Layered social federalism: from the myth of exclusive competences to the categorical imperative of cooperation

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All political regimes rest on a number of founding principles, myths and taboos. In their provocative piece, Patricia Popelier, Bea Cantillon and Ninke Mussche call into question one of the founding principles on which the Belgian federal system is grounded: the exclusivity of the distribution of competences. The authors also pray for greater coordination between public actors in order to limit overlap and better articulate public action in the social protection sector.

Replacing the principle of exclusivity by a larger catalogue of options is an appealing invitation to creative – and policy-oriented – thinking. The thought-provoking proposal generates a number of concerns, however. After summarizing certain of the authors' main arguments (I), I would like to reflect on some potential advantages and risks of altering and or adopting alternative modes of distribution of competences (II); the potential legitimisation of the so-called "spending power" (III); the ghost of the "joint decision trap" (IV) and the virtues and hazards of cooperation (V). I will then offer some concluding remarks on the link between social protection and identity politics in a multinational context (VI).

I. The end of a myth: some (overly optimistic ?) advantages

The lead piece convincingly demonstrates that – at least with regards to social protection – competences are already largely parallel, complementary, overlapping and multi-layered. A large number of social policies require action by both the federal authorities and the Communities.[23] Rather than seek elusive – and often ineffective – homogeneous "packages of competencies", the three authors call for an end to the "dogma of the exclusivity principle". Competences with regards to social protection should, rather, be distributed on a shared (parallel or concurrent) basis, or allow for framework (federal) legislation to be implemented and complemented – if need is demonstrated – by the three Communities. This, in their view, should have a number of positive outcomes. The idea is not to replace one dogma by another, but to move from one form of distribution of competences (officially exclusive) to a number of options, that can be tailored to meet specific social policy challenges.

First, the formal mode of distribution of competences would actually align itself with what has become a practical – and even a timid constitutional - reality.[24] The end of the exclusivity taboo would thus bring some form of constitutional honesty to the social protection field. Secondly, allowing for shared competences at least should reduce the risk of policy paralysis. If I understand well, one of the underlying assumptions is that if the bipolar federal authority cannot get its act together, constitutive units would be able to adopt social protection policies. This should either discourage the use of vetoes against reforms in federal institutions, or at

[23] And, on the Francophone side, by the Regions either because there has been a legal transfer of the exercise of competences from the French Community to the Walloon Region or the COCOF, or because the Walloon Region, in practice, funds and organises services which are intimately intertwined with a given Community-based social policy.

[24] See, notably the discussion of the Constitutional Court's decision 11/2009 in VANPRAET, Jurgën, «Vers une sécurité sociale flamande complémentaire dans le cadre actuel de répartition des compétences ? », *Journal des Tribunaux*, 2010, no. 18, pp. 301-305.

least facilitate policy-making at other levels, if need be.[25] Thirdly, abandoning the dogma of exclusivity should reduce the competitive trend to "occupy the field" first, even when the added value in terms of social protection may not be clearly demonstrated. Fourthly, this should also reduce the costly "race to the top" between orders of government who all want to serve a similar public through distinct but related - and generally uncoordinated – public policies. In other words, moving from exclusivity to various forms of ordering of competences should reduce competition-driven factors unrelated to the social policy at stake.

It is undeniable that from a functional – as opposed to a purely formal - perspective, competences in the area of social protection are intricate, interconnected, intertwined. Hence, the call for an end to the mythologised principle of exclusivity is welcome. It is generally salutary to challenge ingrained taboos. The alternatives have their own inherent risks, however. The following section identifies a few, but also reinforces the potentially positive impact of the proposed paradigm-shift.

II. Parallel, concurrent, shared competences: broadening the catalogue of options

There are a number of means of distributing competences in a federal regime. In some cases, constitutive units have explicitly attributed competences, the federal order enjoying residual ones (the case, so far, in Belgium). Sometimes, the opposite is true (to some extent, the United States). Sometimes, there are twin lists of exclusive competences (in Canada). In addition, however, competences can be shared between orders. As the lead piece underlines, this "sharing" can take three distinct forms: parallel or concurrent competences, or framework legislation to be complemented/completed/implemented by constitutive units.[26]

Framework legislation allows for common ground rules to be adapted to "local" preferences and implemented in a differentiated manner. An approximate analogy would be European directives. In some areas, this can be a decent mid-point between full-fledged transfer of federal competences, or a structured – institutionalised – means of ensuring cooperation between federal and federated entities. The key here is 1) that federal authorities must agree on those ground rules, something which is arguably increasingly difficult in Belgium, at least with regards to social policy reform and 2) that the framework rules not be so detailed that they act as a *façade* for full-fledged federal legislation, leaving little room to manoeuvre to constitutive units.[27]

Concurrency allows for action by different orders of government (federal and Communities, for instance), but requires a "rule of supremacy" in case of conflict. In most federations, federal law takes precedence when there is a clear contradiction with norms adopted by a constitutive unit, although there are exceptions.[28] In fact, there is no logical necessity that the rule should apply in one direction only, or that the same rule should apply in all cases of concurrency. In any event, opting for concurrent competences would require to determine which order should take precedence in case of conflict between legislative provisions adopted by different orders. This would clearly run counter to another founding principle (myth?) of the Belgian federal system: that of the equality between the federal and federated authorities.[29] This assertion of constitutional equality was – at least originally – understood as a means of securing the autonomy of the recently constituted federated units. Arguably, however, one could imagine that some specific areas of social protection could be subject to this form of distribution, with a clearly determined rule of supremacy. Unless all components of the federation act in good faith, the order with the supremacy rule could attempt to deliberately adopt conflicting rules to annihilate their "concurrent's initiative (but I might be overly pessimistic here…). In other words, this method does not necessarily reduce competition, but it may play itself out in a different manner…

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[25] The power to intervene in case of paralysis at the center is far less clear in the case of framework legislation, which by design require consensus at the federal level.

[26] See footnotes 1 to 3 of lead paper

[27] GARCÍA MORALES, María Jesús, ARBÓS MARÍN, Xavier, "Intergovernmental Relations in Spain in POIRIER, Johanne, and SAUNDERS, Cheryl, eds., *Intergovernmental Relations in Federal Systems, A Global Dialogue on Federalism*, vol. 8, McGill/Queen's University Press, Montréal/Kingston, forthcoming 2011, p. 8 of the manuscript

[28] In Canada, for instance, contributory old age pensions are a concurrent competence with provincial supremacy. In other words, in case of conflict between federal and provincial rules, the latter would take precedence (art. 94a of the 1867 Constitution Act). In practice, only Québec has set out its own pension plan. In other provinces, the federal regime applies. There is a high degree of coordination between the Québec and Canadian plans, so that the provincial supremacy clause has never had to be invoked.

[29] DELPÉRÉE, Francis, VERDUSSEN, Marc, « L'égalité, mesure du fédéralisme », *in* GAUDREAULT-DESBIENS, Jean-François, GÉLINAS, Fabien (dir.), *Le fédéralisme dans tous ses états: Gouvernance, identité et méthodologie / The Sates and Moods of Federalism: Governance, Identity and Methodology*, Carswell/Bruylant, Montréal/Bruxelles, 2005, pp. 193-208, at pp. 199 ff.

At first sight, **parallel competences** do not run into such problems but they also have their inherent drawbacks. Basically, this form of distribution allows all federal partners to legislate with regards to a common policy area, to the extent that each order acts within its own – exclusive - sphere of competences. In Canada this is called the "double-aspect" doctrine.[30]

For a number of reasons, notably the age of the federation (created in 1867), the Canadian Constitution provides very few clear rules concerning the distribution of competences in the field of social protection.[31] With a few exceptions, courts have been called upon to rule on the constitutionality of federal or provincial legislation in social policy. Some periods have favoured provinces (which enjoy most of the competences in the area), others the federal authority. In the last few years, however, the trend seems to have been to consider a significant number of legislative initiatives to fall within the "double-aspect" doctrine, which allows intervention by both orders.[32] The advantage is that once a programme has been designed by one order, another can also design a similar (even identical !) one, so long as it can link it with one of its – I repeat, exclusive - constitutional competences. [33] However, the risk of duplication or overlap is obvious, and, consequently, effective coordination and cooperation between the various actors is essential.[34]

It bears pointing that parallel competences also require a rule of conflict in case of a clear contradiction between otherwise valid federal and provincial norms. In other words, the potential impact of a supremacy clause on the principle of equality and non-subordination is relevant in the context of parallel competences, just as it is in the case of concurrent competences. In practice, however, Canadian courts seek to find conciliatory interpretations of the respective competences, so as to avoid having to declare a particular legislative scheme invalid. For instance, the fact that provinces adopt stricter protective rules, over and above those provided in federal legislation, are generally not considered to raise a conflict requiring the application of a supremacy rule (which would favour the federal order), since both sets of rules (the less and the more stringent) can be respected simultaneously.

Parallel competences allow for greater flexibility and, in some cases, positive forms of asymmetry. For instance, some provinces may wish to introduce a programme, while others are happy to leave the federal order handle the matter.[35] In a sense, the message given by the Supreme Court to federal and federated authorities is: "you can both intervene, so get your act together and cooperate". While at first sight, no one should be against cooperation, this reluctance of the highest Court to clarify constitutional competences can favour power games within a federal system, particularly when some federal partners have greater financial capacities than others (see section III, *infra*)….[36]

Whether such a system could work in the Belgian bipolar political and constitutional environment remains to be seen. In theory, as the three lead authors suggest, parallel competences could limit the risk of blockage within federal institutions, as actors would know that if a programme/reform cannot be undertaken at that level, Communities could take over…. In other terms, vetoes would have a cost. Could this have diminished resistance by some (French-speaking) ministers concerning reforms of Unemployment Insurance scheme at

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30 POIRIER, Johanne, « Le partage des compétences et les relations intergouvernementales : la situation au Canada » *in* FOURNIER, Bernard, REUCHAMPS, Min (dir), *Le fédéralisme en Belgique et au Canada : Un dialogue comparatif*, de Boeck, Bruxelles, 2009, pp. 103-118. In Canada, « shared » competences is often used as a synonym for parallel (rather than as a category that includes both concurrent and parallel competences). The distinction proposed by Popelier, Cantillon and Mussche is much clearer.

31 Exceptions are pensions and Unemployment Insurance which were explicitly transferred to the federal authority after having been recognised as lying within the provincial sphere of competences by Courts: POIRIER, Johanne, « The Canadian Social Union : Solution or Challenge for Canadian Federalism », *in* VANSTEENKISTE, Steven et TAEYMANS, Marc (dir.)., *Sociaal Beleid en Federalisme*, Vlaamse Juristenvereniging, Staatsrechtconferentie 1998, Larcier, Brussels, 1999, pp. 25-84.

32 Parallel leave, for instance, can both be covered by federal authorities (pursuant to its competences relative to Unemployment Insurance) and provincial ones (family policy). Coordination, to avoid duplication and balance funding, is essential: Reference re *Employment Insurance Act* (Can.), ss. 22 and 23, [2005] 2 S.C.R. 669, 2005 SCC 56.

33 LECLAIR, Jean, « The Elusive Quest for the Quintessential 'National Interest' » (2005) 38 *The University of British Columbia Law Review* 355-374.

34 See VANPRAET, supra, note 2.

35 This is partly the case of early child care provisions. Pursuant to its competence over family policy. Québec chose to heavily subsidise day care centers (to increase accessibility). The federal government then developed a programme through which it provides funds to families who can chose modalities of care (including payment for stay at home parents). The system relies mostly on tax cuts to parents for the cost of care (based on Ottawa's fiscal competences. Québec sought in vain to obtain some financial compensation for the programme it had set up earlier, but Ottawa refused. In other words, there was a heavy premium on asymmetry in this case: Québec pays for its system frpm its general budget, while Québec *parents* can get a federal tax cut. The result has to be higher taxes in Québec… In the absence of a financial settlement with Ottawa, other provinces, who were tempted to follow Québec's policy initiative, have not done so, even when they agree with the early child education value of the project.

36 POIRIER, Johanne, «Les ententes intergouvernementales : Une contractualisation paradoxale du droit constitutionnel canadien », *in* vol. 1, *Revue québécoise de droit constitutionnel,* 2009, 20 pp. : http://www.aqdc.org/public/main.php?s=1&l=fr

the federal level, and thus avoided the subsequent claims for a further regionalisation of employment policy (by Flemish political actors) ? Perhaps.

Similarly, could parallel competences have prevented Flemish autonomists from rejecting a proposal to introduce a Dependency Insurance programme within the overall federal social security system, since having a federal one would not necessarily exclude the introduction of a Flemish equivalent?[37] Maybe. But the risk of competition, and the need for very effective and constant dialogue and coordination cannot, once more, be under-estimated. Particularly if a constitutive unit which organises its own programme then calls for financial compensation by federal authorities, discussions are likely to be unending… [38]

III. Legitimising the "spending power" ?

In many federal regimes, there is no necessary connection between substantive (or material) competences (what a public authority can do) and competences over funding (what it can spend money on). For instance, in Canada (or the United States, or Australia, or Germany, or Spain), federal authorities can fund projects – or make direct payments to individuals or groups – even in areas over which they do not have constitutional competences. To give a concrete example, even though education is a provincial matter, Ottawa can fund scholarships or research projects, so long as it does not formally "regulate" the matter (adopt detailed legislation). It can simply determine under what conditions it is willing to provide funding.

Those who think that this is a way of doing indirectly what cannot be done directly would not be far from the truth. Be that as it may, this phenomenon is common in federal practice around the world. This has sometimes had positive impact in terms of public policy: the public health system initially introduced by one province was generalised across Canada through the use of the federal spending power.[39] Nevertheless, this capacity to circumvent the formal distribution of competences can certainly distort constitutional architecture and favour power games: s/he who holds the purse, can dictate (even indirectly) policy options…

In theory, in Belgium, funding and substantive competences are linked. The reasons are complex.[40] From a comparative perspective, I have always thought this rule to be logical, coherent and – oddly – rare. This limitation on the capacity of public authorities to fund initiatives in areas over which they have no legislative capacity has known some exceptions,[41] but overall, it still governs public spending. One of its principal advantages is that it keeps the lines of accountability more transparent: the order that regulates, funds, and can (in theory) be held accountable for its decisions and management. By contrast, splitting legislative competences and spending power renders public action far more opaque.

In a sense, shared competences (at least if they are widespread) would have the effect of removing the constitutional obstacle to the "spending power". If you can legislate, you can spend. If two orders can legislate in relation to a particular social policy, both can spend in that area. This can also lead to distortion.[42] In most other federations, the greater spending capacity of federal authorities, coupled with this "spending power" has lead to federal intrusion into spheres of competences of constitutive units. The situation is somewhat different

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37 This, it seems to me, is a good example that it is not always the « French-speakers » who forestall reforms within federal institutions….

38 It may be, however, that a richer Flemish Community would chose to finance such a programme without seeking compensation from a fiscally very tight federal order. I would surmise that this would lead some to denounce the resulting indirect financial transfers from North to South, as the federal programme, funded by the Belgian wide federal budget, would only benefit non-Flemish citizens… This, in itself, in likely to fuel blockage at the center…

39 This is the archetypical example of the "innovation" or "laboratory" potential of a federal regime with regards to public policy.

40 They are essentially linked with the territorial competence of the communities. Disconnecting funding from material competences would have allowed the French Community to fund cultural centres in Flanders: CA 54/96 (03.10.1996) ; CA30/2000 (21.03.2000) ; CA 56/2000 (17.05.2000).

41 Hence, Regions can « pre-fund » some railway projects despite the fact that rail transportation is a federal matter. There has also been some very creative funding arrangements by the Walloon Region in areas which a priori are still within the competence of the French Community : DELGRANGE, Xavier, DETROUX, Luc, « Tout s'achète, même les compétences: le "pouvoir de dépenser" fleurit sur le terreau de l'autonomie fiscale », Journal du Juriste (Belgique), no. 4, 2002, 4 ; VANDER GEETEN, Valéry, « Le pouvoir de dépenser en Belgique et au Canada : gage d'efficacité ou entorse au fédéralisme ? », available on the collaborative website « Le droit public existe-t-il ? », under the theme : L'État doit-il être efficace ?: http://dev.ulb.ac.be/droitpublic/index.php?id=31&tx_ttnews[pointer]=1&cHash=bf631284b0ht (access Novembre 16, 2010), also found in *Revue belge de droit constitutionnel*, vol. 38, no. 4; POIRIER, Johanne, « Le droit public survivra-t-il à sa contractualisation ? Le cas des accords de coopération dans le système fédéral belge », *Numéro spécial de la Revue de droit de l'ULB*», vol. 33, 2006-1, pp. 261-314, at pp. 276-280.

42 Although such a system would arguably remain more theoretically coherent than those in which spending is not aligned with substantive competences …

in Belgium, where, given Flanders' higher degree of spending capacity, parallel competences could lead to better social services in the North, even in areas in which federal authorities enjoy shared competences (but where it has lessen resources to spend, or cannot gather the necessary consensus to spend…). While uniformity is neither compatible with federalism, nor a guarantee of substantial equality, fiscal and financial differences in the bipolar Belgian system, are likely to be a source of renewed and continued tension…

IV. The ghost of the "joint-decision trap" ?

In Belgium, the distribution of competences concerning social protection has been incremental, haphazard and is not always either transparent or coherent. This is not unusual in a federal regime. In theory, abandoning the myth of exclusivity in the sphere of social protection would allow for a clarification of the actual situation (taking stock or a sort of "*état des lieux*"). It would also potentially facilitate a policy-oriented reflexion on the best method for ensuring generous, effective, equitable social protection to all citizens, while respecting cultural differences and policy preferences.

The question would not (simply?) be : "who should do what" ? But "how should they do it (together or not?). And it they chose to act "together" how should they do it? Through framework schemes? Parallel or concurrent competences? And in that latter case, which order should enjoy paramountcy in case of conflict? And – while we are at it – even if policy-makers agree that the matter should remain (or become) exclusive, should some coordination mechanisms be explicitly provided to ensure a certain degree of mobility and continued communication in terms of policy orientation and innovations? In this sense, cooperation and coordination could be an integral part of the reframing of social protection. In other words, redefining competences could be made conditional on some formalised cooperative mechanisms and processes. A range of institutional design and tools would then be available to social policy-makers. This has great potential for creativity and innovation.

But it can also lead to a quagmire of discussions and – potentially – to what German political scientists have called the "joint-decision-trap".[43] Interestingly, over the last decade, Switzerland - probably the multinational polity that is least prone to internal tensions - has attempted to disentangle competences and responsibilities. The objective of this complex project was notably to clarify lines of responsibility, which joint-decision making had often blurred. In the case of Belgium, introducing a system of shared competences – or of framework legislation – which would increase the need for constant negotiations and joint-decision making could be an interesting enterprise. It could indeed potentially lead to better communication and coherent policy-making. However, given the current stalemate of discussions concerning almost any aspect of public affairs, the risk of policy paralysis may be heightened, not reduced….

V. Cooperation, communication, coordination… : a cure-all ?

"Intergovernmental relations" (the term commonly used in English) or "cooperative federalism" (as more frequently used on the European continent) are an unavoidable component of any (working !) federal regime. Mechanisms to coordinate inter-related action are simply part of the "federal destiny". A large number of techniques are used – or should be used ! - to articulate the exercise of closely related exclusive competences. Mechanisms and processes are also required to clarify "who should do what" in the case of parallel ones, in order to limit duplication. In other words, no method of distribution of competences will obviate the need for cooperation, although the failure to cooperate may not have the same consequences in all cases.

True to its reputation, the Belgian federal system includes an impressive variety of complex and sometimes original cooperative methods. Some are clearly under-used, most are under-studied. One of the pragmatic advantages of moving from a model of exclusivity of competences to one of a range of modes of distribution is that it would require a fresh look at "who does what ? for whom ? and how?" Cooperative methods could be systematically included in any proposal for alternatives to the *status quo*. At the very minimum, a domestic

[43] Though this phenomenon may have been overstated : see LHOTTA, Roland, Von BLUMENTHAL, Julia, "Intergovernmental Relations in the Federal Republic of Germany", in POIRIER, Johanne, and SAUNDERS, Cheryl, eds., *Intergovernmental Relations in Federal Systems, A Global Dialogue on Federalism*, vol. 8, McGill/Queen's University Press, Montréal/Kingston, forthcoming 2011, at p. 32 of manuscript.

"Open Method of Coordination" should be introduced to ensure the sharing of information between public actors from different constitutive units and the federal order.[44] In a political environment in which informal and spontaneous cooperation is weak (as is arguably the case with federalism of dissociation), institutionalising them offers greater potential for improved coordination.

This being said, intergovernmental relations and other forms of cooperation also have their down-side. Again, they have a tendency to blur lines of political (and arguably even legal) responsibility. They also have a tendency to reinforce the role of the respective executive branches of government, thus restricting both parliamentary and judicial control of public action. This is not to deny the virtues of coordination, but a warning that in designing cooperative tools, care must be taken to promote as much transparency and accountability as possible.

VI. Social protection and identity politics

In a large number of policy areas, the actual distribution of competences is a rather technical affair which should not raise identity politics issues. A *priori*, what do competencies in aeronautics, financial institutions, vaccination or highways have to do with culture/language/history or, more globally, the sense of "nationhood" in a multinational country, such as Belgium or Canada?[45] Yet, in some cases, constitutive units which host a "nation" may draw a sense of security (or even pride) from knowing that even in technical matters, they can make their own – final - decisions. This is not unique to Flanders.[46]

Social protection is not, however, merely a technical affair. And here, the link with identity politics is, *a fortiori*, undeniable.[47] The search for "congruence" between cultural preferences and social protection mechanisms is commonplace in multinational countries.[48] Social protection is a very visible and effective tool of "nation-building". This was – and is – true in "mono-national" states. It is also true of multinational ones. In that case, however, social protection will likely be a battlefield aimed at consolidating/preserving/enhancing distinct, senses of belonging and "circles of solidarity".

In other words, in a country with evolving, multiple and often competing identities, it is not surprising that social protection plays a complex role in identity politics. The question is whether moving from "exclusive" to largely shared (or framework) modes of distribution of competences would have an impact on this competition for allegiances.

In my view, this is unlikely. Each negotiations concerning the proper order which should be primarily responsible for a particular policy area, and/or for the method of distribution of competences to be used (framework federal legislation, complementary rules, exclusive ones, etc.) would also reflect this desire to maintain a certain Belgian identity (for those who wish to keep matters federal) or to promote another form of identity (primarily Flemish, *in casu*).

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[44] See also : CANTILLON, Béa, De MAESSCHALCK, Veerle, « Sécurité sociale, transferts et fédéralisme en Belgique », R.B.S.S. 2007, no 2, pp. 365-396, à la p. 388. Participants in the Open Method of Coordination on social cohesion revealed that the process had allowed - within a EU context - to a sharing of information between the Belgian authorities, which had not taken place otherwise: VANHERCKE, Bart, HARMEL, Marie-Pierre, «Politique nationale et coopération européenne : la méthode ouverte de coordination est-elle devenue plus contraignante? », R.B.S.S. 2008, no 1, pp. 73-111.

[45] I personally have no doubt that the Flemish (as the Québécois, the Catalans or the Scots) form a nation within their overall country. The fact that the sense of nationhood is far more complex for the rest of their respective countries (is there an « English Canadian nation » by opposition to a « Canadian » one ? or are Walloons a nation ?) does not negate the simple « constat » that Belgium, Canada, Spain or Great-Britain are not uni-national polities.

[46] Again, in Canada, the use of the federal spending power has generated a reaction amongst many Québécois politicians and constitutionalists that the "original" 1867 contract is simply being ignored for apparently pragmatic policy reasons, with derogations being banalised by the Supreme Court. For a minority, the sense that the "original deal" should be respected is arguably far more significant than for the majority. In other words, even in rather technical affairs, with little connection with culture-in-a-strict-sense, parallel competences, particularly when coupled with a federal "spending power" may feel threatening: ADAM, Marc-Antoine, "The Spending Power, Co-operative Federalism and Section 94" Queen's Law Journal, vol. 34, Number 1, Fall 2008, 175 at pp. 180-181. Of course, given the majority status of the Flemish in Belgium, and the general weakness of the federal authorities (compared to Ottawa or Madrid), the risk that parallel competences would weaken the autonomy of Regions or Communities is not as great.

[47] I have argued elsewhere that social protection in multinational states play three functions : redistributive, bureaucratic legitimation and consolidation of complex multi-layered and often competing identities : POIRIER, Johanne, "Protection sociale et (dé)construction de la citoyenneté dans les fédérations multinationales", *in* JENSON, Jane, MARQUES-PERRERA, Bérangère, REMACLE, Éric eds., *L'état des citoyennetés en Europe et dans les Amériques*, Les Presses de l'Université de Montréal, Montréal, 2007, pp. 195-214.

[48] McEWEN, Nicola, MORENO, Luis, eds., *The Territorial Politics of Welfare*, Routledge, Oxford/New York, 2005, pp. 1-40

Arguably, in a multinational federation, there may be concentric circles of solidarity. This can be interpreted as a "*repli sur soi*", when a circle is being tightened (by moving a competence or a programme from the federal to the federated order). It can be also understood as a logical consequence of having multiple identities and multiple allegiances. It may be that moving from "exclusive" competences to more flexible multi-layered modalities, could render those circles of solidarity even more complex, fluid and overlapping.

That is not necessarily a bad thing. Sharing would not only occur either between all Belgians (in federal matters), or exclusively within each Community (in Community ones). Sharing could take different forms, and different degrees of intensity, depending on the policy area. An optimist may see this has having the potential of reducing the constant bipolarity and dualism which institutional reforms have reinforced. Policy specialists may see the end of the myth of "exclusive competences" as a way of (re)focussing the discussion on the promotion of social protection for those who need it. These potential blessings certainly justify that Popelier, Cantillon and Mussche's proposal be given serious consideration.

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