Chapter X

FEDERALISM IN BELGIUM:
ITS ELEMENTS, ADVANTAGES AND DRAWBACKS

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Introduction

We need to seek the advice of international experts and resource persons on how various governments at various times have resolved ethnic conflicts – temporarily as well as permanently. We will focus our attention on how ethnic conflicts have been resolved by accommodating the problems of national minorities in certain systems of government. So we will be particularly looking at federal and confederal models.

> -Anton Balasingham, after the second round of the peace talks in 2002

As Sri Lanka embarks on this journey of exploration into federalism, many people are looking to Belgium as a federal prototype. Supporters see Belgian federalism as the unique product of creative, flexible and effective, and – most importantly – sustainable Constitution-making. So far, Belgian federalism has been successful in controlling domestic nationalist conflict and providing effective representation for all its ethnic groups. It is certainly arguable that Belgium would no longer exist as a single country, had it not been able to federalise.[1]

This paper gives an overview of the main features of Belgian federalism from a comparative perspective, and evaluates the assets and disadvantages of the system, in particular as a model for Sri Lankan Constitution-building. I should note that the Belgian political system and devolutionary process are extremely complex, and this paper does not pretend to provide an exhaustive analysis of

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[1] W. Kymlicka, "Federalism and Secession: At Home and Abroad" (2000) 13 *Can. J. L. & Juris.* 207-224 at para. 22.

Belgium's federal system. Rather, the paper is a preliminary study that, hopefully, will be useful for those who participate in the Sri Lankan dialogue.

Basic Background on Belgium

To see the Belgian federal system in its proper context, a brief note on Belgium is required. Belgium is a small country in Western Europe, only about half the size of Sri Lanka. It has a population of about 10.25 million, roughly half of Sri Lanka's population.

Yet Belgium, like Sri Lanka, has several deeply-rooted ethno-linguistic groups. In fact, Belgium's most definitive feature is its multilingual character. Two major language groups exist – Dutch or Flemish (55%) and French (44%) – as well as a small German minority (1%). Territorial boundaries mirror this linguistic division to some extent: Flanders in the north is predominantly Dutch-speaking, Wallonia in the south is mostly French, and the capital region of Brussels is officially bilingual (but it has a majority of French speakers even though it is north of the Flanders-Wallonia border). The tiny German-speaking community is in the southeast region, concentrated in the region bordering Luxembourg.
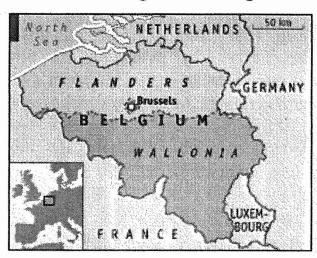

Figure 1: Political map of Belgium.[2]

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Historical Development of Federalism in Belgium

In Belgium, like many states in Europe, nationalist conflicts go back for centuries. Since the 5th century, the area that is now Belgium has been a battleground for the Germans, French, Dutch, Austrians, and Spanish.[3] Finally, in 1830, Belgium seceded from the Netherlands, forming its own state. At that time, the driving forces for Belgian secession were religion and class, with ethno-linguistic tensions playing a relatively insignificant role. At the time of its foundation, Belgium was a coalition between the nobility/landowners and the Catholic Church. Its constitution was a unitary constitutional monarchy.

Although Belgium was fundamentally multinational in character, ethno-linguistic tensions only arose significantly after WWII. However, the old layers of religion and class divisions continue to underlie those tensions, resulting in a very complex political landscape.[4]

In the 1940s and 1950s, the political polarization of the Dutch and French linguistic groups caused a series of constitutional changes. In 1970, a first attempt was made at devolution. Further devolution followed in the establishment of the language communities and regions in 1980. In 1988, another proto-federalist amendment increased devolution further, by extending the powers of the communities and regions. Finally, in 1993, a special act was passed finalising the present federal structure.

Like many other federal countries, therefore, Belgium federalism was a reaction to the competing demands of linguistic groups.

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[3] Dr. V. Rajakulendran, "In search of a political solution in Sri Lanka" *TamilCanadian* (10 November 2002), online:
<http://www.tamilcanadian.com/pageview.php?ID=1345&SID=52>.
[4] L. Hooghe, "Belgium: From Regionalism to Federalism", online: University of North Carolina <www.unc.edu/ ~hooghe/downloads/03_bel_feb23.pdf> at 3.2. For a more detailed description of the history of religious and class differences, see Bursens, *infra* note 19.

Belgian federalism developed gradually over the course of decades, in the context of intense – but non-violent – ethnic conflict.

Belgium federalism is both territorial (Regions) and non-territorial (Communities). A partially-territorial solution made sense in Belgium, because the linguistic groups were already highly segregated into territories. A non-territorial solution made sense as well, because of the recognition that Brussels was a bilingual area.

Today, three major sources of inter-ethnic tension exist in Belgium:[5]

1. Flemish nationalism versus French-speakers on cultural identity issues – the Dutch resent the political, cultural and linguistic dominance of French-speakers in historical unitary Belgium;

2. Walloon nationalism versus Flanders and Brussels on socio-economic grievances – uneven patterns of economic development after WWII led to new prosperity in Flanders and Brussels, leaving Wallonia feeling abandoned and resentful; and

3. Brussels (predominantly Francophone, but officially bilingual) versus the rest of the country on centre-periphery concerns.

Therefore, despite its problems, over the last few decades, Belgium has made a successful transition from a unitary decentralized state to an efficient federal structure which maintains national sovereignty while facilitating increased economic and cultural regional autonomy.

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[5] *Ibid.* at 3..5.

Elements of Belgian Federalism

Structure of the Belgian Federal State: A Double-Layered State

The structure of Belgian federalism is intriguing but complex. Please refer to Annex 1, "Devolution in Belgium", Annex 2, "Spheres of Belgian Legislative Authority and Their Respective Heads of Power", and Annex 3, "Breakdown of the Federated Levels in Belgium" for helpful charts of the Belgian federal structure.

In a nutshell, the uniqueness of Belgian federalism comes from its two different types of constituent units: Regions and Communities (Articles 2 and 3 of the Belgian Constitution).[6] Belgium is divided into three Regions, territorially-defined: Wallooon, Flanders, and Brussels. Overlapping these Regions are three Communities, ethno-linguistically defined: Flemish, French, and German. The Constitution also provides for four linguistic regions (writ small): French-speaking, Dutch-speaking, German-speaking, and the bilingual region of Brussels (Article 4). Thus, two types of jurisdiction exist in Belgium: *territorial* (Regions) and *non-territorial, or personality-based* (Communities).

Three spheres of legislative power co-exist: a Federal Parliament at the national level (with the King as its formal head), Community Councils, and Regional Councils. Both the Community Councils and the Regional Councils have the power to legislate, without hierarchy between each other's laws, or between their laws and federal laws. The 1993 Constitutional amendment enumerated federal powers and left residual power to the regions (Article 35). Because there is no formal hierarchy, partners around the table have in principle equal status, regardless of size.

The extensive legislative autonomy of the Regions and Communities is accompanied by well-designed administrations. Thus, federal laws are implemented by federal agents and Regional or Community laws

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[6] The Constitution of Belgium, available online: <http://www.fed-parl.be/gwuk0001.htm#E12E1>.

implemented by their own administrative agents, including extensive provincial and municipal administrations.[7]

Constitutional Asymmetry

It is common to hear Belgian federalism characterized as being "asymmetrical." For example, J.S. Tissainayagam has written,[8]

> "In 1996, at a conference in Bergen, Norway, V. Rudhrakumaran presented a constitutional model that articulated certain aspirations that were important to the LTTE. Among them were asymmetrical devolution and greater power sharing at the centre. They were both propounded to act as safeguards to the national minority.
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> Asymmetrical devolution gives the Tamil majority areas certain powers that can act as a counterweight in dealing with other Sinhala majority areas, so that one ethnic group cannot use sheer numbers to have its way. Secondly, asymmetrical devolution also ensures that more substantive powers are devolved to a region where the minority forms a sizable section of the population, so as to preserve and foster the group's identity and uniqueness.
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> Power sharing at the centre is a means whereby the region is represented in the central government facilitating it to articulate its grievances and aspirations and bargain for central government grants and other allocations. What is more, it allows for minority communities that are dispersed

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[7] W. Swenden, "Belgian Federalism: Basic Institutional Features and Potential as a Model for the European Union." Paper presented at the Royal Institute of International Affairs Conference, Robinson College, Cambridge, UK (12-13 April 2003). Online: Faculteit Sociale Wetenschappen <www.soc.kuleuven.ac.be/facdep/social/pol/iieb/index. htm> at 9.

[8] J.S. Tissainayagam, "A Constitution that meets Tamil aspirations" *Sunday Leader* (18 March 2001), online: <http://www.tamilcanadian.com/cgi-bin/php/pageview.php?SID=40&ID=154.1>.

and not concentrated in a clearly defined territory, to be better represented.

Among the constitutional models discussed was that of Belgium, where the Walloon and the Fleming populations had reached a power sharing agreement that seemed to meet LTTE aspirations. "

This description is only partially correct. J.S. Tissainayagam seems to believe that the Belgian model is a precedent for giving more powers to Tamil Eelam than to other (Sinhala majority) provinces in Sri Lanka. However, the Belgian Constitution does not establish asymmetry between the powers of different Regions and Communities. The only asymmetry of the Belgian federal system is in the ways that different Regional and Community jurisdictions overlap.[9]

On the one hand, Regional and Community jurisdictions have evolved asymmetrically. In 1980, the Flemish Region and Community merged, meaning that although two separate entities still exist from a Constitutional point of view, both are now governed by a common Flemish government and Parliament. In contrast, the French-speaking Community and Region remain separate. Other border asymmetries stem from the Constitution itself: Brussels is a Region but not a Community, and German-speakers are a Community but not a Region.

On the other hand, Regions and Communities enjoy almost identical powers; the Constitution does not tailor-make any of the entities. Thus, although the German-speaking Community is almost a hundred times smaller than the Flemish Community, both enjoy similar powers over educational and cultural affairs. None of the communities has more powers than any of the others.

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[9] *Supra* note 7 at 7.

Degree of Devolution

Belgium is noteworthy for its high degree of devolution and decentralization. Belgian federal and Regional/Community law are on par with one another, all subordinate only to the Constitution. Historically, many heads of power have been enumerated under the Regional and Community lists, and Regions and Communities also have shared jurisdiction over many heads of power which are technically federal areas.

For instance, Regions and Communities can even conclude international treaties and agreements in their areas of competence (Article 167) (with some slight reservations).[10] In comparison to Canada, where only the federal government has treaty-making power (although in practice it must consult with the provinces), the degree of Belgian devolution far exceeds that of other federal models.[11]

Particracy in Belgium

In the Canadian model of federalism, the political system is run by the executive backed by a Parliamentary majority. In contrast, the Belgian political system is essentially run by the political parties, which command more power than other actors like the cabinet, president, legislature or courts.[12] This so-called particracy results in *the lack of an autonomous centre or federal power base.* In other words, periphery-focussed actors must sit at the negotiating table to work out a deal to govern the centre.[13]

For one thing, there are no nation-wide parties; rather, each party presents a platform for only one linguistic group. In Canada, for instance, a member of the provincial Liberal Party and a member of

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[10] Forum of Federations, *Handbook of Federal Countries, 2002.* A. Griffiths, ed. McGill-Queen's University Press, Montreal: 2002 at 65.
[11] Legal Service and Documentation, "The Federal Parliament of Belgium." Online: Senat de Belgique <www.senate. be/doc/parl_en.pdf> at 4.
[12] L. Hooghe, "The Dynamics of Constitution Building in Belgium" (1994). Online: Political Studies Association <www.psa.ac.uk/cps/1994/hoog.pdf> at 315.
[13] *Ibid.* at 316.

the federal Liberal Party may fall in very different places on the political spectrum, simply because each represents arena-specific platforms. In Belgium, however, party headquarters govern regional legislative bodies as well as federal Parliament members. Institutional overlap also exists between federal and regional governments: some Senators are drawn directly from Community Councils. In a practical sense, agents in political parties work simultaneously in multiple arenas, but always retain regional/community links, even at the federal level. An anecdote from Hooghe illustrates this phenomenon:

> *"Take a Flemish Christian Democratic Party leader. He/she is the spokesperson for his group (Catholic pillar), but he is also the guardian of the national interest. Federalization has added two other arenas: the community arena for Flemish cultural and group interests, and the regional arena for Flemish territorial interests. That burdens him with many responsibilities towards his constituencies, but it also enables him to negotiate more freely as he can offer and ask as a Christian Democrat (or Catholic), a Belgian citizen, a Flemish-speaker, and a citizen of the Flemish region, and in a way he/she is free to choose the constituency he/she decides to please most."[14]*

Thus, the split of political parties along linguistic lines means that parties solidify electoral profiles along regionalist issues. Parties are internally united, but engage in coalitions with ideologically-related parties from other linguistic groups. Swenden proposes that this shift away from unitary parties enhances consensual decision-making between different groups, because negotiation happens in the visible public sphere *between* parties, rather than less democratic compromises being made behind the scenes *within* parties.[15]

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[14] *Ibid.*
[15] *Supra* note 7 at 4.

Consociationalism

To people outside of Europe, "consociationalism" is perhaps an unfamiliar concept. Basically, "consociationalism" and federalism are two different solutions to ethnic-linguistic conflict, different ways of combining autonomy with power-sharing. Before Belgian adopted the federal model in 1993, it employed consociationalist techniques to mediate group conflicts. Even after federalisation, therefore, Belgian politics still bears the brand of its consociationalist legacy.

"Consociationalism" has been defined by Arend Lijphart as "government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy."[16] It differentiates government functions based on demography, and is concerned with managing social divisions in plural societies.[17] Put simply, consociationalism is cooperative decision-making that does not involve devolution. Consociationalists believe a unitary state can fully accommodate pluralism if all significant decisions are made by consensus among the leaders of the different groups.[18] However, most political scientists see consociationalism as being unsustainable, and view it as a transitory or transitional method of collective decision-making. Although it accommodates various kinds of diversity, it is, as Lijphart says, "elite" because decisions are negotiated behind closed doors by the leaders of groups, impeding mass interaction. Also, consociationalism focuses on division of powers, rather than autonomy for different ethnic groups.

Over the years, Belgian politics have necessitated a system based on consensus. In fact, this spirit of cooperation is built into the

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[16] T. Khidasheli, "Federalism and Consociationalism: Prospects for Georgian State Reform". Online: Vrije Universiteit Brussel <poli.vub.ac.be/publi/orderbooks/federal/09khidasheli.pdf> at 197.
[17] J. M. Saldanha and F. da Costa Guterres, "Toward a Democratic East Timor: Institutions and Institutional Building". Online: East Timor Study Group <rspas.anu.edu.au/etsg/papers/2.pdf>.
[18] D. Elazar, *Exploring Federalism*. The University of Alabama Press, London: 1987 at 49-50.

Constitution, which explicitly provides that in the exercise of their respective responsibilities, each federated entity must "act in the interests of federal loyalty, in order to prevent conflicts of interest" (A₁ ₁le 143, the so-called "loyalty clause").

An important example of consociationalism is the requirement for a double majority in order to pass federal bills that address community questions. A 2/3 majority is required in each of the House and the Senate, as well as a simple majority within each Parliamentary linguistic group.[19]

Intergovernmental Relations and Conflict Prevention

The Belgian Court of Arbitration (*Cour d'arbitrage*) was established in 1984. Today, it deals with competency conflicts between the respective legislative powers of the federal power, the Regions, and the Communities. It also has some narrow jurisdiction over principles of equality, non-discrimination, and freedom in the area of education.[20]

Numerous extra-judicial mechanisms also exist. For example, a multilateral body called the Concertation Committee solves "conflicts of interest" and mediates actions by one order of government that impact another order.[21]

Fiscal Federalism in Belgium

Belgian federalism employs the principle of financial autonomy of the federal entities, "each of which receives the means necessary to exercise its fields of jurisdiction" such that there is a "balance between the autonomy of the federated entities and the political and monetary union of the federation."[22] The financing of the Regions

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[19] *Supra* note 10 at 63.
[20] *Supra* note 10 at 64.
[21] *Supra* note 10 at 65; see 1980 Ordinary Act of Institutional Reforms, Article 31.
[22] P. Bursens, "Belgium's Adaptation to the EU: Does Federalism Constrain Europeanisation?" (2002), online: University of Essex

and Communities stems from the *Special Financing Act* (16 January 1989) (SFA). The *SFA* provides for a transitional phase (1989-1999) and a permanent phase beginning in 2000.

The Regions have almost complete fiscal autonomy. They are financed by a transfer of a portion of personal income tax, as well as own-source tax revenues (hunting and fishing fees, forest operation fees, formerly federal taxes which are now Regional, and additional levies on the personal income tax), and other non-tax revenues. Brussels receives a special form of aid, called *mortmain*, to offset its special costs as a federal and international capital. The Walloon Region also receives transfers from the French Community in recognition of its added expenses since the merger of the two entities.[23] Inter-Region equalization payments are also paid according to the "National Solidarity Measure", on the basis of need as assessed by low per capita revenues from personal income tax. Generally, Brussels and Wallonia have been the recipients of these equalization payments.[24]

The French and Dutch Communities are financed by federal transfers via three taxes: the radio-television fee, personal income tax, and the value-added tax (VAT). The German Community, however, is financed by aid that is not tax-related, therefore impeding its fiscal autonomy.

Non-Territorial Federalism

Because the Communities create individual jurisdiction, Belgium is often appropriately touted as a prime example of non-territorial federalism. It should be noted, though, that the non-territorial component of Belgian federalism is not complete. For instance, the Flemish Community brings together Dutch-speakers who live in Flanders and those who live in Brussels – but it does not include the

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<www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/turin/ws19/BURSENS.pdf> at 18.
[23] *Ibid.* at 18-27.
[24] *Supra* note 22 at 21-22.

Dutch-speaking minority who live in Wallonia. Similarly, the French Community includes Francophones in Wallonia and Brussels, but not those in Flanders. The German-speaking Community has a small defined area in the east of the country.[25] Put differently, the linguistic Communities are somewhat territorially-defined as well; but perhaps they are better understood as *cross*-territorial, rather than as fully *non*-territorial.

Advantages of Belgian Federalism

A Voice for Many Groups

Belgium may provide a promising model in the search for a uniquely Sri Lankan model of federalism. Dr. Victor Rajakulendran, who believes that Belgian federalism is a good model for Sri Lanka, writes,

> "A simple federal system like the one in Canada is good for countries with simple communities with mainly two groups of people living in distinct contiguous regions. These simple federal systems cannot meet the aspirations of all the communities of Sri Lanka. There are only two linguistic groups living in Sri Lanka but there are at least 4 distinct communities based on their origin, culture or religious believes [sic]. This is further complicated by the way they are geographically distributed.
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> The current peace process is all about the Tamil-speaking people's claim for their homeland in the NorthEast of the country. Therefore the country has two major regions, a Singhalese Homeland and a Tamil Homeland, similar to the Walloon region and Flemish region of Belgium. But within the Sinhalese Homeland, there is an Indian Tamil Community region in the Hills and a cosmopolitan Capital region in Colombo similar to the bilingual region of the

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[25] *Supra* note 7 at 7.

Brussels Capital. Similarly, within the Tamil Homeland, there is the Muslim Community region.

Therefore for the devolution of power to work satisfactorily for all the communities, there is a need for the involvement of more than two (Sinhalese and Tamil) levels of regional administration." [26]

As Dr. Rajakulendran observes, therefore, the Sri Lankan ethno-linguistic debate is complex, with many overlapping political aspects, and many overlapping layers of group and individual identity. A model that looks to Belgian federalism may be a way for many communities to be represented as groups with equally strong political voices. A strictly bipolar solution – that is, between the Sinhalese and Tamils only – will not be a stable, sustainable, long-term solution.

For instance, Dr. Rajakulendran refers to the simplicity of Canadian federalism as only being suited to a country with two ethno-linguistic groups. It is true that Canada was founded on a division of powers between the English and French communities. However, that story of Canada's historical foundations ignores the fact that a third ethno-linguistic group was present – but ignored and silenced – at the time of Confederation. That group was Canada's aboriginal people, the First Nations. The oversight of that group and their invisibility in the Canadian Constitution has led to atrocities and abuses of the First Nations people for many years. Even today, First Nations people still struggle for Constitutional recognition as a founding peoples of Canada. Sri Lanka could benefit from the Canadian experience by making sure that all ethno-linguistic groups are effectively represented and visible in the federal solution it adopts.

Conflict Management and Separatism

Belgian devolution has successfully addressed tensions between ethno-linguistic groups in a peaceful and democratic way, and led to

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[26] *Supra* note 3.

a relatively stable system of governance. Each of the last three federal governments has been able to complete their terms, a positive sign of political stability, although all coalition governments are plagued by some degree of inherent instability.[27]

Many criticise Belgian federalism for facilitating rather than containing separatism. It is true that the Belgian state has, at times, come very close to either dissolution or secession. Kymlicka argues, however, that the presence of a secessionist movement is not an indicator that a federal system has failed.[28] Instead, countries should evaluate their political systems according to the fundamental values of democracy, peace, human rights, and the rule of law. Since the existence of secessionist movements is but an example of a healthy democracy, Kymlicka observes that, in a practical sense, "secession is less likely in a democratic multinational federation where secessionists can mobilize freely than in a centralized state where illiberal measures are adopted to suppress minority nationalism." Also, should secession occur, the stakes are lowered in a federal system. For instance, if Flanders or Québec were to secede from Belgium or Canada, there is relatively little that they could do as independent states, that they cannot do now under a federal system. That fact gives them less incentive to separate. Likewise, minorities within the seceding territory (e.g., Anglophones in Québec or Francophones in Flanders) would still enjoy similar legal rights as they do now, also giving them less incentive to support secession.[29]

Flexible Adjustments and Consociationalism

Hooghe describes the Belgian Constitution as providing for "peaceful, negotiated, flexible and effective constitutional adjustments".[30] For instance, ministerial portfolios in the Belgian federal government have employed the technique of "carving up the centre": control over different departments is granted to the actors

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[27] *Supra* note 7 at 13.

[28] *Supra* note 1 at para. 27-30.

[29] *Supra* note 1 at para. 28.

[30] *Supra* note 12 at 314 and 318.

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who want them the most. Other consociational devices that persist after federalisation continue to allow flexible reactions to specific challenges.

Sri Lanka does not share Belgium's consociationalist tradition. However, perhaps the most important lesson to be learned from consociationalism is its underlying philosophy, which is an important indicator of the political climate. First, consociationalism presumes that process is more important than outcome: the "fairness" of a deal depends more on the inclusiveness of the process by which it was negotiated, than it does on the actual substance of the deal. Second, consociationalism "accepts that deep conflict is a fact of life" – certainly a significant first step toward resolution of such conflict.[31]

Reduced Costs

Undoubtedly, countries must spend large sums of money to maintain a federal system. In Canada, for instance, approximately 1.5% of the GNP is spent on maintaining internal trade barriers.[32] In Belgium, the very process of federalization has incurred huge costs. However, such costs are arguably lower than the costs of proto-federal practices that conceal disputes between groups in a unitary state. For example, pre-federal Belgian policy was racked with problems of appearing utterly impartial between both major linguistic communities. Thus, the French and Dutch linguistic communities both received comparable amounts of money or aid, regardless of objective need: if funding was provided for a new school in Wallonia, funding was provided for a new school or its equivalent in Flanders, whether or not one was needed. Obviously, immense waste resulted. After federalisation, the need for an appearance of impartiality has disappeared, because each group has similar Constitutional protections for its rights. Therefore, expenditure is

[31] *Supra* note 12 at 318.
[32] J.R.S. Prichard & J. Benedickson, "Securing the Canadian Economic Union: Federalism and Internal Barriers to Trade" in P. Macklem *et al.*, *Canadian Constitutional Law*. Edmond Montgomery, Toronto: 1997.

more efficient because it can be justified on the basis of objective need.[33]

Rise of a National Identity?

One criticism of federalism is that it tends to intensify a sense of group "apartness" – that is, a climate of being many political communities living together – rather than creating a sense of being a single political community with many facets. Perhaps this criticism is valid, but should not be seen as anything more than a simple reflection of the realities of pluralist political life.

However, some studies suggest that the opposite trend may, in fact, be taking place in Belgium. One study asked citizens to express their loyalty either exclusively with their Region or with Belgium, or with both, or more with the Region than with Belgium or *vice versa*. The study found that the percentage of citizens (especially youth) who say they identify more with "Belgium" than with their Region has increased since federalisation. Thus, Belgian federalism provides "contexts of choice" which allow individuals to more freely structure their public and private lives.[34] Whether federalism leads to a long-term rise in willingness to identify with Belgium as a whole, remains to be seen.

Problems with Belgian Federalism

Centrifugality vs. Flexibility

Because federalism is as much a process as it is a structure, some political scientists predict that powerful decentralizing forces built into the Belgian system will lead to a "centrifugal spiral" that "hollows out" the competences of the centre, thereby robbing it of its

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[33] *Supra* note 7 at 14.

[34] L. Moreno, A. Arriba and A. Serrano, "Multiple Identities in Decentralized Spain: the Case of Catalonia" (1998) 8 *Regional and Federal Studies* 3: 65-88; W. Kymlicka, *Multicultural Citizenship*. Oxford: Oxford University Press, 1995; *supra* note 7 at 14.

ability to address centre-periphery issues and/or resolve inter-group conflicts.[35] As Hooghe describes it,

> *"Groups may want to keep what they once gained. Suppose they do; who is going to stop them? They have the mileage to play this tough: their equal status gives them de facto veto power, there is no autonomous centre to fight them off, there is no hierarchical structure to force them to give in, and their double gate-keeper role gives them free access to the centre. Hence the trade-off and compromise may become a one-way street: from centre to periphery, and only a trickle from periphery to centre... [T]he potential for a centrifugal course is embedded in the structure."[36]*

Thus, what was flexible change may become uncontrollable change as parties start "constitutional tinkering" – which is, among other things, a highly expensive process that diverts scant government resources from other areas of concern. For instance, a debate continually centred on largely elite issues of federalism (fiscal imbalance, federal-regional transfers, visibility, etc.) leaves little room for implementing grassroots social policy and true community-building.[37] Further, attempts at appropriate flexibility may lead to reshuffling goods, devolving powers, redesigning policies, and so on – such that politics is regularly focussed on the *reform* of the state rather than the *administration* of the state. Clearly, Sri Lanka would want to avoid that trap: the goal is to create a federal system that is flexible enough to be sustainable, yet stable enough to resist constant change and the inappropriate diversion political energy away from substantive social issues.

One possible solution would be to introduce *de facto* hierarchies between groups, perhaps in relation to certain issues that do not directly affect the group's core character, in order to mitigate the

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[35] *Supra* note 7 at 15.
[36] *Supra* note 12 at 316.
[37] K. Banting, "Social Citizenship and the Social Union in Canada" (1998), online: Institute for Research on Public Policy <www.irpp.org/po/archive/nov98/banting.pdf>.

destabilizing effects of complete equality. Another way of viewing this issue, though, is that the possibility of constant change is merely the trade-off for the level of flexibility in the Belgian Constitution. The Belgian federal system is still too new to draw firm conclusions regarding the balance that centrifugality and flexibility will find.

Consociationalism vs. Hyper-Nationalism

One philosophical basis for consociationalism is that conflict pays off, particularly conflict framed in ethno-linguistic terms. Hooghe predicts that even non-nationalist parties may strategically frame their complaints in nationalist terms, in order to have their demands met.[38] Such nationalist demands have become standard bargaining chips at every government negotiating table. Thus, Regions and Communities are empowered to turn non-nationalist issues into nationalist conflicts – certainly starting down a slippery slope. Also, this hyper-nationalism does a disservice to the human dignity of non-nationalist minorities (women, sexual minorities, religious minorities, etc.) which must squeeze their grievances into a nationalist mould in order to be heard.

Competitive regionalism also makes international integration difficult. In Belgium, for example, federalist forces have problematised the country's relationship with the European Union; in Canada, North American/regional trade agreements and international treaties are plagued by the same problems.

Problems with Particracy

The Belgian system depends heavily on the existence of a spirit of cooperation and a willingness to build successful and relatively stable inter-party coalitions. Also, politicians and voters must be able to accept some degree of incongruence between federal and Regional/Community party politics. Two parties have dominated the political landscape in Belgium: the Christian-Democrats (Flemish) and the Socialists (French). Thus, shared hegemony between these

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[38] *Supra* note 12 at 319.

two parties requires alternating competition and cooperation – strategies which sometimes break down.[39] For example, the federal government recently underwent a crisis when the Flemish Greens threatened to resign from the government to protest arms exports to Nepal from a Walloon factory.[40]

Furthermore, coalition-building sometimes involves *cooption* rather than *consensus*. In other words, the two dominant parties set the parameters for the discussion and then "buy out" their opponents using bribes or dangling carrots of future support. One hopes that those carrots may include compromise on certain issues – however, this hope may not be the reality. It may be that some parties (for instance, those representing the German-speaking minority interests) are consistent losers in the process, forced to compromise on too many issues.

Bipolar Dialogue

These bipolar party politics mirror the essentialisation of Belgian political and cultural life into Flemish vs. French issues. As Swenden observes, bipolarity manifests itself in the presence of two separate spheres of public communication: all significant newspapers and radio/TV broadcasts cater to either the Dutch or the French community, not both. Many issues in federal elections are characterized as two-player games, between the Dutch of the French, even though other groups, such as the German-speaking community, also have passionate nationalist claims.[41] If an individual wants to run for a political position, she has not choice but to align herself with either the Dutch or the French. Such bipolarity is a problem, not only in Belgium, but also in other federal countries where dialogue is narrow and exclusive to particular groups or issues. For example, aboriginal people in Canada are often shut out of the

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[39] *Supra* note 12 at 317.
[40] "Tongue Lashings" *The Economist* (26 September 2002), online: <www.economist.com/PrinterFriendly.cfm?Story _ID=1360463>.
[41] *Supra* note 7 at 15.

English-French federal debate, and the Muslim people in Sri Lanka are, so far, not included in talks between the Sinhalese and Tamils.

Swenden comments that, had the ten provinces been used instead of Regions and Communities as the basic units of Belgian federalism, such dynamics would have played out as multilateral issues rather than bipolar ones, creating the potential for more inclusive dialogue and solutions. The Canadian federal system has advantages over the Belgian one in this sense, because although Québec was territorially-defined, other federal entities are based on regional rather than ethno-linguistic boundaries. This system allows for a more pluralist and multi-faceted debate, and avoids the casting of inappropriate issues as ethno-linguistic.

Violations of Minority Rights

Many critics feel that the Belgian federal system has only been a partial success in ensuring equality and human rights. In its judgement No. 54/1996, the Court of Arbitration held that "it is the duty of each legislator, within the limits of its competence, to ensure the protection of minorities."[42] All too often, however, the Belgian federal system exacerbates nationalist sentiments and gives people an excuse to believe that the bare bones of Constitutional protection are the cap on concessions that should be made to other ethno-linguistic groups. In other words, the linguistic alignment of the Belgian federal state bolsters an attitude of "we have already given them everything they need".

One recent linguistic dispute is centred on bilingualism in the suburban areas of Brussels; although Brussels is officially bilingual, it is surrounded by Flanders. The Flemish, therefore, insist on exclusive Dutch-speaking in the periphery areas of Brussels, invoking their right to reinforce the Dutch character of those

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[42] "Protection of Minorities in Belgium", Parliamentary Assembly, Council of Europe, Doc.9536 (5 September 2002), online: <assembly.coe.int/Documents/WorkingDocs/Doc02/EDOC9536.htm> at para 10.

regions.[43]   The result is institutions that anger the 120,000 Francophones living in the Brussels periphery. For instance, all local council proceedings must be in Dutch, even in areas where the mayor and most local politicians are Francophone; all official letters must be in Dutch; libraries stocking too many French books stand to lose their subsidies.   Walloon activists began employing civil disobedience tactics in protest, and eventually appealed to the Council of Europe.

The Council of Europe found that Belgium was violating national minority rights in the Brussels periphery. The Flemish, though, argue that Francophones are not even classifiable as a national minority group, because of the federal structure that gives them equal rights to the Dutch.[44]   Therefore, a federal state structured along ethno-linguistic lines may foster defensive border-building rather than a true spirit of tolerance and respect for minority rights.

Uneven Distribution of Costs

Another problem with the Belgian system is that the costs of federalisation are not evenly distributed between the federal level and the Regions and Communities.   Although the regional governments may conclude international treaties, other national concerns fall beyond their purview and they are free to ask for resources or advocate policy stances without concerning themselves with broader issues. The federal government, however, bears the burden of keeping a balanced budget (especially with European Union pressure), while also distributing sufficient funds to internal security, the justice apparatus, and social security.[45]

Such uneven distribution of costs also arises in Canadian federalism. For instance, the federal government recently ratified the Kyoto Accord based on broad national interests and international environmental cooperation, despite objections raised by provinces

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[43] *Supra* note 40.
[44] *Supra* note 42, see especially para. 22-23.
[45] *Supra* note 7 at 16.

like Alberta, which had regional economic interests at heart. In some ways, the burdens of federalism will always be most heavily borne by the federal government.

Complexity

Finally, although Belgian federalism may be fascinating from an academic point of view, it is undeniably complex – to fully describe its workings would be far beyond the scope of this paper. Complexity has its drawbacks, of course, one of them being the expense involved in maintaining it, and the possible duplication and redundancy in areas of overlapping authority. However, in the modern world, it is arguable that higher levels of complexity mean easier access to the system for individuals. Complex Constitutions are, perhaps, better answers to the problems of complex societies.

Conclusions

Sri Lanka's challenge is to find a federal solution that allows internal self-determination, regional autonomy, and consensual and representative decision-making. It must build a Constitution that will bring Sri Lanka's communities together as many autonomous units that coexist peacefully and democratically. It must recognize all minorities, even non-traditional minorities or non-ethno-linguistic minorities.

Belgium provides an interesting model of federalism for study by Sri Lankans in the journey of Constitution-building. This paper has pointed out some of the pitfalls of Belgian federalism. However, not all federal states encounter the same types or intensities of problems. The most vulnerable federal states are those whose sub-national groups employ confrontational strategies, rather than fostering a cooperative relationship with the central government. Put differently, competitive regionalism is more unstable than cooperative federalism.[46] For Sri Lanka, a country where nationalist forces have a violent dimension, a faulty process of federalisation

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[46] *Supra* note 22 at 3-4.

may simply bind Sri Lanka to many more years of almost-exclusively nationalist debate.

Having said that, we should remember that Belgian federalism is young and still evolving. As Gérard cautions, "any portrait of [Belgian federalism] is nothing more than the representation of a temporary, often precarious balance, on a course whose outcome is uncertain."[47] The Belgian federal system has been enormously successful in many ways, and remains a creative response to a complex problem. Sri Lanka may wish to keep a close eye on its development in the future.

As one Sri Lankan author has suggested, "probably the most important lesson to take from the Belgian success is to have faith in a process of gradual positive reforms within a system which equally recognises and represents the views of every party equally."[48] Through a process of dialogue in good faith, Sri Lanka can draw on the lessons of other countries, such as Belgium, in its development of a federal Constitution.

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[47] M. Gérard, "Fiscal Federalism in Belgium". Paper presented at Conference on Fiscal Imbalance, Quebec City (13-14 September 2001), online: ARPEGE <www.desequilibrefiscal.gouv.qc.ca/en/pdf/gerard.pdf> at 2.

[48] "Belgian Model for Sri Lanka?" *Shanthi Journal*, online: <http://members.fortunecity.com/shanthi/belgian_ model_for_sri_lanka.htm>.

Annex 2: Spheres of Belgian Legislative Authority and Their Respective Heads of Power

Item	Federal	Regions	Communities
General legislative authority	Matters of national concern	Regional economic matters	Cultural and education issues
Specific heads of power (also see Annex 1 for more details)	• Defence • Internal security • Justice • Taxation policy • Social security (including unemployment insurance, pensions, health care) • Foreign affairs • Sole power to revise the Constitution (and therefore to revise the organization of the different Regions and Communities)	• Regional economic development (including financing of subordinate powers) • Employment policy (including assistance in investment and employment) • Industrial restructuring • Environment • Nature conservation • Rural development • Housing • Land-use planning • Urban renewal • Water resources and sewage • Energy policy • Infrastructure (roads, waterways) • Regional airports • Public local transport • Local and provincial government • Agriculture • External trade • International relations re: Regional spheres of jurisdiction • Scientific technology research / applied science	• Cultural issues • Education (with some reservations) • Use of language (administrative matters, teaching, contacts between employers and staff) Services offered to individuals (*matières personnalisables*) • Arts • Youth policy • Tourism • Preventive health care • Some welfare policy • Intra-community and international cooperation (treaties re: cultural matters, teaching, and services offered to individuals) • Basic scientific research (shared with federal government)

Structure of legislative body	Bicameral constitutional monarchy – Senate + House of Representatives. The Senate may examine a bill and suggest modifications, which need not be accepted by the House; also, the Senate can initiate legislation but the House has final say. The King is the symbolic head of state and is without linguistic personality.	Regional Council + an executive Government branch	Community Council + an executive Government branch
Mode of election	*House*: Directly elected members. Prime Minister is appointed by the King based on ability to gain support in the House. *Senate*: some direct elections, some drawn from Community Councils, some appointed.	Directly elected members	Directly elected members
Composition of legislative body	*House:* 150 members, including an equal number of Dutch and French ministers. *Prime Minister:* an unstated requirement is that the PM be Flemish, since the general population has a majority of Dutch-speakers. *Senate:* 71 members, including children of the King over 18 yrs (who have a right to be Senators).	75 members, including some from Brussels.	89 members

Annex 3: Breakdown of the Federated Levels in Belgium

Federal level	Belgian state: 10 million inhabitants			
Community level	German-speaking (0.06 million inhabitants)	French		Flemish
Regional level	Wallonia (3.3 million inhabitants)		Brussels-Capital (1 million inhabitants)	Flanders (5.9 million inhabitants)
Language used	German	French	Bilingual (French and Dutch)	Dutch