

## ADAPTIVE FEDERALISM IN BELGIUM

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### I. INTRODUCTION

There has been little coverage, in Australia, of the major constitutional changes which have been occurring in Belgium recently. I am not speaking here of the development of a quasi-federal structure for the European Community (now over 30 years old) and the role of Belgium in that process. Rather, I am referring to the major changes which have been wrought to the internal political structure in Belgium.

In fact, Belgium is the newest federal state in the western world.<sup>1</sup> It is a federal state in an adaptive phase. Less than twenty years ago, it still had a

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1 Some may argue that the new Belgian constitutional structure fails to measure up as "truly" federal, that is, it fails to accord with classical definitions of what is federal. My own view is that the new structure, as proposed, is clearly federal. I say, as proposed, because, currently, the two major regional political entities are not separately elected; they are made up from politicians who *also* serve in the National Parliament. Elected representation is scheduled for introduction for these two bodies (the two lesser regional entities already enjoy it) during the current Third Reform of the constitution, however. Even as it presently stands, I would argue that the extant political structure in Belgium is federal.

highly centralized political structure, a legacy, more than anything else, of the twenty year period of French occupancy which ended with Napoleon's defeat at the Battle of Waterloo (located in present day Belgium) in 1815. How then, has Belgium come to this constitutional crossroads and what has been the outcome of this process of change? The principal aim of this article is to suggest some answers to these questions. A related aim is to canvass what, if any, lessons for Australia may lie in the Belgian experience.

The format of the article is as follows. In the Part next following, I examine, briefly, Belgium's political history. I then review the main features of the Belgian Constitution and the resolution of the country's long-running language dispute. In Part 3, I outline the principal constitutional changes effected over the last two decades. The article concludes with a critical discussion of the current Belgian constitutional adventure and some reflections on the Australian constitutional experience.

## II. PRELIMINARY CONSIDERATIONS

### A. THE HISTORICAL POLITICAL SETTING

Belgium has a population of just under 10 million. It covers an area of approximately 31,000 square kilometres. It has the highest population density of all the major European nations.<sup>2</sup> It is a nation sharply divided along language and ethnic lines. Like Switzerland, it is a nation which straddles the intersection of the two great (Latin and Germanic) western European cultures.<sup>3</sup> Belgium is now becoming even more like Switzerland in that a federal structure is being used to help deal with this reality.

Belgium, historically, has been relatively prosperous, at least when it has not been being used as a convenient battlefield by its more powerful neighbours.<sup>4</sup> It continues to enjoy significant prosperity today. Like most of Europe, its per capita income exceeds that of Australia. The social service infra-structure is comprehensive and, although the national debt is huge (about BF 7000 billion or about \$A220 billion) it seems most of it comprises funds lent by Belgians to themselves. The currency is stable, incomes are high and prices and inflation are moderate. Moreover, with Brussels clearly establishing itself as the capital of Europe and a buoyant local economy, future prospects appear propitious.

Visitors are often surprised to discover that there are three official language communities in Belgium (Dutch, French and German) and three distinct geographic regions in which each language predominates. The German speaking part of Belgium (which was added to the country in 1919 pursuant to

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2 *Europe in Figures*, Office for Official Publications of the European Community, Luxembourg, 1988, Section 8.

3 *The New Belgian Institutional Framework*, Group Coudenberg, Brussels, 1989, 4. The rest of the western European countries lie in one camp or the other.

4 *Id.*, 5.

the Treaty of Versailles and which briefly reverted to Germany during the Second World War) is in the extreme east of the country. It covers only a small area and accounts for less than 1% of the total population. The balance of the population is approximately 60% Dutch speaking and 40% French speaking. The geographic divide which separates these two major linguistic groups runs, roughly, horizontally across the country. The regional names for these two *geographic* regions are Flanders (for the Dutch speaking northern region) and Wallonia (for the French speaking southern region). The capital, Brussels, is an 80% French speaking enclave, just north of the divide, in Flanders.

But where lie the linguistic origins of Belgium? The Romans had invaded the Low Countries,<sup>5</sup> by the first century BC. The resistance of the competing Germanic tribes was too strong to permit their complete permanent conquest, however. The Franks were the most successful of these tribes. Ultimately, they ended the Roman occupation in the Low Countries (and the Roman occupation further south). Their cultural influence was, however, never sufficient to oust the Roman languages. Thus, the linguistic frontier between Romance and Germanic languages was fixed at the point of maximum (stable) Roman conquest. It remains at this point, essentially, today. That is, the linguistic dividing line, which separates Flanders and Wallonia in modern Belgium has been in place for some 2,000 years.<sup>6</sup>

The modern political entity Belgium dates from 1830. In that year, the historical fact of continuous foreign domination finally ended with the Belgian Revolution against their ultimate colonial masters, the Dutch.<sup>7</sup> The immediately previous period of French occupation (from 1794 until 1815) was far more important in shaping the political framework of modern Belgium, however. The Napoleonic era left Belgium with a highly organized and *centralized* political structure, modelled on that of France.

## B. THE CONSTITUTION OF 1831

The new Belgian State was established with a written constitution (from 1831) which survives to this day. It established Belgium as a unitary state with a bicameral legislature and a constitutional monarchy.<sup>8</sup>

The constitution is laid out, in the accepted way, under a number of major headings. The pre-eminent heading is "Title". Within the Titles, the basic

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5 Present day Holland, Belgium and Luxembourg.

6 *Low Countries, History of*, Vol 23 Macropedia, Encyclopaedia Britannica, Chicago, 1986, 315.

7 Following the defeat of Napoleon in 1815, the Congress of Vienna, in the same year, reunified Belgium Holland and Luxembourg under King Willem of the Netherlands.

8 The bicameral National Parliament remains, as does the constitutional monarchy but, as we shall see, Belgium is no longer a unitary State.

provisions (known as articles rather than sections)<sup>9</sup> are then further subdivided into Chapters and Sections.<sup>10</sup>

Title 1 deals with the territorial division of Belgium. Title 2 contains the Belgian Bill of Rights. It includes over 20 articles which stipulate an extensive agenda of guaranteed individual rights. These include equality rights, rights to education, religious and press freedom, restraints on the operation of the criminal law and a right to peaceful assembly. Until very recently, the application of the Bill of Rights was not subject to judicial review. It is now partly so subject. Historically it thus has acted as a non-judicially enforceable constitutional constraint on legislative and administrative excess.

Title 3, "The Powers" is the most extensive in the constitution. Article 25 stipulates that all powers emanate from the nation, thus neither the people nor the King are the ultimate repository of sovereignty, apparently. Article 26 then vests legislative authority in the King, the House of Representatives<sup>11</sup> and the Senate. Chapter 1 of Title 3 sets down the structure, procedures and powers of the two Chambers of the National Parliament in articles 32 to 59. Chapter 2 of Title 3 provides a striking contrast with the Australian Constitution for, in it, the role and powers of the King are set out in great detail. Article 60 provides, *inter alia*, that all women are perpetually excluded from exercising royal authority in Belgium. Chapter 3 of Title 3 prescribes the manner in which judicial power is to be exercised and the institutions which are to exercise it. Title 4, entitled Finances, establishes Parliamentary control of public revenue raising and expenditure in articles 110 to 117. Title 5 regulates the constitutional position of the Belgian military. Titles 6 and 8 govern a number of miscellaneous matters, including the nomination of Brussels as the national capital. Also, article 130, in Title 6, prohibits any suspension of the constitution in whole or in part.

Title 7 contains, in article 131, the mechanism for changing the Belgian constitution. Initiatives for change need to come, by way of a declaration, from the National Legislature. When such a declaration of the need for change is

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9 Though sometimes the terms are used interchangeably in the literature.

10 A point about the numbering of all these entities ought to be made at this juncture. The European system for interpolating new sections into a numbered document such as this follows a model somewhat different from our own, though the result is much the same. Commonly, when faced with the need to insert a section where one already exists we resort to adding a capital "A" (or "B" etc as the case requires) to the number of the new section to distinguish it from the adjacent older section. Thus the Financial Agreement was inserted in the Australian Constitution in 1929 as section 105A. In the European model, Latin-based suffixes, similarly indicating order of insertion, are added to the relevant numbers. Thus, in the Belgian Constitution Title 1 is followed by Title 1bis and article 3 is followed by article 3bis and article 3ter and so on.

11 The House of Representatives is also referred to as the Chamber of Representatives in the constitution, for example in article 47ff.

made, both Chambers of the National Parliament are dissolved. A national election ensues and the new Parliament debates the proposed changes and votes on them. The quorum for such a debate is two-thirds in each Chamber and no change may be adopted unless it secures at least two-thirds of the total votes cast.

### C. RESOLUTION OF THE LANGUAGE ISSUE

Although the new constitution of 1831 provided for freedom in the use of language, in article 23, French remained Belgium's sole official language for many years.<sup>12</sup> Economically, Wallonia was the dominant region. It had major coal deposits and it developed a thriving iron and steel industry. This economic power led to political domination of the country, notwithstanding that the Flemish were the majority group.<sup>13</sup> The educated classes in Flanders all were bilingual as a matter of practical necessity. This, of course, tended to reinforce the dominance of French language and culture.<sup>14</sup>

Not surprisingly, political agitation for improvement of the language rights of the Flemish was an aspect of early Belgian political life. Energetic campaigning produced a number of gradual changes. In the 1870s, approval was given for the use of Dutch in criminal courts. In 1883, Dutch was finally approved as a language of instruction in *Flemish* secondary schools and in 1898 laws began to be published, at last, in both Dutch and French. During the First World War, the occupying Germans tried to capitalize on the internal antagonism by supporting demands for Flemish autonomy. The Germans established a Council of Flanders and a Flemish University. Most Flemings were hostile to the occupying forces and refused to recognize either institution, however.<sup>15</sup> The next period of major change was during the 1930s. The University of Ghent<sup>16</sup> became a Dutch speaking university and Dutch was adopted as the sole and compulsory language for many official purposes throughout Flanders.<sup>17</sup>

A number of forces were driving these changes. First, there was the gradual extension of voting rights (by 1949 universal suffrage was achieved)<sup>18</sup> which,

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12 This was, in part, another legacy of the French occupation prior to 1815. During that time, French was made the sole official language.

13 They have become more so with the passage of time. The Flemish now enjoy a majority of about 60:40.

14 *The New Belgian Institutional Framework*, Note 3 *supra*, 8-10.

15 *Low Countries, History of*, Note 6 *supra*, 354.

16 Ghent is the principal city of Flanders (outside Brussels). It is referred to as the capital of Flanders.

17 *The New Belgian Institutional Framework*, Note 3 *supra*, 9.

18 Article 47 of the Belgian Constitution now guarantees universal suffrage to all citizens over 18 years of age. The extension of the franchise was extraordinarily delayed by Australian standards. Interestingly, Belgium is one the countries, like Australia, to have compulsory

of course, tended to shift political power towards the numerically stronger Flemish. Secondly, the economic strength of Wallonia began to decline as its heavy industries lost out to more efficient international competitors. At the same time, rapid industrialization of the north was taking place. Thus the Flemish were swiftly catching up in terms of economic prosperity and their ascendancy in sheer numbers continued to grow.<sup>19</sup>

Major reform of language laws followed in 1962-63. These laws brought about a high degree of unilingualism in Flanders in education, the civil service and the army.<sup>20</sup> These reforms were driven by Flemish demands. It is important to note that the thrust for language rights was pervaded by a demand for a *unilingual* structure for Flanders. That is, the Flemish were not prepared to accept bilingualism in Flanders. They reasoned that, because of its dominance *internationally* (vis a vis Dutch), if French were allowed to enjoy any official status, Dutch would not be able to compete and thus would continue to languish as a subsidiary language. The same problem did not confront Wallonia. The historical political-economy of language in Belgium has meant that there has been little need for the French speaking region to speak other than French. Despite the relative economic and numerical decline of Wallonia, French language and culture have yet to experience any serious threat to their continued vitality.

### III. THE NEW FEDERAL SYSTEM

#### A. PREAMBLE

The momentum developed in the quest for language reform has now led to a series of major constitutional reforms over the last two decades. Further reform is envisaged. It is important to stress that this process of reform has been characterized by an absence of serious violence, notwithstanding the long-running nature of the language dispute and the antagonism which has flourished across the community divide.<sup>21</sup> The most significant legacy of community

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voting. (In the European Community, voting is also compulsory in Italy and Luxembourg.) Article 48 provides that elections are to be based on a system of proportional representation, although the Senate is partly composed of members elected under a collegiate system (see article 53).

19 *The New Belgian Institutional Framework*, Note 3 *supra*, 10-11.

20 Previously, French retained an influence in these domains. In Walloon, Dutch has never provided any competition to French (see notes 13 and 14 and accompanying text).

21 *Id.*, 9. Probably the most divisive incident of this century came during the resolution of the so called, "Royal Question" shortly after the Second World War. It was indirectly related to the language question. King Leopold III, unlike his government and other royal brethren in occupied Europe, refused to leave the country as the Germans approached. The King was incarcerated in Germany for the duration. His return to the throne after the war was delayed whilst a referendum on his suitability was held. He received a comfortable

cleavage in Belgium has thus not been a Northern Ireland style, deeply violent impasse but, rather, continual political and constitutional development riven with political compromise.

The modern reform of the 1831 Belgian Constitution proper<sup>22</sup> is generally regarded as having taken place in three stages.<sup>23</sup> The First Reform was in 1970; the Second Reform in 1980 and we are currently in the midst of the Third Reform, which began in 1988. It must be said that the Belgians have created a most complex federal structure with this series of reforms. Still greater complexity is promised for the future.

It was the movement for language rights which provided the momentum for much of what has happened since. The Flemish community has been pushing for greater Flemish autonomy in all areas, since the major problems with language were addressed. Since the 1960s, Walloon leaders, such as Andre Renard, have also favoured federal style reform as a mechanism to protect their cultural, political and *economic* interests as a diminishing minority group.<sup>24</sup>

Throughout the recent period of constitutional reform, the governance and control of Brussels has presented singular difficulties. This moderately sized and attractive city of 1.3 million is not only the capital of Belgium, it is also the capital of Europe. And as the European Community moves closer to some sort of federal political form,<sup>25</sup> Brussel's status as a centre of power is steadily being enhanced. In the battle across the linguistic divide, it is a major prize. The city itself is predominantly French speaking<sup>26</sup> but it is located within Flanders. Devising an acceptable system to devolve power to the Brussels region has proved very difficult indeed, for all concerned.<sup>27</sup>

overall majority, but there was a strong majority *against* his return in Wallonia. When he returned to take the throne in July 1950 a wave of demonstrations and protest strikes ensued. The King abdicated very shortly after this.

22 Rather than, simply, variation of the language statutes.

23 There were two previous reforms of the constitution, in 1892 and 1921. They were concerned with the voting franchise, however, not with reform of the apparatus of the State itself.

24 *Low Countries, History of*, Note 6 *supra*, 354.

25 The European Community could not currently be described as federal in any customary sense of that word. The present structure might best be described as pre-federal or confederal. The central governmental institutions of the European Community remain subject and, ultimately, subordinate to the sovereignty of the 11 member states.

26 Approximately 80% of the population speak French and 20% Dutch. Many French speakers are of Flemish origin, however. These families have, simply, over the years, taken on the principal tongue of the city in which they live for practical reasons. Also, there are many non-Belgians living in Brussels and these tend to swell the numbers for the dominant language.

27 The small German speaking region has not been a serious cause of concern in this regard.

## B. THE FIRST REFORM (1970)

The First Reform, of 1970, recognised that there were four language regions in Belgium; the unilingual Dutch, French and German language regions and the bilingual Brussels region.<sup>28</sup> These then were *geographical* areas of the country which were divided on a territorial basis according to the language predominant in each geographic area. This was, ultimately, the least important of the *three* divisions at the regional level which make Belgian federalism so remarkable. The same reform *also* recognised that there were three *Communities* in Belgium; the French, the Dutch and the German.<sup>29</sup> The emphasis here was on divisions according to *persons* not *geography*; rather after the fashion in which we speak of the Italian community in Australia. Councils of the Communities were established *but* the members of the Councils were drawn from the National Parliament.<sup>30</sup> That is, the members of the National Parliament also got to wear hats as *regional* politicians. If that wasn't confusing enough, the 1970 Reform also recognized three *Socio-Economic Regions*, in addition to the four *Language Regions*. These were the Walloon Region (which encompassed the German speaking region in *this* carve-up), the Flemish Region and the Brussels Region.<sup>31</sup> The important divisions, then, are the *Communities* (hereinafter, the Communities) and the *Socio-Economic Regions* (hereinafter, the Regions).

This remarkable system of overlapping divisions did not come into existence in its entirety in 1970, though the ground work was all laid at that time. Important powers over linguistic matters were devolved to the Communities in 1970 but little else. A protracted political debate prevented the Regions from operating until 1980. The First Reform, thus, did not greatly change the centralized system of Government.

## C. THE SECOND AND THIRD REFORMS (1980-1991)

All the institutions of the second tier of government are now in place. And many more powers have been devolved to these regional entities. Although still legally separate, the Community and Region are merged, for management purposes, in Flanders (outside of Brussels). There is thus, effectively, a single Flemish Council (the regional law<sup>32</sup> making body) with its own Executive (or government). In Walloon, however, there is both a *Community* Council and a *Regional* Council (with their respective Executives).

The governance of the Brussels area is now<sup>33</sup> controlled by an *elected* Council plus three other Commissions which draw their membership from the

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28 Title 1, article 3bis.

29 Title 1bis, article 3ter.

30 From the appropriate linguistic group.

31 Title 3, article 107quater.

32 Regional laws are actually known as *decrees* to distinguish them from the *laws* of the National Parliament. Laws in the Brussels region are known as *ordinances*.

33 Since mid-1989.



two language groups.<sup>34</sup> The Council of the German Community is also elected.<sup>35</sup>

Rather simply put, it is the Flemish, with their superior numbers who have pushed for *Community* Councils and the Walloons who have pushed, as a minority protective measure, for the *Regional* Councils.

In the process of devolving powers to this plenitude of regional entities, some powers have gone (in the Second and Third Reforms) to the Communities and some to the Regions. Basically, the Communities have powers over what are termed cultural matters. These include language and most educational matters, health care, and a wide range of social welfare issues.<sup>36</sup> The Regions have substantial economic management powers (subject to National override in certain cases), planning powers, environment protection responsibilities and energy management powers. They also are responsible for major public works and roadworks, housing and have parallel power with respect to initiating scientific research.<sup>37</sup> Perhaps even more remarkable, from an Australian view point, is the power being given to Regions to construct their own international export policies and to grant work (though not residence) permits to foreign workers.

Thus far, the Communities and Regions are almost completely fiscally reliant on a share of National taxes.<sup>38</sup> Regional taxes, such as those on lotteries, distilleries and electronic games, are of minor importance. A reducing fiscal equalization program (known as the *national solidarity contribution*) will take effect over the ten year period from 1990. Initially, it will assist Walloonians by maintaining the old (National Government) expenditure bias towards that region, although assistance will gradually be reduced over this term.<sup>39</sup>

It must be remembered that the politicians of the principal regional entities (of Flanders and Walloonians) are *not* elected *as politicians of those regional governments*; they are chosen from within the ranks of the National Parliament. However, this system of double office holding is scheduled for abolition in the third *phase* of the current Third Reform of the constitution. The respective Councils would then be elected. It is also proposed that the Regions would take over greater responsibility for international relations.

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34 Title 3, article 108ter. See, also, the Special Law of January 12, 1989 concerning Brussels Institutions and the Ordinary Law of January 12 1989 concerning election of the Council of the Metropolitan Region.

35 Title 3, article 59ter.

36 Title 3, article 59bis; and the Special Law of August 8, 1988.

37 Special Law of August 8, 1988.

38 Special Law of January 16, 1989 concerning the financing of Communities and Regions

39 *The New Belgian Institutional Framework*, Note 3 *supra*, 36; 40.

#### D. THE COURT OF ARBITRATION

The creation of this component in the new Belgian political order is the major *judicial* change to have emerged in the political restructuring of the country. The Second Reform of 1980 provided for the establishment of Court of Arbitration.<sup>40</sup> This is something of a misnomer as the court is, essentially, a constitutional court. The title "Constitutional Court" was rejected, however, apparently because the name evoked the possibility of control of the legislature by the court.<sup>41</sup> In the event, the court was not established, fully, until 1985. Initially, standing was only provided to the political institutions in the system, that is, there was no individual standing. Moreover, the orthodoxy is that there is no "hierarchy of laws" (as the Belgians describe it) or paramountcy rule to cover conflicts between laws of the National Parliament and those of the regional Councils. The court *is*, however, able to strike down laws which are *ultra vires*, that is beyond the constitutionally stipulated power of the particular legislature.

The Third Reform (phases one and two of 1988 and 1989) has widened the standing rules substantially and also the court's jurisdiction. Now any person "interested" in a relevant matter can seek to bring it before the court. Furthermore the court can review both national and regional laws to ensure that they comply with a *selection* of sections in the Bill of Rights.<sup>42</sup> Thus far, the court is only able to apply articles 6, 6bis and 17 from the Bill of Rights. The first two guarantee equality of treatment before the law and prohibit discrimination. Article 17 sets out important education rights.

The membership of the court is carefully controlled to maintain a balance between the two major linguistic groups. There are two Chief Justices, one from each region and they serve for twelve months each on an alternate basis. The court has twelve members, six French speaking and six Dutch speaking. Half its members have to be judicial or academic lawyers of long standing and the other half, former politicians. The court simply hands down decisions; it does not give written reasoned judgments. It seems that the political sensitivities involved in making judicial decisions preclude this.

The Court of Arbitration potentially has the power to be a serious force indeed in the new political structure. It has been given significant powers and can widen its brief by interpretation of what is a division of powers issue and by a wide reading of the Bill of Rights provisions it is authorized to apply. There are powerful political constraints in place, however. The judges are acutely aware of the political sensitivity of their decisions. The omnipresent Germanic - Roman divide runs right through the court itself, after all. Nevertheless, given the wide range of its authority, it is very difficult to see the court side-stepping significant controversy in the longer term.

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40 Title 3, article 107ter.

41 *The New Belgian Institutional Framework*, Note 3 *supra*, 33.

42 Title 3, article 107ter.

#### IV. CONCLUSION

It must be said that the Belgians have shown energy, skill and resourcefulness in crafting, in stages, their new political structure. The constitution is being moulded and shaped to meet the demands facing the country as it approaches the 21st century.

The result of all these labours is highly complex, however. Certainly, working from an English translation of the Belgian Constitution, as I have, has possibly heightened this apparent complexity. Nevertheless one can reasonably describe the federal political structure emerging in Belgium as being not a little byzantine. Apart from the structural complexities, the wording of some of the new provisions is quite tortuous.<sup>43</sup> I doubt they would have passed a plain Dutch or plain French drafting protocol. They certainly do not translate into plain English. Article 26bis provides a good example:

The Laws enacted in the implementation of Art. 107quater determine the judicial force of the rules, which are enacted by organs created by them in matters which they determine.

They may confer upon these organs the power to enact decrees having the force of law in the area and the manner which they establish.

One must not, however, underestimate the political-constitutional achievements of the Belgians. The makings for significant civil violence have always been at hand, yet this menace has, for the most part, been avoided. There has been, on both sides it would seem, a real commitment to the politics of negotiation. The changes achieved are often riven with compromise but change *is* being accomplished and in the face of some extraordinary obstacles. Perhaps there is a collective recognition by the two sides that, unless they ultimately strike a deal when in dispute, the option is a stand-off which could fracture the nation, with France and Holland happy to pick up the pieces. Or, to put it another way, Flanders and Walloon, despite their differences, ultimately have far more in common with each other than with either of their respective language-related neighbours.

Some of the more difficult obstacles have been dealt with, it must be admitted, by collective acts of political neglect. The failure to implement a formal paramountcy rule falls, plausibly, into this category. The inexactness surrounding the jurisdiction and procedures of the awkwardly named Court of Arbitration is also a product, I suspect, of an implicit agreement to put off some hard decisions. Likely this approach is simply storing up difficulties for the future. For instance, the apparently not deeply thought-out way in which the Court of Arbitration has been given power to give effect to certain sections of the Bill of Rights would ring alarm bells with many constitutional lawyers, especially in Canada where the political impact of the Charter of Rights has

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43 Indeed delphic to the anglo-celtic mind at least.

embroiled that document in continuous controversy.<sup>44</sup> The nub of the problem is the appropriateness of allowing unelected judges to second-guess legislative policy on the basis of the judges' interpretation of certain, generally expressed protections of individual rights.<sup>45</sup> My impression is that, so far, this concern has not gained much currency in Belgium. It may be that, in a country so acculturated to perpetual political negotiation, constitutional loose ends hold far fewer terrors than in other jurisdictions. Doubtless the shapers of the new order are *aware* of the loose ends but perhaps they reason (based on much past experience) that they will be able to deal with them when they have to. In the mean time, the thing to do is get done what can be done now.

Finally, are there any lessons for Australia in these developments in Belgium? I believe the answer is yes. The Belgians, who have had their constitution for some 70 years longer than us, do not view it as some sort of perpetually bogged juggernaut. Rather, they regard it as a highly useful instrument for contemporary political problem solving. This suggests a possible key to a deeper understanding of why it is so difficult to breath some explicit<sup>46</sup> life into our own constitution. In making this comment I am *not* ignoring the incontestable differences in the two constitutional change mechanisms. Section 128 presents a genuine obstacle to making the Australian Constitution responsive and adaptable. But we should be wary of placing all the blame there. Cultural attitudes antithetical to change, which permeate many sectors of Australian society, are also important. What I am suggesting is that cultural sentiments are an important explanatory factor in Belgium's relative willingness to adapt politically.

Of course we have powerful differences of opinion about how our own political structure ought be developed in Australia. The social, economic and political forces generating those differences would appear, however, to be far less deep seated than some of the forces at work in Belgium, which have pedigrees stretching back some 2000 years. Yet, in Australia, the operation of the constitutional political process (and public policy making generally) produces a litany of stalemates. The Belgians seem to have found a mechanism (albeit infused with compromise) for breaking many of their public policy log-jams despite their deep antagonisms. We don't even seem to be interested in

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44 For instance, in the 1987 volume of the *Osgoode Hall Law Journal* (a leading Canadian law journal) almost half the articles are devoted to critical Charter analysis.

45 Interestingly, the court has already granted standing to a corporate entity seeking to bring a Bill of Rights action.

46 Explicit, as in explicitly and thoughtfully adapting the constitution in contrast to the present practice of happily tolerating and even cheering endless High Court ad hoc modification of the document whilst, at the same time, repeatedly refusing to sanction any but the most trivial formal changes.

searching for such a mechanism. How *does* one explain the great Australian love-affair with strenuous indecision?

A number of difficult questions follow, as a matter of course, from these observations, including, what has determined these cultural predilections? I do not profess to have answers to these questions. Allow me to conclude by venturing a preliminary conjecture on the issue of cultural leanings, however. Belgium's position as a small *continental* nation abutting large, powerful and aggressive adjacent societies has had a potent influence on national perspectives. Notwithstanding an essentially conservative political tradition, Belgium has developed a noteworthy capacity for intelligent collective judgment on the timing of and need for constitutional change. Conversely, Australia's political culture has been deeply influenced by its 200 year, uninterrupted, isolated island status. We draw many strengths from that but it also has incubated inward looking and fairly unsophisticated (and highly abrasive) political habits. Our political culture appears confined to generating ever more strident political stand-offs as the sole response to the growing neuroses in the Australian political-economy. The resilience of this phenomenon normally is egregiously verified whenever we attempt formal constitutional change.