

Two dilemmas in institutional reform: the Pieters dilemma and the Cantillon dilemma

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It is a pity our friend Danny Pieters cannot attend the debate today. I know his view on social federalism, and I disagree; that would have made for a nice discussion, but there may be other occasions to come. I must say I also disagree with Popelier, Cantillon and Mussche (PCM). Yet, if Danny were here, I would disagree starkly with him, whilst with Bea and her co-authors I disagree gently.

Since a long time, I believe the Flemish movement is running up against a dilemma when it comes to de-federalizing social security. Let me call it the “Pieters dilemma”, because Danny is a staunch defender of the idea that you can split our federal social security system in two parts, a “Dutch Community Social Security” and a “French Community Social Security”. I believe that that perspective contradicts fundamental features of what constitutes social insurance, which you will find well explained in Danny’s general writing on the subject, notably the fact that social security must be based on general, compulsory insurance. Admittedly, in intra-Flemish political discussions the idea that social security would be de-federalized, has been defended most of all with regard to health care insurance and child benefits. The argument, often repeated in Flemish circles, was that health care insurance and child benefits constitute “social policy” rather than “social insurance”. Hence, it was deemed both appropriate and feasible to decentralize those policies towards the two main Communities, the Dutch- and the French-speaking, whilst there were more doubts about income-replacement branches of social security. Danny Pieters believes that one can also split the income-replacement branches of social security on a “Community basis”. I think it is neither possible to do that for health care and child benefits, nor for pensions or unemployment, without contradicting the essential characteristic of social insurance (which also holds for health care and child benefits): allowing people to *shop* and choose their social security regime is incompatible with social insurance. If you de-federalize social insurance towards the two Communities, *shopping* is inevitably what you have to admit in Brussels, in one or other way. I summarize and simplify the argument now, but this is, in my mind, an insurmountable problem for any proposal to split our social security in two parts. Depending on the branch we are discussing and on the degree and modalities of “choice” for residents in the Brussels Region (i.e. choice between a “Dutch Community” and a “French Community” system), the result will be technical infeasibility, or instability, or huge inadequacies in coverage. The only solution for de-federalization of social security which is, theoretically, feasible is a regionalisation, whereby each of the three regions would organize a compulsory insurance system with no shopping. I know that the Flemish care insurance system is put forward as “proof” that a community-based approach *is* possible, with people in Brussels having a choice between participating in the Flemish scheme or not participating in it, but I think that case is unconvincing for reasons which I cannot pursue here. (To summarize my argument, on this, briefly: with the current architecture it will be impossible to develop the Flemish care insurance into much more than a marginal benefit, and even the current architecture entails important practical difficulties.) Danny Pieters does not want to de-federalize the country on a regional basis, so he is confronted with a real dilemma here: either one regionalizes social security (creating a Brussels social security system), or one leaves it at the federal level.

I now turn to the argument put forward by PCM. I have three difficulties with their approach. But let me first point out in what sense their approach is an interesting departure from the traditional discourse on institutional reform. The traditional discourse on institutional reform often refers to the necessity of having “homogeneous competences” at each level of authority. In practice, there is no homogeneity: in the domains of employment

policy, health policy, housing policy... we have both federal and regional competences. *Pure* homogeneity is, at least in some broad policy fields, very difficult to reach. The reason is partly related to the Pieters dilemma. Take employment policy. Labour market legislation is a crucial component of employment policy, yet it seems difficult to imagine that we de-federalize labour market legislation. If we are ready to decentralize labour market legislation on a regional basis (creating Flemish, Walloon, and Brussels labour market legislation), de-federalization is theoretically feasible, but that would obviously create an extremely complex situation. De-federalizing labour market legislation on a community-basis and allowing economic actors in Brussels to shop between a “Dutch” and a “French Community” variety of labour market regulation is, even on a theoretical level, a *contradictio in terminis*. Labour market regulation is “coercive” by its very nature. So, whilst it is useful and feasible to regionalize activation policies, we better leave labour market legislation where it is today. That destroys homogeneity. But even without reference to the Pieters dilemma, it seems very hard to achieve pure homogeneity within broad policy fields, for fundamental reasons as pointed out by PCM. First, the multi-layered character of governance to which the growing influence of both the EU and the local level contributes, contradicts the idea that “good governance” presupposes pure homogeneity. And, on an even more general level, it seems that the neat distinctions between what we traditionally consider to be “employment policy”, “education policy”, “social policy”, are becoming harder to sustain, given the increasing emphasis on the links between employment, education and social protection, notably in the framework of “social investment”. So, when we argue for homogeneity, and the question then is “homogeneity of *what?*”, the answer is less evident than ever. Here I agree with PCM. You will hardly ever hear me reason about institutional reform with the quest for homogeneity as the main motive and perspective. (Sceptics of the homogeneity discourse, may also remark that the demand for “fiscal autonomy in income taxation” creates heterogeneity, instead of homogeneity.)

Yet, I disagree with PCM on three issues.

First, I believe there is confusion between “goals” and “policy domains” in the development of PCM’s argument. Hence, their scepticism about “homogeneity” in what they call “policy fields” too easily turns into an argument against exclusivity in what I would call “policy domains”. A “policy domain”, as I define it, is a narrower concept than a “policy field” as they seem to define it: let us say that a “policy field” is defined by policy goals, and a “policy domain” is defined by a combination of goals and a set of instruments. To give but one example, the fact that both the federal government and Community governments would have “child welfare” as a fundamental *goal*, creating a “policy field” which is best defined as “child welfare”, does not make it impossible to distinguish neatly “child benefits” and related cash advantages from “child care”, and to confer the first exclusively to one authority and the other to another authority. “Child benefits” and “child care” are two distinct domains of policy (a domain being defined by a combination of goals and types of instruments), yet they serve the same fundamental goal, child welfare. In other words, the fact that we would allow for some “heterogeneity” of competences in the broad policy field “child welfare” (defined by that goal, child welfare) does not make it impossible to apply a principle of exclusivity. When it comes to practical policy domains, “exclusivity” does not presuppose “homogeneity” on the level of broader policy fields.

Second, I do not see what the practical implementation of their proposal would change in (or add to) our current institutional set-up, as defined by the current Constitution and Special Laws. In many domains, the kind of multi-layered policy development they call for is already possible. I do not see a domain in which the application of the PCM principle would really necessitate a new round of institutional reform. To put it bluntly, what PCM argue for is already largely present.

Third, and most fundamentally, I am strongly in favour of exclusivity where it is possible. PCM explain well how “competitive nation building” has led to inefficient policies in the domain of elderly care and long term care, and financial support for kids going to school. There are other examples too. The fundamental tensions in our country greatly add to the natural tendency of politicians to be expansive with the powers conferred to them. I would say to any institutional architect: please, make it *more difficult* for politicians, situated at different levels of power, to compete with each other in the same policy domain! Hence, try to avoid shared powers. Try to organize exclusivity, where it is possible.

Now, PCM give us one argument in favour of their variety of multi-layered governance, shared powers, and one important constraint. The argument has to do with policy innovation. However, that requires some guarantee that policy competition would always be truly innovative, in one way or other. Indeed, the shared powers they argue for are “controlled”: “if one wishes to take up a power, one would have to demonstrate that is

complementary of necessary”. Such a setup requires strong mechanisms for resolving conflicts, based on a *hierarchy of norms*. For historical reasons, neither the South nor the North in this country ever accepted the idea of a hierarchy of norms, which would give the federal level predominance over the regional and community levels. That is the fundamental Cantillon dilemma: to make shared powers a concept that is both productive and stabilizing, you need hierarchy of norms, which we do not have and will not have for the foreseeable future.

Let me add a nuance and clarification. I think the PCM variety of “shared powers” leads to instability and inefficiency in this country, as it is and will stay. But that is not to say that exclusivity is always possible, and certainly not that multilevel governance is always to be avoided. One type of multilevel governance, which may be further developed in Belgian institutional reform, is “framework powers”, as mentioned by PCM. When it comes to employment policy, some of the proposals I have tabled in the past are examples of “framework powers” at the federal level, and “implementation” at the regional level. But such a model implies a neat distinction of competences, not policy competition.