

## Re-constituting Belgium to be a sound Federation

### Analysis: a mix of the centralist, federalist and con-federalist model

Public authorities in Belgium are barely successful: they are caught in a political and institutional trap. Why? Formally, it is a Federation (article 1, Constitution), but it appears to be a falsified Federation. How did it start? This Federation is *a top down* creation by party leaders only. No consent from lower level authorities, provincial nor local, nor citizens' approval. The same unilaterally centralist proceeding goes for all later constitutional and legal modifications of the Federation.

This is a violation of federalism, as federalist ideology holds these three standards: 1° to express citizens' layered identities, 2° equality in sovereignty (i.e. a public power only terminable by itself) between all governments and 3° autonomy of each government. Therefore, the creation of a federation and its modifications should be the result of decision making by citizens, through consultations and plebiscites.

The unitary Kingdom of Belgium, going through a '*de-federalization*' process, did not follow that democratic path. There never was a federalist decision making in which the citizens themselves participated, at any level of government. Only *professional politicians* were in command at party top conferences. Once the political deal made about an institutional reform, the party leaders controlled the federal government and the federal parliament. The same procedure was implemented after the creation of the autonomous institutions for three regions and three communities, turned into federated units (1980-93). Then and later on, their approval for the constitutional reforms was always redundant.

Therefore, its result is not surprising: 1° the competences were overall distributed according to the national interests, selected by parties once forming a programmatic majority in parliament and a coalition in government, 2° the financial autonomy of the federated units remained very limited, until now, and 3° the national capital Brussels became a federated unit, a Region, equal to the other Regions.

Moreover, the conversion of the Belgian institutional system caused construction faults in the federal organization as such. For example: 1° the Federal Parliament is fragmented constitutionally in three linguistic factions with specific law making power, 2° the Federal Government is equally composed by Dutch speaking, resp. French speaking ministers and 3° the spreading of competences became too complex, undermining the autonomy of all governments. As a result, the Belgian Authorities do not show harmony and energy, but cleavages and inertia. They suffer from a political and legal polarization. Frankly, in fact and in law, Belgium operates like... an international organization, say a confederation, yet without the right for any federated unit to leave it unilaterally. This institutional system is contributing to the laborious operation of the federal whole, often leading to political deadlocks, sometimes culminating in Federal Government crises.

### Conclusion: the need for a New Federal Constitution

First a reminder: the philosophy of *democracy* – Greek for 'people's power' – starts with the principle that all powers to rule are vested in the citizens. Each citizen is a shareholder of state sovereignty. Sovereignty, at any level of public ruling, is the citizens' property. Since Ancient Greece, the fundamental principle for taking care of the general interest is that any public power emanates from the people's sovereignty. Political citizenship is the first civil right!

Building a Federation and sustaining it, requires the following preconditions, indispensable to practice true federalism: 1° being a political objective in itself, not an instrument to achieve other purposes, like accommodating partial and/or external interests, 2° to construct bottom up by its own citizens, not being imposed externally nor top-down from power centers, and 3° taking care of common and converging interests by the federal whole. As soon as these preconditions to federalize are fulfilled, the question raises how to organize the tangible federation.

Well, civil rights and duties are often written down in laws. The same goes for basic rules of a polity. Those rules are laid down in a supreme law, usually called a constitution. A federation holds a federal constitution and constitutions of the federated units, all these authorities sharing sovereignty. The former does exist in Belgium, but it is misshapen. The latter do not (yet) exist. So, Belgium desperately needs a brand-new federal Constitution.

### Approach: a Constitutional Convention

The goal of this *'Reconstituting Belgium'* project is people's approval of a new Federal Constitution, which replaces all conflicting federal laws and decrees (laws of federated units). How to proceed?

The constitutional superseding should go through several stages. First, all Belgian citizens elect the members of a Constitutional Convention. All once applicant members and former and current members of any parliament, government or court are excluded to run for it. The Presidents of the Constitutional Court and the Courts of Appeal, regulate, organize and preserve these Convention elections. They publish its outcome. The Court Presidents do the same for the whole course of the project.

The assignment of the Convention is to list: 1° the federated units, 2° the limitative federal competences and 3° the federal institutions and their role. The Convention presents such propositions with its motifs to the citizens, for approval and amendment by selection of alternatives. Once the results of this poll declared, the Convention drafts a Constitution text according to the citizens' will.

The Convention presents the adopted Constitution text for citizens' approval or rejection. If rejected, the Court Presidents organize an opinion poll among all citizens. This poll collects their suggestions to improve the draft Constitution text, through a multiple-choice format. The Court Presidents publish its results and assign the Convention to amend the draft text correspondingly. Once adapted, the new draft Constitution is submitted to the citizens' vote. If rejected, this opinion poll procedure starts over again, until the citizens accept the whole Constitution text.

The new Federal Constitution approved, one crucial condition must be fulfilled as long as the Federation exists. Referring to the second law of thermodynamics, independent Courts, the third branch of state powers, should safeguard this institutional system by enforceable means, on all levels.

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Is it impossible to make this project successful? Is it based on utopian thinking? Well, may I quote this one liner by late Albert Einstein: *"Keine Idee ist gut, die nicht zu Beginn als unmöglich galt"*. My translation: *"No idea is good enough, unless it looks impossible to realize, from the start"*.