

# Belgium and Its Thoughtful Electoral Engineers

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## *The importance of being Belgian*

Belgium matters, and to more than just its Flemings, Walloons, and the denizens of Brussels. In its ports and towns, the tourist is obliged to decide whether Belgium's medieval cities, its beers, its chocolate, its "frites", or its visual arts are the best in Europe – or the planet. Belgium matters not just because Brussels is the capital of the European Union, Strasbourg's pretensions notwithstanding. For the comparative political scientist and constitutional lawyer what truly matters is that Belgium's history and continual survival showcase, in almost exquisite institutional evolutions, the proposition that it is possible to combine modernity, peace, prosperity and cultural co-existence without a mono-national or a monolingual state.

Belgium is rightly thought of as a modern state, but it has existed since 1830, which makes it one of the world's oldest continuous polities. It also has one of the most continuous of parliamentary governments – its institutional longevity punctured only by the German invasions and conquests of the two World Wars. To the outsider Belgium, it appears, long ago mastered the art of largely peaceful change. It seceded from the Netherlands without violence. Male universal suffrage was introduced after a fairly civil general strike. After World War II the country managed a peaceful change in its monarch – after popular consultation. In the late twentieth century it became a federation without tumult. It has also witnessed the quite remarkable and unique constitutional moment of a monarch abdicating for a day to enable parliament to pass abortion legislation.

There have, of course, been dark sides to Belgium's history. Externally, partial collaboration with the Nazis is widely recalled in Europe. Outside its parliamentary institutions Belgium's monarchy initiated and presided over one of the most exploitative of racist colonial regimes in the Congo (Hochschild 2000). Their additional colonial and immediate post-colonial record in Rwanda and Burundi puts Belgians high in the league-table of European imperialists with shameful records in Africa (Lemarchand 2008). But, just as the institutions of Athenian democracy can be evaluated and deemed meritorious apart from the slavery that marred them – as famously argued by A.H.M. Jones (1969), so it is possible to admire Belgium's domestic institutional developments and evaluate them in distinction from its imperialist past. Internally, Belgium has shared in the apparent recent increase in visible corruption among the elected political classes of western democracies, and has had its own distinct policing and religious scandals, but it is difficult to maintain that in these respects it is more radically unkempt than any of its peers in the European Union.

Yet in most recent characterizations, domestic but especially foreign, Belgium is treated as on the verge of collapse. To North Americans it is introduced as the Canada of northwestern Europe, except that it is its non-French speaking community that is seen as the likely secessionist. Belgium's possible collapse would, of course, add weight to the claims of those who argue that pluralist federations and consociations are necessarily doomed.<sup>8</sup> By contrast, Belgium's survival and future flourishing, despite its multiple regime crises, would support those who maintain that even in places with strongly dualist nationalist antagonisms it is possible to avoid violent break-up, secession or partition, and to have functioning power-sharing federations. That is Belgium's wider significance, and it is of far more import than a

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<sup>8</sup> These arguments are reviewed and some of their critical weaknesses observed in McGarry and O'Leary (2009).

technical puzzle in comparative politics.

For these reasons, among others, the publication of the elegant central essay of this book, Kris Deschouwer and Philippe Van Parijs's "Electoral Engineering for a Stalled Federation" should be warmly welcomed. These two professors, from Dutch and French-medium universities respectively, have made innovative proposals, in the neutral language of English (neutral for them). They may serve to prove to some that on occasion the application of two political approaches to constitutional design, sometimes treated as strictly incompatible, may be fruitfully combined. They are those of consociation and pluralist federation.

### *Consociational reformers not abolitionists*

Our two authors, though unhappy with some of the consequences of past consociational practices in Belgium, do not propose to challenge any of the federal Kingdom's current consociational arrangements, namely,

1. *Cross-community executive power-sharing* in the federal government among politicians from the two major linguistic communities (which currently primarily takes the form of a cabinet that requires parity of representation among its major linguistic communities, and unanimity as its conventional decision-rule);
2. *Proportional representation* of the two major communities in key federal political institutions;
3. Group *autonomy* (through the three territorial and three community governments) in matters of core concern; and
4. *Veto-rights* over constitutional change (e.g. the alarm-bell procedure, and the combination of concurrent majority and qualified majority requirements in the processing of amendments).

Though Deschouwer and Van Parijs acknowledge that their own proposal requires constitutional amendments, which will make its passage problematic, it is advanced, very wisely, as an emendation to the existing order: to make power-sharing work better, not to replace it. They propose to reform Belgium's consociational arrangements through the creation of a federation-wide electoral district, to supplement not supplant the series of mostly unilingual (and therefore largely uninational or unicommunal) electoral districts used to form the House of Representatives. Their expectation is that the formation of this district will increase the likelihood that politicians will be elected from each of Belgium's two major linguistic communities who will make executive power-sharing in the federal government function better.

While they want to modify – through the addition of one federation-wide district – the constituencies through which politicians are elected, they are fully intent on preserving the consociational use of proportional representation. Their proposal rests on using the d'Hondt allocation system of list-Proportional Representation, as used elsewhere in Belgium, and as invented by a Belgian.<sup>9</sup> And if I have understood them correctly, they would use open rather than closed lists in this federal district, but with a distinctive quota requirement. In this latter respect, they are *corporately consociationalist*. A liberal consociationalist wants voters to be able to select their representatives freely, whereas a corporate consociationalist favors at least some elements of pre- rather than self-determination (Lijphart 1995; O'Leary 2005; McGarry and O'Leary 2007; McGarry, O'Leary and Simeon, 2008).

Deschouwer and Van Parijs wish to use linguistic group quotas in the federal electoral district because they fear that their absence would lead to straightforward vote-maximizing competition between the linguistically based parties, and thereby favor confrontationalists. They are nevertheless liberals because – at least as I read them – they are willing to see the

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<sup>9</sup> Strictly speaking d'Hondt's invention was a re-invention: Thomas Jefferson had already invented this allocation process for allocating districts to states for elections to the US House of Representatives (Balinski and Young 1982: Ch. 3).

relevant quotas change periodically according to recent electoral results. Their proposed federal electoral district would for now be filled through a 3: 2 ratio of Flemish to French speakers, the same as that produced in the most recent elections (and similar to estimates of the current demographic ratios in Belgium – no linguistic census can currently be taken because of political sensitivities). Given that 15 seats have to be filled in the proposed federal district that would presently deliver a 9: 6 ratio. The twist in the authors' argument is that the quota will provide an incentive for joint lists to be presented, or for the option of *apparentement* to be organized in the federal-wide district by the ideologically related Flemish and Francophone parties. These possibilities will promote a more accommodative cohort among those elected to the federal district than might otherwise occur without quotas - and as currently occurs with no federal-wide district in existence. They also suppose that the procedure for electing the federal-wide district will have positive ripple-effects: the status of those competing for these positions will be higher with the wider electorate, and have knock-on effects, increasing, if only slightly, the number of accommodationist candidates to be elected in the unilingual districts.

Deschouwer and Van Parijs also do not challenge any group's current form of territorial or community self-government, though it is fair to infer that they would like there to be more effective shared federal government in Belgium, and they do not appear to be persuaded that there is any case for further hollowing out of the functions of the federal government.

Lastly, they propose no changes to the forms of constitutional amendment in Belgium, and do not propose to weaken the veto-rights of the smaller of the two largest communities in Belgium, namely the Walloons. Indeed, they advocate the quota in the federal electoral district, and, by implication, keeping parity in the cabinet, to protect the smaller French-speaking population from the potential majoritarian power of the Flemings. They also do not challenge the constitutional convention – not law – of unanimous decision-making within the federal cabinet. So, in short, these authors are reforming consociationalists, not anti-consociationalists, and that, it appears to me, is their own correct self-understanding.

I have made this lengthy observation about the reformist consociational character of their proposals for two reasons. One is that some will want to interpret Deschouwer and Van Parijs's essay as proof of the 'stalling' and 'immobilist' features of consociations - and to suggest that their proposals merely tinker at the edges of these problems. I think that is unfair. The authors' diagnoses and proposal are highly intelligent, and, if the proposal were applied, and if it worked out as intended, it would certainly make Belgian power-sharing work better. Their analysis shows that there are more rigid and more flexible forms of consociation, and their idea is to add an institutional fix that positively nudges trends and tendencies latent within existing Belgium politics in a clearly productive direction.

But their proposal will also make any critical reader reflect whether there are any other consociational methods, other than those proposed by Deschouwer and Van Parijs, to re-introduce the requisite flexibility and governability in Belgium's system. Belgium's consociational federation is currently quite rigid in its power-sharing mechanisms at federal level. The requirement of parity of representation of language communities within the cabinet (Constitution of Belgium, Article 99 (2)), and the convention of unanimity in cabinet decision-making, makes government-formation especially likely to be protracted, precisely because the cabinet cannot directly reflect election outcomes and because every possible government-maker knows that they are granting every cabinet member a veto. These problems are exacerbated, argue our authors, by de-synchronized but continuous regional, provincial, federal (and European Union) elections, which now reward stalwarts rather than accommodationists in each linguistic camp. Deschouwer and Van Parijs's clever suggestion is intended to ease government-formation, and to make government-maintenance more likely. But it requires for its success a rather roundabout mechanism, the introduction of a federal electoral district to inject a more accommodationist ethos within the political class, which in turn, they hope, will ease federal government-formation and maintenance.

My initial inward response to Deschouwer and Van Parijs's proposal was not to question their analysis, which is quite convincing, but instead to ask: Why not seek less backdoor ways

around the identified problem?

One pair of ideas, which would be best as a pair, would occur to any defender of Northern Ireland's novel consociational arrangements (see McGarry and O'Leary 2004: especially Ch. 1 and 9; and McGarry and O'Leary 2009 in Taylor (ed.) 2009: especially Part I and Part III). Namely,

1. *Why not organize parity through two co-equal prime ministers* (nominated by the largest Flemish and largest Francophone parties respectively) instead of through equal numbers of cabinet members? The two premiers would maintain a key symbolic (and decision-making) component of parity, but their existence could also be compatible with ending the convention of unanimity in the cabinet.

2. *Why not organize cabinet formation through the d'Hondt rule, using it both to decide which parties get which share of the available cabinet seats (allocation rule), but also the sequence within which they select them (sequential rule)?* This mechanism, provided the number and content of cabinet portfolios are fixed, enables fast cabinet-formation, because the allocation process grants parties entitlements to ministries in proportion to their strength in parliamentary seats, without requiring a pre- or even a post-electoral coalition (O'Leary, Grofman, and Elklit 2005). Since Belgium limits cabinet size to 15 ministers by Article 99 (1) of its Constitution no constitutional amendment would be required to fix the size of the cabinet.

Using the d'Hondt allocation mechanism would prevent any party from vetoing cabinet formation. Though a d'Hondt allocation and sequential process could enable the formation of a Flemish-speaking majority in the cabinet, it would not enable any party or list to exclude from the cabinet any party or list with a significant share of the vote. Moreover, and importantly, the d'Hondt mechanism could be combined with a qualified majority decision-making rule in the cabinet. Given Belgium's recent history a qualified majority rule is certainly necessary to ensure that the change in cabinet formation would not lead to straightforward majoritarianism. That goal could be achieved by requiring the cabinet to make all decisions by a concurrent majority of the Flemish and Francophone ministers in the cabinet – or to make all decisions in this way when sought by a majority of the Francophones in the cabinet.

These elements would also make government maintenance easier. A concurrent majority on issues would be easier to obtain than unanimous agreement. Any party that resigns from the cabinet would hand the relevant ministerial portfolios to other parties, and that therefore would act as an incentive against unilateral resignation. The shift to a proportional rather than parity basis for representation in the cabinet would enable the cabinet to reflect shifts in electoral opinion. So Belgium's current arrangements, in which there is something like center-right and center-left alternation in authority, could be maintained, but without the need to exclude the losers in the left-right contest from any access to the cabinet.

The first idea, the joint premierships, would solve the issue of finding an asexual or neutered prime minister, and the second idea, more interesting perhaps, would bring d'Hondt, a Belgian invention, back to its homeland, but with an application (sequential allocation of ministerial portfolios) not used in Belgium. A worked example, using the June 2007 election results, is given in Table 1 below.

These two prescriptive suggestions are targeted at modifying the rigidity of Belgium's cabinet formation. They are, however, intended to preserve both parity and proportionality principles, but in ways that would ease both cabinet formation and cabinet maintenance. These proposals are not advanced with the absurd spirit that what works in Northern Ireland works best everywhere else; and they are certainly not advanced with any of the sensitively detailed knowledge of Belgium's historic and current dynamics which Deschouwer and Van Parijs display in their essay. It may be that these alternative proposals would be deemed unrealistic, not just because they would require constitutional amendments, but also because Francophone parties may be unwilling to surrender parity of membership and the convention of unanimity in the cabinet for the arrangements just suggested.

That may well be so, but these ideas nevertheless confirm an essential analytical and prescriptive point. The ways of re-engineering consociations are multiple, and the defeat of Deschouwer and Van Parijs’s proposal, were that to happen, would not mean that the consociational repertoire of ideas is exhausted. The Northern Irish inspired ideas (themselves partially derived from Belgian and EU experiences) that are sketched here should not be treated as an exclusive alternative to the proposal of Deschouwer and Van Parijs – they could, conceivably, be combined with it. Indeed, there may be case for arguing that while my proposals would be looked on more favorably by Flemish speakers (since their majority status would be reflected in the cabinet – though without majoritarian power), the proposals of Deschouwer and Van Parijs may seem more pro-Francophone (since they are geared toward making the federal government work better), and so the two might profitably be combined as a balanced package.

**Table 1. Allocating Belgian Cabinet positions using the d’Hondt formula, applied to seats won in the June 2007 elections.**

	LIST															
	CD&V NVA		MR		PS		OPEN VLD		VLAAMS BELANG		SP.A - SPIRIT		CDH		ECOL	
DIVISOR	S	M	S	M	S	M	S	M	S	M	S	M	S	M	S	M
1	30	(1)	23.0	(2)	20	(3)	18	(4)	17	(5)	14	(7)	10	(11)	8	(14)
2	15	(6)	11.5	(8)	10	(10)	9	(12)	8.5	(13)	5		4			
3	10	(9)	7.7	(15)	6.7		6		5.4							
4	7.5															
TM	3		3		2		2		2		1		1		1	

Key: S = Seats won; M = Ministries won in order of choice; TM = Total Ministries.

**Explanatory Notes:**

(i) The leading List (CD & V NVA) nominates the prime minister, and the 2<sup>nd</sup> placed list (MR) nominates the co-premier, provided he or she is from a different language group, in this case a Francophone. The CD & V NVA would have the premier and the 6<sup>th</sup>, and 9<sup>th</sup> choices of ministerial portfolios. The MR would have the co-premier, and the 8<sup>th</sup> and 15<sup>th</sup> choices of ministry.

(ii) Where there is a tie during the allocation, e.g. in the choice of the 9<sup>th</sup> ministry, it is broken by prioritizing the list with the higher share of the popular vote.

Deschouwer and Van Parijs’s proposal certainly merits the careful attention of the Belgian political class and its civil societies. Anyone who would condemn their proposal faces the fair question: do you have any better proposals for making power-sharing work more effectively and that are fairly easily made compatible with Belgium’s evolved constitutional ethos - and therefore have some prospect of being adopted?

A second reason for emphasizing the pro-consociational features of Deschouwer and Van Parijs’s proposals is that they are historically sensitive to the evolution of Belgium’s history. They thereby implicitly rule out the applicability for Belgium of proposals from the ‘centripetalist’ school of conflict-regulation (Reilly 1997; 2001; Reilly and Reynolds 1999), correctly, in my view, given Belgium’s political sociology.

Deschouwer and Van Parijs put matters this way, “A federal district would re-introduce pre-electoral incentives - absent since the Belgium-wide parties fell apart - to display a disposition to compromise that is needed to govern, in power-sharing fashion, at the federal level.” On this account it was the breakdown of electorally integrationist pan-Belgian parties, followed by federalization, that weakened accommodationist incentives, not consociation *per se*. Before 1970 each major party was, roughly speaking, internally consociational (sharing

power and positions proportionally across the different language speakers), which facilitated coalition governments in the then unitary state. It was, on our authors' account, the breakdown of these parties along the ethno-linguistic line, followed by federalization, that created the current difficulties that they seek to redress, while – they do not forget to add – resolving many inter-group conflicts (through territorial autonomy and complex arrangements for Brussels).

What is especially interesting about Deschouwer and Van Parijs's proposals is they do not seek to pursue what standard centripetalist advocates, inspired by Donald Horowitz, might suggest, that is, strongly incentivizing the formation of federation-wide bi-lingual parties. Deschouwer and Van Parijs know that these parties once existed; and that they have broken down; but they have little expectation that such parties can be restored. While mildly regretting their non-existence they waste no time in romantic proposals to resurrect them artificially. The current parties might of course, stoutly resist any such suggestions. Nor do they seek to rig the electoral system, as Donald Horowitz – or a Horowitzian – might want, in favor of federation-wide parties through 'distributive requirements.' Such requirements might constrain parties to compete throughout the federation in all electoral districts, or require parties to obtain minimum support levels in all (most or a plurality) of the federation's districts before achieving representation in parliament (or the cabinet).<sup>10</sup> Instead, Deschouwer and Van Parijs' proposals are explicitly conceived of as a way to compensate for the absence of federation-wide parties, and to compensate for the loss of previous pre-election incentives to support conflict-regulation rather than conflict-aggravation. Their proposals would not weaken the equality of the vote of each person in each part of Belgium – unlike some possible distributive proposals. Instead they advance one consociational distributive proposal – a fair quota in a federation-wide district, which they think might better promote federation-wide interests through incentivizing politicians toward more accommodative postures. So, while they favor Horowitz's oft-repeated insistence on the importance of electorally incentivizing conflict-regulating behavior among politicians, they do so through consociational proposals, a quota within the family of list PR.

### *Pluralist federalists*

Deschouwer and Van Parijs are decidedly not against Belgium's secular shift and formal constitutional transformation into a federation over the last two generations. Moreover, they certainly do not favor re-making Belgium along the lines of an *integrated federation* – i.e. majoritarian in the federal government, centralized in fiscal and legal powers, and mono-national in identity. Instead, they favor *pluralist federations* – i.e. consensual in their decision-making at the federal center, decentralized in constitutional powers, and pluri-national in the management of identities (O'Leary 2005b).

But their essay shows that they are alert to three dangers, which we might call the limits to Belgium federalism. They fear that consensus may be increasingly less feasible because the electoral system currently rewards confrontationalists, i.e. Flemish nationalists who wish to disembowel the federal tier of government, and Francophones who wish to stave off any change, at any cost. Deschouwer and Van Parijs also appear to fear that the decentralization dynamic has reached the end of the road – because to concede any further autonomy to Flanders would deeply damage the residual but important elements of shared Belgian statehood. Lastly, Deschouwer and Van Parijs think that a fully nationalist resolution of

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<sup>10</sup> Deschouwer and van Parijs do not consider Donald Horowitz's favored electoral prescription, the alternative vote, which is strongly majoritarian in single member districts - and utterly irregular in multi-member districts (see Lijphart 1991). Even Horowitz would have to temper his enthusiasm for the alternative vote in Belgium given that the only relevantly heterogeneous constituencies would be in Brussels, and that the use of the alternative vote in that city would almost certainly strikingly over-represent Francophone candidates. Deschouwer and van Parijs also do not consider Horowitz's counsel to make a federation's regions ethnically or linguistically heterogeneous, e.g. through re-drawing federal regions' boundaries to cut across the existing language divide, or to increase the number of federal regions. I infer that Deschouwer and van Parijs do not consider Horowitz's proposals, even though the authors have plainly read Horowitz's major book, *Ethnic Groups in Conflict*, precisely because our authors are consociationalists, and perhaps because they know that any such proposals would be treated by most Belgians, Flemings, Walloons and Brusselers, as unworkable provocations.

Belgium's conflicts – the secession of Flemings from Belgium - cannot occur, or at least cannot occur easily. That is because of Brussels, a Francophone majority-region, but an enclave within the Flemish region, the site of a disproportionate amount of the production of Belgium's GNP, and historically a Flemish rather than a Francophone city. But Deschouwer and Van Parijs nevertheless fear that the project to advance a sovereign and independent Flanders might trigger catastrophic antagonism at some juncture. Their proposed electoral district therefore has a lot of work cut out for it. It is clear how it is intended to weaken the impetus for confrontationalists to be successful in elections, but whether it will be sufficient to hold off the threats to Belgium's integrity remains to be tested.

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It should now be clear why it is fair to read Deschouwer and Van Parijs's paper as a successful synthesis of consociational and federal logics. The much tougher question is to assess whether it might work. There are, however, no obvious technical problems. There are absolutely no good institutional or democratic reasons why one cannot combine a federation-wide electoral district along with other region-based districts. The quota requirement, as they present it, would present some problems before some supreme courts, since it appears to advantage some parties or lists (those willing to run a full complement of Francophone and Flemish speakers) ahead of others, but that might be deemed the precise act of public policy required to bind the federal union together, and it is likely that the European Court of Human Rights would deem any such measure as within the margin of discretionary decision by constitution-makers.

How the law will prevent the running of fake Francophones or Flemings to make a list eligible to win all 15 seats is doubtless a problem that can be addressed – though perhaps not very elegantly. In any case that scarcely matters because the point of the change – to have some prospect of genuine cross-community jointness in electoral competition will hardly be damaged by fake jointness. But, let me be clear that I doubt the capacity of this proposal, on its own, to reverse the impetus behind Flemish nationalism, though it may help slow down the capacity of hard-line Flemish nationalists to make Belgium ungovernable – if that is what they wish to do. This, of course, is not argument against the proposal – merely to caution that it may not be able to accomplish all that the authors want.

A last word. No short focused paper, even by two highly eminent and very brilliant scholars, can address everything. But to an outsider two matters need greater attention from the intellectuals involved in Belgium's constitutional debates. The first is the place of Europe's migrants and the rest of the world's migrants, especially in Brussels. If, and it is a major if, the European Union consolidates, and grows, then Brussels will have an even larger metic population that will have a legitimate claim to a stake in the running of the Belgian federation and consociation. Will a Brussels EU district have to be carved out of the Brussels region that will be outside of the Belgian federation? How should the Belgian federation as well as the Brussels region deal with the fact that the *Bruxellois* will increasingly be comprised of *Brusselers* – those who reside in Brussels but whose working language will be English? The second, related question, is how to prevent Flanders from losing its connections to Brussels. That steady loss both inspires Flemish nationalism, and makes it more likely that one day that there will be a viable secessionist project, provided Flanders is willing to live without Brussels.

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