Explanatory Arguments*, in FROM POWER SHARING TO DEMOCRACY: POST-CONFLICT INSTITUTIONS IN ETHNICALLY DIVIDED SOCIETIES 3, 26 (Sid Noel ed., 2005) (surveying “consociational thinking” and suggesting that Belgium is an example of a state successfully managing its consociational difficulties); see also Brendan O’Leary, *An Iron Law of Nationalism and Federation: A (Neo-Diceyan) Theory of the Necessity of Federal Staatsvolk and of Consociational Rescue*, 7 NATIONS AND NATIONALISM 273, 288–91 (2001) (constructing a Herfindahl–Hirschman index to measure the number of politically effective cultural groups in various countries, and noting a similarity between Belgium’s score and the scores of other nations often described as having consociational institutions).

92. See generally Deschouwer, *supra* note 60; George Tsebelis, *Elite Interaction and Constitution Building in Consociational Democracies*, 2 J. THEORETICAL POL. 5 (1990).

93. Kris Deschouwer, *Consociational Democracy and Belgian Politics in the Twenty-First Century*, 29 W. EUR. POL. 895, 906–07 (2006).

In actual operation, the system's consociational features and the complex fragmentation of authority make coherent policy extremely difficult.⁹⁴ Moreover, because the regions and communities lack general fiscal autonomy and are dependent on federal grants and shared tax revenues, critical negotiations occur at the national level, in a complex set of intergovernmental mechanisms devoted to policy coordination.⁹⁵ Many Flemish resent the antimajoritarian elements as undemocratic and are frustrated by their inability to develop coherent policies for their region. Yet the Flemish required the same protective mechanisms in Brussels, where they are a minority.⁹⁶

3. Brussels

The Brussels metropolitan area presents a special problem for Belgium because of its physical location, its history, and its growth. Brussels is physically situated in Flanders, and in the mid-nineteenth century a majority of the city's inhabitants were Flemish.⁹⁷ Today Brussels is no longer a Flemish city. In fact, it has become overwhelmingly francophone.⁹⁸ The negotiated compromise was to make the nineteen municipalities of Brussels into a separate, bilingual Brussels Capital Region that is not part of either Flanders or Wallonia, which are monolingual. In order to protect the Flemish minority within Brussels from francophone domination, the governmental structure of the Brussels Capital Region has several antimajoritarian rules akin to those in the national government structure.⁹⁹ Flemish residents of Brussels are guaranteed the right not only to use their language in administrative dealings with the government, but also to have Dutch-speaking schools.

Brussels remains a point of political contention because metropolitan Brussels extends well beyond the nineteen municipalities in the Brussels Capital Region. Over the years, an increasing number of French speakers have acquired homes in the surrounding areas.¹⁰⁰ The Flemish fear and resent what they see as the creeping "Frenchification" of these Flemish areas.¹⁰¹ In 1962, Dutch speakers pushed for and secured legislation to establish a fixed linguistic border

94. For example, social insurance, including health insurance, is a federal matter, but public-health policies are said to be a community competence. The communities govern education but the regions control school transport, while the national government controls teachers' pensions and sets standards for professional qualifications. The main social-policy instruments relating to income redistribution (social security, the welfare system, and the personal-income tax) remain with the federal government.

95. See Swenden & Jans, *supra* note 66, at 886–88.

96. ALEN & MUYLLE, *supra* note 25, §§ 347–49.

97. Alen, *supra* note 24, at 49.

98. As noted, within the Brussels capital region, 85% of the population is French-speaking and only about 15% speak Flemish at home. Today, a substantial fraction of the population of Brussels is made of immigrants, many from North Africa and Turkey. This population is largely francophone. Brussels is becoming more and more a multilingual city where languages such as English and Arabic are of increasing importance.

99. Hooghe, *supra* note 16, at 73–76.

100. See the official website of the Flemish Government, *supra* note 89.

101. Hooghe, *supra* note 16, at 60–61.

around Brussels.¹⁰² But as part of a political compromise, some of the suburban municipalities that are not part of Brussels proper have received linguistic “facilities.” These facilities entitle Francophones living in these particular Flemish municipalities to deal with the municipal authorities in French.¹⁰³ From the Flemish perspective, this compromise was seen at the time as a temporary violation of the territorial principle, to enable those francophone citizens to integrate and learn Dutch.¹⁰⁴ From the Francophone’s perspective, this forty-five-year-old exception to the territorial principle is now seen to suggest that language rights should adhere to the individual and therefore should be a permanent and personal privilege. The conflicting perspectives came to a head in November 2007, when the Flemish Minister of Internal Affairs refused to appoint and recognize three francophone mayors in these particular municipalities located within the Flemish region because of their refusal to comply with Dutch-language regulations. For the same reason the Minister also annulled several resolutions of municipal council meetings conducted in French.

A related flash point concerns the Brussels–Halle–Vilvoorde electoral and judicial district, a single district that includes both the officially bilingual Brussels Capital Region core as well as the nominally monolingual Dutch area, Halle–Vilvoorde, which surrounds it. The Brussels–Halle–Vilvoorde electoral district was created as another part of the 1962 political compromise. The net effect of having this electoral district, which is larger than Brussels itself, is that in national elections francophone residents in Halle or Vilvoorde can vote for francophone parties from the Brussels Capital Region and for candidates who live in Brussels proper and do not reside in the Halle or Vilvoorde areas. It also assures the Francophones in that area access to francophone courts. The crisis arose as the result of two rulings of the Belgian Constitutional Court that having Brussels–Halle–Vilvoorde as a single electoral district was inconsistent with provisions of the Belgium Constitution that contemplate territorially based electoral districts.¹⁰⁵ The Flemish parties insist that the borders of the Brussels Capital Region remain fixed and that the electoral district be split so that voters in the Halle–Vilvoorde areas are no longer attached to the Capital Region for any voting purposes.¹⁰⁶ The francophone parties oppose the split, and ask that

102. MCRAE, *supra* note 5, at 150–152.

103. *Id.* at 155.

104. See the official website of the Flemish Government, *supra* note 89.

105. Grondwettelijk Hof van België, Cour Constitutionnelle de Belgique, Verfassungsgerichtshof Belgien, Feb. 26, 2003, No. 30/2003; Grondwettelijk Hof van België, Cour Constitutionnelle de Belgique, Verfassungsgerichtshof Belgien, May 26, 2003, No. 73/2003; see also ALEN & MUYLLE, *supra* note 25, § 225.

106. See *Persbericht: Unanimiteit op staten-generaal, SPLITS BRUSSEL–HALLE–VILVOORDE*, May 20, 2005, <http://www.splits-bhv.be/startpagina.htm>.

six communes with a number of francophone residents be given permanent language facilities and even be added to Brussels proper.¹⁰⁷

This conflict will likely be resolved eventually with some sort of “Belgian compromise.” Its practical importance is minor—with respect to national electoral power, little turns on how the Brussels–Halle–Vilvoorde electoral district is reformed. Nevertheless, the conflict has substantial symbolic importance on both sides of the language divide and is used for purposes of political mobilization.

4. Regional Economic Differences, Internal Transfers, and Entitlement Policies

A far more important and potentially explosive conflict relates to the control and allocation of governmental resources and to Flemish pressures for further devolution. In Belgium today, revenues for all levels of government are generated primarily by taxes levied at the national level.¹⁰⁸ Because Flanders is now much richer than Wallonia, it pays proportionately more of these taxes.¹⁰⁹ In various past negotiations at the national level, the leaders of the francophone parties have exercised their leverage to extract and protect what the Flemish parties see as disproportionate internal transfers from the Flemish region to the Walloon region and Brussels. A good portion of these transfers occur because unemployment insurance, health insurance, and social security (old-age retirement benefits, disability) remain national and not regional programs. Flemish (who on average have higher incomes) pay more into these programs than they receive.¹¹⁰

There are now regular calls from the major Flemish political parties for the regionalization of some of these national entitlement programs. Flemish business leaders are deeply concerned that these programs will destroy Flanders’ ability to compete in a global marketplace in the long run and that only regionalization will provide safeguards against even greater burdens in the years to come.¹¹¹

Many Flemish feel that Flanders is presently tied to an economic region that refuses to cooperate in its own rescue, and that the Walloon region risks drowning Flanders as well. Moreover, the average Flemish person on the street

107. See “Bruxelles–Halle–Vilvoorde,” un épineux sujet de discord [*“Brussels–Halle–Vilvoorde,” A Thorny Subject of Discord*], JOURNAL DES FINANCES (Fr.), Jan. 26, 2008, <http://www.jdf.com/dossier/2008/01/26/04007-20080126ARTHBD00406-bruxelles-halle-vilvorde-un-epineux-sujet-de-discorde.php>.

108. ALEN & MUYLLE, *supra* note 25, §§ 502–06.

109. REFLECTION GROUP “IN DE WARANDE,” *supra* note 7, at 146–51.

110. For precise numbers, see Bea Cantillon et al., *Social Redistribution in a Federalised Belgium*, 29 W. EUR. POL. 1034, 1040–43 (2006).

111. In 1999 the Flemish Parliament passed resolutions calling for tax autonomy and for broader and more-coherent or homogeneous authority in areas such as employment policy, health care, children’s allowances, collective labor agreements, railways, traffic regulation, and some aspects of penal-law enforcement. See Resolutions of March 3, 1999, available at http://www.vlaamsparlement.be/vp/informatie/informatieek/informatiedossiers/vlaamsegrondwet/vijf_resoluties.htm.

resents the idea of substantial subsidies from Flanders to the Walloon region.¹¹² Others within Flanders, while not hostile to the principle of national solidarity, object to the implementation of the existing welfare system, the lack of transparency, and the absence of objective criteria.¹¹³

Many in Flanders also object that the regions lack the policy instruments to create efficient economic policies. For example, the Flemish Economic Minister lacks the power to grant abatements to the company tax (which is levied at the national level) but instead must use subsidies and direct grants to attract new industry.¹¹⁴ Regionalization of these policies is vehemently opposed by the francophone parties, especially the socialist party, which sees these national entitlements as vitally important to its political base and at the core of the party's political ideology.¹¹⁵ In sum, these issues are deeply divisive and could generate a substantial degree of mass political mobilization on both sides of the language divide.

B. What Glue?

In light of these and other conflicts between the Flemish and the Walloons, what can hold Belgium together, particularly given the centrifugal pressures generated by the existing federal regime? One frequently hears, only half in jest, that the only truly Belgian institutions are the soccer team and the monarchy. But neither provides much glue.¹¹⁶ Belgium soccer teams have had limited success in international competitions, and hardly provide a source for much national pride.

The royal family is plainly committed to holding the country together, and King Albert II is well liked among both francophone and Dutch-speaking Belgians. If he were to die now, many on both sides of the linguistic divide would grieve and fly a Belgian flag at half-mast. But Flemish regularly complain that the royal family has always preferred to speak French and has never bothered to develop a deep mastery of the Dutch language nor exhibited much interest in its culture. The heir apparent, Prince Philippe, is regularly ridiculed in the Flemish press as a none-too-bright, awkward bumbler. Some Belgians, though, who have had personal and professional dealings with the Prince consider him a well-meaning and conscientious man, but one better suited for the monarchy in a different age—a person entirely lacking the modern communicative and political skills to unite a divided society.¹¹⁷ One Flemish

112. Professor Giuseppe Pagano has called the combination of “profound cultural resentment” and expensive transfers an “explosive cocktail.” DUTILLEUL, *supra* note 2, at 167.

113. AERNOUDT, *supra* note 70, at 175.

114. *Id.* at 206–12.

115. For an argument that regionalization is inconsistent with the provision of social services, see the official website of the francophone socialist party, <http://www.ps.be> (last visited Apr. 2, 2009).

116. The monarchy provides a strong glue, however, not in itself, but as an important mechanism in the creation and continuation of a strong Belgian establishment. *See infra* IV.B.3.

117. Confidential interview. *See supra* note 69.

political leader summed up her faith in the monarchy this way: “The perfect Belgian King would have movie star looks, be completely fluent in many languages, would be charming, would *not* be a womanizer or be sexually aberrant in any way. How likely are you to get such a person by birth and primogeniture?”¹¹⁸

One might suppose that a 175-year-old shared history would bind the country together. But much of this shared history has not been happy. Although today the Flemish region is more prosperous and has considerable autonomy, many Flemish still resent language slights and perceived ongoing francophone condescension. Two devastating world wars were fought on Belgian soil, and during each was a German occupation that led to divisive and bitter postwar accusations in which many Flemish felt unfairly accused of collaboration. According to one prominent Flemish businessman, “After World War II, Walloons accused many Flemish of collaboration. While only a few were ever prosecuted, many Flemish felt misunderstood and unfairly tarred. The scars from this condemnation still exist in many Flemish families.”¹¹⁹ Some in the francophone community are very quick to characterize Flemish politics today as reflecting fascistic roots that existed before World War II. They see this in the electoral strength of the Vlaams Belang, and they regularly condemn the Flemish as selfish and lacking in feelings of social solidarity because of their express desire to reduce the entitlements of the welfare state.

The factors that are most likely to hold the country together are (1) Flemish fears that Brussels might be lost, (2) a national culture that accepts pragmatic compromise and dislikes violence, (3) a strong Belgian establishment including a national-political-party elite with experience at problem-solving negotiations, and (4) European integration and the European Union.

1. Brussels

Today Brussels is not only the capital of Belgium and often characterized as the capital of Europe—it is the capital of the Flemish regional government and community. For those Flemish pressing for Flemish independence, Brussels presents a real political stumbling block. Although Brussels is located within what was historically a Flemish-speaking area, it is highly unlikely that a majority of this overwhelmingly francophone city, if given a choice, would elect to dissolve Belgium to become part of Flanders. Nor would Brussels’ residents likely prefer to become part of a new francophone nation over the status quo. Francophone residents of Brussels do not identify with the Walloon region or its separate culture so much as with the more cosmopolitan, broader French culture. Residents of Brussels might also prefer the status quo to dissolution for economic reasons: Brussels is not a rich city, and today it benefits from transfers from Flanders—both direct and indirect.¹²⁰

118. Confidential interview. *See supra* note 69.

119. Confidential interview. *See supra* note 69.

120. REFLECTION GROUP “IN DE WARANDE,” *supra* note 7, at 132–55.

Without describing the process by which it might be achieved, the Manifesto suggests that after dissolution of Belgium, Brussels should become a shared responsibility of the two new nations as well as the EU, a condominium of sorts.¹²¹ In the Manifesto authors' view Brussels might become a "free city," that is, part of neither new country, but instead the capital of Europe, supported and subsidized by the EU.¹²² Although such alternatives would presumably be acceptable to many in Flanders who prefer independence, a Flemish state bent on securing its independence could not unilaterally impose such arrangements. Instead, they would have to be created through negotiations that would require the agreement of the national francophone parties and the EU and perhaps some sort of ratification by the residents of Brussels, as well. But why would the francophone parties or the EU agree to such arrangements, which they would surely see as paving the way to Flemish independence?

This raises an important question for the advocates of Flemish independence: How likely is it that a majority of Flemish would support independence if in the process Flanders risks "losing" Brussels in the sense that it could not remain the capital of Flanders or be part of the new Flemish nation? In answering this question, one must acknowledge that many Flemish have ambivalent feelings toward Brussels. They often express pride in this cosmopolitan city and its Flemish roots. But at the same time many Flemish—especially those who live and work outside the city—feel Brussels has become a foreign metropolis filled with immigrants. They often express resentment that Brussels is only nominally bilingual, that in reality Dutch is not much used or even understood in many shops and restaurants. Notwithstanding this ambivalence, Brussels is an important part of the glue that holds the country together. Like a father who never files for divorce because he is unwilling to give up custody of a child, many Flemish—who might otherwise favor independence—would, we suspect, prefer to stay in an unsatisfying Belgian marriage in which the spouses lead separate lives rather than give up Brussels. Many seem to corroborate this analysis. One important business leader supporting the Manifesto confessed he would never favor divorce if it meant giving up Brussels.¹²³ Another agrees with the analysis of the Manifesto but does not want dissolution, thinking of himself as a strong federalist.¹²⁴ One political leader put it quite clearly: "If you ask people in Brussels Central Station[,] 'Do you want Belgium to divide?,' 75% of the Flemish would oppose. On the other hand, if you ask 'Should Flanders have more autonomy?,' 75% of the Flemish would say yes. The problem of Brussels can't be solved. Brussels is becoming a

121. *Id.* at 197–207.

122. *See id.* at 201–12 (laying out a plan for reorganizing Brussels as a region separate from Flanders and Wallonia, borrowing from the example of Washington, D.C.); TRENDS REDAKTIE, BRUSSEL, WASHINGTON AAN DE ZENNE. EEN PLEIDOOI VOOR BRUSSEL ALS EUROPESE HOOFDSTAD 9 (1989) (comparing Brussels to Washington, D.C.).

123. Confidential interview. *See supra* note 69.

124. Confidential interview. *See supra* note 69.

less francophone and more polyglot community.”¹²⁵ He also suggested that even with divorce, the underlying problems of immigration, unemployment, social-security costs, and the need for transfer programs would remain—just on a smaller scale. Each region would still need governmental transfer programs.¹²⁶

2. A Pragmatic and Pacifist Culture that Supports Compromise

Certain elements of a shared culture provide glue that might well hold the country together. The experience in the two world wars appears to have created—on both sides of the linguistic divide—a strong tendency toward pacifism and conflict avoidance. One political leader commented,

Belgians are conflict averse. Given the history of the country, Belgians have no taste for fighting or for wars. Our land has provided the site of battles fought by others, and our people have been occupied by the French, the Dutch and the Germans. People in this country don't like the government, and don't like the army. There is very little chauvinism. While the ties with the nation are very thin and there is little state feeling or identity, there is not taste for violence.¹²⁷

Fear of the unknown consequences of a divorce, combined with Belgium's current prosperity as a united nation, creates a bias towards the status quo even among the Flemish. So long as Flanders remains prosperous—today it ranks among the richest regions of the world—many Flemish who might abstractly prefer greater Flemish autonomy are reluctant to upset the apple cart and break up the Belgian state. Why risk today's comfort for the possible benefits of independence? On the other hand, in an ongoing, deep crisis like we are experiencing today, Flemish economic insecurity, coupled with continued resentment of subsidies to the Walloon region, might create a greater willingness to take the risk.

An equally important factor that provides “glue” relates to a shared cultural commitment throughout Belgium to pragmatism and compromise. Indeed, the Belgians use the expression “a Belgian compromise” to describe a deal in which difficult issues are resolved in a messy, inefficient, and ambiguous way—in which both sides have made concessions but no one understands the long-term implications. But these compromises allow ordinary life to go on without undue disruption or violence. The history of Belgium in general, and especially the history of its constitutional reforms since 1970, is replete with such compromises.¹²⁸

3. A Political Elite and National Establishment

Belgium's entire federalist design, with its complicated consociational mechanisms taking into account and recognizing the interests of both sides, is an illustration of such compromise. Notwithstanding this regionalization, a

125. Confidential interview. *See supra* note 69.

126. Confidential interview. *See supra* note 69.

127. Confidential interview. *See supra* note 69.

128. ALEN & MUYLLE, *supra* note 25, §§ 247–349.

federal political career remains highly attractive.¹²⁹ The elites of the various political parties have had a great deal of experience negotiating various compromises across both language and ideological cleavages. In these negotiations the leaders have a great deal of power because the leaders can speak for their parties. Belgium is sometimes called a “partocracy” because party discipline is absolute; in parliament, deputies vote as their party leaders dictate because it is the leaders who substantially influence whether someone is a candidate, as well as candidates’ positions on the electoral list.¹³⁰

The need for coalitions to form a government, when combined with the various antimajoritarian rules, creates a system in which there is pressure to forge some sort of working consensus across party lines.¹³¹ Stalemates do occur, and sometimes these cause the government to fall and new elections to be called. But the typically protracted negotiations often lead to log-rolling compromises, sometimes with further devolution of authority to the regional or community level, combined with various side-payments subsidizing the Walloon region. One political scientist declared,

The reforms of the 1970[*s*] in essence obligated the political elites to be prepared to negotiate various compromises because the price of failure was that the government would fall. This was a very high price. The elite are and have been very creative in avoiding gridlock and negotiating intricate and creative compromises, typically behind closed doors. They deal with each other all the time and know each other’s true “bottom lines” or reservation points. People were not aware in the 1970[*s*] of how substantial the implications of these changes would be. Not simply a first step to “Federalism” but instead a procedural framework that required double majorities.¹³²

Complaints about Belgium’s “democratic deficit” relate in some measure to the fact that these leaders, behind closed doors, can negotiate deals without much public input or dialogue.¹³³ Leaders are often accused of “selling out” and accepting arrangements that are inconsistent with assurances given during election campaigns. But over the years, this political elite—because of shared cultural commitment across the language cleavage to the peaceful resolution of conflict—has provided the glue that has helped hold the country together.¹³⁴

The multilevel and very complex, asymmetrical governance system forces party leaders to “conceptuali[z]e their role as the cement that binds the various

129. Swenden & Jans, *supra* note 66, at 891. This may also be explained by the increasing importance of Europe, which has led to a strengthening of the position of the federal government. See *infra* IV.B.4.

130. STEFAAN FIERS, PARTIJVOORZITTERS IN BELGIË OF “LE PARTI, C’EST MOI”? 106 (1998); Lieven De Winter & Patrick Dumont, *Do Belgian Parties Undermine the Democratic Chain of Delegation?*, 29 W. EUR. POL. 957, 964–69 (2006).

131. Deschouwer, *supra* note 93, at 901–04.

132. Confidential interview. See *supra* note 69.

133. On this lack of legitimacy and procedural justice, see Tom Tyler, *Governing Pluralistic Societies*, 72 LAW & CONTEMP. PROBS. 187 (Spring 2009).

134. See Jaak Billiet, Bart Maddens & André-Paul Frogner, *Differences in Political Culture Between Flemings and Walloons*, 29 W. EUR. POL. 912, 930–31 (2006) (“[A]n over-arching Belgian political and economic elite still exists, which uses its . . . power to maintain the unity of the country.”).

elements of the system together.”¹³⁵ According to some observers, party leaders have maintained their dominant position by using the state for their own ends,¹³⁶ while the state itself has used these leaders to provide cohesion to the governing process. Corruption and “clientelism” are seen as indispensable for the maintenance and continuation of the system.¹³⁷

The Belgian establishment glue extends beyond the political class. Many have a stake in the survival of Belgium as a country: business, economic, and financial leaders; federal civil servants and diplomats; the heads of employers’ organizations and trade unions. The trade unions and mutual health funds provide for various social services and, most important, are responsible for the administration of unemployment and health benefits. Billions of euros run through their hands, all from national social-security programs under the control of the federal government. Moreover, during the last twenty years the King has systematically worked to broaden this Belgian power base by creating a large number of new knights and barons. Many among the Flemish business and academic elites are thus co-opted into the national Belgian establishment.¹³⁸

4. Europe

It is not a simple matter to assess whether on balance European integration operates to weaken the national state and strengthen the regions within Belgium, or vice versa. On the one hand, some governmental functions are now at the supranational level. Furthermore, there are some EU policies that relate directly to the regions and bypass the national government. The Treaty of the European Union allows regional Ministers to be actively present in meetings of the European Council. These realities can be seen as strengthening the regions at the expense of the national state. But the rules of the European Council require that a nation’s regional representatives in the Council act in unity, and take a single position for the national state as a whole, irrespective of the underlying constitutional status of the region in that member state.¹³⁹ Therefore, in some respects the EU forces regions or other subunits of a state to cooperate. Numerous cooperative modes of governance have been developed for that purpose.¹⁴⁰

Therefore, although European integration has given subentities in several areas a strong role and powers, it has enabled the federal government to strengthen its position as a key policymaking player and to occupy a powerful gate-keeping position between the domestic regional level and Europe. Even in

135. B. Guy Peters, *Consociationalism, Corruption and Chocolate: Belgian Exceptionalism*, 29 W. EUR. POL. 1079, 1081 (2006).

136. It is therefore not so surprising that in Belgium the splitting up of national political parties into regional parties has preceded the regionalization of the country. See Swenden & Jans, *supra* note 66, at 880.

137. Peters, *supra* note 135, at 1086–87.

138. See JOOST BALLEGEER, *DE VLAMINGEN: EEN VOLK ZONDER BOVENLAAG* 194 (2005).

139. See Beyers & Bursens, *supra* note 57, at 1064.

140. For many concrete examples, see *id.* at 1062–73.

policy areas in which Europe has made the regions potentially dominant, such as the environment and agriculture, the regions have been forced to cooperate in order to present a single Belgian position to the EU.¹⁴¹

C. The Current Crisis and Alternative Scenarios for the Years Ahead

The aftermath of the June 2007 federal elections in Belgium brought to international attention the profound cleavage existing within contemporary Belgium. Over a period of more than six months, all attempts to form a new government failed because of the inability to put together the necessary coalition of Flemish and francophone parties to create a governing majority. The hang-up was disagreement on an agenda for state reform. In desperation, just before Christmas 2007, a deal to form a temporary, interim government was brokered.

Only in March 2008 was a permanent government formed. In October 2008 a “dialogue” among regional representatives began relating to further “reform” of the governmental structure. With the economic crisis in November 2008, it was “temporarily” suspended. Shortly before Christmas 2008, the Prime Minister was forced to resign because of claims of inappropriate interference with a judicial proceeding relating to the banking crisis. A successor was appointed on December 30, 2008. The June 2009 regional elections have more or less confirmed the existing power balance. In sum, more than two years after the 2007 national elections, nothing has changed in terms of the basic structure.

In the long run, what are the conceptual possibilities concerning the future of Belgium? We see four options.

1. The national government might be strengthened and policies adopted to mitigate the language-based cleavage and to strengthen Belgian national identity.
2. The status quo might be maintained with no significant change in governmental structure.
3. There might be further devolution of authority to the regions, perhaps leading in the long run to a confederation.
4. The Flemish might establish an independent state.

The first outcome is rather unlikely given the existing governmental structures and the concomitant interests of various political stakeholders. In theory, the engine of history might be “run in reverse,” and Belgium might adopt policies to make the entire country bilingual, strengthen the Belgian national identity, and augment the powers of the national government. However, because the separate language communities control the schools and language policy, the national government lacks the authority to require bilingual education. It will also be particularly difficult to get the regional groups to give up powers they currently have. Path dependency often means

141. *Id.* at 1073.

that steps, once taken, cannot be retraced. The present attitude—especially in Flanders with its desire to do things its own way (what we do ourselves, we do better)—and the limited interaction between the regional governments, makes this option rather unrealistic. The lack of interaction also restricts the opportunities for the governments to learn from each other. Research even suggests that many of the negative consequences of the present federal system are simply due to the different political cultures and have little to do with the state structure.¹⁴² Although the current crisis might reignite Belgian unity and state reform might push some competencies down from the federal level while re-federalizing others, it seems unlikely that Belgium will ever once again become a unitary national state.

The second outcome, maintaining the structural status quo, would surely be preferred by many in the Walloon region. During the six months following the June 2007 elections, it appeared that some francophone politicians might succeed in avoiding even discussion of further reform. They did not completely succeed. There has been some “dialogue.” But for the most part francophone political leaders continue to resist substantial changes to the status quo.

The third scenario, further devolution, is the most plausible. The aftermath of the 2007 national and the 2009 regional elections, and the perceived risk that a prolonged stalemate might jeopardize the future of the Belgian state, might someday lead to some sort of Belgian compromise—a compromise in which the francophone political elite will eventually, reluctantly accept some additional devolution as necessary in order to save the country. The Flemish elite will get far less devolution than they desire but will have succeeded in adding to their regional power.

Before the 2007 federal elections, all three mainstream Flemish-language parties had indicated they would prefer further devolution of authority to the regions, particularly with respect to economic and social-welfare policies. The Flemish Socialist party preferred modest changes in the existing federal system and strongly advocated regionalizing employment policies. The Flemish Christian Democratic Party has suggested it would go much further and would prefer a “confederal” state.¹⁴³ Such an outcome would require an amended or new constitution in which the regions would cede to the national government only defined and limited powers, perhaps relating primarily to national defense and some aspects of foreign affairs. All of the francophone parties oppose any further devolution, and vehemently object to the notions of a confederation or Flemish independence. But the political crisis since the 2007 elections has forced the Francophones to change their attitude toward any change from a firm “No” into a reluctant “Maybe,” at least if the changes are modest.

142. See generally Jeroen Maesschalck & Steven Van de Walle, *Policy Failure and Corruption in Belgium: Is Federalism to Blame?*, 29 W. EUR. POL. 999 (2006).

143. Some Francophones describe confederalism as “le fédéralisme des cons [the federalism of idiots].” See DUTILLEUL, *supra* note 2, at 42, 161–62.

A fourth outcome, which still looks very unlikely, would be Flemish independence. Presently only the Vlaams Belang and one small conservative Flemish party (the N-VA) advocate the creation of an independent Flemish state. This might result from either the negotiated dissolution of the Belgian state or the successful unilateral secession by Flanders. Assessing the likelihood of each possible outcome requires an analysis of a complicated Belgian bargaining game.

Someday the political situation within Belgium might come to resemble a game of chicken. In that dangerous game two teenagers drive towards each other at high speed down a single lane. The teenager who swerves to avoid a crash is the chicken; the teenager who stays in the lane wins the game. If neither swerves, they crash and obviously both lose. Each player would like to win; but each player would prefer to swerve than to crash.

In these negotiations the Flemish parties argue for further devolution; the francophone parties resist. The Flemish political elite at the national level claim that francophone intransigence may risk eventual Flemish secession. Given the problem of Brussels and the various legal impediments to secession, the francophone parties do not consider the threat of secession credible. Indeed, they may believe that in the end the leaders of the mainstream Flemish political parties would not support Flemish secession because independence might not serve their personal political interests.

A stalemate might well lead to escalation on the part of the more mainstream Flemish parties to put greater pressure on the francophone parties. In the face of francophone intransigence, more Flemish politicians may come to favor independence, unless there is further devolution. Someday members of the Flemish parliament might signal that a majority would support secession if the francophone parties remain intransigent. Resolutions might be proposed in the Flemish Parliament advocating an advisory referendum to the electorate within Flanders on the question of Flemish independence.

In this bargaining game the Flemish parties are at a real disadvantage. Whether a majority in Flanders would come to favor independence, especially in light of the problem of Brussels, is hardly clear. More fundamentally, a unilateral declaration of independence by the Flemish parliament is of dubious legality. These impediments would be substantial, within Belgium, within the EU, and for the international community.

Nothing in the Belgian constitution allows secession. The constitution could not be amended to allow it without the support of the francophone parties. If the Flemish parliament proposed holding a referendum in Flanders as a prelude to a unilateral declaration of independence, those opposed to Flemish independence would no doubt bring a lawsuit in the Belgian Constitutional Court, which has jurisdiction to resolve all conflicts relating to the allocation of authority between the various levels of the federal system. In this court, a complainant would likely point to Article 143 § 1 of the Constitution, which announces the principle of federal loyalty and implies that the regions and

communities have an obligation not to endanger the Belgium federal regime.¹⁴⁴ The suit could challenge the legality of a referendum held in Flanders alone¹⁴⁵ and claim that whatever its outcome, Flanders could not unilaterally declare its independence. It is likely the Belgian court would follow the Canadian ruling in the *Secession Reference*¹⁴⁶ that a referendum in favor of secession in Quebec could not establish the basis for unilateral secession; it could do no more than create a duty for Quebec and the other Canadian provinces to negotiate in good faith.¹⁴⁷ And in good-faith negotiations, there would be no need for the francophone parties to agree to Flemish independence.

External international pressures might also discourage Flemish secession. International law strongly discourages unilateral secession because it violates state sovereignty, which is at the center of the international system.¹⁴⁸ The issue of Flemish secession could be brought before the European Court of Justice,¹⁴⁹ but here, too, the probability of Flemish success is low. Although those seeking Flemish independence would no doubt claim that as a people they have a right to self-determination, the international community would probably have little sympathy for the claim. Particularly in light of the substantial grant of autonomy the Flemish presently have within Belgium, they cannot credibly claim they are prevented from participating in the political, economic, and

144. ALEN & MUYLLE, *supra* note 25, § 414.

145. Even a general national referendum is problematic from a constitutional point of view. Indeed, although the Constitution is silent in this respect, Alen points out that both legal scholarship as well as a constant position of the Department of Legislation of the Council of State hold that a referendum, binding or not, is unconstitutional. Since 1999, as amended in 2005, article 41 of the Constitution provides for one exception: a nonbinding referendum on the municipal and provincial level. *See* ALEN & MUYLLE, *supra* note 25, § 108–13. There has been one national referendum in Belgian history, on the fate of King Leopold III after World War II, in 1950. Although there was a majority vote in favor of the King, unraveling the result shows pronounced regional differences. The pro votes were 72% in Flanders against 58% in Wallonia and only 52% in Brussels. This led to mass protests, riots, even one death; and to avoid the risk of a civil war, the King resigned and passed the throne upon his son, the young Baldwin (Boudewijn/Baudouin). The present King Albert II (since 1993) is his brother. *See* MCRAE, *supra* note 5, at 111.

146. Reference re Secession of Quebec, [1998] 2 S.C.R. 217.

147. *Id.*

148. *See generally* ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL (1995).

149. The Final Act of Helsinki lays out an expanded view of self-determination:

The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with [governing principles] . . . including those related to the territorial integrity of States. By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status

Final Act of the Conference on Security and Co-Operation in Europe, art. 1(a)(VIII), Aug. 1, 1975, 14 I.L.M. 1292 (emphasis added). Cassese argues that the term “peoples” does not refer to internal minorities but to entire populations of states. *See* CASSESE, *supra* note 148, at 59. This conclusion is supported by the clause affirming the importance of territorial integrity. What the Final Act of Helsinki authorizes is separation (or unification), since the unification of Germany was what most states had on their mind when this was drafted) when it is decided by the entire population of a state through a democratic procedure. Therefore a referendum held just in Flanders would not meet the requirement.

social decisionmaking process of the state. They are not an oppressed minority, but a majority who are on average richer than members of the francophone community.

Finally, any attempt at Flemish secession must be examined in the context of the European Union. For the EU, the dissolution of Belgium would probably be seen as a threatening precedent, given the internal cleavages in other EU countries, most notably in Spain, but also in the United Kingdom. Moreover, Belgium plays an integral role in the stability of the EU because Brussels is the home of many institutions of the European Union. The EU and many member states would no doubt apply a great deal of pressure on the parties to negotiate a resolution of the conflict short of Flemish independence.

Notwithstanding all these impediments, a hard-nosed realist would recognize that if the Flemish parliament declared independence after a referendum in which a substantial majority of the Flemish people voted in favor of that outcome, Flanders—like Slovenia—could probably secede and ultimately secure international recognition of its independence. There would be no civil war, and Flanders would probably become a member of the EU. In fact, the very existence of the EU as a supranational structure of twenty-seven countries, sharing common values and norms, might, paradoxically, facilitate the breakup of a country: because of the EU, a new entity does not have to worry about security and economic self-sufficiency, which are often deterrents to declaring independence, particularly for small states.¹⁵⁰

Flemish independence remains unlikely, however, especially given the preferences of the mainstream political parties on both sides of the language cleavage. With the exception of the Vlaams Belang and the N-VA, all of these parties would prefer further devolution to Flemish secession. Unilateral secession, therefore, seems highly unlikely unless the francophone parties refuse to make any concessions, and a substantial Flemish majority finds the stalemate intolerable because the economic burdens of remaining hitched to the Walloons outweigh the risks of independence.

The eventual outcome of the conflict probably will be yet another Belgian compromise—a complex and obscure deal that involves some modest degree of entitlement reform, and perhaps some further devolution but coupled with transitional transfer payments from Flanders to ease the impact in the Walloon region and Brussels.¹⁵¹

150. Some European countries opposed the recognition of the independence of Kosovo, which had relatively undeveloped political institutions and little internal capacity to maintain local order. This would not be true if the Flemish region seceded. Spain (worried about Basque secession) did not recognize Kosovo's independence.

151. Cf. Swenden & Jans, *supra* note 66, at 892 (predicting a gradual “unravel[ing] of the Belgian cent[er]”).

V

LESSONS

The political crisis within Belgium following the June 2007 national elections alerted the outside world to the possibility that Belgium might go the way of Czechoslovakia and split up. Although the profound social divisions based on language and culture had been longstanding, the rest of the world had little idea that the internal schism in the heart of Europe was so serious. The good news is that the conflict likely will remain nonviolent. The bad news is that national reconciliation is unlikely.

A. Why No Violence?

The obscurity of this conflict was and is due to the absence of violence and bloodshed. Apart from the Belgians' shared cultural commitment to pragmatism and compromise,¹⁵² why might this be so?

1. Geography

Most Walloons and Flemish are able to live their day-to-day lives with little contact with the "other." With the exception of Brussels, there is little residential integration. Ethnically and linguistically distinct institutions can exist without threatening the other ethno-linguistic group.

2. The Stakes of the Conflict

Neither the Francophones nor the Flemish see their conflict as existential—threatening their core identity or their ability to survive as a people. Francophone and Dutch-speaking Belgians have both achieved linguistic and cultural autonomy, and they control a broad range of governmental policies. Moreover, given the existence of the EU, many policies will be set at the supranational level regardless of whether Flanders remains a part of Belgium. The Flemish Manifesto produced late in 2005 contains mainly pragmatic and utilitarian arguments regarding the bureaucratic and economic issues affecting the country. No arguments are based on deep issues of corrective justice or ethnic supremacy.

Perhaps more important, no historical memories of mass violence exist between the two sides. The Walloons and the Flemish tend to see each other not as enemies, who must be demonized, but as peoples with distinctly different cultures and incongruent interests. There is no dehumanization, repression, or a vicious cycle of revenge such as those remaining predominant factors in other ethnic conflicts around the world. Furthermore, the conflict occurs within a state that has strong cultural and institutional support for the rule of law and the capacity to rebuke, step in, and stop threats of violence.

152. *See supra* IV.B.2.

3. Economics

In spite of the fundamental economic crisis, Belgium remains a rich country, and economic disparities between the two peoples are not vast. The average per capita income of the Walloons is about three-quarters that of the Flemish.¹⁵³ By international standards both the Walloons and the Flemish are well off. This is in stark contrast to many other ethnic conflicts, in which gross economic disparities exacerbate the tensions. For example, the economic disparity of the Israelis and the Palestinians is enormous: the average per capita GDP for Israelis is about \$26,600 while that of Palestinians living in the territories is about \$1,100.¹⁵⁴

4. The Federal System and the Political Elite

The federal system makes it possible, even easy, for the two groups to “live together apart.” The highly inefficient system of government frustrates both the Flemish and the Walloons. Yet governance can occur, “not *in spite of* the multiple divisions and the apparent internal difficulties . . . , but *because of them*.”¹⁵⁵ This is what one leading politician has called “the charm of a permanent crisis.”¹⁵⁶ The continual threat of dissolution creates the central force uniting the two sides, both horizontally (across the regions and language communities) and vertically (between a particular region and community and the national government). The political elites are bound to each other because each knows and fears that not finding a solution is a failure that may ultimately diminish his or her own power. Thus, politicians continue to function “within the ‘shadow of entropy.’”¹⁵⁷ Inefficiency and frustration, and possibly corruption, favoritism, the lack of transparency, and instability, might be the price of maintaining a unified Belgium.¹⁵⁸ Although the recent crisis has heavily tested the limits of this model, which at moments seemed ready to explode, the interim-government solution is yet another proof of the survival talents of Belgian politicians. When the heat becomes intolerable, all parties move to cool things down. This approach is facilitated by a shared cultural commitment to pragmatism and compromise.¹⁵⁹

B. Why No Reconciliation?

An interesting question relates to reconciliation. If there is no violence, why is there no reconciliation? Why will the characteristics that have led to an

153. See Robert H. Mnookin, *Ethnic Conflicts: Flemings & Walloons, Palestinians & Israelis*, 136 DAEDALUS 103, 119 (2007).

154. Compare CIA WORLD FACTBOOK: ISRAEL (2008), <https://www.cia.gov/library/publications/the-world-factbook/geos/is.html>, with CIA WORLD FACTBOOK: GAZA STRIP (2008), <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html>.

155. Peters, *supra* note 135, at 1085.

156. Confidential interview. See *supra* note 69.

157. Peters, *supra* note 135, at 1086.

158. *Id.* at 1086–88.

159. See *supra* IV.B.2.

absence of violence not allow for a reconciliation in which the Belgian marriage is strengthened?

What could be done to strengthen the glue? To promote reconciliation? To strengthen a national Belgian identity?¹⁶⁰ We can imagine a variety of actions that might contribute to reconciliation. The media might play a more constructive role if it were less parochial.¹⁶¹ Policies promoting bilingualism could stimulate greater social integration over the long run. Electoral reforms creating cross-regional electoral districts would encourage the development of national political parties.¹⁶²

But, frankly, it is too late. A deep reconciliation is not in the cards. Things have gone too far.

There appears to be little interest in reconciliation or in further integration. Today's debate rests instead on whether Belgium's two parts should separate further. Apart from the monarchy, the institutional mechanisms that might stimulate interest in reconciliation are lacking. The most important implication of this analysis relates to both the opportunities and limitations of using a federal regime to resolve internal conflicts. The good news is that the Belgian federal system—though complicated and inefficient—has helped cabin this conflict and contribute to the absence of violence. It has allowed those on either side of the ethnic and cultural divide to have a greater sense that they can assert a substantial degree of autonomy. But the bad news is that the federal system has not resolved the conflict, much less led to reconciliation, and may have contributed to the amplification of the centrifugal forces that may eventually lead to the breakup of the nation.

One possible explanation is that the interests of the parties have changed. In the 1970s, the Flemish wanted greater language and cultural rights and the Walloons wanted greater subsidies. Deals could be made in which the Walloons accepted federalism and devolution in exchange for money. However, the Flemish now have serious concerns about cross-subsidies at present levels. The mechanism used in the past, with the Flemish “buying” more autonomy through money transfers, no longer seems to be politically feasible. Flanders is also worried about its future prosperity and is thus reluctant to continue offering a blank check without any terms or conditions of responsibility on the beneficiary's side. This new conflict also suggests a problem with using

160. Tom Tyler suggests that it is superordinate identification that is important in shaping people's political attitudes and actions. See Tyler, *supra* note 133.

161. See IS DEMOCRACY VIABLE WITHOUT A UNIFIED PUBLIC OPINION? THE SWISS EXPERIENCE AND THE BELGIAN CASE (Dave Sinardet & Marc Hooghe eds., 2009), available at <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-3-democracy-without-unified-public-opinion>; Martin Euwema & Alain Verbeke, *Negative and Positive Roles of Media in the Belgian Conflict: A Model for De-escalation*, 93 MARQ. L. REV. (forthcoming 2009).

162. See KRIS DESCHOUWER & PHILIPPE VAN PARIJS, ELECTORAL ENGINEERING FOR A STALLED FEDERATION: A COUNTRY-WIDE ELECTORAL DISTRICT FOR BELGIUM'S FEDERAL PARLIAMENT (2009), available at <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-4-electoral-engineering-stalled-federation>.

federalism to resolve ethnic conflict, namely, that giving a group some autonomy might only increase its desire for more autonomy, thereby destroying any hope for full reconciliation.

C. Living Apart Together

Returning to the metaphor of the married couple, we think there will be no divorce, but there is no real prospect of living together under a strong national government. We believe that the goal should be a civilized separation without divorce, not the resurrection of an intimate marriage with deep attachments. Belgium's future lies in a model of living apart together—in which the spouses can do business with each other, have some shared assets, and treat each other with respect. Such a relationship requires the capacity to communicate effectively.

Separating spouses who both want a continuing relationship with the children cannot make a “clean break.” They must continue to have some sort of relationship with each other, since they remain parents if not partners. In *Dividing the Child*, Maccoby and Mnookin identify three common patterns of co-parenting relationships after the breakup.¹⁶³ The most common is spousal disengagement, which essentially involves parallel parenting with little communication. A second pattern is conflictual, with parents exhibiting and communicating high levels of emotion. The third pattern is cooperative, in which high communication leads to low conflict. The impact on the children is predictable: in the conflict pattern the children are caught in the middle and are adversely affected; in the disengagement pattern, the effects on children are intermediate; the cooperative pattern conveys real psychological, social, and economic benefits to the children.

The marriage analogy is suggestive. In considering the organization of Belgium's separation, it would be desirable to move toward a more cooperative pattern of communication.¹⁶⁴ Elites on both sides should invest time and energy into creating more empathy, respect, and trust between the communities. They should underscore the mutual benefits of a more collaborative association.¹⁶⁵ These actions will require greater tolerance on both sides. But the goal would not be to create a stronger national state but instead to enhance the benefits of a federal structure that provides substantial autonomy for each community.

163. ELEANOR MACCOBY & ROBERT MNOOKIN, *DIVIDING THE CHILD* 276–78 (1992).

164. Cf. Deschouwer, *supra* note 93, at 908–09 (explaining that one scenario for the future could be a learning process in which the new political elite sees the benefits of a more accommodating attitude).

165. For an example of how such a constructive dialogue might be implemented, see Jennifer Pratt Miles, *Examining the Applicability of the Concepts of Apology, Forgiveness, and Reconciliation to Multi-Stakeholder, Collaborative Problem-Solving Processes*, 72 *LAW & CONTEMP. PROBS.* 193 (Spring 2009). Pratt Miles suggests using the Transitions Framework of William Bridges, articulating the Flemish past and the Wallonian present as losses, and thinking through potential ways to replace, restore, or address those losses.