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Belgium and the Brussels Question: The Role of Non-Territorial Autonomy

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Abstract

This article describes and assesses the process of territorial and non-territorial devolution in Belgium. After providing a description of the linguistic structure of the country and the background that led to its transformation from a unitary consociational democracy to a federal one mixing forms of territorial and non-territorial autonomy, it provides an assessment of the functioning of non-territoriality in Brussels and its capacity to accommodate linguistic diversity and conflict. It concludes with an overall positive assessment, since the solution that was reached allowed linguistic conflict to be kept at a tolerable level and granted a substantial degree of autonomy to each linguistic community. Nevertheless, the Belgian case also points to some problems. First, non-territorial autonomy has mainly been based on a system of dual monolingualism rather than true bilingualism, and this has contributed to separation between the two communities and to the centrifugal forces unleashed since the linguistic territorialisation of Flanders and Wallonia. Second, because of the coexistence of territorial and non-territorial autonomy, the definition of the border of the non-territorial area has been problematic and contested. This has favoured the persistence of conflict, though concentrated on the border between the two areas; but it has not escalated into expressions of violence.

Introduction

Although instances of non-territorial autonomy (NTA) were to be found earlier, this device was first exhaustively theorised as a tool to manage ethnic conflict by the Austro-Hungarian Social-Democratic representatives Karl Renner and Otto Bauer. Aiming to solve the problems of rising nationalist demands in areas where different cultural groups were highly intermingled, the system devised by Bauer and Renner envisaged devolution of powers to national communities along both territorial and non-territorial lines (Coakley, 1994, pp. 299-300; McRae, 1975, pp. 38-40; Coakley, 2016). The Great War prevented the Austro-Hungarian experiment from bearing the fruits of its concrete application (Kuzmany, 2016). Its legacy was, however, inherited by other countries. In the interwar years, Czechoslovakia, Estonia, Finland and Lithuania, among others, discussed non-territorial schemes granting cultural autonomy to some national minorities living on their soil, although only Estonia thoroughly implemented them (Smith, 2016). In quite a few cases, non-territorial autonomy was not incompatible with territorial forms of federalisation. In a similar fashion, in the 1960s, Belgium began a process of transformation from a unitary consociational democracy into a federal system characterised by both territorial and non-territorial forms of autonomy.

In many respects, Belgium is a uniquely complex case; hence, some may well argue that it offers little ground for generalisations. Yet, we suggest that it provides a valuable perspective from which to observe two dynamics: the interaction of territoriality and non-territoriality in a context of transition from a unitary to a federal architecture; and the effectiveness of non-territorial autonomy in appeasing ethnic conflict in situations of linguistic competition.

Since the second half of the nineteenth century, ethnic conflict in Belgium has revolved around the linguistic fracture between French and Dutch-speakers. Therefore, the implementation of forms of territorial and non-territorial autonomy has mainly been based on the language spoken by the inhabitants of different areas of the country. In this specific context, the difference between the principles of territoriality and non-territoriality (also called 'personality') is that according to the former 'the rules of language to be applied in a given situation will depend solely on the territory in question', while the latter entails that the 'the rules will depend on the linguistic status of the person or persons concerned' (McRae, 1975, p. 33). For this reason, the expression 'linguistic groups' is preferred here to the expression 'ethnic groups', as more appropriate to the Belgian case.

Before embarking on the process of federalisation, Belgium was already a divided country and had developed consociational mechanisms to deal with societal conflicts. Arend Lijphart defined consociationalism as 'government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy' (Lijphart, 1969, p. 216). Consociational democracy rests on two major principles: executive power sharing and group autonomy. The former means that all relevant groups are involved in the decision-making process. The latter boils down to the freedom left to each group to regulate its internal affairs, especially in cultural and educational matters. In the last 50 years, Belgium has moved from a unitary state, where consociational mechanisms were used to assuage non-territorial conflicts, to a federalised consensus democracy largely based on ethno-linguistic pillars. This process has certainly reduced the intensity of community conflict, but, at the same time, it has unleashed centrifugal forces that

threaten the stability of the system and, to some extent, discourage communication between the two communities. This, however, is fully consistent with the principle of separation deriving from the adaptation of the pre-existing consociational system to the linguistic divide, whereby each elite represents its own linguistic segment and there are ever fewer actors in a position to bridge them (Deschouwer, 2006, p. 903).

This article thus aims at providing an assessment of the process of Belgian state reform with a focus on the measures of non-territorial autonomy adopted. In the next sections, we first present the linguistic structure of Belgium with a special emphasis on the metropolitan area of Brussels, where this form of autonomy has been genuinely applied. We then offer a short description of the historical events that led to this transition as well as of the main reforms enacted up to now. Next, we look more in detail at the functioning of non-territorial autonomy in the country and, finally, we assess the system's capacity to assuage linguistic conflict.

Belgium's Linguistic Structure

According to the 1947 census—the last reporting data on the linguistic composition of the country—the 8.5 million people resident in Belgium at the time were divided as follows along linguistic lines: 54.8% spoke only or mainly Dutch, 43.7% French and 1.0% German (the remaining 0.6% did not answer). However, these figures should be interpreted cautiously because of accusations of manipulation by the Flemish movement (including allegations of pressure on bilingual families to declare a francophone identity) and the hostile climate in which they were gathered, resulting in a delay in publication of the full results until 1954. Furthermore, the census classified children

below two years of age in the ‘unknown’ category, thus implicitly treating them as an independent language group. As this practice is quite unusual and the methodological reasons for its adoption are not very clear, we have decided to exclude them from any calculation. The data reported in this paragraph therefore refer to the population aged two or more.

This preliminary clarification notwithstanding, the linguistic composition of the soon-to-be regions of Flanders, Wallonia and Brussels showed two clearly distinct patterns. On the one hand, Flanders and Wallonia were characterised by a high—although not total—linguistic homogeneity. In the former 94.7% of the population was Dutch-speaking and the francophone minority accounted for 5.1% of the regional population, while in the latter 95.5% of the regional inhabitants were Francophones, 2.1% Dutch-speaking and 2.4% German-speaking. On the other hand, in Brussels, the equilibrium between the two major linguistic groups was more balanced, although Francophones (74.2% of the local population) clearly outnumbered Dutch-speakers (25.5%).[1] The linguistic homogeneity of Flanders and Wallonia, however, did not coincide with an equally shared inclusiveness. Whereas Flanders hosted 93.5% of the total Dutch-speaking population of the country, only 74.8% of French-speakers resided in Wallonia. This difference stemmed from the fact that the francophone population of Brussels accounted for a much higher proportion of the total number of French-speakers (18.9%) than the corresponding figure for Dutch speakers in Brussels, who represented only 5% of the total number of members of their linguistic group (calculated from Hooghe, 2003, p. 73).

Since 1961, questions concerning the language spoken by Belgian residents have been legally prohibited in the official population census. Therefore, later data about the size and evolution of the linguistic groups living in the country are based on estimates and sample surveys. Scientific research, however, has focused on the Brussels-Capital Region (BCR), while Flanders and Wallonia have been neglected because of the supposedly greater stability of their linguistic profiles. The official statistics for the three regions reveal that, in January 2013, out of the 11 million citizens of Belgium, 57% lived in Flanders, 32% in Wallonia and 10% in Brussels (DGS, 2013). The German-speaking community has recently been estimated at 0.6%, or about 70,000 people, almost entirely concentrated in nine municipalities of the so-called 'Eastern Cantons', at the border with the Netherlands, Germany and Luxembourg (Markusse, 1999, pp. 61-6).

Flanders and Wallonia are organised around a principle of strict monolingual territoriality. There are minor exceptions in the form of 27 'municipalities with facilities', i.e. offering services in a national language different from the regional one. These facilities apply to minorities belonging to one of the three linguistic groups recognised in the constitution (Dutch, French and German-speaking) in either region. Twelve of them (with a total population of 105,833) are located in Flanders (half in the Brussels periphery and half along the linguistic border with Wallonia), and provide services for the francophone minorities living there. The other 15, with an overall population of 186,796, lie in Wallonia: four serve the local Dutch-speaking and two the local German-speaking minorities, while in nine there is a German-speaking majority but facilities are offered to the francophone minorities. As a proportion of the overall

regional population, the municipalities with facilities for linguistic minorities account for 1.7% of the population in Flanders and 5.2% in Wallonia (calculated from DGS, 2013). These data do not give us a precise estimate of the French-, German- and Dutch-speaking minorities in Flanders and Wallonia, as we do not know their exact share on the total population of each municipality with facilities, and they do not take into account members of the minority group resident in other municipalities. Yet, in the absence of recent data on the linguistic composition of the two regions, the small share of the regional populations affected by them seems to confirm the substantial linguistic homogeneity of Belgium's two large regions.

Such homogeneity has certainly been diminished by foreign immigration. Between 1947 and 1981, the share of foreigners in the total population of Belgium increased from 4.3% to 8.9%, stabilising around this figure (Eggericx et al., 2002).[2] These data, however, hide very wide disparities. In 2008, the immigrant population in Flanders was 5.8% of the regional total, compared to 9.3% in Wallonia and 28.1% in Brussels (DGS, 2008). Furthermore, since the 1980s, the regions have put in place policies of integration of migrants that, in Flanders, have also recently led to the provision of compulsory and publicly funded language courses for some categories of immigrants (Höhne, 2013; Hambye & Lucchini, 2005). For this reason, and in the absence of any formal change in the monolingual character of Flanders and Wallonia besides the facilities mentioned above, it is unlikely that immigration has brought about any major shifts in the linguistic homogeneity of the two regions.

This, however, is not the case with Brussels. In the last two centuries the metropolitan area of the capital has gone from being predominantly Dutch speaking, to francophone

domination, to multilingualism. As suggested by Harry Van Veltoven (1987, pp. 21-6), in the mid-eighteenth century the city was almost homogeneously Dutch speaking, with only a small francophone urban nobility. By the time of the first census of the new Kingdom of Belgium, in 1846, the shift in the direction of French had already set in, as this recorded 66% Dutch speakers and 32% Francophones.[3] A century later, the proportions had completely reversed, with 74.2% of the population claiming to speak French only or most frequently and 25.5% opting for Dutch (calculated from Hooghe, 2003, p. 73).

Since the 1990s, Brussels has experienced a further transition from a city polarised around the Dutch-French linguistic fracture to what some have called 'super-diversity' (Bollen & Baten, 2010, p. 416). According to the most recent estimates issued in 2013, the linguistic landscape of Brussels, on the basis of the language spoken at home by the interviewees, was as follows: 5.4% were Dutch-speaking, 33.6% French-speaking, 14.1% traditional bilinguals (Dutch-French), 14.9% new bilinguals (French-other language), and 32.0% monolinguals speaking neither French nor Dutch (see Table 1). When considering the language in which local people claimed to have good or excellent proficiency, though, French has clearly remained the *lingua franca* of the city (88.5%), although to a lesser extent than in previous years (see Table 2); it is followed by English (29.7%) and Dutch (23.1%) (Janssens, 2013, pp. 16-34).

Table 1. Brussels: language spoken at home, 2000-12

Language	2000	2006	2012
French	51.7	56.4	33.6
Dutch	9.1	6.8	5.4
Dutch and French	10.1	8.7	14.1
French and Other	9.4	11.4	14.9
Other	19.7	16.7	32.0

Note: figures are percentages of the total sample.

Source: Janssens, 2013, p. 34.

Although any projections should be taken cautiously because in such a diverse context it is really hard to make forecasts, comparing these results with those of the two previous studies conducted by the same team of researchers in 1999-2000 and 2005-06 (Janssens, 2001, 2007, 2008), we can see some interesting trends in the relationship between these three major languages used in Brussels. First, while the number of people using only Dutch at home has decreased since 2000, the pace of such reduction has considerably slowed down between 2006 and 2012, while traditional bilinguals have substantially increased in number (see Table 1). Furthermore, the public and private use of Dutch was on the rise between 2006 and 2012. Substantially more people who grew up in a Dutch-speaking family declared that they were using Dutch with their partner and children; all

language groups were using Dutch outside their homes more frequently (especially in their neighbourhood, in local shops, in healthcare-related services and with colleagues in the work place); and increasingly more Dutch and non-Dutch children were attending Dutch-speaking schools instead of francophone ones.[4]

Table 2. Brussels: linguistic proficiency, 2000-12

Language	2000	2006	2012
French	95.5	95.5	88.5
Dutch	33.3	28.3	23.1
English	33.3	35.4	29.7
Arabic	10.1	7.4	17.9
German	7.1	6.6	8.9
Spanish	6.9	5.7	7.0
Italian	4.7	5.6	5.2
Turkish	3.3	1.4	4.5

Note: figures are percentages of the total sample and refer to level of proficiency in the language of question (defined as ‘good’ to ‘excellent’).

Source: Janssens, 2013, p. 16.

Second, despite having consolidated its role as the second most spoken language in the city (see Table 2), English mainly remains a school language with a very limited number of people speaking it at home. Its use in the neighbourhood, in local shops and in the work place increased substantially between 2006 and 2012, though, along with that of Dutch, as indicated above. Finally, the latest data show a clear decrease in the number of people using only French at home, to the advantage of languages other than Dutch, but especially of Arabic (as suggested by Table 2 and by other data quoted in Janssens 2013: 33-47). This points to the increased complexity of the Brussels linguistic landscape. Although French remains the *lingua franca*, its acquisition seems not to erase immigrants' home languages: people speaking only French at home today are almost as numerous as people speaking only a language other than French or Dutch (Table 1).

From a Unitary to a Federal Country

As Liesbet Hooghe pointed out (2004, p. 2), 'when Belgium seceded from the Netherlands in 1830, there were few indications that the Flemish-Walloon conflict would profoundly shape politics and polity throughout much of the twentieth century'. Belgium was set up as a French-speaking state by a francophone elite drawn from both Wallonia and Flanders. Although the constitution recognised linguistic freedom, it was taken for granted that French would be the official language of the state; it was regarded as a fundamental nation-building tool that in due course—it was thought—would unify the entire country. The economic imbalance between Flanders and Wallonia, reinforcing the association of Dutch with backwardness and poverty, inevitably favoured French. Upward social mobility was thus necessarily linked to learning the language of Molière (Witte, 1993, p. 205).

Linguistic liberty, however, enabled a Flemish minority to start campaigning for Flemish cultural rights. Between 1873 and 1898 the first measures introducing and regulating the use of Dutch in the courts, the administration and secondary education were adopted. Official parity in the promulgation of laws crowned the end of this early phase, thus marking the transition from a *de facto* monolingual francophone regime throughout the country to a system based on monolingualism in Wallonia and bilingualism in Flanders. Although official linguistic parity largely remained a nominal achievement because of poor enforcement, it triggered a reaction in Wallonia against the spread of bilingualism to the entire country and in favour of a monolingual system in its southern part. The First World War, coupled with the introduction of universal male suffrage in 1921, radicalised the demands and further increased the electoral weight of the Flemish movement (Delcorps, 2012, pp. 21-3; Witte, 1993, p. 206). Reforms became unavoidable. The administrative law of 1921 enforced for the first time monolingual territoriality, dividing the country into a Dutch-speaking, a French-speaking and a bilingual area (the last limited to Brussels and the nearby municipalities). Nevertheless, minority language facilities were envisaged in towns where at least 20% of the population spoke the other national language (Van Goethem, 2011, pp. 146-7). A 1932 law confirmed the territorial division of the country, but allowed changes in the status of each municipality according to the results of language censuses. If the census showed that 50% of the population of a municipality spoke the non-official language, the municipality had to switch to it. If at least 30% spoke the non-official language, the municipality had to adopt 'external bilingualism' (for purposes of communication between the administration and the citizens) and set up schools for both languages. This mechanism stirred up conflict in 1947, when the

census showed a dramatic increase in the number of Francophones living in the periphery of Brussels. The fixing of the linguistic border thus became even more of a priority for the Flemish movement (Sinardet, 2008a, pp. 143-4; Van Velthoven, 1987, pp. 40-43; Govaert, 2007).

Mainly because of collaboration of some on the Flemish nationalist fringe with the Nazi regime during the Second World War, Flemish demands in the area of language remained marginal for more than a decade. It should be noted that although we focus on the language conflict for purposes of this article, this was by no means the major cleavage dividing the country until the early 1960s (De Winter et al., 2006, p. 934). The deep division between the Catholic and secular (and, later, socialist) blocs had led to the creation of a consociational system already before the rise of the conflict between linguistic groups, which to some extent inherited and adapted existing structures and practices. This was also facilitated by the fact that the distinction between old and new cleavages was not so sharp. While cutting across the religious and socio-economic ones, the linguistic fracture also overlapped with them to some degree, since Flanders has historically been more Catholic and less socialist than Wallonia (Deschouwer, 2006, pp. 895-904).

Reforms introduced in 1962-63 and in 1970 represented two major turning points. By fixing the language border, the former identified clear and unchanging territorial aggregates with specific linguistic statuses, thus breaking the ground for the institutional changes introduced by the latter.

The law of 8 November 1962 enshrined fixed territoriality in Flanders and Wallonia, and blocked the expansion of Brussels. It was however preceded by adjustments: 25

municipalities, accounting for about 87,000 people altogether, moved from the Dutch to the francophone area, and 24 (24,000 people) went in the opposite direction (Hooghe, 2004, p. 7). Yet, several areas near Brussels and adjoining the language border contained minorities, especially francophone ones in Flanders, that never completely accepted the fixing of the frontier. After a summit held in the Château of Val Duchesse in summer 1963, two laws were promulgated, on 30 July and 2 August; they validated the existence of exceptions in the form of municipalities with minority language facilities, entailing the adoption of bilingualism in interaction between the local administration and the members of the minority group as well as requiring the establishment of schools in the minority language (Deschouwer, 1999-2000, p. 4). Another important exception with major consequences for the future concerned the electoral and judicial arrondissement Brussels-Halle-Vilvoorde which, instead of being divided into a bilingual (Brussels) and a monolingual (Halle-Vilvoorde) district, was left untouched.

Furthermore, in 1965, the francophone parties agreed to a redistribution of seats in the House of Representatives to make it more representative of the demographic reality of the country, which had seen the Flemish population increase relatively more than the francophone one. In return, they obtained a set of consociational guarantees that were formally adopted through the 1970 constitutional reform. These safeguards included a requirement of a two-thirds majority in the House of Representatives and an absolute majority in each linguistic group to amend special laws; an ‘alarm bell procedure’ stopping the legislative process for 30 days when at least three-quarters of the MPs of a linguistic group deemed a bill to be harmful to their interests; and linguistic parity in the

composition of the Council of Ministers (Prime Minister excluded). The reform thus entailed the division of all MPs into two linguistic groups, based on the principle of territoriality in Flanders and Wallonia, and on that of personality in Brussels. As argued by Dave Sinardet (2010, p. 352), 'the end result is a parliament in which the representatives are supposed to represent their own language group'.

The constitutional reform of 1970 initiated a process of federalisation running along complementary cultural and socio-economic lines. Three communities—the Flemish, the French and the German-speaking—were formally constituted to cater for non-territorial competences relating to the individual, above all in the areas of culture, education, language use and personal welfare. Alongside these, three regions—Flanders, Wallonia and Brussels-Capital—were given responsibility for territorial matters such as regional economy, agriculture, infrastructure, environment, and traffic. While having been written into the constitution, only the communities obtained immediate, although quite limited, powers. The regions remained a very vague entity for about a decade (Hooghe, 2004, pp. 21-2; Deschouwer, 2012, p. 55).

The next constitutional reform, in 1980, increased the powers of the subnational institutions and endowed them with separate—although not directly elected—executives and councils. The regions thus became fully-fledged bodies and the Flemish parties decided to merge region and community into a single authority. The Brussels-Capital Region, exempted from this reform, eventually came into operation in 1988, following a delay arising mainly from the strong opposition of a substantial part of the Flemish movement, which saw this as a wedge that would ultimately lead to the incorporation of the city into Wallonia.

The francophone parties of Brussels, however, which had pushed for the reform, had to accept a lower constitutional status compared to the other regions, and special safeguards for the Flemish minority that mirrored those in force at the level of the central state (O'Neill, 1998, pp. 246-9). In 1993, a new reform completed the transition to federalism. It institutionalised the direct election of subnational parliaments, attributed residual competencies and treaty making powers to them, transformed the Senate into a chamber of the communities, affirmed the constitutional parity of federal and regional or community laws, and increased the financial autonomy of the subnational entities. As a consequence, regions and communities came to account for 34% of public spending (Hooghe, 2004, p. 27). Yet, fiscal autonomy remained quite low. The Lambermont and Lombard agreement, implemented by the laws of 13 July 2001, partially changed that by allowing the regions to vary their rate of personal federal income tax by 3.25% until 2003 and by 6.75% from 2004. To give an indication of the level of autonomy that this implied, 6.75% would have been equivalent to 8% of the Flemish budget in 2004 (Verdonck & Deschouwer, 2003, pp. 104-6). The reform also reinforced the position of the Flemings in Brussels by granting them a minimal representation at the regional and municipal levels (Witte, 2009, pp. 388-91).

At the end of the 2000s the country entered a phase of political instability, evidenced by the two longest government crises in its history. After the 2007 elections, it took 194 days to form the federal executive. In 2010, the impasse lasted 541 days. This was concluded in December 2011 with an agreement—implemented in two steps in July 2012 and July 2014—on a new reform of the state providing for further transfers of powers in the areas of labour market policy, justice, health policy and child allowances.

The reform also increased the fiscal powers of the regions, as the federal government transferred 25% of its share of personal income tax to the regions and allowed them to freely decide the final level of taxation. In this way, the regions will finance about 70% of their budget with their own taxes (Deschouwer, 2012, pp. 69-72). The reform also entailed the division of the Brussels-Halle-Vilvoorde electoral arrondissement, which since the 1960s had periodically resurfaced in a Flemish demand that it conform to the linguistic territorial character of Flanders.

However, despite six major state reforms and about 50 years of evolution, the Belgian state seems not to have found a conclusive balance, and the system remains open to competing demands and centrifugal dynamics. As pointed out by Kris Deschouwer (2012, p. 75), the main reason probably lies in the reality that 'fixing an end point does ... require some fundamental agreement on the very nature of the Belgian federation, on its essence, on its fundamental composition. And there is no such agreement'.

Non-Territorial Autonomy: How Does it Operate?

The constitutional architecture constructed by the 1970 reforms implies a clear division between the regions, in charge of territorial matters, and the communities, responsible for non-territorial ones. Concretely speaking, the communities deal principally with the areas of education; cultural affairs (pertaining to language, arts, libraries, television, youth, tourism and leisure affairs, among others); personalised issues such as health policy and individual assistance; justice pertaining to youth criminality; and international cooperation with regard to the competences listed above (Deschouwer, 2012, p. 61). Yet, the jurisdiction of the communities, in principle non-territorial, has a

major territorial dimension. Thus, the French and Flemish communities exercise exclusive authority over the territories of the Walloon and Flemish regions respectively; the French community has virtually no power over the Francophones living in Flanders and vice-versa.[5] Similarly, the autonomy of the German-speaking community is exercised within the territorial limit of the nine municipalities of the Walloon region that comprise the German-speaking monolingual territorial area. The legal obligation to provide 'facilities' for the Francophones living in these municipalities further highlights the unclear distinction between the territorial and non-territorial nature of the authority exercised by the German-speaking community. Thus, for about 90% of Belgians the concepts of community and region practically coincide. Apart from the small and ambiguous case of the German-speaking municipalities, the Brussels-Capital Region (BCR) and the municipalities lying within its borders represent the true exception.[6] There, official bilingualism is in place—although with important differences at the regional and municipal levels—and the two communities are responsible for the matters listed above pertaining to the individuals of their own linguistic group (Swenden and Brans, 2006, pp. 122-7; Markusse, 1999, pp. 61-6).

Before going into detail regarding the workings of the communities in Brussels, however, we need to briefly introduce the institutional architecture of the regions and the communities (see Figure 1 for a visual summary). The members of the three regional parliaments (Flemish, Walloon and Brussels) are directly elected and each appoints a government. Unlike the unilingual Flemish and Walloon parliaments, the BCR Parliament is bilingual, but its members are rigidly divided into the two linguistic groups and elected on unilingual lists, clearly reflecting the organisation of the federal

assembly. Accordingly, Dutch speakers are also granted a reserved share of seats—higher than their demographic weight would imply (17 out of 89)—and the same consociational guarantees enjoyed by Francophones at the federal level: special majorities for specific laws, alarm bell procedures to delay legislative acts deemed harmful to their interests and linguistic parity in government.

The regional institutions overlap in membership with the community ones. As the Flemish region and community have been merged, there is only one Flemish Parliament, in which six of the 17 Dutch-speaking elected members of the BCR Parliament sit in order to legislate on community matters. The French community, by contrast, has a separate parliament and government. The parliament is made up of the 75 members of the Walloon Parliament plus 19 of the 72 francophone elected members of the BCR one. Finally, the German community has a small parliament of 25 members that elects its own government (Deschouwer, 2012, pp. 62-9; Swenden & Brans, 2006, p. 136).

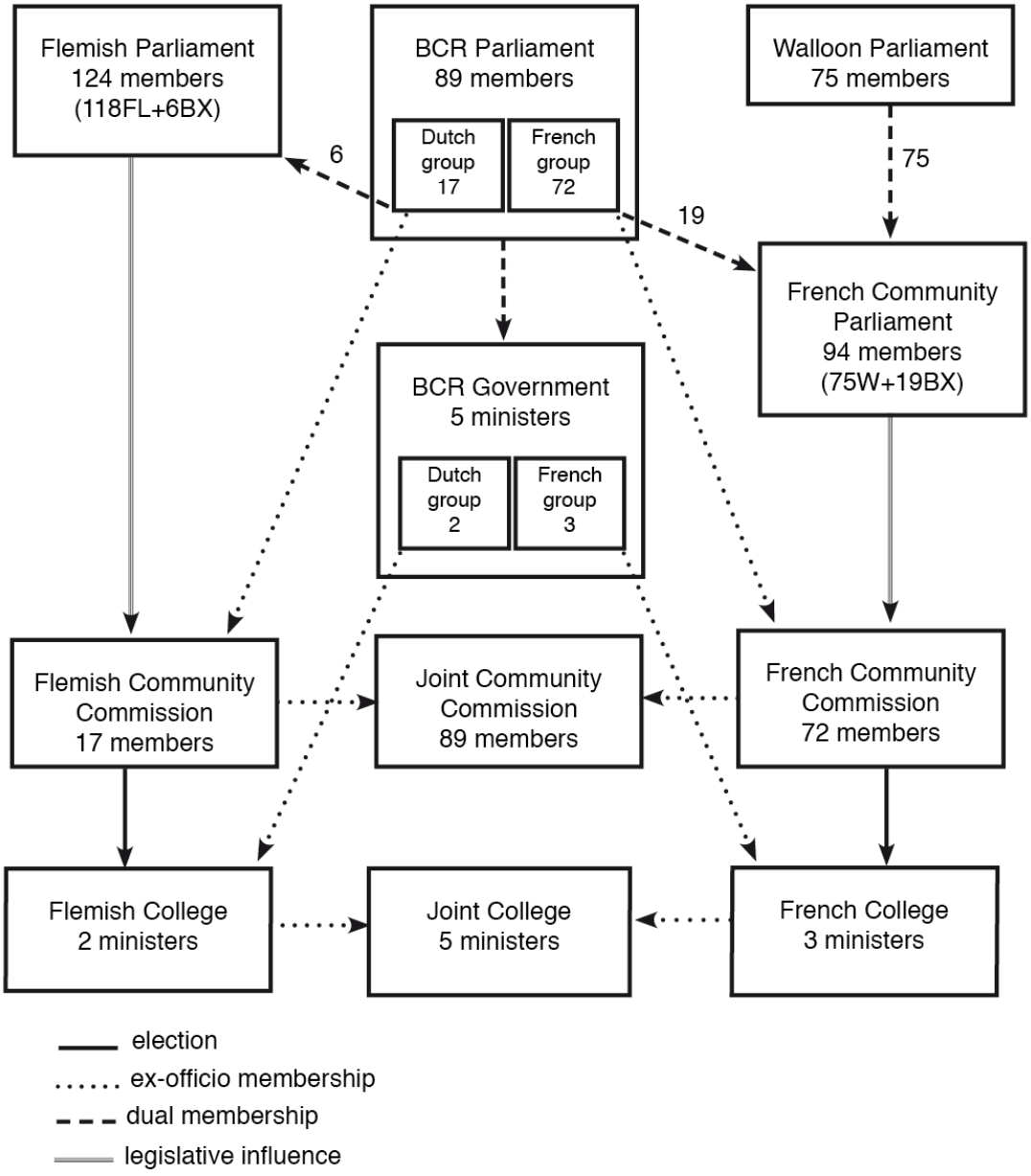

Figure 1. Brussels: institutions of the communities and regions

In the BCR, each community has established a Commission for community matters—the *Vlaamsegemeenschapcommissie* (Flemish Community Commission) and the *Commission communautaire française* (French Community Commission). These are

composed of the members of the respective linguistic groups elected to the BCR Parliament and have the duty to translate into policy the decisions taken at the level of the wider Flemish and French communities. Both also appoint an executive formed by the ministers of the BCR government belonging to their group. Yet, the extent of the powers of these two bodies differs somewhat. The French Community Commission may not only issue rules in order to organise the policies adopted by the French Community, but also directly legislate, through decrees, over matters that have been transferred to it by the Community, as in the case of the management of francophone schools in the BCR. The Flemish Community Commission, by contrast, limits itself to implementing the decrees issued by the Flemish community and therefore plays a much more subordinate role. The difference is mainly due to the rather more unitary approach sought by the Flemish community, facilitated by the lower demographic weight of the Dutch speakers of Brussels as compared to the Francophones living in the capital.

Whenever specific matters need the collaboration of both communities, these are brought together in the Joint Community Commission, which coincides with the Parliament of the BCR, the main distinction being that in the Joint Commission each resolution has to be approved by an absolute majority of each linguistic group. Its executive, the Joint College, is formed by the ministers allocated to each language group within the BCR government with the minister-president playing an advisory role. It deals mainly with matters concerning child allowances and welfare organisations with an unclear unilingual status, such as, for instance, certain public hospitals that have adopted bilingualism (Jacobs and Swingedouw, 2003, 129-32; Deschouwer, 2012, pp. 68-9).[7]

The communities do not deal directly with individuals, but rather regulate and finance institutions that provide services to individuals who can freely choose them. Thus, for instance, Francophones may not only send their children to a Dutch-speaking primary school and take part in the cultural activities organised by the Flemish community, if they so wish, but they can also take different decisions at a later time, such as registering the same children to a French-speaking secondary school. This freedom of choice at all times between the services provided by either community is the distinguishing feature of the Brussels institutions and the reason why it is considered officially bilingual. However, bilingualism here means that both Dutch and French are recognised as official languages and, at least in principle, users are always offered the possibility of conducting business with the authorities through the medium of either. This does not imply that the residents are themselves bilingual, or that there is any active support for individual bilingualism. On the contrary, such bilingualism is not permitted in specific institutional contexts (see below). The administration of the BCR guarantees services in both languages, but civil servants are not required to be bilingual. Employment is organised on a quota basis (according to a 31-69 ratio) so that the presence of a public official fluent in either language should, at least in principle, always be ensured. Similarly, electoral lists are strictly monolingual and candidates are required to choose once in their life within which linguistic group they want to run. The ultimate outcome is a form of 'dual monolingualism' (Swenden and Brans, 2006, pp. 127-41; Bollen & Baten, 2010, pp. 413-9; Mettewie & Janssens, 2007, pp. 117-26).

Municipal institutions within the BCR, already in place before the federalisation of the country, have not adopted this logic and, on the contrary, are run according to

traditional bilingual rules. This is the case both at the administrative and electoral level. Civil servants are in principle required to be fully bilingual, although enforcement is often weak and the rights of Dutch-speakers are sometimes violated. Failure to provide effective bilingual services, especially in the healthcare sector, even attracted the attention of the Council of Europe, which underlined in a special report the need to ensure compliance with the law (CoE, 2005). Electorally speaking, bilingual lists are legally permitted at municipal elections within the BCR and there are no reserved seats in local councils for Dutch-speakers, although a Dutch-speaking politician is always allowed to take part in the deliberations of the council in circumstances where only francophone councillors are elected. In 2001, Flemish parties secured the concession that municipal executives, including at least one Dutch-speaking alderman or president of the local council for social welfare, would receive a fiscal bonus from the federal government, thus offering a financial incentive for the formation of local majorities inclusive of Dutch-speaking members. These differences with regard to regional institutions are a heritage of the pre-1963 period, when non-territorial autonomy and dual monolingualism had not yet been implemented in Brussels (Swenden & Brans, 2006, pp. 127-33).

The strictly dual monolingualism followed at the regional level is clearly visible in the realm of education, the most important competence managed by the communities. Bilingual education, understood as the equal use of two languages as media of instruction, is not permitted anywhere; the only exceptions are those enjoying ministerial approval or exploiting loopholes in the legislation. What most schools offer is teaching of another language (usually French and/or English for Dutch speakers and

Dutch and/or English for Francophones) as a separate subject. This is, again, due to historical reasons. For a long time, bilingual education functioned as a mechanism for the conversion of Dutch-speaking pupils into francophone citizens through a process of 'substractive bilingualism', whereby students were initially taught in their own mother tongue but were progressively subjected to a transition to French as the only language of instruction (Bollen & Baten, 2010, pp. 413-6; Van Velthoven, 1987, pp. 30-43). This often happened with the consent of the parents, who saw the learning of French as the best chance of upward social mobility for their children.

The historical tension between the two communities is reflected in the fact that in Dutch-speaking schools French must be taught by a Dutch-speaking instructor, and in French-speaking ones Dutch must be taught by a Francophone. Likewise, the continuing impact of the memory of the historical process of Flemish assimilation to the French language is illustrated by the greater reluctance of the Flemish community to engage in experimental programmes of bilingual education. As of 2013, there were 171 primary and 66 secondary experimental bilingual schools organised by the French community, of which 12 and 19 respectively were in Brussels (Fédération Wallonie-Bruxelles, n.d.). They teach between 25% and 75% of the curriculum in a language different from the regional one from the last year of the kindergarten to grade 6 of primary school (Bollen & Baten, 2010, p. 416).[8] Developments have been slower in Flanders. As of 2007, there were only nine bilingual schools in the region, with one additional pilot project in the BCR (Bollen & Baten, 2010, p. 417). From September 1, 2014, schools have been able to introduce content and language integrated learning programmes for up to 20% of their non-language curriculum—in either French, English or German—which often

means that one non-language subject (that is, all subjects except for foreign languages, for instance history or mathematics) is taught in a language other than Dutch. The schools must still receive formal approval from the Flemish community, which, however, only checks that the establishment respects the quality standards set forth in the legislation. Twenty-five schools in Flanders and one in the BCR have obtained the green light to start this programme in September 2014.[9]

The absence of any explicit and permanent affiliation to either community in the BCR, whereby residents can freely and at any time use the services of either (see above), is also the result of the historical evolution of the country. In line with the same logic by which language questions in the census were dropped in 1961, residents are never asked to explicitly declare their belonging to any linguistic group. This stands in clear contrast with the enforced separation at the regional institutional level described above, as well as with the implicit choice between either community which is constantly required of the users of the services. Thus, as a matter of fact, the communities do not know who precisely their users are. This has two important consequences. First, the communities cannot be fiscally autonomous because they do not know whom to charge for their services. They are therefore doomed to depend on transfers from the federal government, which calculates them on the basis of the estimated number of users (usually according to an 80:20 ratio) (Verdonck and Deschouwer, 2003, p. 96). Second, linguistic identification is not necessarily the main reason why people use the services of a specific community. One example is provided by those francophone parents who send their children to a Dutch-speaking school because they think it offers better education and/or they believe that learning Dutch will improve their prospects on the

labour market. Similarly, when the Flemish community estimates the potential pool of users of its activities in the BCR, it does not consider only the Dutch monolinguals (about 60,000) or the traditional bilinguals (about 150,000), or their sum (about 210,000), but a much wider public of 300,000 inhabitants that includes a share of users who do not speak Dutch (Janssens, 2008, pp. 2-3).

Although, strictly speaking, they do not represent a case of non-territorial autonomy, but rather a derogation from the monolingual territoriality of Flanders, the facilities offered to French-speakers in the six municipalities around Brussels—Drogenbos, Kraainem, Linkebeek, Sint-Genesius-Rode, Wemmel, and Wezembek-Oppem—are relevant to our discussion. So, too, is the preservation, until 2012, of a unified Brussels-Halle-Vilvoorde electoral district for federal elections. Both have been a constant source of conflict between Flemish and francophone parties, substantially contributing to the recent government crises mentioned above.

Despite being located in Flanders, and thus within the monolingual Dutch-speaking area, residents of the abovementioned municipalities can deal with the local administration in French, instead of Dutch, if they so wish. They can also have the Flemish community organise nursery and primary schools in French, although at least 16 parents in a municipality must request this. The derogation from linguistic territoriality, however, does not extend to the use of Dutch as the working language of the administration. This was a highly sensitive issue especially in the 1980s, when the appointment of some elected councillors to executive positions was challenged before the Council of State on the basis of their supposedly insufficient knowledge of Dutch. Conflict has arisen also with regard to the specific interpretation of the extent and nature

of the derogation to the territorial principle. A circular letter issued by the Flemish Minister of Internal Affairs, Leo Peeters, in December 1998—and commonly know as the 'Peeters directive'—'reminded' the councils of the municipalities with facilities that according to the 'correct application' of the language laws residents willing to receive administrative documents in French had to make a specific request each time, thus failing to conform to established practice by which after the first application people would keep receiving documents in French. The reasoning behind the directive was that the facilities were a temporary solution meant to provide non-Dutch speakers with time to learn the local language. Without offering them incentives to learn this, the facilities would lose their character as mechanisms of 'integration'. Such a view of the derogation as 'temporary' has been strongly opposed by francophone parties, which by contrast have tended to see language facilities as a fundamental right of the French-speaking minorities in the area (Koppen et al., 2002, pp. 391-425).[10]

A similar divergence of interpretations has underlain the conflict about Brussels-Halle-Vilvoorde. Before the negotiation of the Val Duchesse Agreement, Brussels-Halle-Vilvoorde coincided with the administrative district of Brussels, which extended over part of Flanders. In order to conform to the boundaries of the linguistic territories, this was divided into two new districts—Brussels and Halle-Vilvoorde—but the electoral and judicial arrondissements were left untouched. Most francophone parties have argued that this was a compensation for the fixing of the linguistic border, while their Flemish counterparts have tended to deny this, pointing out that other concessions were given in exchange (Blero 2011, 103; Devos and Bouteca 2008, 8-9). In 2002 the government, led by an alliance of Liberals, Socialists and Greens, modified the size and

number of electoral districts in order to make them coincide with the provinces, but Brussels-Halle-Vilvoorde was not divided. A year later the Constitutional Court ruled that, in the new configuration, the arrondissement was illegal and required the government to find a solution by 2007. The Flemish parties seized the occasion to claim that the Court ordered the division—while in reality other solutions were possible—and that therefore this would be a simple enforcement of the law. Difficulties in finding an agreement persisted until 2012, aggravating the political instability that marked this period.

In the case both of the municipalities with language facilities and the Brussels-Halle-Vilvoorde problem, language issues have chiefly been framed as territorial conflicts, although of a peculiar character, i.e., between areas subjected to territorial and non-territorial regimes. The precise border of the territory where non-territorial autonomy is applied has been the focus of dispute on the two sides, with the Flemish parties fearing its expansion into Flemish territory and the francophone ones precisely calling for such an expansion as a compensation for the division of Brussels-Halle-Vilvoorde and/or for the elimination of language facilities (Govaert, 2007, pp. 16–17; Blero, 2011, pp. 119–23). The coincidence between the Brussels-Capital Region and bilingualism, or, better, dual monolingualism, has territorialised the non-territorial autonomy applied there, and clashed with the homogeneity embedded in the territoriality of the Flemish region.

Non-Territorial Autonomy: Has it Worked?

There is a general consensus in the literature that the measures enacted by the Belgian state in order to avoid conflict between Dutch-speakers and Francophones have been

largely successful, although they have nourished centrifugal forces (Hooghe, 2003, p. 3; Sinardet, 2008b, p. 1017; Deschouwer, 2012, pp. 242-60, Swenden and Brans, 2006, pp. 137-41; Swenden and Jans, 2006, pp. 888-9). Historically speaking, conflict between the two linguistic groups was quite high, albeit rarely violent, throughout the 1960s and the 1970s. It peaked at the beginning of the 1980s, before later abating. The potential for confrontation, however, remains high, and heated disputes periodically arise over territorial and linguistic matters, even though they are almost exclusively limited to the political realm (Delcorps, 2012; Deschouwer, 2012, p. 73).

As shown in the paragraphs above, the process of federalisation of Belgium has been driven mainly by the principle of territoriality. This applies not only to the overwhelming bulk of the territory, affecting almost the totality of the population; it also strongly influences the functioning of the non-territorial area. For this reason, it is not easy to disentangle the effects of these forms of autonomy on the capacity of the Belgian system to assuage conflict. In attempting such an exercise, we first deal briefly with the probable merits and effects of the territorial component and we then move to examine why this principle could not be applied in the BCR, assessing what has been achieved there and what negative effects can also be identified.

The main driving force of the country's federalisation has been the Flemish demand for protection of the Dutch language. As argued in the paragraphs above, the process of assimilation to French along the linguistic border and in Brussels was very powerful and had a clear social dimension. While some have argued that territoriality is an illiberal policy that prevented the implementation of true linguistic pluralism (De Schutter, 2011), there are sufficient reasons to believe that, had Belgium not adopted a territorial

solution, conflict would have been more diffused and generalised (Van Parijs, 2011). With territorialisation, instead, conflict has concentrated on contested areas along the borders separating territorial regions from each other (for instance, in disputed municipalities such as *Voeren/Fourons*) and from the non-territorial area (the Brussels-Halle-Vilvoorde electoral arrondissement and the municipalities with facilities around the BCR). Yet, territorialisation itself was not sufficient. Conflict remained indeed high for about two decades after the fixing of the linguistic border and abated only after the full implementation of the autonomous institutions envisaged in the constitutional reform of 1970. In this connection, the impact of the economic rise of Flanders to the position of leading region in the country on the social attraction of the Dutch language and the self-confidence of Flemish identity certainly played a critically important role in spurring the process of federalisation and in slowing down that of assimilation to French (Van Velthoven, 1987, pp. 57-72).

Although territoriality might have played a positive role in Belgium at large, this would have simply been impossible in Brussels. This is not so much due to the intermingled character of the communities, as any territorial solution would have certainly been accompanied by extensive guarantees for minorities, but rather to the reality that Brussels geographically lies in Flanders but is overwhelmingly francophone. Hence, any attempt by French speakers to incorporate the capital in Wallonia would be seen as illegitimate and would be blocked by the Flemish side, which constitutes a majority at national and regional levels (and Brussels is entirely surrounded by Flemish territory), while any attempt by the Flemish side to incorporate Brussels would inevitably meet the resistance of a majority in the capital (Van Parijs, 2007, pp. 9-10). Non-territorial

autonomy has therefore been a necessary and largely successful solution to accommodating the demands of the two communities in the capital.[11] First, as seen above, conflict has been low, and has been mainly concentrated on certain specific issues touching upon contrasting interpretations of the compromise of 1963 on the territorial division of the country. Second, although the number of people speaking only Dutch at home has probably continued to decrease even after the establishment of the communities, the process of language shift to French has certainly been slowed down. Even more interestingly, recent evidence suggests that the use of Dutch has been on the rise in the city in recent years. Such an outcome is quite remarkable in light of the lack of any compulsory affiliation to a specific community on the basis of one's mother tongue. This exceptional result is probably due to multiple factors, among which, however, a major role has been played by the safeguards provided to Dutch speakers in the BCR, the activities financed by the Flemish Community and the imposition of monolingualism rather than bilingualism within either school system.

Yet, there are also some issues that need to be highlighted. A first minor one concerns the financing system. The fact that the communities cannot know who precisely their users are opens up the possibility of some inter-community free-riding. Indeed, since it is not in charge of the collection of the resources needed to support its activities, the community offering better services cannot adapt the 'price' of these by modifying the tax level, without consulting with the other community. In other words, there is a risk that one community may offer better services, attracting an increasing amount of users, for the same price as the other community and without being able to adjust it to the changed circumstances (Swenden & Brans, 2006, p. 138). Second, one should not forget

the overlap between territoriality and non-territoriality emphasised above. More specifically, the non-territorial area also has a specific border, one that coincides with that of the BCR. The modification of such a border entails a modification of the rights enjoyed by the residents on either side of it. Thus, it is little surprise that the borders have become an object of contestation and that conflict has concentrated on them. Third, and more fundamentally, the non-territorial regime in the BCR has furthered the principle of separation inherent in the entire process of Belgian federalisation and in the consociational mechanisms already at play, thus favouring the centrifugal forces that threaten the stability of the Belgian federation and the erosion of a common public sphere bridging the two linguistic communities (Deschouwer, 2006, p. 903). The dual monolingualism promoted in the BCR's educational system is a case in point. As Mettewie and Janssens (2007, p. 136) concluded after having compared the daily linguistic use of a sample of Dutch-speaking and francophone students, 'both linguistic communities in Brussels live side by side, having hardly any contact with each other and each other's language'. The authors also showed that pupils who receive at least part of their education in the language of the other community have substantially more positive attitudes towards the other linguistic group than pupils attending schools where teaching is exclusively in their own mother tongue.

The linguistic 'segregation' of the BCR's educational system stands in patent contrast with the linguistic diversity of the region described in the first section above. While this has been put in place for specific reasons and has played a fundamental role in assuaging conflict and ensuring the preservation of the Dutch language, the current social conditions of the BCR and the changed power relations between French and

Dutch seem to warrant a call for an adaptation, at least in part, of the legislation to the multilingual reality of the city. Furthermore, societal and institutional attitudes towards bilingualism have changed in recent years, as suggested by the French and Flemish communities' initiatives towards bilingual education and by the steady increase in the number of francophone pupils attending Dutch-speaking schools. Yet, this remains a very recent trend.

Conclusion

Is Belgium a case of genuine non-territorial autonomy? The country has certainly gone very far along the path of federalisation and arguably is one of the most decentralised states in Europe. According to the aggregate value of the 'regional authority index' developed by Hooghe et al. (2010, pp. 349-60), the country ranks third among the 42 democracies surveyed by the authors, with a noticeable increase since the constitutional reform of 1970. Focusing more closely on the communities, which embody the principle of non-territorial autonomy in the institutional architecture of the country, and relying on the measure of self-rule in the regional authority index, we can draw four major conclusions. First, Hooghe et al. confirmed the progressive increase in the autonomy of the communities. Between 1970 and 2006, the values of the aggregate index for self-rule increased from 4 to 9 in the case of French community, from 4 to 10 for the German one, and from 4 to 13 for the Flemish one. Second, the three communities show some variability, with the Flemish one displaying the highest score (13 on a 15-point scale), the French one the lowest (9) and the German-speaking one somewhere in between (10). This result, however, is certainly influenced by the fact that the Flemish community and region have coincided since 1980. Third, and as a result of the previous

consideration, since 1995 the Flemish community has ranked very high as compared with the subnational authorities in the other countries included in the study, slightly above the German *Länder* (for the period 1995-2006), and just below the US federal states and the Swiss cantons. Fourth, the authors also confirm the very low fiscal autonomy of the communities—in fact, nonexistent in the case of the French and German-speaking ones. It is, however, higher in the Flemish case because of its coincidence with the region, for reasons explained above. Thus, though with some caveats, the evidence provided by Hooghe et al. seems to confirm that the Belgian communities enjoy a somewhat variable but genuine autonomy.

What about the non-territorial character of the Belgian case? Belgium's genuine non-territorial autonomy is very limited in geographical scope and is influenced by the strong territorial dynamics that have clearly driven the process. However, the area where this truly applies, the BCR, is of fundamental importance at the social, economic and symbolic level, not only for Belgium, but for Europe more generally. Hence, the non-territorial component of the Belgian federation is much more important than its geographic size would suggest. As seen in the previous section, territoriality would have been impossible in the BCR. In this context, non-territorial autonomy has offered a clever and effective solution to conflict management. It contributed to slowing down the process of assimilation to French of the Dutch speakers living in the city, thus satisfying the demands of the Flemish movement for cultural protection and soothing the confrontation between the two language groups in the city.

Yet, an objective assessment cannot ignore some less positive outcomes. First, conflict has not been completely resolved, but has rather been channelled into political

institutions and concentrated in border areas. This is not necessarily a negative feature, as it would be too optimistic to expect that complete conflict resolution might be achieved. A comparison between Belgium and other cases highlights the reality that non-territorial autonomy often has an implicit territorial dimension. The different sets of rights and duties of residents on either side of the border defining the area where non-territorial autonomy applies can lead to confrontation over the definition of its contours, since the stakes for different categories of people may be quite high. Second, this form of autonomy has stimulated the further separation of the two communities. This is hardly surprising as the principle of separation was already embedded in the consociational mechanisms of Belgian democracy before the process of federalisation began, and it is implicit in the idea of autonomy itself. What is potentially threatening for the stability of the system, though, is the fact that the specific adaptation of such a principle to the linguistic conflict has substantially weakened the Belgian public sphere and the capacity of the two communities to communicate with each other. The dual monolingualism rigidly enforced in the educational system of the BCR represents a clear example of such separation and of its potentially negative side-effects. While its adoption may be explained by well-known historical reasons and it has contributed significantly to the cultural protection of the Dutch-speaking community in the capital, there seems to be a strong case for revisiting this arrangement, or at least parts of it, given the changed sociological profile of the BCR and evolving power relations between Francophones and Dutch speakers.

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Notes

1. The question asked referred to what language the interviewees spoke only or most frequently. The data provided in the text refer to the current Belgian regions, which did not exist at the time of the census. Using the then Brussels administrative arrondissement, which included the district of Halle-Vilvoorde, currently in Flanders, the percentages are as follows: 57.1% were Francophones, 42.5% Dutch speakers and 0.3% German speakers (calculated from INS, 1954).

2. In 2008, the share of foreigners in the total population was 9.1%. Since successive reforms of the process of naturalisation have made it substantially easier to obtain Belgian nationality, however, figures based only on the current foreign population may lead to an underestimation of the total population of foreign origin in recent years.

3. The census asked which language was regularly used by the respondent and thus did not provide clear information about bilingualism and monolingualism.

4 . The number of parents, among those resident in Brussels, sending their children to Dutch-speaking maternal schools (kindergarten) increased from 10.4% to 24.6% and those sending them to Dutch-speaking primary schools from 8.9% to 19.2%, respectively, between 2000 and 2012 (Janssens, 2013, pp. 55-9).

5. An exception to this rule is the responsibility for the pedagogical coordination of minority schools in the municipalities with facilities, which is exercised by the community of the linguistic group to which the minority belongs. Administratively and financially, however, the schools are set up and managed by the region in which they lie (McAndrew & Janssens, 2004, p. 71).

6. Although they provide recognition of some cultural and linguistic rights and differentiated services based on a linguistic personality principle that derogates from the territorial character of the area in which they lie, the facilities offered to francophone minorities in Flanders and to Dutch-speaking minorities in Wallonia cannot really be considered as forms of non-territorial autonomy because the special services offered to these minorities are managed by the community exercising authority over the relative territory—i.e. the Flemish one in Flanders and the French one in Wallonia.

7. The government of the Brussels-Capital Region is formed by four ministers plus the Minister-President. Two of them must be Dutch-speakers and two Francophones. The Minister-President is by convention Francophone.

8. This, however, is a very recent phenomenon dating from around the mid-2000s.

9. This information has been provided by the Flemish Ministry of Education and Training upon the author's request.

10. In 2014, the bilingual section of the Council of State rejected the Peeters directive, ruling that residents of the six municipalities willing to receive administrative documents in French had to apply for them once every four years (Graziadei, 2015).

11. This was already pointed out by Witte (1987, pp. 57-72) at the end of the 1980s.

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