A DEMOCRACY IN ACTION

Belgian Government and Administration

by

NICO GUNZBURG

BELGIAN GOVERNMENT INFORMATION CENTER
630 FIFTH AVENUE, NEW YORK
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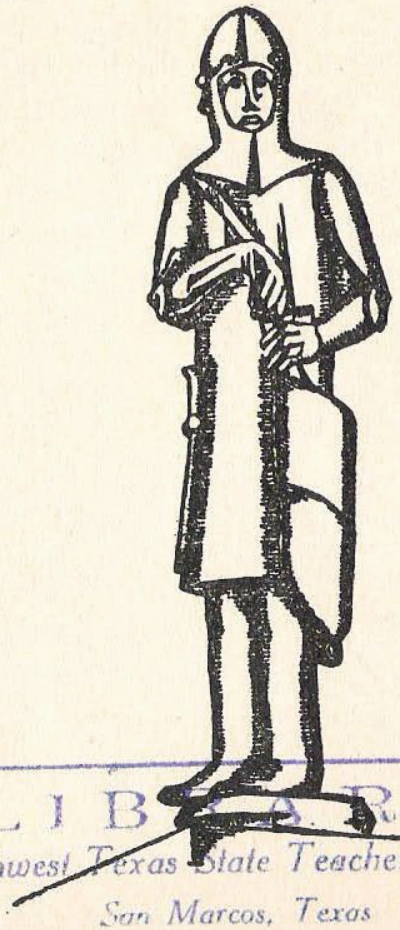

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A DEMOCRACY IN ACTION

TWICE in a quarter of a century, Germany has deliberately violated the neutrality of Belgium, in spite of repeated pledges to defend her independence. And twice in a quarter of a century, the Belgian people have been tortured and exposed to the cruelest exploitation by the Teutonic soldiery, backed up by a plundering and looting civil administration.

The people of Belgium have kept faith with the principles of freedom and democracy as outlined in their Constitution of 1831 — a constitution which, after more than a hundred years, still remains one of the most liberal in the world.

I. A Freedom-Loving People

The first acts of the Provisional Government of 1830 were the appointment of a commission to draft a Constitution and the convocation of a National Congress of elected representatives. Less than three months later, the 139 articles of the Constitution, establishing a parliamentary monarchy and proclaiming new freedoms for the people, were adopted by the Congress; its remarkably progressive character reflected the influence of the American Declaration of Independence, the French Declaration of Rights of Men and Citizens, British and French philosophy of the late eighteenth century, and finally, the "Joyous Entry"* and the municipal charters of the Belgian "communes," which the earlier conquerors of the country had been forced to adhere to by an unrelenting citizenry. Never were constitutional liberties expressed with greater preciseness and force than in Articles 6 to 24: equality of all citizens before the law without distinction to classes; individual liberty, guaranteed against any arbitrary encroachment, arrest, or prosecution; trial before a jury in all matters of felony and of political or

*When the princes made their first solemn visit to the towns under their command they usually granted some privileges or extension of privileges which were consigned in a document called "Joyous Entry."

journalistic offenses; abolition of arbitrary fines and punishment and of the penalty of confiscation; guarantees against attack on private property, except where demanded for the public good, and then only after due process of law and with just compensation, previously determined; freedom of creed and religion, of education, of press and of assembly; prohibition of censorship or exactment of security from writers, publishers, or printers; freedom of speech and use of native tongues; and, finally, the assurance that all of these freedoms are natural rights which neither government nor law can restrict or infringe.

Such are the foundations upon which rest the Belgian Government with its legislative, executive and judicial branches and, as outlined in the third section of the Constitution.

Article 131 provides for the possibility of amendment. The Legislative Power must designate the specific provision to be revised. In such a case, the two Houses are dissolved, and two newly elected Houses are summoned for the revision. The Constitution provides that two-thirds of the members must be present, and no amendment may be adopted except by a two-thirds vote in both Houses. This clause, however, has almost never been used. Only five constitutional amendments have been made — the first, September 7, 1893, and the latter four in 1920 and 1921, to extend the franchise and allow a greater number of citizens to participate in legislative elections. No other article has ever been modified, and the Constitution has remained as originally drawn up — a protecting shield for liberty. This liberty has always been staunchly defended. In 1856, Napoleon III attempted to restrict the freedom of the press, and when the Belgian government was asked in Parliament whether it contemplated any such action, Count Vilain, a former Member of the National Congress and Minister of Leopold I, replied with one word: "Never!"

II. The Legislative Power

The first provision of the third section of the Belgian Constitution, entitled "The Powers," states the general principle that "All power emanates from the people and shall be exercised as established by the Constitution."

One century after its formulation, this provision was interpreted in a judgment on June 26, 1930, by the Belgian supreme court. "Belgium," wrote the Cour de Cassation — Verbrekingshof "is a law-state in which the real sovereign is the law; the relations between the sovereign and the individual are determined by the same rules of justice as are the relations between individuals and never for reasons applying to the State alone."

The Constitution continues with a description of the three powers — the legislative, executive, and judicial.

Legislative power is vested in the House of Representatives, the Senate, and the King. The bicameral system, which existed in 1830 in almost all the democracies of the world, was accepted in the Belgian Constitution. According to the then prevailing conception, the Senate was meant to constitute the traditional resistance of the aristocracy to the rising democratic forces which displayed their might in the House of Representatives. There never have, however, been hereditary senators or members nominated for life in the Belgian Senate. The restrictions of eligibility lay in the fact that members of the Senate had to be forty years of age and had either to possess land or real property of a certain value or pay extensive taxes. Except for the age limitation, these restrictions have gradually disappeared so that now any citizen, male or female, is eligible for both Houses.

In 1830, the electorate was restricted, and only a small number of people could vote. The franchise was greatly extended by the 1893 and the 1920-21 amendments to the Constitution.

According to the Constitution, the total membership of the House (202 in 1940) shall not exceed more than one representative for every forty thousand inhabitants. The members are elected for four years by the male citizens who have reached the age of twenty-one. Any Belgian citizen, male or female, is eligible for office if he is twenty-five years of age or over. No other conditions are imposed.

However, although women may run for office (and a few have actually been elected), they have not yet obtained complete suffrage. Only a small number may vote, namely, the widows and

mothers of men who died in the first World War, and those women who distinguished themselves by their patriotism during the same period.

As for the Senate, the same body of voters elects, for a four-year term, a number of senators equal to half of the number of representatives, 101 in 1940. To be eligible to the Senate, candidates, male or female, must be forty years old and belong to one of the twenty-one categories fixed by the Constitution. These categories include all who are assumed to be prepared for political life by virtue of their education, industrial or commercial position, previous political activity, or certain social, professional, or judicial qualifications.

Besides the senators elected by direct vote, there are a number of provincial senators (44 in 1940) who are elected by the nine provincial councils in such a manner as will guarantee impartiality of choice. These candidates must be citizens and not less than forty years of age; no further qualifications are required.

A third category includes the so-called "co-opted" senators. Their number amounts to half of that of the provincial senators. They are elected by the two previous categories of senators and must be Belgian citizens and forty years of age. The purpose of this amendment was to include in the Senate those citizens distinguished for their scientific, commercial, or social skills, who might be reluctant to expose themselves to the compromises and inconveniences of political campaigns.

Finally, in conformity with the monarchic tradition, the sons of the King or, failing them, the Princes of the branch of the royal family in direct succession, become senators, by right, at the age of eighteen, with, however, no deliberative voice until the age of twenty-five.

Elections are regulated by the system of proportional representation, allowing seats in both Houses to minority parties strong enough to poll a relatively high number of votes.

The number of votes cast in an election is divided by the number of positions to be filled, the quotient being the number of votes necessary to elect a candidate. Each party arranges its candidates

according to first, second, third choice, and so on. Each candidate is elected as soon as he receives the quotient, and the party elects as many candidates as it has completed quotients. After the candidates reaching full quotient are elected, the party having the largest number of votes left over fills the last position.

Proportional representation was added to the Constitution in 1920. In fact it has been a part of Belgian electoral legislation since 1899.

Howard Lee McBain and Lindsay Rogers, professors at Columbia University, in their book on *The New Constitution of Europe,* published in 1923, declared that the Belgian system was "the oldest thoroughgoing system in Europe and may be regarded in some respects as the parent of many other systems." They add that this system had longer trial than any other in Europe and had had, on the whole, salutary results.

To understand this electoral system better, it may be added that the 200 members of the 1830 National Congress were elected by about 30,000 voters, the population then being about 4,000,000. Before the 1893 Amendment to the Constitution, there were 137,000 voters. The revision gave the franchise to 1,370,000 citizens, or almost ten times as many as had previously voted out of a population of about 8,000,000. In the last election held before the war, 2,300,000 persons voted, out of a population of 8,386,000 inhabitants.

Very likely women's suffrage may be conceded in Belgium after the war. The abolition of restrictions in the categories of citizens eligible for the Senate may slightly increase the number of candidates, but on the whole, the Belgian people are fully represented in the two houses of Parliament.

The rights of the House of Representatives and the Senate are equal, and both possess the power to initiate and amend legislation. They also possess broad autonomy over their agendas and discussions of proposed laws. Each elects a Bureau composed of a president and two or more vice-presidents and secretaries. Sessions are governed by rules for procedure established by each of the Houses.

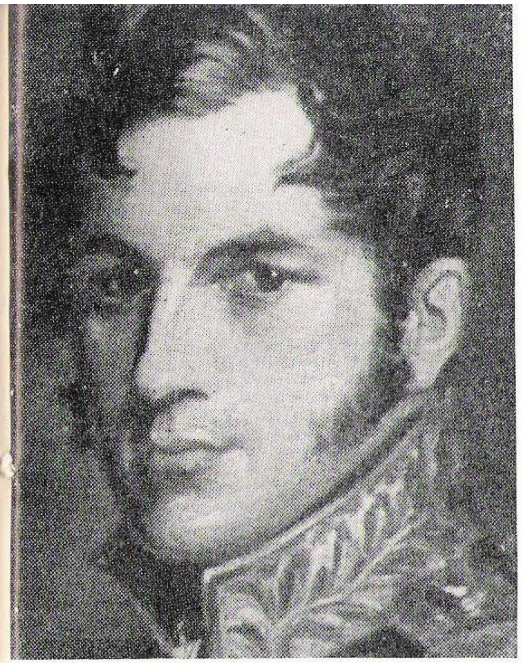
When a bill is introduced in either of the Houses, it is first examined by a Committee, which appoints a reporter. In the House of Representatives, the reporters of the various committees convene as a Central Committee, the reporter of the Central Committee reporting to the House. Sometimes, for more important measures, a special committee is formed with one or two reporters. The reporter leads the debate in the House or Senate. At that stage, the discussion is always public, except in very exceptional cases, where such procedure might endanger the State. The President may, upon request of at least ten members, decide that the House shall sit in closed session.

The votes, first taken on the individual sections of the proposed measure, may be recorded by a show of hands or by a roll-call.

The Constitution guarantees complete personal freedom to members of Parliament through two provisions: Article 44 provides that they cannot be prosecuted or investigated for expression of an opinion or a vote in the exercise of their functions; and Article 45 provides that a member of Parliament is immune against detention and indictment during a Parliamentary session, unless such action is authorized by the House of which he is a member or unless he is caught in the act of committing a crime. If, however, under these conditions, a member of Parliament should be detained or prosecuted, he must be freed and investigation suspended, if so requested by the House of which he is a member.

It is in the Parliament that the parties fight out their program. It should be noted that in Belgium, as in most European countries, controversies generally center around ethical, religious, and economic problems; and opposition is much clearer and more acute than in the relatively younger countries, like the United States, where, to Europeans, the differences between the two major political parties appear insignificant in comparison.

At the time of the Belgian Revolution in 1830, only two parties existed — the Catholics and the Liberals. In order to assure the success of the revolution, a truce was declared. After some years, when Belgium's independence seemed solidly established both internally and externally, this truce was renounced. Violent clashes



The Belgian Dynasty. — From left to right: Leopold I (from a painting in the Brussels Palace); Leopold II (from a photograph); Albert I (from a drawing by Baron Isidore Opsomer); Leopold III (from a drawing by Cor. Visser.)

The Congress Column at Brussels. — Dominating a good part of the Brussels scenery is the monument erected to the first Congress assembled in the country after Belgium had asserted her independence in 1830. The photograph shows a detail of the monument, a stately woman symbolizing Law. To the left some excerpts from the Constitution are reproduced, to the right, the names of the signers of the document.

ensued, the Liberal Party struggling against the steadily increasing power of the Church and clergy. As stated by Théodore Verhaegen, a Liberal Party leader, in 1841, the struggle was not against the Church, but for the principle that the Church should exist within the state and not the state within the Church.

The Liberal Party was particularly successful in its fight against the predominating influence of the Catholic Church in matters of education. In 1842, it succeeded in passing the first law establishing public primary schools, at a time when the education of youth was held almost exclusively in the hands of the clergy. Successive legislation established public instruction in all levels of education. Today the State is responsible, mainly through the municipal authorities, for the establishment of nonsectarian schools where the entire population may receive a free education. Attendance at primary schools is compulsory. The parochial schools, however, are also free and enjoy substantial subsidies from the State.

The last quarter of the nineteenth century brought a third party into existence: the Socialist party. Ghent and Brussels were the cradle of the European trade union movement in the middle years of the nineteenth century. This movement was led by a number of courageous and disinterested men in order to better the depressed standards of living at a time when the introduction of machinery and the birth of the factory system, with its massing workers in the new industries, was producing great economic changes. These leaders included the typographer, César de Paepe; the marble worker, Louis Bertrand; the newspaper carrier, Edward Anseele; and before long, a number of intellectuals allied themselves with the movement—men like Louis de Brouckère, Camille Huysmans, Jules Destrée, and Emile Vandervelde, who later became leaders of the international Socialist organization.

It was these men who brought about the Constitutional Amendment of 1893 enlarging the franchise. The elections in 1894, when the electorate numbered 1,370,000 instead of 137,000 as before, sent twenty-eight Socialists into the Chamber of Deputies. At the

outbreak of the first World War in 1914, they numbered forty, as against ninety-nine Catholics and forty-five Liberals. In 1939, their numbers had increased to sixty-four, as against seventy-three Catholics and thirty-three Liberals, thirty seats at this time being in the hands of the Flemish-Nationalists, the Communists, and the Rexists.

The Socialists, in close collaboration with a section of the Catholics, who, in the nineties, had founded the Christian Democratic Party based on the Papal Encyclical on social problems, "De Rerum Novarum," pressed for the improvement of working conditions. As a result, Parliament passed a series of laws protecting the worker, limiting hours of work, raising wages, providing for factory inspection, workmen's compensation, and a system of social security. By 1914, Belgium's social legislation was the most progressive in all of Europe.

The end of the nineteenth century was marked by another struggle than that of labor for better working conditions — the struggle by the Flemish part of the population to secure linguistic equality.

The every day language of about four and a half million Belgians is Flemish, whereas that of three and a half million Belgians is either French or the Walloon dialect. Not more than one million people, mostly Flemings belonging to the well-to-do class, speak both national languages.

Under the Dutch rule, from 1815 to 1830, Dutch became the only language used in administrative and public life. The Walloons, and even some of the Flemings whose education had been in French, were in strong opposition to this.

The Belgian Revolution of 1830 reacted by establishing French as the major language in public and private life, and so complete was this reaction that no consideration was given the rights of the Flemish people who numbered at the time almost half of the population. The Flemish language was ignored in the administration, courts, army and schools.

Out of these grievances grew the Flemish movement. In the beginnings its basis was of a cultural nature, centering around the

legends and songs of Flanders, gradually, however, it adopted a social and political character, tinged with a nationalist and racial mysticism which were very popular in most European countries during this period.

As the movement gained strength, a certain number of laws were passed, the first in 1873, giving the Flemings the right to defend themselves in their own language before the criminal courts — a right denied them up to that time. Furthermore, the use of Flemish was somewhat broadened in the schools, extending gradually from the grammar schools to the universities, and in the administration and army. There remained, however, a strong opposition to its use, and the application of these laws was often hampered.

After the war, in 1918, wisdom and statesmanship prevailed, and a policy, sponsored by King Albert I, gradually achieved the legal and actual equality of the two peoples of Belgium in almost all phases of public life.

Boisterous and stormy as the political conflicts were, the principles of constitutional freedom were always supported by the majority of the Belgian people and never failed to restore compromise and order to a population whose main virtue has always been moderation.

III. The Executive: The King and Ministers

As required by the Constitution, a constitutional and parliamentary monarchy governs Belgium.

As head of the executive departments, the King may appoint and remove his Ministers and issue any regulation or decree necessary for the execution of the laws enacted by Parliament.

The Constitution does not mention the existence of a premier or even of a joint cabinet. Parliamentary tradition, inspired by British and French examples, has resulted in a collective responsibility on the part of the Cabinet without, however, creating in any way a parallel of the instability such as existed in France before the war.

The executive functions of the King include the appointment of officers and judges of the courts, in accordance with the law.

He is also Commander-in-Chief of the army and navy and may declare war and conclude treaties of peace, alliance, or commerce, which must, however, have the approval of Parliament before taking effect.

He has the right to coin money, in accordance with Belgian law; confer titles of nobility, without attaching any privilege to these titles; confer orders and decorations; and grant pardons or commute penal sentences.

These rights, however, are not privileges which the King can exercise alone or arbitrarily. For, while the person of the King is inviolable, none of his acts shall take effect unless countersigned by a minister, the minister thus assuming responsibility for it toward Parliament. Furthermore, the Constitution provides that the House of Representatives shall have the right to accuse ministers and arraign them before the *Cour de Cassation — Verbrekingshof,* the supreme court of the country. In no case, as stated by the Constitution, shall a verbal or written order of the King relieve a minister of responsibility.

By the oath, taken in Parliament before ascending the throne, the King is bound by the Constitution and the laws of the land. He possesses no other power but those conferred upon him by the Constitution or the laws.

In conformity with the principle of separation of powers, the courts have a right of review of the acts of the King; they may deny application of a decree on grounds of unconstitutionality or of nonconformity with the laws.

The Constitution also gives the King legislative powers. Like the House and the Senate, he possesses the right of legislative action. No law may take effect until approved and promulgated by the King. He has the right to adjourn the Houses and even to dissolve them, either simultaneously or separately. In this case, the act of dissolution shall result in a new election within forty days, and the two re-elected Houses must meet within two months from the date of dissolution. While these provisions appear to give the

King, within the aforementioned limitations, significant legislative powers, he cannot, in fact, use them except in case of an emergency necessitating new elections, and even then he may not act without the cooperation of the responsible ministers.

As W. L. Middleton points out in his book on *The French Political System,* no regime can evade the problem of highest authority. Even the most democratic nations must be led by a strong and decisive government.

The monarchy, as conceived by the Belgian Constitution, has no metaphysical connotation. Full sovereignity resides in the people's representatives. The King reigns, but his ministers and Parliament govern. This was a fundamental decision of the National Congress, when the election of a first King for the new Belgian State took place.

The first vote nominated Duke Charles of Nemours, but in the face of British protests, King Louis Philippe refused the crown for his son. Congress turned towards Prince Leopold of Saxe Coburg Gotha. Forty years of age, he was a Prince of German blood, widower of Princess Charlotte, daughter of the King of England, and in great favor at the court of the Russian Czar. His marriage to the daughter of the French King was arranged, and his final accession to the throne of Belgium was generally satisfactory to the European powers. He was elected by a majority of 152 out of 195 votes on June 4, 1831.

It is reported that Leopold hesitated because the royal powers conferred upon him by the Constitution seemed to him and his British advisers extraordinarily curtailed. To the Belgian delegation, who offered him the crown in Eugland, he said: "You have rudely treated the royalty which was not there to defend itself!" He finally accepted, however, and the new Kingdom of Belgium was recognized by the powers in the Treaty of the Eighteen Articles, signed in London on June 26, 1831.

King Leopold I, in spite of his first hesitations, abided faithfully by the Constitution and did not attempt to go beyond the powers granted him. This policy was also scrupulously followed by his three successors — his son, Leopold II; his grandson, Albert I, who

was the son of the Count of Flanders, second son of Leopold I; and Leopold III, the son of Albert I, who ascended the throne in February 1934.

When Leopold III took over the helm, other European ships of state were sailing uneasily before the storm. Black clouds already darkened the skies, and on the night of May 9, 1940, the Germans invaded Belgium.

Faithful to the promise made to his soldiers to remain with them whatever happened, King Leopold III was taken prisoner with them, after witnessing his country crushed by the overwhelming superiority of German tanks and planes. On the day of the Allied invasion of Normandy he was deported to Germany with his family.

Deprived of its royal authority, the government turned to the Constitution for its legal powers. According to this document, there are a number of provisions in case of the death of the King. According to Article 79, until his successor or, if the latter is a minor, the Regent takes over, the constitutional rights of the King shall be exercised, in the name of the Belgian nation, by the ministers, united in council and bearing full responsibility.

Article 82 provides that if the King is unable to reign, the two Houses of Parliament must convene to set up a regency.

Since, in 1940, it was physically impossible to convene Parliament, the members of the Belgian Government decided to apply Article 79, and, by analogy, the Belgian ministers united in Council in London, exercised the constitutional rights and bore the full responsibility. On September 21, 1944, the King's brother, Prince Charles was appointed Regent of the Realm.

In normal times, the ministers are appointed by the King, who also has the right to remove them; they are, however, under constant control of Parliament and responsible to the representatives of the people.

The Constitution does not specify how many ministers there shall be, nor does it indicate any special qualifications for their appointment. In theory, the King may appoint as minister any Belgian citizen who possesses political rights.

In fact, the appointment and number of ministers is determined by parliamentary tradition. There has been a consistent tendency toward an increase in the size of the Cabinet — five or six members under Leopold I, to fourteen or fifteen and even more, in recent years. The creation of new departments began with the natural development of state supervision of the commercial, cultural, and economic life of the country. Early in the second half of the nineteenth century, it became necessary to create a Ministry of Education or Public Instruction, later called the Ministry of Sciences and Arts. The rapid growth of labor legislation made necessary the establishment of a Ministry of Industry and Labor in 1895, to which was added a Ministry of Social Welfare and Public Health; and after the first World War, a Ministry of Economic Affairs was formed to facilitate the reconstruction and rehabilitation of the country. Since the French system of under-secretaries was not used in Belgium until 1940, a new ministry was established in each of these cases.

In some instances, the number of ministers was determined by, and generally increased as a result of considerations of a political nature. When none of the two or three major parties had an absolute majority in Parliament, the government had to be based on the cooperation of two or three parties. A bipartite or tripartite compromise Cabinet necessitated an equal or proportional division of portfolios, and new ministries had, therefore, to be created. This occurred at various times during the interim period between the two world wars.

As a matter of fact, the system was introduced by King Albert I in August 1914: an all-Catholic Cabinet was in control at the time of the German ultimatum; the King suggested the addition of two Liberals and one Socialist, in order to form a National Government at the tragic moment when the independence of the country was at stake. In the reorganized Cabinet, the three new ministers at first had no portfolios. They had, however, all the privileges, rights, and obligations of the other ministers. Later, the necessities of war resulted in the creation of new departments of which they became the respective heads.

The existence of ministers without portfolios has, since that time, been accepted at various periods of political crisis or under emergency circumstances when it was desirable to include an outstanding nonpolitical personality in the Cabinet.

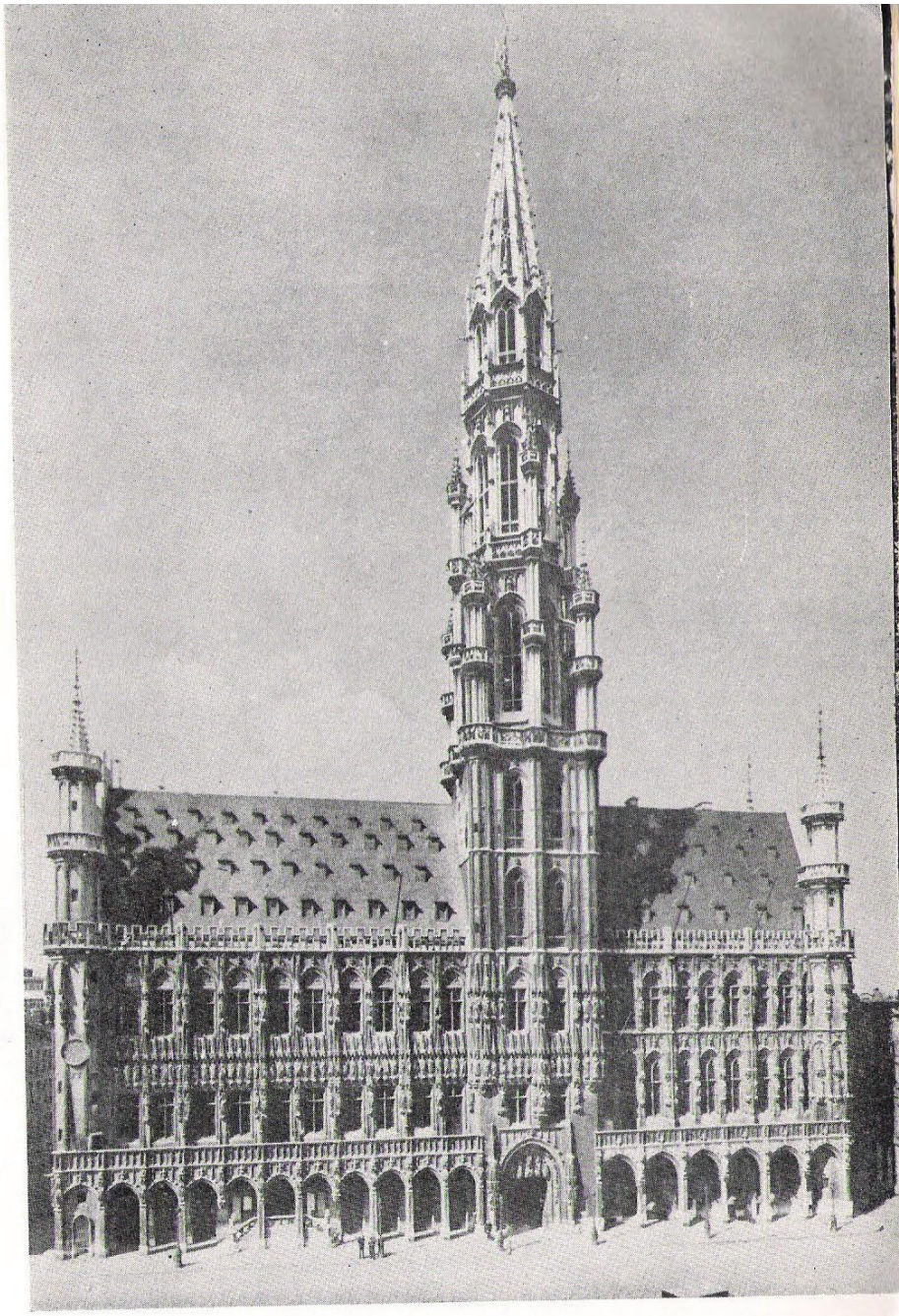
Tradition also ratified the nomination of ministers of state. Originally this post was only given as a special distinction to statesmen who had rendered extraordinary services after a long period of government service.

However, since the Constitution does not mention the various categories of ministers, it is generally assumed that a Minister of State, though not a member of the Cabinet, possesses the same privileges as the other ministers, so that his signature, for instance, on an act of the King validates it. In exceptional circumstances, the ministers of state are invited to attend Cabinet meetings.

As regards the Cabinet, the Constitution does not mention its existence nor that of a premier or head of the Council. The inclusion of a leader was necessitated by the rules governing parliamentary responsibilities.

The same article of the Constitution, which provides for the inviolability of the person of the King, also provides that the ministers are responsible to Parliament. This Ministerial responsibility compels the King to choose a Minister who represents the majority of Parliament or who enjoys the necessary confidence and authority, thus guaranteeing the inclusion in the government of those leaders of political parties whose collaboration is necessary for that purpose. The tradition has gradually been established, therefore, that whenever a ministerial crisis occurs, the King shall call upon a leading personality to whom he entrusts the formation of a Cabinet. That personality received the name and title of Prime Minister of the government. Actually he is the real head whenever the government is made up of a coalition of parties, as has mostly been the case since the first World War.

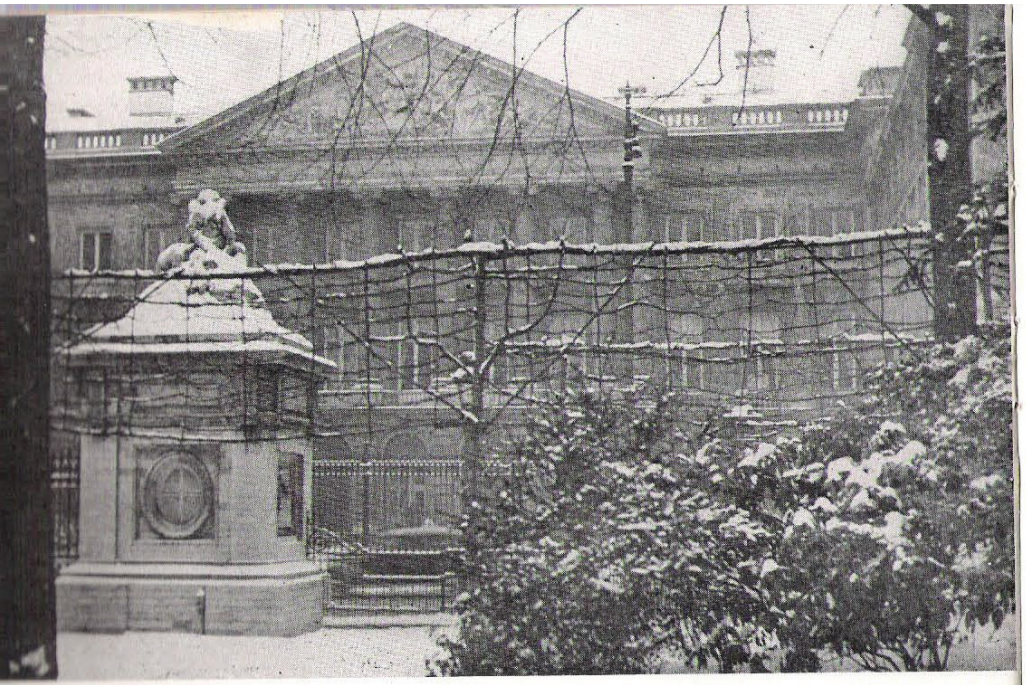
Thanks to the wisdom in the choice of a premier and to the moderation of the political spirit in Belgium, the tenure of the Belgian Cabinets has been relatively secure.

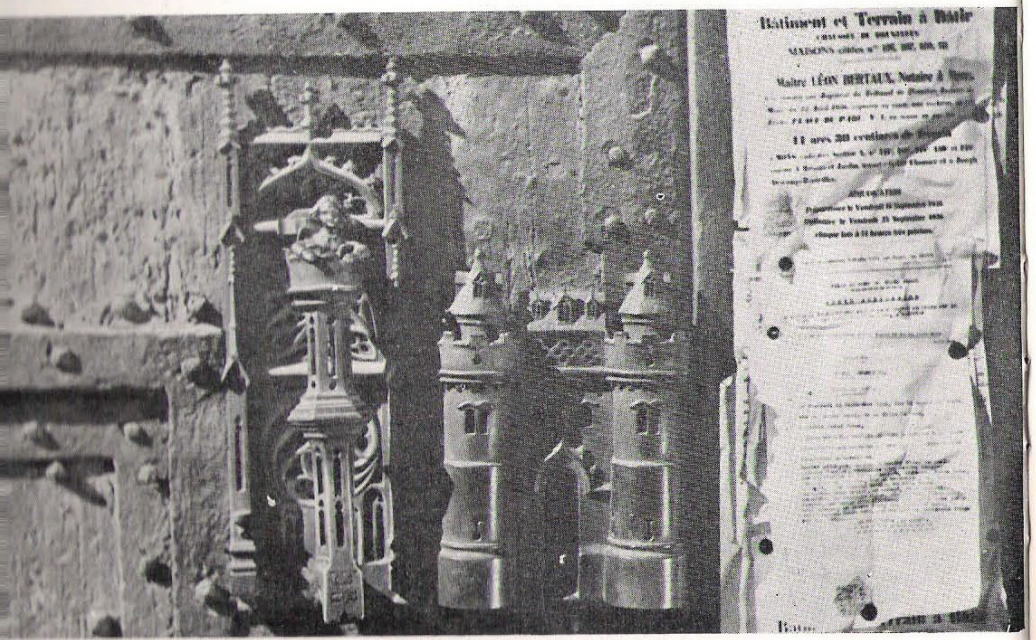


The Town Hall of Brussels. — Throughout history, the Belgian communes have constantly manifested a strong opposition to the centralizing tendencies of the goverrment. They used to express their civic pride and their high conception of municipal autonomy by building towering belfries and magnificent town halls. The Brussels Gothic Town Hall was built between 1402 and 1454.

The Brussels Law Courts. — Among the most impressive buildings erected in XIXth century Europe was the Brussels Law Courts by architect Joseph Poelaert. It is a huge construction in which all kinds of classical styles are used. It dominates the skyline from afar and towers impressively above the most popular district of the capital. In this Law Courts the highest courts of the country assemble.

The Liége Perron. — On the Market Place of Liége stands a little monument which symbolizes the spirit of liberty that inspired the citizens in their relations to their sovereign. The original monument of bronze was taken away by Charles the Bold as a punishment for the city. In 1697, Del Cour created the monument reproduced above.





he House of Parliament, Brussels. — Here the House of Representatives and ne Senate assemble. Right and left are located some of the ministerial departments. (Top picture)

he Lock of the Mons Town Hall. — So much were the Belgians of the Middle ages subdued by the necessity of stressing their autonomous rights, that even n the ornamental details of their buildings they illustrated the point. They did o in this ornamental lock at Mons, representing the defenses of the city.

THE EXECUTIVE

In the internal organization of the ministries, Belgium has followed the French rather than the British pattern.

Each minister has his Cabinet, composed of a Cabinet head and a small group of secretaries, who are usually appointed by him personally, and who eventually follow him into retirement. Furthermore, each ministry is organized into a centralized hierarchy so that all decisions must be passed on by a certain number of officials with final responsibility resting in the hands of the Minister himself.

The head of a department is a Secretary-General to whom, together with the head of the Cabinet of the Minister, belongs the general supervision of all work done. There are also one or more directors-general, inspectors-general, directors, heads of divisions, and heads of sections. A certain number of Committees of Experts were recently created which have closely cooperated with the several services.

Various laws and decrees regulate the appointment, promotion, and tenure of the officials, with the result that the Civil Service in Belgium is of a very high caliber. The administrative offices enjoy a wide reputation for skill and efficiency in their work; continuity of service in the same departments gives officials valuable training and experience.

Confidence in the Secretaries-General has always been so high that, at the time of the invasion of Belgium, a law of May 10 and a decree of May 15, 1940, gave extensive powers to the Secretaries-General so that they might ensure the continuity of the administration in case of the government's eventual inability to stay in Brussels. These provisions were, unfortunately, abused by some of the Secretaries-General, particularly when the Germans maneuvered the appointment of new Secretaries-General, more devoted to them than to Belgian interests. It is obvious that this abuse was not in conformity with the Belgian Constitution and their decisions became subject to annulment when the Belgian Government returned to Brussels on September 8, 1944. No law exists which allows any delegation of power.

Each ministerial department establishes its own yearly budget, and the budgets of all the ministries are combined in a total budget of the government, to be submitted to Parliament by the Minister of Finance. Voting on revenues and expenditures takes place every year in a special session and discussion of the budget provides an opportunity for criticism of the conduct of the government and of each of the ministers.

The fiscal system of Belgium has varied greatly in the course of the last fifty years. Actually the revenues came from the following sources:

1. Ordinary revenues from direct and indirect taxation.
2. Revenue from state property (forests and woods, buildings, mines).
3. Revenues from public services.
4. Internal and foreign loans.
5. Extraordinary revenues.

The Government must also render a yearly account of expenditures for approval by Parliament. The accounts are generally late and cannot be considered, therefore, as constituting a sufficient guarantee of good administration. But the financial administration is controlled by a special agency, called the Court of Accounts, which constitutes a trustworthy guarantee.

The Court of Accounts is composed of a president and eight councillors, appointed for a six-year term by the House of Representatives. This is the chief accounting authority for the legality of expenditures. No payment, however small, from government funds may be made without the consent of the Court of Accounts. The court verifies whether provision for the expenditure was included in the annual budget of the ministry concerned, as approved by Parliament, and whether the provision for the expenditure has not yet been exhausted. If objected to by the Court of Accounts, payments may not be made by the government except by special payment orders approved by the full Council of Ministers.

As the highest authority for all that concerns the State budget, the Court of Accounts is also entrusted with the accounts of the

internal and foreign debts of the State; also, its decision is final in all litigation over government accounts. In this it represents the Belgian counterpart of the French *Conseil d'Etat,* acting as an administrative court, with all the guarantees generally provided for judicial bodies.

IV. Autonomous Local Government

The Belgian Constitution of 1830 provides for a united and centralized monarchy, with the government the supreme authority over the country and its population. Local government cannot naturally encroach upon the authority of Parliament and the Executive Power. Nevertheless, provinces and towns possess a large autonomy, which has remained in existence for many centuries.

Under the feudal system, regional power developed in territories where the counts, dukes, and margraves succeeded in increasing their independence at the expense of the sovereign king, who was involved in wars and dynastic fights. As for the towns, their merchants and craftsmen gained much wealth from their skills and trades, and since both the kings and counts needed financial aid, the people were able to demand charters granting certain freedoms and privileges as compensation.

In the early middle ages, each town had a mayor and aldermanic council, elected by the community and possessing full jurisdiction over its citizens. The guilds and fraternities exercised more power than the sovereign himself.

In the fourteenth century, the presidents of the guilds of weavers and butchers, Jan Breydel and Pieter de Coninck, were able to challenge the authority of the French royal court and nobility and wage successful battles on the fields of Brugge and Kortrijk (Courtrai). The battle of the "Brugsche Metten" on May 17, 1302, and the "Battle of the Golden Spurs" on July 11 of the same year were victories of the Flemish townsfolk over the professional French army. These dates are landmarks in the history of European freedom.

In later centuries, under Spanish and Austrian rule, the sovereigns were bound to respect the freedoms of the people by pledge

in the famous "Joyous Entry" which they had solemnly to accept before assuming power over the Belgian provinces. Gradually, however, they succeeded in curtaining these freedoms until it was easy for Napoleon to ignore them and include the Belgian provinces and towns in his centralized system of French districts and municipalities. It was not until the Belgian Constitution was drawn up that the ancient spirit of city and provincial self-government, was, to a large extent, restored to the country.

Articles 31 and 108 of this Constitution state that all matters which are exclusively municipal or provincial shall be regulated by municipal and provincial councils, to be elected by universal, popular vote. A certain number of functions are considered as either communal or provincial. Belgium's local governments are the most decentralized on the European continent.

Each of Belgium's 2,630 municipalities has a town council, composed of from seven to forty-five councillors and elected for a six-year term by Belgian citizens of both sexes, twenty-one years of age or over, who are residents of the community for the last six months. Anyone of these citizens is eligible to run for office at the age of twenty-five. Universal suffrage and proportional representation have been a characteristic of municipal elections since 1921.

The council elects, by secret vote, the members of an executive body, called the Aldermanic College, composed of a varying number of aldermen and presided over by the mayor.

The mayor, or burgomaster, is the head of the municipal council as well. He is appointed by the State, but must be chosen from among the elected members of the municipal council. In exceptional circumstances, he may be chosen from outside of the council, but only with the consent of the Permanent Deputation of the Provincial Council.

The burgomaster has a dual role. He represents the central government, and, as such, he possesses full police power, under control of the government of the province and the Minister of the Interior; he can call upon the *gendarmerie,* a kind of state police, and, if need be, upon the army. Generally the municipal police force appointed by the burgomaster is sufficient to maintain order.

Since the mayor is almost always an elected member of the municipal council, he is, above all, the representative of the interests of the community.

The Belgian burgomasters, especially those of the larger towns like Brussels, Antwerp, Ghent, and Liége, have always been reliable trustees of the prerogatives of the people. In both world wars, they have been the champions of national resistance.

As for the nine provinces, each is administered by an elected provincial council of from fifty to ninety members, according to the population. The councillors are elected for a four-year term by citizens eligible to vote for members of Parliament who have been residents of the province for the last six months before election. Any citizen who is twenty-five years old, male or female, and a resident of the province, may run for office. The council elects its own chairman and officers and nominates six of them to form a permanent delegation, appointed for four years, which acts as an executive body under the title of Permanent Deputation. The Permanent Deputation is also an administrative court and exercises control over the execution of all legislative decisions passed by the provincial council.

The central government is represented in each province by a governor appointed by the King on recommendation of the Minister of the Interior. The governor does not preside over the provincial council. He may attend all sessions of the council and address the body whenever he wishes, but he has no voice in its deliberations.

The governor is the president of the Permanent Deputation, by right of being the highest executive officer in the province. By delegation of authority from the central government, he possesses the right of supervision over the decisions of the council which might be contrary to the Constitution or the laws of the country.

The Belgian provinces are divided into *arrondissements,* or administrative districts, each of which has a commissioner or *commissaire d'arrondissement.* The commissaire is appointed by the government, on recommendation of the governor of the province,

and exercises supervision, on behalf of the governor over the administration of towns with 5,000 inhabitants or less.

The province has a wide administrative field to cover: the construction, maintenance, and policing of provincial roads; the maintenance and policing of the non-navigable rivers; and the establishment and maintenance of charitable and technical institutions and schools, medical and social organizations, etc.

The autonomy of provinces and municipalities is so far-reaching that, subject to government control, they may even, for their common good, make agreements between themselves and establish public utility corporations. Such agreements have been made over supply of water, gas and electrical power, and the organization of streetcar and river traffic.

Both provincial and municipal councils vote large budgets. The primary right of taxation belongs to Parliament, which annually votes the budget for the State and the various taxes to be levied, such as taxes on revenue, on public services, real estate and personal property, and professional activities. The province and the municipality, however, are allowed to levy so-called "additional centimes" (an additional number of centimes on each franc of the taxes collected by the State) to cover provincial and municipal needs. Certain expenditures must, by virtue of law, be included in the provincial and municipal budgets. The municipality, for instance, must support its own public schools, although subsidies from the government cover most of these compulsory expenditures made by the provinces or communities.

Within certain legal limitations, the vote of taxes by provincial and municipal councils has the same status as ordinary government taxation. All disputes over assessments and collections of taxes are decided by the municipal council or the Permanent Deputation, which acts in these matters as an actual court.

The municipalities also have facilities for borrowing money on long-term loans. The larger cities, such as Brussels, Antwerp, Ghent, Liége, and some others, have never had any difficulty in raising money this way, as such bonds are considered as stable an investment as those of the Belgian State.

V. The State Judiciary

True to the doctrine of the separation of the powers, the framers of the Belgian Constitution established an independent judiciary with powers equal to those of the legislative and the executive departments. They were convinced of the value of the principles outlined by Montesquieu in his famous book *L'Esprit des Lois.* They knew by experience that any government can easily be a victim of the natural tendency to abuse power, thus running the danger of its degeneration into potential or open despotism. To avoid this danger, the three powers must continually act as a check on each other.

Unlike the system of the French Third Republic, the Belgian Constitution establishes the judges as independent representatives of the people's justice and not merely administrative agents of the executive.

All litigation, even between private citizens or corporations and the government, are decided by the regular courts, except for certain electoral matters.

Almost all cases are dealt with by collective benches of at least three judges, appointed for life. It is an axiom for the Belgians that the courts must make anonymous decisions, because they must apply and interpret the law according to its true meaning and not according to personal opinion. Of course, common law and equity law, in the English sense, have almost completely yielded to statute law. Belgian courts rule acocrding to the system inaugurated by the Napoleonic Code.

The Civil Code of 1804, the Civil Practice Code of 1806, and the Commercial and Criminal Procedure Codes of 1808 are still in current use. Thousands of amendments have rejuvenated a large proportion of the codes by remedying their stereotyped rigidity and remolding these antiquated tools into flexible judicial machinery appropriate for modern political, economic, and social needs.

In some cases, new legislation has practically revised the code, as, for instance, in criminal law. The French Penal Code of 1810 was replaced by a new Belgian Penal Code in 1867.

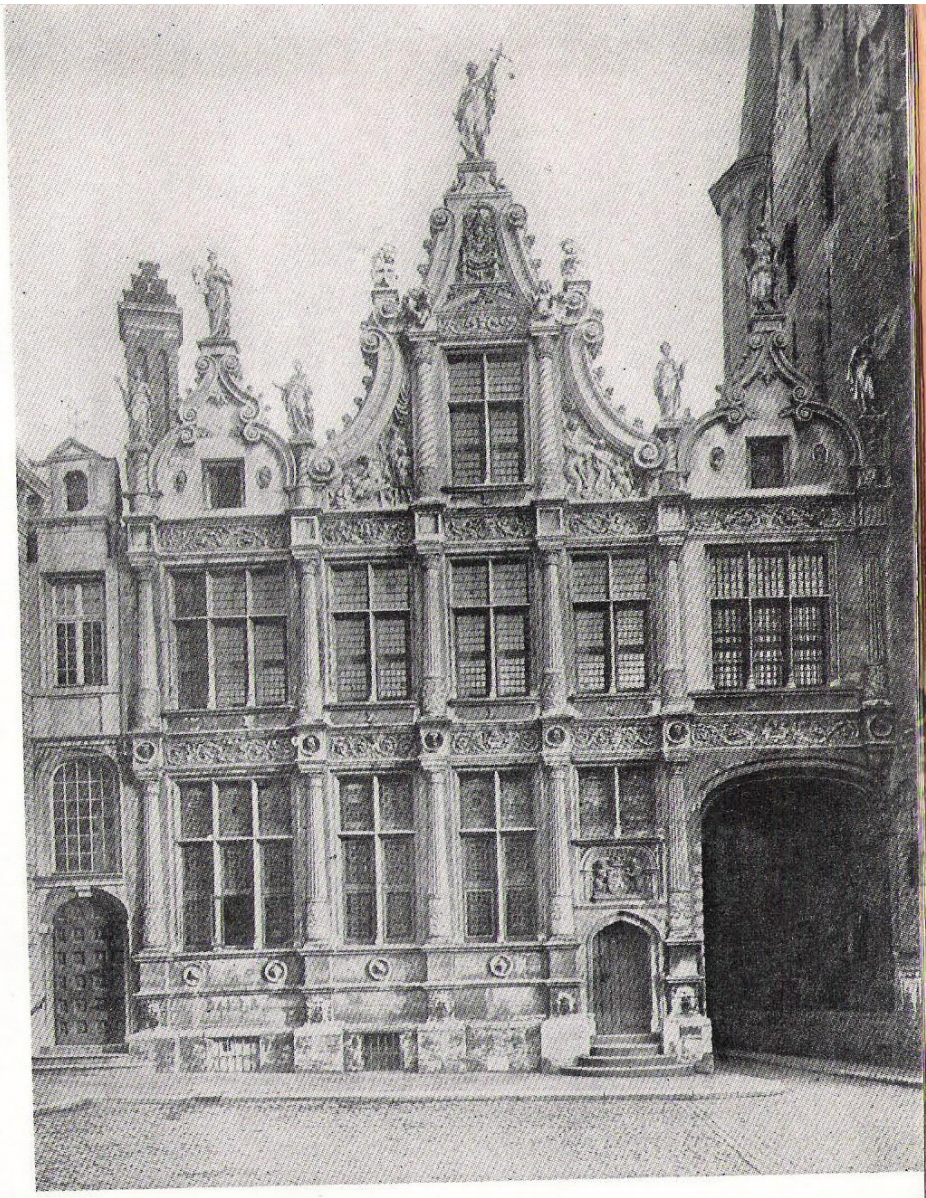
The judiciary of Belgium may be said to resemble a pyramid. At its base or lowest level stands the Justice of the Peace, composed of one judge for each of the 230 judicial districts or cantons. Each town or village is generally considered a canton, except for the smallest ones, two or three of which may be merged in one canton. The large cities are divided into from three to six cantons.

Originally, the justice of the peace had to deal with civil litigation where only small sums were involved and with minor offenses. His authority, however, was gradually extended to cover a great variety of lawsuits — family disputes, controversies over succession, quarrels over boundaries of land, litigation between landlords and tenants and between masters and servants, and all litigation arising out of the extensive legislation covering workmen's compensation.

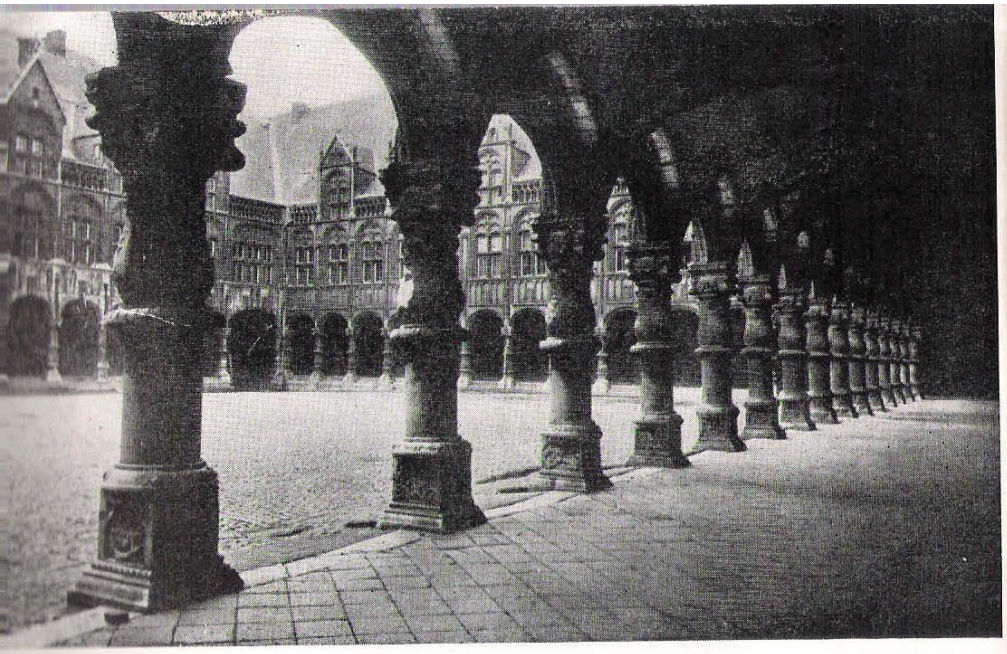
In almost all matters, decisions of the justice of the peace may be appealed and the case may be taken to the *tribunal de première instance—Rechtbank van Eersten Aanleg.*

The *tribunaux de première instance* correspond to the district courts in the United States. There is one in each of the twenty-six judicial *arrondissements* (districts) which means three or four in each province. The court is composed of three or more judges: in the latter case, it is divided into two or more sections of three judges each. After the first World War, for reasons of economy, single-judge sections were organized to deal with summary cases. Besides their appellate function of reviewing decisions of the justice of the peace, these courts have original jurisdiction in all civil disputes and criminal cases, with the exception of felonies and political and press offenses, which are brought before the courts of assize. When they sit in criminal cases, they are called *tribunaux correctionnels.*

Their decision may generally be appealed to the higher courts, or *cours d'appel — beroepshoven* of which there are three — in Brussels, Ghent, and Liége. These three courts of appeal have, respectively, fifty-two, twenty-one, and twenty-eight councillors. They are divided into sections of at least five councillors each. The recent law, referred to above, organizing the single-judge district courts, allowed the courts of appeal to try certain cases with only three members in a section. The *cours d'appel* have no original



The Record Office of the Law Courts at Bruges (Brugge).—Many of the law courts in Belgium are located in buildings dating several centuries back. The Record office of Bruges is a fine Renaissance building covered with gilt and sculptural ornamentations. Over the doorway stands the Lion of Flanders, on top the statue of Justice and several statues of counts and countesses of Flanders.



The Belgian Supreme Court. — An official session in the course of which a new counselor was sworn in.

The Liége Law Courts were built at the beginning of the 16th century and used to be the Bishops' Palace. (Top picture)

jurisdiction. In civil as well as in criminal matters, they review, as an appellate division, the cases decided by a *tribunal de première instance,* at the request of one of the interested parties or of the attorney-general.

Felonies come under the exclusive jurisdiction of the courts of assize. These are the only Belgian courts which include a jury.

The French Criminal Code of 1810 on which the Belgian Criminal Code is based, divided all offenses into three categories—*contraventions, délits,* and *crimes*, according to the severity of the penalty provided by the law.

If the legal penalty is a fine of from one to twenty-five francs, or imprisonment of from one to seven days, the offense is a *contravention,* and the case goes to the justice of the peace, called, when deciding such case, "police judge."

If the penalty is a fine of twenty-six francs or more or imprisonment of from eight days to five years, the offense is a *délit* (misdemeanor) and the case comes under the jurisdiction of the *tribunal correctionnel.*

If the penalty is imprisonment of from five years to life, or capital punishment, the offense is a *crime* and is under the jurisdiction of the courts of assize.

We may add that capital punishment—by the guillotine—is still a part of the penal code of Belgium and is occasionally ordered by the courts for murder, parricide, poisoning, or high treason. But there had not been an execution since 1817. Recently, however, a few collaborators were shot. According to a well-founded tradition, the death penalty has always been commuted to life imprisonment by the King.

A law of September 14, 1918, introduced capital punishment by shooting for cases of high treason and for military offenses committed during the war. Execution by shooting was, until then, only provided for military offenses by the Military Code of 1870.

The courts of assize are composed of two distinct parts: the court and the jury. The court is made up of a councillor a court

of appeals and two judges from a *tribunal de première instance.* The jury is composed of twelve jurors, chosen by lot from a panel of Belgian citizens of from thirty to sixty-five years of age.

The jury decides by a majority vote based on the evidence presented in court whether a prisoner is innocent. This decision is made on the basis of a series of questions, prepared by the presiding councillor at the end of the trial, after all the witnesses and experts, the defense lawyers and public prosecutors have been heard. The series may include questions concerning extenuating or aggravating circumstances; the jurors must reply to these questions by Yes or No, all answers being made by secret ballot.

Up to the time of the first World War, the court decided upon the severity of the sentence after a verdict of guilt by the jury. The law covering this practice was amended on August 23, 1919. It appeared that jurors were occasionally inclined to be lenient and answer No, although convinced of the guilt of the defendant, because they feared too severe a sentence. Today, therefore, the sentence is decided by the court and the jury together.

A court of assize sits in each of the nine provinces every three months or oftener if necessary. There is no right of appeal for a sentence handed down by an assize court; it may however be revised by the *Cour de Cassation-Verbrekingshof.*

Article 98 of the Constitution also provides that there shall be a jury trial for all political or press offenses. Such offenses must of necessity, therefore, be tried before the courts of assize, no matter how small the penalty involved.

In the trial of felonies, the jury system has often been strongly criticized because, so it is said, the jurors could so easily be influenced by the masters of the bar. This criticism is questionable. In fact, the court judges are often more lenient than the jury, allowing themselves to be swayed by the human aspect of the case as well as by the final scientific facts based on modern criminological theories.

In any case, however, where political and press offenses are concerned, the constitutional provision is religiously upheld, being considered as one of the most important guarantees of democracy,

and for this reason the courts of assize is one of the most highly respected of Belgian institutions.

Actually there is no legal definition of a political offense, and there has been a host of controversies on the subject. As regards press offenses, the provision is an efficient guarantee of the freedom of the press. Only in very extraordinary circumstances are writers or columnists referred to the court of assize because of the expense, the complicated procedures involved, and the uncertainty of conviction.

Aside from these regular tribunals and courts, Belgium has a certain number of specialized courts, such as the military, commercial, and labor courts.

In peacetime, there are four permanent courts martial and a high military court. The courts martial (*conseils de guerre-krijgsraden*) are located at Antwerp, Brussels, Ghent, and Liége and are presided over by a high-ranking officer of the army and are composed of a judge of a district court, two captains, and a lieutenant. The high military court at Brussels, is presided over by a Councillor of the highest court and is composed of four members: a lieutenant-general or a major-general, a colonel or a lieutenant-colonel, and two majors. The high court is an appellate court, with power to modify or reverse the decisions of the four martial; furthermore, it possesses exclusive original jurisdiction over offenses committed by officers with a rank above a captaincy.

In cities where commercial litigation is of importance, special commercial courts have been established by law. These are made up of Belgian merchants, twenty-five years old or over, who are elected annually by other Belgian merchants of twenty-one years or over. They are endowed with exclusive jurisdiction in all matters of commercial and industrial transactions, including bankruptcy, and in all controversies dealing with territorial or maritime traffic, with the exception of compensation for personal injuries. The commercial tribunal is generally composed of sections of three members each, plus a legal adviser or *référendaire,* who, however, has no voice in the decision. Except in cases where only small sums of money are involved, the decisions of the commercial tribunals

can be taken to the regular courts of appeal. In cities of lesser commercial importance, all commercial cases are dealt with by the ordinary court of first instance.

In addition, there are the labor courts which are still called, according to Napoleonic tradition, the *conseils de prud'hommes.* They possess original jurisdiction for all litigation between employers and employees, or for disputes among the latter.

These courts of labor arbitration are composed of from ten to twenty employers and employees, elected for a six-year term from among Belgian employers and employees twenty-five years of age or over; anyone, male or female, twenty-one years of age or over is eligible to vote, and both men and women are eligible for office.

Each *conseil de prud'hommes* is presided over by two presidents, one representing management and one labor, and both appointed by the King from lists of candidates drawn up by the management and labor judges.

These courts sit in chambers of at least four judges, representing management and labor equally. Each chamber is assisted by a legal "assessor," who must be an attorney at-law: he possesses no voice in the deliberation, however, unless there is a tie, in which case he may cast a vote.

Owing to the steadily increasing power of labor organizations in Belgium, the jurisdiction of the labor courts has been considerably enlarged. A law of 1926 gave them full legal authority; until then, their decisions had to be submitted to the regular courts in case of appeal; since 1926, there have also been appellate divisions of the *conseils de prud'hommes* composed of members of the *conseils* of first instance, half management and half labor, who decide under the chairmanship of a presiding attorney-at-law, appointed by the King.

Over and above the aforementioned courts and touching each with its authoritative and unifying rays stands the *Cour de Cassation.* This is the supreme court of Belgium, and it has created, during its century of activity, the very highest standard of consistency in its interpretations of the law.

Every legal decision, from the lowest to the highest court, can be finally reviewed and re-examined by the *Cour de Cassation* in Brussels.

This supreme court enjoys the very highest prestige. It is composed of fifteen councillors, a president and a *premier president* or chief justice. It is divided into two sections, one for civil and one for criminal cases; each section must have at least seven councillors present in order to deliberate. The procedure, imbued with what might in this modern age be termed "quaintness," is mostly based on written affidavits and memorials, prepared, or at least signed, by special attorneys-at-law. These are *"avocats près la cour de cassation,"* or supreme court attorneys appointed by the government on recommendation of the existing special attorneys who have a monopoly on practice in this court.

The jurisdiction of the *Cour de Cassation—Verbrekingshof* is appellate. It neither tries cases nor modifies decisions. Its functions consist of verifying, by files and exhibits, whether the law has been properly applied and interpreted. If the court finds a legal violation or error in the procedure of any lower court, appellate division, or court of assize, the decision is set aside, and the case must be tried again by a tribunal or court similar to that which rendered the first decision. It should be pointed out that Belgium does not follow the rule of Anglo-Saxon law by which a court is under obligation to be guided by previous decisions. All tribunals and courts are absolutely free to follow, or not follow, the interpretation or doctrine of the *Cour de Cassation—Verbrekingshof.* Thus, it may well be that the second decision is identical with the first, in which case the new decision may again be brought before the *Cour de Cassation.* This time the review must be made before the full court of fifteen councillors. If the decision is again set aside for the same reasons, the case is returned to a similar court, which, however, must this time abide by the decisions of the supreme court. This is the only case where Belgian law follows the doctrine of precedents, generally known, in the United States, as the rule of *stare decisis.*

All judges of the regular tribunals and courts are appointed by the King for life. Except in a few particular courts (for commercial

and business litigation) there are no elected judges because it is feared that candidates may become involved in politics and depend upon politicians for their jobs. But the King—in other words, the government—is never free to appoint a judge arbitrarily. There are a number of strict rules laid down by the Constitution and subsequent laws which must be followed. The candidates must be chosen exclusively from the legal profession; they must have a degree of law as well as a certain number of years' practice at the bar. The candidacy must be approved by various bodies and courts. The appointment and the security of judicial tenure are so encompassed by these restrictions that the judges and councillors may be supposed to possess the skills and virtues which guarantee their independence.

No judge may be discharged or removed from office, or even displaced, without his consent or a judgment to that effect. Salaries are fixed according to legal schedules. Article 103 of the Belgian Constitution forbids a judge to accept any paid position from the government.

Americans have expressed their regret that the Belgian Constitution does not give the judiciary the right of review over laws enacted by Parliament and that such power has not been acquired by usage, as in the United States. Belgian students of law, however, consider that such a right may not only at times be a hindrance to the development of progressive legislation, but might, in addition, constitute an infringement of the independence of the legislative power in expressing the opinion of the people.

Belgian courts, however, possess, according to Article 107 of the Constitution, the absolute right of review over all decisions made by the executive power of the government and over the acts of provincial and municipal authorities, whenever they consider such a decision or act contrary to the Constitution or the laws of the country.

In all the law courts of Belgium, the government is represented by attorneys-general and public prosecutors; they have the right of interference in a large number of civil cases and in all criminal cases. Together they constitute what is known as the *Ministère*

Public. They are appointed by the government and may be removed at will. They have no voice in deliberating a decision.

Furthermore, the Belgian judiciary has obviously a great number of rules of practice, describing the appointment and functions of the judicial officers. The bar is also organized along very rigid lines.

Indeed, the bar is considered as one of the branches of the judicial organization. Nobody is admitted to the bar unless he has matriculated from a postgraduate law school of a Belgian university, where he has followed a very rigorous curriculum, and passed his examinations before a central jury composed by professors from the four universities. His preparation requires a minimum of five years of instruction after leaving high school. After final graduation, however, as Doctor of Law, he has three more conditions to meet: he must be sponsored by an elder attorney-at-law in taking the professional oath. This oath, dating from 1810, contains a pledge of allegiance to the Constitution, the King, and the nation, and a solemn engagement never to advise or defend a case which he would not, in his "soul and conscience," consider a just one. The candidate must, furthermore, seek admission to the bar attached to one of the courts, and for three years practice under the control and responsibility of an attorney with at least ten years' practice. These three years are called a "stage." After fulfillment of his duties as licentiate in law during their "stage," he may become a full member of the bar. From there on, he is under the supervision of a special disciplinary council whose members are elected by members of the bar and vested with very extensive powers, including that of suspension and disbarrment. A great number of rigorous rules govern the conduct of the attorney; he may not be connected with any business or trade, nor accept any salaried administrative post, except that of Minister of the King or professor at a university. A long series of regulations impose the strictest loyalty upon him in his relations with the judges and courts, with other attorneys, and with clients. Any kind of publicity is forbidden, and some Disciplinary Councils are extremely rigid where these regulations are concerned. Whenever a judge is absent from the courts, which, as mentioned above, are collegial,

the eldest attorney present in the courtroom is called to the bench and sits for one or more cases, if necessary.

There are a number of other types of members of the legal profession. There are *avoués*, corresponding to British solicitors, who must be employed, in a large number of cases, for writing briefs; there are *huissiers,* appointed by the government after summary examinations and whose functions correspond to those of a sheriff. They have the exclusive right to serve writs, make attachments, and execute measures for the enforcement of judicial decisions.

Finally there are the *notaries.* They fulfill the duties of the American notaries public, in that they legalize and authenticate signatures on acts and agreements. But in many respects they differ greatly from their male and female colleagues in the United States. There are, first of all, no women notaries in Belgium as yet. Professional jurisdiction is much broader and more significant. Notaries have a monopoly over the enactment of the most important agreements, such as real estate transactions, including sale and mortgage; marriage settlements and wills, with the exception of holograph wills which any individual may draw up personally on condition that he write, sign, and date it in his own handwriting. The Belgian notary is appointed for life by the government, according to very rigorous rules; he must have completed four years at a university and, once appointed, is placed under the supervision of severe disciplinary committees, as are attorneys. There is only a limited number of notaries in Belgium — something over one thousand for the entire country — and they enjoy so high a reputation for integrity that they are generally held in great respect in the communities in which they reside.

It will be seen by the foregoing that Belgian Administration follows strict rules and regulations the inspiration of which is found in the country's Constitution. Its directing principle is based on liberty, and the men who are entrusted with the task of carrying out these rules and regulations are guided essentially by the rights of the citizen within the framework of a modern, progressive and democratic nation.

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