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The Federalism in Belgium (1) as a constitutional problem

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INTRODUCTION

THE PRESENT SITUATION IN BELGIUM

Belgium, one of the smallest countries of Western Europe, is, after the Netherlands, the most densely populated country in the world.

Of its nine million inhabitants there are five million Flemings in the northern half, Flanders. The language spoken by the Flemings is Dutch and so they belong to the Dutch social community, which comprises eighteen million people (the Netherlands, Dutch-speaking Belgium and a section of Northern France). In the southern half of Belgium three million Walloons live. The language of Wallonia is French, which places them in the large French social community. In the northern part (Flanders), Brussels, the capital of Belgium, is situated. Brussels has one million inhabitants, some of which are Dutch speaking and the greater part French speaking.

The linguistic and social boundary through Belgium is not an invention of these times. It has developed historically ever since the migration of the nations more than a thousand years ago.

What is specific about the Belgian situation is, that two communities of people with their own pasts and characters belonging to two different social communities, constitute one and the same state since 1830.

How this strongly centralized state has evolved undemocratically for more than a century and how both communities of people are looking

(1) End of October 1968, the author will publish a book with the same title, in Dutch at the Nederlandse Boekhandel, Sint-Jacobsmarkt 7, Antwerp, Belgium (530 pp., 3 maps, 3 unfoldable outlines and 16 fotographs).

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for a more balanced reconstruction of the political co-ordination you can read in this article.

Flemish arrearage.

The Flemings, who still comprise the majority of the Belgian population, have known an elevating history whence a particularly high level is evident. Since 1830 they have however incurred a considerable arrearage compared with their French-speaking countrymen.

Generally speaking Flemish families have more children than Walloon families. As a result it is normal that, whereas in 1900 the Walloons formed 40 % of the Belgian population, in 1966 our country consists of 60 % Flemings, 30 % Walloons and 10 % Brusselers.

Belgium was conceived in 1830 as an extremely centralized state with France as a model with French as vehicular language in parliament, government, administration, industry, court, army and higher education. Up to 1930 Dutch-speaking people were obliged to do their university studies in French. That is why throughout the Dutch-speaking population there is still a so-called social linguistic boundary which certain people use to wilfully separate themselves from the rest of their community by speaking another language, French.

The social and political struggle of the labour classes for their rights definitely broke through after the first world war. It was coupled with a romantic movement for the revival of Dutch as the rightful language of the Flemings in Belgium and lead to the vigorous flourishing of a true popular movement which wants to procure complete development for the Flemish community in Belgium.

Not only socially but also economically there was an important arrearage to put right. This was mainly the result of an acute lack of employment, which in its turn lead to permanent unemployment, a higher geographic labour mobility and a large-scale emigration to Brussels and Wallonia.

Even now this social-economic struggle for their rights is not ended :

— the gross income per head is markedly lower in Flanders than in Wallonia ; and in Wallonia it is lower than in Brussels ;

— on top of that the Dutch-speaking people saw that the national savings, in Belgium 70 % of which are derived from Flanders, were invested for 70 % in Brussels and Wallonia, which the Flemish resent. Here are some figures with will clarify the actual situation of the Dutch-speaking population in Belgium.

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	Dutch-speaking	French-speaking
Soldiers	62 %	38 %
University-Doctorates	33 %	67 %
University education	42 %	58 %
Higher non-university education	45 %	55 %
Secondary education	57 %	43 %
Two latest years lower education	78 %	22 %
Lower education	57 %	43 %
Nursery school education	63 %	37 %

From the Struggle for their rights to complete development.

The aim of the Flemish struggle has now become clear to you. It has in view the complete individual development of all the dutch-speaking Belgians and a valorization of the entire Flemish community and the Flemish region in every sphere. People of every political and philosophical conviction are co-operating towards the realization of this great ambition. This ambition we have just sketched will never be attained unless it becomes the subject of statutory measures.

For several years the realization of the programm of the Flemish struggle has been the subject of an important part of the political happenings in our country. An adapted linguistic legislation and an acceptable statute for Brussels as the capital of a billingual country, is now partially realized or being considered. Also the economic valorization of the Dutch-speaking population and the industrialization of Flanders are the subjects of important measures. The use of the Dutch language in industry is the first step towards the integration of industry in the community. All these measures are however only the first step towards an harmonic extension of our country and need to be expanded and supplemented in the near future.

The social-cultural arrearage will be caught up on by means of a daring democratizing of the education. So every child, regardless of the financial ability of its parents (the lowest wages are ever in Flanders), will be offerred the opportunity to complete every standard of education, resulting in complete development of all the talents. Besides this, isn't it only normal that a Fleming should be able to go as far with his language as a French-speaking person can with his ?

Some of the suggested measures have caused a strong reaction among French-speaking compatriots. They fear that the application of distributive social fairness will deprive them of a number of privileges in

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favour of the Flemish speaking section of the population which have up to now been forced backwards. A new structure is being sought for the extremely centralized Belgium so that her harmonic integration in the United Europe can proceed efficiently and modernly. The two social communities with their own regions, will have to be constitutionally recognized by the new structure. At the same time a number of competent authorities will have to be spread out regionally on this basis and attributed to political organs peculiar to Flanders and Wallonia.

ESSAY I

A GENERAL APPROACH OF FEDERALISM

A new element becoming obvious is that federalism is not of French origin, as all French sources maintain ; the French Lafayette and Brissot got it from America, where it had already been used at about 1787 by Washington, Jefferson and others.

Older in age than the idea federalism are such words as « Bund », « Eidgenossenschaft » and « Commonwealth », respectively a German, a Swiss and a English idea. Throughout the Middle-Ages the Netherlands knew a kind of feudal federalism that was broken off by the French Revolution.

The great difference between a federal state and a confederation — in which for certain items a common policy is elaborated by consultation organs — is that the principle of a federal state is a common constitution while for a confederation a treaty is the underlying principle. In a federal state sovereignity is vested in a federal authority ; in a confederation it is vested in the members. The authorities in a federal state have a direct say on the individual citizens ; this is not the case in a confederation.

ESSAY II

THE FEDERALISTIC IDEA IN BELGIUM

With the exception of a few rare forerunners, federalism as a political problem hasn't been put in Belgium until 1898, date of the Equality-law. Professor Vanderkindere (1870) and professor de Laveleye (1871) are prophetic paradoxes. They have been thinking loudly and didn't have any hold of reality.

When Hendrik Conscience writes about « Away with the Walloons » (1838) and Rodenbach « once the mess of the year 1830 will go to the dogs », these are just expressions of feelings. These expressions were

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never turned into concrete theses, because the three parties, the Catholic Party, the Liberal Party and the Socialist Party, were dominated by French. This has known its logical outburst when the Walloonside felt that something was changing. It is striking that the problem of federalism was not put to the organized Flemish movement, such as the Antwerp Meetingparty (after 1862) and the Daensism (1892-1914). Up to the first World War there is a period of language- and culture-flamingantism, with only a political gust here and there. As a matter of fact the Walloons are the first to put the Flemish-Walloon problem politically after the Equalitylaw (1898), that was putting Dutch and French on the same level, in an official way. Equality of rights for both linguistic groups means the end of the Walloon Belgian pleasure. The Flemings first reacted with a refusal, but just before the first World War in a pro-federalistic way. Until 1914 the Flemish movement didn't have any own political conception. No political consequences were related to the Flemish movement. The Walloon representative Jules Destrée is the first to raise the matter of federalism publicly. The political structure must be changed. This is the first remark « Sire, il n'y a pas de Belges » (« Your Majesty, there are no Belgians ») relating political consequences to the Flemish-Walloon problem. It is just striking that Destrée, although being an experienced statesman, as a socialist has never understood anything of the netherlandic integrity of Flanders. He has never been able to look behind the bourgeois façade. The socialistic leading man Vandervelde too, he didn't understand Dutch, wasn't able to do so either (2).

During the first World-War, for the first time political consequences are drawn from the Flemish Movement : the Front-Movement by putting in evidence the idea of self-government, Activism by pushing the separation of government with the help of the German occupation.

After the first World-War there is a concentration round the Front-Movement and Activism. There grows the Flemish Nationalism, giving to the Flemish Movement its definitive political conception in the years 1925-1928. The former activists, the front-people and the passives find each other in the struggle for amnesty. The passives understand that the struggle « contre l'activisme » (« against activism ») in fact is a struggle against the Flemish Movement. Having 5 seats in 1919, the Front-party in 1929 gets 12 seats on 187, and as such is more numerous than the Liberals in Flanders.

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(2) P. DOMS, L'emploi des langues dans les Chambres législatives en Belgique, *Res Publica*, 1965, nr 2, p. 131.

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At the end of 1929 there is the economical crisis. Unemployment was more important than the Flemish Movement. At that moment the Flemish-Nationalists have to adopt a doctrine. In 1933 a certain part moves to Nazism. In that time a catholic boy couldn't go left, only right. With the elections during the crisis, November the 27th 1932, the Flemish-Nationalists didn't have a social-economical policy. They fall back from 12 tot 8 seats. This election defeat however wasn't only due to the economical crisis. In a pastoral letter of October 30th 1932, Belgian episcopacy made a stand against the anti-clerical threat (Socialists and Liberals refused grants to catholic schools) and asked the Catholics to unite for the defence of catholic schools and therefore to vote on catholic lists. In Flanders this was in the first place aimed at the Flemish-Nationalists, being catholics for the greater part. The electoral struggle passed in a sphere of school-conflict, for « the pure soul of the child » (3). In this way a split was caused between catholics and modernists in the Front-party. The structure of state (corporatism or not) as well as the social situation also took part in this election.

Cultural autonomy for both Flanders and the Walloon country, and the division of the Ministry of Education and Culture were on the program of each of the governments succeeding each other quickly just before the second World-War. About these items there was an agreement between the three great parties.

The second World-War stopped all action for federalism. Collaboration — neither the administrative, the political, the Flemish, nor even the Walloon one — hasn't taken any action in a federalistic direction, mainly because the Germans didn't want it.

Since the second World-War Belgium has known five crises : the Royal Question (1944-1951), the School Question (1954-1958), the struggle round the linguistic census (1959), and the mainly Walloon strikes against the Unitary Law (December 1960-January 1961). Since February 1968 Belgium has a new crisis, the Louvain crisis. The issue is the big Catholic University at Louvain (25.000 students), with a Flemish and Walloon section, located in the Flemish part of the country. The government resigned. In the new elections, March 31, 1968, the three major parties lost seats in the 212 member House of Representatives and the small radical parties gained seats. The Flemish People's Union got 20 seats (+8), the « Rassemblement Wallon » in coalition with the Brussels « Front Démocratique des Francophones »

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(3) Prof. Dr T. LUYKX, *Politieke Geschiedenis van België*, (Political History of Belgium), p. 353.

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12 seats (+7) (*3a*). Each time these crises went into a federalistic direction by the great differences that found expression between the Flemish and the Walloon reactions.

ESSAY III

PRESENTATION OF THE FEDERAL BILLS

Nine bills have already been introduced in Parliament for a revision of the Belgian constitution in federal sense. These bills are called after their respective introducers (4) :

1. Herman Vos	abbreviation Vos	(Fl., Frontpartij)	1931
2. Truffaut	abbreviation Truff.	(W., BSP)	1938
3. Grégoire	abbreviation Grég.	(W., BSP)	1947
4. Van Belle-Merlot	abbreviation VB-M.	(W., BSP)	1952
5. Yernaux (Senate)		(W., BSP)	1953
6. Moulin		(W., kommunist)	1961
7. Dejace	abbreviation M and D	(W., kommunist)	1961
8. Paque		(W., BSP)	1961
9. Van der Elst	abbreviation VdE	(Fl., Volksunie)	1962

Moreover a whole series of federal bills have been framed by different Walloon and Flemish groupings and movements, starting with the bill of the Walloon Delaite in 1912 up to the present moment ; these bills however have not been introduced in Parliament.

1. THE BILL OF VOS.

This *Bill for Revision of the Belgian Constitution,* called *The Federal Statute,* was introduced in the House by the parliamentary leader of the Flemish Frontparty, Herman Vos, on March 25th 1931. After a detailed explanation, a bill is following proposing a revision of 71 articles or half the Belgian Constitution, signed by five representatives of the Frontparty. The « Federal statute of the united Kingdom of Flanders and Wallonia » follows in an appendix. This, as it were, contains two constitutions, one for the States and one for the confederation. It

(*3a*) For more informations about recent developments see e.g. *Time,* February 16, 1968, p. 43 ; *Newsweek,* February 19, 1968, p. 55, April 15, p. 60 and June 24, p. 43 ; *The New York Times,* February 9, 1968, April 2 and June 18, p. 5.

(4) Signification of the abbreviations : Fl., Flemish ; W., Walloon ; BSP, Belgian Socialist Party.

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proposes a dual federalism. Sovereignty belongs to the provincial states, and the federal authority is defined limitatively. Vos had framed this bill together with P. Geyl. Gerretson, the Utrecht-professor of constitutional law, B.C. de Savornin Lohman and other people from the Netherlands has been consulted. On July 19th 1932 the House, by sitting and rising, refused to take into consideration the bill of Vos ; the catholics and liberals voted against, only the Frontparty and the communist Jasquemotte voted for it (together 13 of them); the socialists, being in opposition, abstained from voting.

2. THE BILL OF TRUFFAUT.

This *Bill for Revision of the Constitution* was introduced in the House by the Walloon socialist Georges Truffaut, together with two other Walloon socialists, on June Ist 1938. After a detailed explanation, a bill is following for the revision of 32 articles of the Belgian Constitution. The *Design of Federal Constitution,* briefly fixing the federal principle in the form of articles, follows in an appendix. It proposes a tripartite federalism (Flanders, Wallonia and Brussels) in a federal state. Sovereignty belongs to the regional states and the federal authority is defined limitatively. It proposes the unilingualism in principle. The articles 21 and 23 provide bilingualism in the region of Brussels ; this however is only a virtual bilingualism, viz. the territory is bilingual, but people remain unilingual, as article 7 explicitly stating. This bill was framed by a Commission of the *Ligue d'Action wallonne,* of which the Liège professor Fernand Dehousse was the reporter. On February 2nd 1939 the consideration is rejected by the House with 111 against 62 votes, with 4 abstentions. The members of the Flemish National Federation (VNV) and a number of Walloon socialists and liberals voted for it.

3. THE BILL OF GREGOIRE.

This Bill for *Revision of the Constitution* was introduced in the House by the Walloon socialist Marcel-Hubert Grégoire on March 25th 1947, co-undersigned by two Walloon liberals, two Walloon communists and a Flemish catholic. After a detailed explanation, appendix I contains the report of the « second national Walloon Congress » of 11-12 May 1946 in Charleroi, of which a « Committee for the constitutional problems » had elaborated a *Bill for the organization of a federal system in Belgium.* Grégoire then discusses the bill in 47 articles. Appendix II

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contains the *Design of Federal Constitution* and a bill asking for the revision of 100 articles. It proposes a dual federalism in confederal connection, with a federal region. Sovereignty belongs to the regional states and the federal authority is defined limitatively. The choice of language is left to the States and the federal region, while Truffaut is fixing it. On the federal level Grégoire stresses unilingualism, e.g. of the functionaries. On November 19th 1947 the House rejects the consideration because article 84 of the Belgian Constitution states : « During a regency no change can be wrought to the Constitution ». The Flemish socialists together with the catholics prevent a discussion of the bill of their Walloon political associate.

4. THE BILL OF VAN BELLE-MERLOT.

This *Bill for revision of the Constitution* was introduced in the House by the Walloon socialists, François Van Belle en J. Merlot on June 3rd 1952. It was signed by the two of them only. Not any party or group did patronize this initiative neither the following ones of Yernaux and Paque. No design of federal constitution is added, only six principles, among others recognition of two ethnical communities and three territorial groups : Wallonia, Flanders and the federal area formed by the Brussels agglomeration ; a Walloon and a Flemish House with largely cultural, economical and social competences. In a single article the bill asks for the revision of the same articles (one hundred) as in the bill of Grégoire. This bill was taken into consideration as the first federal bill on June 24th 1952. Early October 1953 the bill is discussed, and rejected on October 14th ; 136 of the 187 members of the House present voted against it ; 33 for it, in particular the Walloon socialists and liberals ; 18 abstained from voting, the Brussels socialists among them.

On November 26th 1953 the Walloon socialist E. Yernaux introduced into the Senate the first bill for a federal organization of Belgium. Properly speaking it was a literal copy of the bill of Van Belle-Merlot now introduced in the Senate because the House hadn't paid enough attention to it. It was co-undersigned by five Walloon socialists. On February 14th 1954 the bill was rejected in the Senate.

A next *Bill of declaration concerning the revision of the Constitution* was introduced on July 13th 1961 by the Walloon socialist Simon Paque ; it was co-undersigned by five Walloon socialists. This too in fact is a copy of the bill of Van Belle-Merlot. The six principles and the bill are exactly the same ; therefore it won't be mentioned any further.

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5. THE BILLS OF MOULIN AND DEJACE.

On February 9th 1961 the Brussels communist G. Moulin introduced a *Bill of declaration as to the revision of the Constitution ;* this happened just before the elections in March 1961, to make the new House constitutional. He is only giving three principles : 1° one electoral college for the House, with adaptation of the seats to the population figure ; 2° an equal representation of both linguistic communities in the Senate, in which the Brussels population must be represented in a reasonable way ; 3° in Flanders and Wallonia regional, democratically chosen authorities are placed between the central authority and the provinces. In a single article he proposes the revision of eleven articles of the Belgian constitution. It is co-undersigned by the Walloon communist Dejace.

Th. Dejace introduced on May 5th 1961, just after the elections, a *Bill of declaration as to the revision of the Constitution.* He is giving three more precise principles : 1° two chosen regional councils with largely cultural, economical and social competences and a special statute for the Brussels agglomeration ; 2° national connection of the lists for the election of the House with automatic adaptation of the seats to the population figure ; 3° substitution of the Senate by a Chamber of the Regions with equal representation. It is co-undersigned by the five Walloon communist representatives.

The bill of Dejace takes the place of the Moulin bill and also completes it. It asks for the revision of the same articles of the constitution as Moulin. Therefore, from now on the two of them will be dealt with as one bill.

6. THE BILL OF VAN DER ELST.

This last *Bill of declaration as to the revision of the Constitution* was introduced in the House, by the parliamentary leader of the Flemish Volksunie, Frans Van der Elst, on January 9th 1962. It is co-undersigned by the five then representatives of the Volksunie.

A bill, following a detailed explanation, asks for the revision of 100 articles, the same as in the bill of Van Belle-Merlot. An appendix contains the *Design of federal constitution.* It proposes a dual federalism in a federal state, with a federal region and a system of one single House. Sovereignity belongs to the federal states and the competences of the federal authority are defined limitatively. Flanders and Wallonia are unilingual but the regions themselves arrange the use of language. This bill in fact is not completely new, but was framed in 1953 by

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a Flemish-Walloon college of federalists under the chairmanship of the Flemish professor Walter Couvreur and Walloon lawyer Fernand Schreurs.

ESSAY IV

COMPARATIVE STUDY OF THE FEDERALISTIC BILLS

1.1. THE TERRITORY AND ITS PARTITIONS.

On closer investigation the item : « The territory and its partitions » seems to be of great importance. In these first articles the form of government is fixed, in all conceivable degrees, going from a two-joined confederation of states (Vos), over a two-joined confederation of states with a federal territory (Grég.), a two-joined federal state with a federal territory (VdE) and the acknowledgement of two ethnical communities and three territorial groups of which the third one is a federal territory (VB-M.), to a sheer tripartite federalism (Truff.).

The development of the three first mentioned is a chronological one (with one exception : Truff.) from a two-joined confederation of states (Vos) to a two-joined federal state with federal territory (VdE.).

1.2. **Nationality.**

The nationality is closely joined with the division of the territory. It therefore reproduces the same gradation. From a double nationality (Vos), over the Belgian nationality with next to it a double subnationality with division for the federal territory *at Choice* (Grég.) and the Belgian citizenship with next to it a Flemish and a Walloon nationality with division for the federal territory *according to descent* (VdE.) the gradation goes to the Belgian nationality with next to it a threefold regional subnationality (Truff.).

2. RIGHTS AND LIBERTIES.

No one but Grég. retains article 23 of the Constitution about linguistic liberty, adding however some precising modifications. Vos does not tell anything about linguistic liberty for the states and he only settles it for the federal government. These are the two extremes. In between those two Truff. and VdE. are to be situated.

Truff., Grég. and VdE. have the use of language arranged in the region by the regional laws. Truff. immediately adds : founded on unilingua-

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lism in Flanders and Wallonia, and on bilingualism in the region Brussels. VdE. too confirms the bilingualism of Brussels ; this however he does not state when writing about linguistic liberty but in a separate chapter dealing with the institutions of the federal territory Brussels (art. 124).

Only Truff. and VdE. confirm the unilingualism of Flanders and Wallonia. Grég. keeps the text : « The use of the languages spoken in Belgium is free... » ; VdE. also confirms the equality of both vernacular languages.

The three of them have the use of languages in federal affairs arranged by a federal law. Both Walloon bills however immediately add : in the field of language the federal government is divided in such a way that in no rank of hierarchy the knowledge of both languages can be obliged to the officials. The French texts are nearly the same on this point, so that we can assume Grég. has adopted this regulation from Truff. As a matter of fact this is a typical Walloon care.

3. CONFEDERATION AND STATES.

3.1. **Competences of the States.**

All bills, with exception of the smaller ones being indistinct on this point, start conferring sovereignity to the regional states. In this way we meet — in theory, but not in result — with a confederation of states (Vos, art. 17, Truff. art. 9, Grég. art. 31, VdE. art. 27). Truff. definitely determines : « All powers start from the region ». Grég. and VdE. still go further. As if this were not enough, they express it the other way round, e.g. Grég. : « in the Confederation they (i.e. the powers) start from the regional States ». The central Belgian authority in itself has no sovereign power it borrows from itself and thus does not seem to exist. It is only a co-ordinating organ, a frail tie.

It is striking that VdE. determines the same as Grég., writing however « a federal state » instead of « Confederation ». In fact, VdE. is wrong here for this definition is characterizing for a confederation of states, but not for a federal state. In the so called federal state the basis of federal power seems to rest with the regional states ; from a doctrinal point of view this is a confederal system. From this follows that the authority of the central government is determined in a limiting way (Truff. art. 10 ; Grég. 55 ; VdE. art. 50). These three bills are expressing things in almost the same way, e.g. Truff. « The Region is competent to make laws about all matters this Constitution does not explicitly reserve to the Confederation.... ». The residuary competences, being such an important factor in a federal statesorder, thus belongs to the regional power.

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3.2. Competences of the Confederation.

The here mentioned authority is not always a sheer federal one. Three cases can be distinguished :

1. *Sheer federal competences.*

2. *Divided competences* : the federal government is competent, but the *execution* belongs to the *regional government.*

3. *Tied competences* : the central government is competent, but has to take into account the unanimous advice of the regional government.

Nowhere is it stated in what way this advice has to be given and in how far it is binding. From the texts one would be inclined to see the character of the advice as a binding one, e.g. VdE. determines in article 2 : « The frontiers can only be changed by the federal law and after unanimous advice of both regional councils ».

1. *Sheer federal competences.*

In most of the bills a series of competences is conferred to the federal power. A general article enumerates the competences of the confederation in a limitative way (Truff. art. 20; Grég. art. 76; VdE. art. 55) : 1° foreign relations ; 2° the colony ; 3° nationality immigration and emigration ; 4° national defence (also Truff. art. 22); 5° statue of religious communities and press ; 6° money ; moreover, this general article determines that this Constitution charges the confederation special competences ; 7° the regulation of the use of language in the Federal Government and in the lower administrations according to the principle of unilingualism (Truff. art. 7 and 23, Grég. art. 26, VdE. art. 25); 8° to testify the necessity of revision of the Constitution (Truff. footnote with art. 32, Grég. art. 169 ; VdE. art. 149). Each of the bills on its turn enumerates some more competences of the Confederation.

2. *Divided competences.*

These competences are exercised by the federal law but their execution is carried out by the regional government. So, these are cases of self-government : to contribute to the execution of statutory regulations made by a higher authority. Vos and Truffaut decide in a general article that the execution of all federal laws comes about through the regional authorities. As to education Grég. article 20 and VdE. article 19 are parallel. Education is free. Public education, at the expense of the regional state, is ruled by the regional law. The allowances for the free catholic

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education, at the expense of the regional state, can only be changed by the federal law.

As to the army Grég. articles 154-156 and VdE. articles 138-139 are also parallel. The organisation, statute and numerical strength of the army are a merely federal competency. The supplying af contingents and the way of recruitment are arranged by the regional law.

3. *Tied competences.*

In case of tied competences the federal government is competent « after unanimous advice » of the regional govnernment. Cases of tied competences are only to be found with Grég. and VdE. The most striking example deals with the frontiers of the federal state and its members. Grég. article 5 and VdE. article 2 are identical : « The frontiers of the federal state, of the regional States and of federal territory can only be changed by the *federal* law and *after unanimous advice of both regional councils* ».

Two other cases of tied competences are to be found : Grég. article 78 : « When the Confederation has to deal with problems concerning nationality, migration,... and extradition, the interested regional States have to give their advice beforehand, each time these problems concern the labourers or the economic or social laws ». So a restriction has been made here, but when does is not concern « the economic or social laws » Could the Walloon people in 1947 already foresee they would have to import now such a lot of Italian and Spanish people to execute the Sauvy-Plan to keep up their population to the mark and thus to keep their industry going ?

VdE. determines about the king (Constitution art. 62,1) : article 65 : « The King cannot at the same time be the head of another state but with preceding *consent of the federal diet* and *after unanimous advice of both regional councils* ».

4. REGIONAL ORGANS.

4.1. **The legislature.**

All bills establish a regional legislature. Vos provides the King, the House and Senate ; Truff. one single regional Chamber ; Grég. the federal Governor and Flemish, Walloon and Brussels Houses of Representatives ; VB-M. a Walloon and a Flemish House ; M.-D. two regional councils, and VdE. : a Flemish and Walloon regional council and the governor-general. All bills provide the single-House-system for the

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regional legislature, with the exception of Vos who seems to build up two Belgian States within the present one.

4.2. **The executive power.**

4.2.1. *One-man-organ.*

Different bills put one person at the head of the regional executive power, be it the King or a Governor-General. The Belgian Constitution has been copied so well that one can speak of a regional state-head, whose competence corresponds with the one of the present King towards his Ministers and the Parliament. With Vos the King is at the same time head of both separate States. Truff. does not mention anything about this. Grég. and VdE. appoint a Governor-General with about the same competences in the regional state as the King in Belgium for the present moment.

4.2.2. *Collegial organ.*

The four most importnt bills provide a collegial organ for the regional executive power, namely : Vos : « The Ministers of the States » ; Truff. « the Permanent Deputation » ; Grég., regional ministers appointed by the governor-general ; VdE., regional ministers appointed by the King.

4.3. **The judicature.**

As to the organizing of the judicature there is no uniformness to be found among the different bills. Vos sees it as completely regional, with exception of the Court of Cassation. Truff. and Grég. see the court as a completely federal competence (see 5.3) VdE. sees it partly federal, partly regional. VB-M.and M. and D. don't mention anything about the judicature.

5. FEDERAL ORGANS.

5.1. **The legislature.**

As to the federal legislature, the Flemish bills prefer the one-House-system, the Walloon ones however prefer the two-Houses-system. Vos provides a federal assembly with an equal representation between Walloons and Flemings ; Truff. and Grég. provide a federal House of Repre-

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sentatives and a Senate, both of them equally representative but with a different structure ; VB-M. provides a equally representative federal Parliament ; M and D. provide a proportional House and a equally representative Senate, while VdE. provides a equally representative federal diet. So we see that all bodies are equally representative, even when there are two of them, except with M. and D. who provide proportional House of Representative. Article 56 *bis* of the Constitution, the 21 categories to one of which one has to belong in order to be possibly elected as a senator, is left out in all bills, except in the one by Truff. (art. 26).

5.2. **Executive power.**

The federal executive power has been settled in a very simple way. Vos provides the King and the federal Ministers (equally representative); Truff. : the King and the Ministers ; Grég. : the King and the federal Ministers (equally representative); VdE. the King and an equal number federal Ministers ; VB-M. and M. and D. don't mention anything about the executive power. The great bills thus are very uniform as to the federal executive power : it belongs to the king and the federal ministers. In all bills, with the exception of Truff., the federal government is organized in a equally representative way among the Flemish and Walloon population. Each of the bills however has some pecularities.

5.3. **The judicature.**

As for the regional judicature too, there is nos uniformness to be found here among the different bills. With Vos, only the top court of justice, the Court of Cassation, is federal. With Truff. and Grég. the judicature is solely a federal power over the whole of the Belgian territory (Truff. art. 19,3 ; Grég. art. 76,8). With VdE. the judicature is partly regional, partly federal. The Court of Cassation and the courts of appeal are regional as well as the judicial structure in the federal territory. VB-M. and M. and D. don't mention anything about the judicature.

6. PROVINCES AND MUNICIPALITIES.

Truff., VB-M., and M. and D. don't mention anything about the provincial and municipal institutions. Truff. even doesn't mention in foot-

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note that the articles 108 and 109 of the Constitution are maintained. It's only in his explanation that he writes down that the nine provinces have been abolished. The three regions take their place.

Vos (art. 110-111), Grég. (art. 139-140) and VdE. (art. 117-118) deal with the provincial and municipal institutions in just the same way as the present constitution (art. 108-109), namely the laws apply the following principles : 1° direct election ; 2° the provincial and the town councils look after their interests ; 3° and 4° publicity of meetings, estimates and accounts ; 5° superintendence by the king or the legislature. The civil registration exclusively belongs to the municipal competences. Only item 5 is changed by Grég. and VdE. in the sense of regional control.

In Vos, Grég. and VdE. are the provinces and municipalities a regional matter. The three of them also maintain article 31 of the Constitution about the powers, in an unchanged way. This article entrusts the sheer municipal and regional interests to the town- and provincial councils (Vos art. 43 ; Grég. art. 37 ; VdE. art. 33).

7. FINANCES.

Finances in general are dealt with in all bills rather parallel to the present constitution. Vos and Truff. maintain the articles of the constitution (110-117) and all taxes are regional. Vos speaks about a federal Court of Account, Truff. maintains the Court of Account. Grég. maintains some articles, and adds some other ones. Taxes there are regional too, for the federal district however they are federal. He deals with a federal Court of Account and three regional Courts of Account. VdE. only maintains some general articles and changes the other ones. The indirect taxes are fixed in a federal way, the direct ones in a regional way. All taxes are collected by the regional administration. VdE. has a federal exchequer and audit department and two regional ones. All bills mention regional contributions to the federal authority (Vos art. 167 ; Truff. art. 24,2 ; Grég. art. 144 ; VdE. art. 133,2). VB-M. and M. and D. don't mention anything about finances.

8. FOREIGN RELATIONS AND ARMED FORCES.

8.1. **Foreign relations.**

In the four most important bills the first competence of the confederation is to maintain the foreign relations (Vos, art. 155 ; Truff.

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art. 20 ; Grég. art. 76 ; VdE. art. 55). There are two exceptions however, namely Vos and Grég. ; in their bills the regional States too are in a certain way competent in this field. With the two other ones foreign policy is an exclusively federal competence. Naturally, the bills of Van Belle-Merlot and Moulin and Dejace don't mention anything about it.

8.2. **Armed forces.**

Opinions on the army are rather different. With Vos there isn't a real army, only a regional guard of the State and a general service of order, all of them thus being Forces of the Interior. For the rest one is entirely committed to the international guarantee-pacts. Truff., Grég. and VdE. are fairly parallel : national defence is a federal competence but in some matters there is a regional competence ; the recruitment in the three of them is regional. Striking is the fact that unilingualism is stressed. The executing organs are regionally divided too. VB-M. and M. and D. don't mention anything about the army or the preservation of order.

9. THE STATUTE OF BRUSSELS AND THE EAST-CANTONS.

9.1. **The statute of Brussels.**

As to the statute of Brussels their is much diversity of opinion in the bills. At the one hand there is Vos : Brussels does not exist as an independent reality ; at the other extreme there is Truff. stating : Brussels is an independent region, next to and with the same competences as the regions Flanders and Wallonia, and it occupies the whole of the Brussels district. In between those two extreme points of view are to be situated those of Grég., VB-M., M. and D. and VdE. With Grég. Brussels gets the statute of federal district ; or of federal territory with VdE. Its territory occupies the 19 municipalities of the Brussels agglomeration. Brussels has its own competence concerning (Grég. art. 56 ; VdE. art. 119,3) : 1° public works, 2° health, 3° preservation of order. Grég. adds : 1° education, 2° fine arts, 3° national instruction and radio. According to VdE. these cultural affaire are preserved to the regional councils ; they are replaced then by : 1° gas and electricity, 2° means of conveyance, 3° fire-brigade. Grég. has a Brussels House of Representatives with 40 members. The inhabitants of Brussels however are not represented in the Federal Parliament. Grég. therefore adds

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11 alternative readings for the case the inhabitants of Brussels might like to be represented as such in the Federal Parliament. VdE. established a municipal council being composed of 20 Flemish and 20 Walloon members, appointing from among them 3 Flemish and 3 Walloon deputies. The governor of the federal territory is entrusted with the executive power on behalf of the king. The federal diet exercises the legislature. The inhabitans of Brussels are represented in the regional councils and by that way in the federal diet. VB-M. attaches much importance to the Brussels agglomeration constituting the federal territory. It asks for constitutional guarantees in the cultural domain of its inhabitants and for the establishment of a General Council. Flemish and Walloon inhabitants of Brussels are also represented in the Federal Parliament. Moulin would like the Brussels population to be represented fairly in the equally representative Senate. To finish with it should be mentioned that Dejace proposes to accord a special statute to the Brussels agglomeration.

With the exception of Vos none of the bills mention a regional capital as seat of the regional legislature and executive power. From this perhaps we can conclude that the regional institutions are established in Brussels. According to the present constitution Brussels is the capital of Belgium and seat of the government (art. 126). Since the law of August 2nd 1963 on the use of language in matters of the board, an administrative district Brussels-Capital has been established, being bilingual and composed out of the 19 municipalities of the agglomeration ; it is governed by the vice-governor of the province Brabant. Together with the administrative district Halle-Vilvoorde and the separate executive district Drogenbos, Kraainem, Linkebeek, St.-Genesius Rode, Wemmel and Wezembeek-Oppem it forms one constituency (the former district Brussels) (art. 3 and 6). This formula already in some degree gets near to the federal territory Brussels proposed in these bills or certainly at least the national territory Brussels proposed in certain circles.

9.2. The statute of the East-cantons.

Here my task is a very easy one. For once all bills completely agree upon this point, as well the Flemish (Vos and VdE) as the Walloon ones (Truff., Grég., VB-M. and M. and D.). There isn't the least proposal about the East-cantons, just as if they didn't exist. Or am I mistaken ? This is true for the bills of federal constitution, but the honour is due to a... Walloon. Truffaut who in his explanation under

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« IV. Three questions at issues » deals with « *a)* Brussels Federalism with two or federalism with three ? », « *b)* linguistic frontier » and finally with « *c)* Regained territories ». Whether he considers them regained by Belgium or by Wallonia remains to be seen. He seems to write in a very calm way about it at least (p. 10) : « The regained territories, situated along Wallonia, can only be added to the Walloon region. There, of course, they will be given a special place. The best of means, we think, would be to trust the competent legislator, the Walloon regional House. A law of regional character, not necessarily to be found in the Constitution, will be enacted to bring the lawful interests of the inhabitants into agreement with the integrity of the Belgian territory, such as it results from the international treaties ». In his « Bill to establish Regional Councils awaiting the revision of the Constitution » the Liège communist Th. Dejace proposes : « The Regional Walloon Council will promote and safeguard the personal rights and interests of the Germanspeaking minority, in conformity with the central authority ».

10. GENERAL DEFINITIONS AND REVISION OF THE CONSTITUTION, TEMPORARY PROVISIONS AND EXTREMITY.

Truff., Grég., VB-M. and M. and D. have no general definitions ; only Vos and VdE., being more thorough than the other ones. Vos twice gives general definitions : once with the « Constitution of both States » and a second time with « the Confederation ».

10.1. **Revision of the constitution.**

According to the present constitution (art. 131) the Revision of the Constitution come to pass in three stages : 1° the preceding statement by both Houses and King, that there is a reason of revision of those constitutional definitions they indicate. This revision should be partial, 2° next to this, a complete renewal of Parliament, 3° the proper revision with ⅔ of the members and ⅔ of the voices. Vos, Grég. and VdE. deal with the revision of the constitution in a similar way as the present constitution, with some importance changes. Vos e.g. states that the whole constitution can be revised ; with the revision of the federal statute no dissolution of Parliament is provided in the beginning of the procedure, but at the end in the procedure of appeasement. Truff. maintains article 131 of the Constitution. VB-M. and M. and D. don't deal with this item.

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10.2. **Temporary provisions.**

VdE., VB-M. and M. and D. don't give any temporary provisions. Vos twice gives them ; especially at the end of the Federal Statute he gives an extensive series of measures to be taken at the time when the federal system becomes effective. Truff. and Grég. give the same temporary provision.

10.3. **Extremity.**

Vos and Truff. are the most radical bills with the most extreme duality and threefoldness. The remaining bills are more moderate. An evolution is to be seen to greater moderation and sense of reality.

CONCLUSIONS

It is extremely difficult to come to a synthesis because, as everyone will have seen, the bills are very different from each other on essential items and sometimes identical in details, while otherwise they can be the same on certain items, but different in their elaboration.

Common at any rate is the fact that all federalistic bills attribute sovereignty to the regional states and enumerate the federal competences limitatively. As a matter of fact all federalists propose a confederation of states for which all of them — with the exception of Grégoire speaking of a « confederation » — use the term of « federal state ».

A second determination, becoming evident from both history and the bills, is that federalism far from tearing Belgium to pieces or destroying it — as seperatism and annexionism desires — on the contrary wants to transform and to build up (= to save !) Belgium again. All federalistic bills and utterances mean well by Belgium. The period of « Belgium to pieces » and « Belgium nothing » of the years nineteen-thirty, against which H. Vos had to struggle and on which his *Federal Statute* has even broken down, has disappeared. Federalism is not directed against Belgium.

To prove this we are in good compagny ; no less a person than Pierre Wigny, Minister of the Colonies (March 20th 1947 — August 16th 1950) in the governments of Spaak (CVP-Soc.), Minister for Foreign affairs in the governments of Eyskens (1958-1961), and former Minister of Justice and French Culture writes : « Les auteurs des amendements

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ont souligné avec force qu'ils n'étaient pas séparatistes. Loin de vouloir anéantir ou mettre en péril l'Etat belge, ils comptaient au contraire en renforcer la structure en l'assouplissement. C'est une intention certainement sincère chez beaucoup des intéressés mais elle est peu réaliste » (5). Wigny refers to the declarations of Merlot and Van Belle in the sessions of Parliament on October the 7th and 8th 1953 and to the session of the Senate of February the 16th 1954.

Truffaut explicitly declares in his explanation : « Our formula of federal state, in spite of what some people might think in their short-sighted patriotism, is a new honest experiment to live in community. It has, so we repeat the double merit of bringing satisfaction in the country and of not enfeebling the State, rather the contrary ».

« If it is true, as we think to have proved, that only the federal statute can bring satisfaction, then our bill, far from bringing a loss upon the stability of the country, in the contrary will greatly tend to reinforce that stability, and that we really wish. »

With the discussion of the Truffaut bill mr. Debacker (VNV, Flemish Nationalist Federation) said : « If you want to keep this country alive, if you want strength to the outer world, if you want peace and union in the country itself, then you should stop that discord, of which for more than one hundred years we have been the victims, let us stop living like quarreling brothers and let us live like good neighbours. That's the reason why I ask the Flemish catholics to approve this bill ».

In his explanation Gregoire declares about his bill in Appendix I : « This claim (for self-determination) is far from being selfish, for the introduction of the federal system in Belgium will give the Flemish people an equal autonomy. Moreover, it is the only possibility to save Belgium, by bringing the two populations closer to each other and so ensuring a new impetus to the country ». The threatening attitude, as existing between the two world-wars, has completely disappeared. Romsée then declared that federalism was a last attemps with Belgium and added : « If this doesn't succeed, we go on ». Such voices no longer are heard nowadays. Only L. Picard is of another opinion. Dealing with federalism he speaks about « The Flemish separatism » in which he wants « to examine which has been the origin and the evolution of that movement in the Flemish country, aimed at the destruction of the present Belgium... » Unless he puts the stress on the *present* Belgium in its unitary form and not as official community,

(5) P. WIGNY, *Propos Constitutionnels*, p. 83.

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it is impossible to agree with him that the unitarians by all means should be more earnest about Belgium than the federalists.

Another fact becoming clear is the consideration that unconsciously a great part of the way to federalism has already been covered, when comparing for instance the present situation to the bill of Vos. One of the first items asked by Vos, the demarcation of the linguistic frontier, has been realized ; the adaptation of the regulations of the National Society of Railways by territorial division of the management has already been realized on map ; we are already very close to the « equal number » or parity in the offices, as Vos had wished it.

From the preceeding lines it will have become clear to everybody that federalists indeed know what federalism means and what they understand and want by federalism in Belgium, leaving inevitable disagreements out of consideration of course.

The Walloon federal bills and federalistic congresses are much patronized and attended by officials, old ministers, representatives and senators. Their reports are even published in the official parliamentary documents, as for instance the reports of the second national Walloon Congress of Charleroi, May 11th-12th 1946, published as appendix I with the bill of Grégoire.

The Flemish federal bills on the contrary are coming from private societies (Flemish People Movement) or rather small parties (Flemish Volksunie) or from single persons. Never have official Flemish personalities of the three great parties expressed themselves in such direction.

Walloon people like a direct, subjective democracy, e.g. Troclet in his 1919 bill where voters in the form of a referendum can pronounce about a law that got no agreement in House and Senate ; this was true for Grégoire and Truffaut too, asking a referendum to fix the linguistic frontier ; the same finally is to be found in the 1950 Destenay bill for the establishment of a referendum about federalism. This is a rather old-fashioned form of democracy only appropriate to small communities, such as Athens and the Swiss cantons. Flemish people rather like the classical, objective democracy according to Anglo-Saxon pattern. In the popular democratic form the elite decides in the interest of the people. Lenin : « the nation is the party ».

A lot of federalists make the mistake to see federalism too statically, not enough in evolution. The reason of this might be that many federalists want to bring a ready-made text of constitution. Such kind of solution won't do for Belgium. We need a solution growing with the time, being in development, be it very quickly.

Reading these bills, in particular the articles, one mustn't look upon them with the conceptions of the doctrine in the head. One should

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take the text as such, for all « federal framers » have written down their imagination in texts, they have given them titles, e.g. Grégoire : *Title VI. The confederation* » and they have used a terminology not corresponding with constitutional law and not to be put in a category. Let us give an example of this : in a text one can read the word « confederation » and immediately one thinks : « Thus foreign relations belong to the central authority ». In spite of this Vos and Grégoire determine that in some cases treaty power is vested in the regional states.

The framers of these bills are not wrong because for Belgium they have thought of a solution *sui generis*. This is necessary for the particular Belgian case : the duality, referring each time to the northern and southern neighbour's country. They might have thought about concluding a cultural treaty between Flanders and the Netherlands, Wallonia and France. For Belgium we need a formula *sui generis* as senator K. Van Cauwelaert said and he added : « With the revision of the constitution federalizing measures will be inserted into the constitution. A next time then perhaps we can move to federalism. We are not going to consult the lawyers beforehand ; they will be allowed to judge what it is, afterwards (6). Professor A. Mast is coming to approximately the same conclusion : « Each of the constitutional figures, when created, was a construction *sui generis*. A reproach to a bill of constitution that it does not correspond to existing types, is on itself not convincing » (7).

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(6) This became evident from a conversation with senator K. Van Cauwelaert on 16.7.1963.

(7) Prof. MAST, in *Rechtkundig Weekblad* (Legal Review), 1962, p. 2335.

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