

Reply

Anything (even) better than the Pavia proposal ? A brief response to four constructive critics

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We are grateful to all four of our critics for insightful remarks that are bound to enrich the debate and move it forward. Most of these critical remarks challenge the Pavia Group proposal of a federal electoral district as the most effective way of pursuing the objective we ascribe to it, while some challenge the objective itself.

Why we need a better federal democracy

For us and for our colleagues in the Pavia Group, Belgium is not, it hardly needs saying, an aim in itself. The objective of our proposal is to make Belgium's federal democracy serve better the interests of the population affected by the decisions it produces (or fails to produce) for as long as it exists and wherever its operation leads to. Among our four critics, only Bart Maddens challenges this objective, because he has given up on federal Belgium and hence advocates as the best next step scrapping federal democracy altogether and restricting direct elections to the regional level or (even better in his view) to the community level, thus turning Belgium into a confederation of democratic communities.

This view does not lack coherence. Nonetheless, it is misguided. Even Bart Maddens should share our objective of making federal Belgium work better, for two distinct reasons. The most fundamental one, but possibly the one hardest for him to accept, is that any feasible version of the confederal path towards separation is undesirable in his eyes too. Why so? Because of the "Brussels problem" about which he has the honesty of confessing some embarrassment. In a nutshell, the problem is that neither Flanders nor Wallonia could secede from Belgium taking Brussels with them and that the overwhelming majority of both the Walloons and the Flemings — including, we suspect, Bart Maddens — would not want to leave Belgium without Brussels. In the hope of dodging this dilemma, some have been dreaming of a formula whereby the Flemish Region would conquer its full independence while retaining control over Brussels, if necessary as a "condominium" shared with Wallonia. Anyone sincerely believing (as distinct from pretending for tactical reasons) that this is a feasible scenario has lost all touch with major aspects of 21st century Brussels. If Bart Maddens has not, it should not be difficult for him to draw the relevant conclusion. If he has, more time and space would be needed to convince him that we could reasonably devote to it here.

There is, however, another reason for Bart Maddens and other sceptics to endorse our objective, one that requires far less fieldwork in order to be substantiated. Institutional reform, in the Belgian context, including — as the Brussel-Halle-Vilvoorde (B-H-V) saga demonstrated — those reforms that require in principle no more than a simple majority, cannot be imposed by one community to the other. The current combination of segregated electoral competition and the requirement of inter-community consensus for a federal government to get off the ground leads to the sort of spectacular stalemate that followed the June 2007 electoral victory of the CD&V/NVA cartel. To those like (we trust) Bart Maddens who really want to catch the "fat fish" of greater devolution to Flanders — rather than spend their time whining or sulking about its absence — it must have occurred that there is something structural about the frustrating lack of progress in recent years. If one is to prevent

the pan from remaining desperately empty, there is bound to be a safer and quicker way than the current alternation of vociferation and bitterness.

This is the second reason why Bart Maddens should share our objective, which is precisely to provide a way for the federal government not only to run in a more efficient and legitimate way the powers currently entrusted to it but also to push through the institutional reforms which will enable our federal state to better serve our regions and our regions to work better, including of course by acquiring more autonomy.¹¹

Maddens' elected head of state

In the service of this objective, however, the institutional reform advocated by the Pavia group and now endorsed by both liberal, both green parties and various prominent socialists and Christian-democrats, may not be the most effective means. All four of our critics think that there may be more promising options. As we care far more about the objective than about the particular way of getting there, we would be delighted if they were right.

In addition to having the merit of making us think harder about our objective, Bart Maddens takes the trouble of articulating an alternative constructive proposal. The latter consists in having the head of state elected by universal suffrage. Though most likely to be a Fleming, a candidate who manages to get strong support on both sides of Belgium's ethnic divide will tend to enjoy a serious competitive advantage. The leading candidates will campaign throughout the country, shape their programmes accordingly and try to create a cohesive support base by linking like-minded political formations in the three regions. As a simple version of a run-off majority system in an ethnically heterogeneous district, such a proposal is bound to attract Donald Horowitz's sympathy. But for the desired dynamics to arise in a country like Belgium, so Maddens suggests, it may not even be necessary to impose regional or ethnic thresholds, as in the Nigerian and Indonesian cases hinted at by both Horowitz (positively) and O'Leary (negatively).

Maddens's proposal is of course not original (nor is it meant to be). Indeed, it is actually in use in a number of other multiethnic countries, from post-Soviet Bulgaria to the Democratic Republic of the Congo and the United States of America. A crucial question is of course how much power the head of state so elected would be given. If the function is essentially symbolic, as in the version Maddens has in mind, the associated dynamics will be too weak to offset the dynamics stemming from the mono-ethnic electorates on which parliamentary majorities and hence the choice of governments will keep depending — hardly better for our purposes, it seems, than the hereditary system now in place. If it is substantial, on the other hand, we are talking about a shift towards a presidential system, i.e. an institutional revolution incomparably more radical than merely scrapping the little that is left of the monarchy's powers or indeed than implementing our very modest proposal.

This is not the place to discuss the respective advantages of (more or less) presidential versus (more or less) parliamentary regimes. Jumping to a presidential regime may or may not have disadvantages that will more than compensate the undeniable advantage that well designed majoritarian systems tend to possess, with ethnically heterogeneous electoral districts, in terms of the dynamics we want to strengthen. The game in which we deliberately chose to play with our proposal is a pretty conservative one, which satisfies a strong constraint of short-term political feasibility as we see it. With the strong (and only relevant) interpretation of his proposal, Maddens is inviting us to a quite different game which implies a far more

¹¹ For this reason, it can be misleading to characterize the aim of the Pavia Group proposal as “centripetal” versus “centrifugal” (as de Briey and O'Leary both do). Our proposal does aim to encourage citizens and politicians not to remain confined within their own community and instead to listen and talk to each other across the language border. This should help identify and implement win-win reforms. But there is no need to believe that a win-win concern should amount to concentrating as many competences as possible at the “centre”. If only for this same reason, our proposal is also by no means more “pro-francophone” than O'Leary's alternative proposal (contrary to what he incidentally suggests). It is in every region's interest to have a federal government moving speedily towards win-win reforms, whether decentralizing or not, and more generally to have an efficient federal government. Only those Walloon *rattachistes* and Flemish separatists who believe Belgium will suddenly explode can feel served by the federal government's inefficiency, and in particular its inability to reform.

radical reform of Belgium's institutional architecture. This is by no means a sufficient reason for refusing to think about it. But the exploration of its many effects in the Belgian context will unavoidably need to be far more speculative than what is required by our modest proposal. Probably too speculative for this option to ever be proposed seriously, not only tongue in cheek.¹²

O'Leary's proportional cabinet

No less revolutionary are Brendan O'Leary's two proposals, both inspired by the Northern Ireland consociational settlement which he helped bring about. His first idea is that we should have "two co-equal prime ministers", respectively nominated by the largest Flemish party and the largest Francophone party, as an alternative to "the convention of unanimity in the cabinet". This convention — which can more aptly be said to apply to the "kerncabinet", i.e. to the chief ministers of each party in the government coalition — is of course a sheer corollary of the government's need to retain the confidence of a parliamentary majority. Hence, dual premiership would not make that convention redundant. And as the premier function is not particularly in trouble, it is not clear what problem dual premiership would solve. Perhaps the reason why such a proposal makes sense in the Northern Irish context and not in the Belgian one is that it is far easier to be(come) linguistically *asexué* than religiously *asexué*. Jean-Luc Dehaene and Guy Verhofstadt, once in power, have quickly acquired strong popular support on the other side of the linguistic border.

More intriguing is O'Leary's second proposal, which he develops at greater length. Why not take D'Hondt to the very top of his homeland's political power? Why not use for the composition of the federal executive, and not only the various legislative assemblies, the list system of proportional representation first articulated by the Belgian Victor D'Hondt (1878) and first introduced in Belgium (1899) before spreading in waves to many other countries throughout the world? The fifteen minister positions in the federal government, with predefined competences, would be allocated sequentially to the various parties as a function of their shares of the seats in the Chamber, using the formula currently used for the allocation of these seats to lists as a function of the popular vote. This sequence would determine the order in which the various parties could choose portfolios. One likely consequence is that the biggest party would automatically get the Prime Minister position and the second biggest party the deputy Prime Minister position. This obviously provides an alternative to the parity principle as a way of securing a balanced representation of both communities in the federal government. It would also have the advantage, O'Leary argues, of enabling us to dispense with the unanimity rule and go for a less constraining majority rule.

However, when looking at O'Leary's application of his proposal to the outcome of the June 2007, these two features are not the first ones that will strike any Belgian observer, but rather a spectacular violation of the *cordon sanitaire* to which all "democratic" parties have scrupulously stuck so far in order to keep out of power, at all levels, the extreme-right anti-immigrant party Vlaams. Two leaders of the Vlaams Belang would be graciously offered two minister posts, with predictable consequences for the atmosphere at government meetings. This particular consequence illustrates the general defect of O'Leary's scheme in the Belgian context: overkill. It is essential to the good working of Belgium's federal system that both communities should be sufficiently represented in the executive, but not that all political tendencies should be present in it. As Guy Verhofstadt's two liberal-socialist governments

¹² The countries in which the system is in place are sufficiently different from Belgium in a sufficient number of relevant dimensions for any inference to be made very cautiously. But they do provide a starting point for such speculation. But Perhaps the closest case is that of the Republic of Macedonia, where the proportions of native speakers for the two main language groups are not that different from those that prevail in Belgium (64/25 versus 56/36) and where parliamentary elections see two sets of parties address two de facto separate electorates (of Macedonians and Albanians) under a multi-district PR system. At presidential elections, both Macedonian and Albanian parties present candidates in the first round. In the second round, the top two candidates are kept, both Macedonians predictably. Neither of them, so far, tries to appeal directly to the Albanian voters, whether from the start or in the second round. But they both try to strike a deal with the leadership of one of the Albanian parties in order to enlist its support. (See Bieber 2008 and Petrov 2009.) Not quite the dynamics aimed at in Maddens' proposal, nor perhaps the one that can be expected in the Belgian case.

(1999-2007) have shown, it is even no longer necessary for the government's legitimacy that the two sides of the old cleavage between Catholics and non-Catholics (the cleavage that prompted *L'Union fait la force* as the national motto in 1830 and later made Belgium a paradigm of consociationalism) should be represented in the government. It is true that O'Leary's scheme would make it conceivable to dispense with the unanimous agreement of all parties of the government. Indeed, this would be indispensable to prevent constant blockages. But there is no reason to expect qualified majority support among the large set of parties wants to bring into the government to be easier to achieve than agreement among all members of the subset of parties that form the governmental majority (in the present situation). Our conviction, therefore, is that the cohesion of a government, its capacity to act and its electoral accountability are all better served under the present system of government formation, which requires simple majority support in the Chamber combined with the support of at least some significant parties in each language group.

All this, however, does nothing to undermine Brendan O'Leary's fundamental point, which his Northern Irish inspired proposals are only meant to illustrate. His point is that once a problem is identified, it is fruitful not to remain stuck with one pet idea and instead to seek inspiration from how other divided countries might have successfully solved analogous problems, possibly in a "less backdoor way". O'Leary emphatically dismisses "the absurd spirit that what works in Northern Ireland works best everywhere else". And it is in the light of a "sensitively detailed knowledge of Belgium's historic and current dynamics", whose importance he stresses, that we believe his proposal would not fix our problem. The reason why O'Leary conjectured it might be that it would make the formation of a government an automatic consequence of the parliamentary elections, instead of giving causing the sort of protracted negotiation we witnessed after the June 2007 election. Such negotiation, however, is about the substance of the government's program far more than about the distribution of portfolios and the reason why it happens before the new government taking office is to prevent constant blockages and governmental instability later on. What the Northern Irish formula would do would be to shift these tensions and blockages into the working of the government once formed and probably make them worse, because of the guaranteed presence of hard liners from both communities. The consequences are likely to be crippling, with the government basically reduced to a caretaker role far beyond the realm of inter-community issues. Or at least this will be the case as long as the prior electoral process keeps inducing parties from both sides to make strong and salient but incompatible promises to their separate electorates. This is our fundamental problem we face, and O'Leary's two interesting proposals do not address it.

De Briey's double vote

Laurent de Briey's proposal does address this problem.¹³ It is, moreover, significantly less radical than either Maddens' proposal or O'Leary's, and is therefore a closer competitor to ours. Like us, de Briey wants all electors of the federal Parliament to have a second vote in addition to the one cast in their own provincial electoral district. But whereas in our proposal, the second vote is cast on a unilingual or bilingual open list presented in a country-wide electoral district, de Briey wants our second vote cast on a closed unilingual list from the other community.

In order to prevent one community from having too much of an impact on who represents the other (and in particular to prevent the Flemish majority from having more say than the Francophones themselves in determining who will represent the Francophones), the votes cast across the linguistic border lose three quarters of their value on the way. In order to avoid many complications and by-pass the problem of insufficient information about individual candidates, on the other hand, the second votes are cast on closed party lists and

¹³ A significantly different version of this proposal, with open lists and no reduction coefficients, was presented by UCLouvain law professor and CdH senator Francis Delpérée (see Delpérée & Dubois 1999 and the discussion in Van Parijs 2000). In February 2009, Open VLD deputy Sven Gatz made a proposal closer to de Briey's (open lists with reduction coefficients) for the Brussels regional elections (see www.vldbrussel.be/page.php/nieuws/dossiers/2009022601).

distributed across provincial electoral districts in proportion to the votes obtained in each of them by the parties concerned. Here again, as under Maddens' proposal, we can reasonably expect that parties on each side will pay significantly more attention to the other side than is the case under the present set up, at least if electors bother to use their second vote in significant numbers.

For the level of complexity of the voting system to remain manageable, this double-vote system is not realistically combinable with ours. The question is then whether there are any good reasons to prefer one to the other. The main of de Briey's proposal, is that his second vote, unlike ours, is wasted if it is not used across the language border. As most voters are likely to have at least some preference between the parties on the other side, many of them are likely to make use of this second vote, and anticipating this response (even with an impact dampened by the coefficient) will induce the leaders of the various parties to care more for the citizens and the media of the other community. In our proposal, it could be said that the guarantee is weaker, since the "federal" vote of each citizen could be cast exclusively on candidates from her own community. We believe, however, that this advantage is more than offset by a conjunction of disadvantages which make the proposal of a federal electoral district both more realistic and more promising in terms of the dynamics it will trigger.

Firstly, in de Briey's proposal unlike in ours, there is no competition between individual candidates for the favours of voters from the other side. As a result, one of the expected effects of our proposal is given up: the encouragement of a selection and self-selection of candidates more suitable for responsibilities at the federal level. Secondly, like the coexistence of two electoral colleges (French-speakers and Dutch-speakers), de Briey's scheme prevents the formation of bilingual lists. It thereby rigidly asserts and tends to reinforce the priority of the dichotomic "ethnic" political identity over all others, with ideological differences playing only a secondary role. Our own scheme, despite the linguistic quotas to which we shall return, is far less rigid. It makes room for (without imposing) bilingual lists which give precedence to ideological over linguistic identity, and could also easily be adjusted if regional identities started overshadowing linguistic identities. Finally, the asymmetry implied by the coefficients means that the members of the federal government are not equally accountable, electorally speaking, to each citizen of the country: the vote of a citizen from the other community matters to him four times less than the vote of someone from his own. In our proposal, each voter matters equally to each member of the government.

It may, however, be argued, that speculations about the possible consequences of de Briey's scheme are pointless because its political feasibility faces a decisive obstacle. Owing to his proposal's closed-list aspect (for which he argues convincingly), the bridging between communities will arguably tend to take the form, not of vote-fetching by individual candidates, but rather of deals between political parties. Each party will tell its voters to allocate their second vote to the party with which it managed to strike a reciprocal deal. If this is anticipated (whether correctly or not) by the various parties, the proposal will be strongly opposed both by those who will have no party to make a deal with (which would presumably be the case for NVA or VB) or only a comparatively much smaller one (which would be the case, under present conditions, for the CD&V, the PS or Ecolo). Especially if the proposal is coming from those parties that stand to gain most from the scheme (CdH, Groen!), this proposal will therefore look *cousu de fil blanc* by all others, and unlikely to get anything like the required majority. As our proposal is consistent with each party standing alone and receiving its usual share of the second votes, it does not create a similar obstacle.

Before concluding that the scheme we propose is definitely better than second vote schemes of the type advocated by de Briey, it is important to answer one important objection to be found in both de Briey's and Horowitz's comments. Both of them fear that the incentives triggered by the creation of a federal electoral district will remain weak, if only because of the relatively small number of seats involved in the Pavia version of the federal district proposal (15 out of 150) or even in the versions favoured by the political parties that support the federal district (30 to 40 out of 180 or 190). In response, we need to stress three crucial points insufficiently appreciated, it seems to us, by our critics.

Firstly, there is no doubt that all the party leaders and most likely members of the federal government to be formed after the election will be standing in this federal electoral district: it will be in the interest of their parties to put them on these lists simply because of the appeal they will have outside their province (not necessarily outside their region), and in an age in which TV appearance is more important than door to door canvassing, how weighty the “federal” candidates are is far more important than how numerous they are. Secondly and for the same basic reason, even though most of the MPs will be elected in a provincial seat, most will have been candidates in the federal electoral district. Finally, the possibility of multiple voting on the same list, which is standardly offered in all Belgian elections, makes it far more likely that voters will seriously consider voting for a salient candidate from the other community providing (s)he stands on a bilingual list and thereby enable voters to vote simultaneously for him/her and for one or more candidates from their own community.

Contrary to a frequent and understandable interpretation to be found for example in O’Leary’s comment, our argument is emphatically *not* that there will be a special category of MPs who will represent, and feel they represent, the whole of the country, while the others represent their region or their province. Our argument is rather that the leaders of all parties and most of the MPs (whether elected in the federal or in a provincial electoral district) will have something to gain — and not, as now, only to lose — by listening to voters from the other side and accommodating their concerns in the programmes they propose and the commitments they make.

Horowitz’s regional thresholds

Now, as Horowitz points out, it remains true that the reform we propose merely opens a possibility, without any guarantee that it will be used. If voters consider that they can only be truly represented by members of their own linguistic group — as de Brieu fears they will —, there will be nothing for politicians to gain from looking across the linguistic border. But is there any fundamental reason why voters should find it more difficult to feel properly represented by MPs belonging to the other linguistic group than by MPs belonging to the other gender or to another age group? It is arguably crucial that voters should feel their representatives understand them and care for them. The lack of any shared language is admittedly a formidable obstacle to both the feeling and the reality of being understood, but a difference in native languages need not be: it only appears to be so when the institutions — as opposed to “nature”, which, when we try to squeeze it out, returns galloping¹⁴ — make it so. And if voters are to feel that candidates from the other language group care for them, enabling these candidates to gain from caring for them — which is precisely what our proposal does — should definitely help.

Nevertheless, if our proposal is to achieve its objective rather than be counterproductive, it is essential that voters should not feel that by giving their vote (or one or more of their votes for individual candidates) to someone from the other community, they risk contributing to their own community being underrepresented. As noted by Horowitz, the open list character of Belgium’s PR system (which we wish to keep) opens the possibility of block voting on bilingual lists for candidates belonging to one linguistic community. The widespread occurrence of such block voting can be anticipated to trigger the collapse of bilingual lists and the spreading of active campaigning for voting for the unilingual lists of one’s own community. Pre-established quotas, simply fixed by the ratio of the linguistic groups in the outgoing parliament, are therefore indispensable if this perverse dynamics is to be inhibited.

Unfortunately, with the exception of O’Leary, our critics do not like our quotas. They seem to feel that they introduce an unwelcome impurity into our proposal: they turn the latter into an uncomfortable hybrid of consociationalist power-sharing (which relies on salient distinct identities) and trans-community bridge-building (which strives to make these distinct

¹⁴ “Chassez le naturel. Il revient au galop.”, Bart Maddens’s title half-says. Perhaps the truly natural behaves in this way. But in human matters, what looks “natural” is generally the (sometimes subtle) product of “artificial”, and hence presumably modifiable, institutions.

identities less salient). We do not care about purity. Nor do we care about whether our proposal can be regarded as truly “consociationalist” or truly “centripetalist”. What we care about is results in the country as it is. And this country is one in which linguistic identities are strong enough for most people to care about the overall representation of their community in the national parliament. But it is also one in which for most people these identities are not so strong as to make it unimaginable for them to vote for a congenial candidate from the other community. This is why quotas are essential to our proposal. This is also why, contrary to what is sometimes suggested, our proposal does not amount to swelling B-H-V to the country as a whole.¹⁵ The fact that the electoral system within the current B-H-V electoral district does not involve quotas is precisely one major reason why federal elections there amount to something like a conflict-ridden linguistic census that drives communities against each other instead of building bridges between them.¹⁶

It is therefore correct to say that quotas are for us a way of creating, in Horowitz’s words, “preelectoral incentives for intergroup cooperation” by switching off the voter’s defensive inhibition. Horowitz suggest that we should “follow that idea to its logical conclusion”, instead of clinging to what looks like a remnant of consociationalism. How? By including far more seats in the federal district so as to mitigate more effectively “the tendencies emanating from the [provincially allocated] seats in which candidates are elected as representatives of ethnic interests”. But also perhaps, more imaginatively, by stipulating that “lists could only be elected if they achieved some territorial distribution threshold that testified to their interregional appeal”.

The Pavia Group did discuss variants of this idea, for example imposing a list-level eligibility condition that prevented allocating seats to lists that do not reach at least 5% of the vote in each Region (a percentage that would need to be safely above the estimated percentage of Francophones living in Flanders), or perhaps at least 0.5% of the vote in each of the eleven provincial districts. Were a condition of this type to be imposed, the incentive to form a country-wide list would obviously be greater than under our proposal. But there is a big danger. Some parties may deliberately opt for sacrificing seats on that electoral district in order to denounce both the “undemocratic” character of a system that denies representation to nationalist parties and the despicable collaboration of their competitors with the “other camp”. Their success may easily be so great as to block any “collaborationist” majority in the federal parliament. Of course, this could be prevented by allocating most seats to the multiple-threshold country-wide electoral district. But the discrepancy between parliamentary majorities in the federation and in the regions would then tend to become explosive.

On reflection, therefore, the Pavia Group opted for a milder variant that does not make it impossible for mono-ethnic parties to get candidates elected in the federal electoral district. Common lists are encouraged by the fact that unilingual lists, in our proposal, will look incomplete (only 9 candidates on unilingual Dutch lists, only 6 on unilingual French lists) and by the premium given to bigger parties by the D’Hondt PR system, at least if district magnitude is not too large. True, our allowing vote pooling between distinct lists reduces this encouragement. But this optional pooling seems to us an appropriate way of creating solidarities across the linguistic boundary when the level of trust is not sufficient for the creation of common lists, while not preventing these solidarities from paving the way to the latter. Moreover, the ability to gather both components of a political family in single list will be an attractive prospect for political leaders who want to become federal prime minister, as they will thereby be able to attract far more easily large numbers of votes spanning the whole country, thereby gaining both greater authority within their own party and a more legitimate claim to leading the government of the whole country.

¹⁵ See de Coorebyter (2007) and Maddens (2007). For a more detailed argument on the importance of quotas, see Van Parijs (2006).

¹⁶ By contrast, the Brussels regional elections, which operate with a 17/72 pre-established quota, display a less divisive dynamics. However, they are organized in two unilingual electoral colleges which prevent bilingual lists and turn border-crossing voting into an anomaly (see Van Parijs 2009). Some analogue of the Pavia Group proposal should be explored for the Brussels Region’s electoral system in order to avoid this defect without lifting minority protection.

If our proposal is to be improved in a direction Horowitz should welcome, therefore, it may be by stipulating that the leader of the list that gains most votes in the federal electoral district should automatically be put in charge of trying to form the next government (instead of the choice being left to the King, as is now the case). Horowitz is likely to welcome this way of increasing the extent to which politicians with the ambition to rule a divided country are made “partially dependent on the votes of members of groups other than their own”. And Maddens is certain to do so. For in our own modest, conservative way — parliamentarian and proportional rather than presidential and majoritarian — we are thereby going a long way towards a direct election of the head of the government, while eroding the little that remained of the current head of state’s political power. Yes, there is perhaps something better than the Pavia proposal. Warm thanks to our critics in any case for having moved the discussion forward.

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