

Reply to Comments

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Our reply to the comments on our paper focuses on what Frank Vandenbroucke (FVDB) called the “Cantillon dilemma”: meaning that introducing shared powers in Belgium, as opposed to sticking to uniquely exclusive powers, would entail that Belgium introduces the principle of “hierarchy of norms” between the federal and federated entities – which nobody wants. FVDB claims that “neither the South nor the North in this country ever accepted the idea of a hierarchy of norms, which gives 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”.

We disagree with the diagnosis. The Cantillon dilemma is not a dilemma as long as ‘hierarchy’ is put in a proper and nuanced perspective. To begin with, not all forms of power allocation require the introduction of hierarchy between levels of government: framework powers and parallel powers, for example, do not require this. Framework powers already exist in Belgium, for example in the field of economic policy. The federal government is competent to develop general rules regarding for example public works and consumer protection. The Regions can complement these rules with other norms and can take individual measures when applying the set of federal and regional rules. This means that each level of government is assigned a certain part of policy making, without any level being able to impose anything in the domain of the other. Nobody needs to justify its policy choices to the other level of government, yet both levels are competent in the same specific policy field – so there is no question of hierarchy. One could additionally level the field even more, by allowing the Regions to have a say in the drafting of the ‘general framework’ by the federal level. This exists already for the specific domain of aid to corporations regarding economic expansion: if the federal level wants to change the maximum level of aid, the Regions must agree (Popelier, 2011). Such an arrangement of framework powers has potential in the social policy and social security field also. One can think of child benefits as a framework power: the federal government sets the floor regarding the minimum level of benefits. But it leaves it to the federated entities to fill in for example whether the first child receives less of more than the second one, whether the money is paid to the mother, how to deal with re-composed families, whether extras are given at the start of the school year, etc. When the federal level decides to amend the basic benefit levels, the federated entities join the table and try to come to an agreement.

Another form of power allocation that does not involve any hierarchy concerns parallel powers, of which quite a few exist in Belgium already, albeit regarding instrumental competences (namely competences that allow you to fulfil your substantial competence properly): both levels of government are competent to act in the same policy domain. In Belgium this is the case for undertaking scientific research, or to develop penal law in the domains one is competent for. Parallel powers in social policy are perfectly thinkable. To come back to the child benefits for example, both the federal and the federated entities can be allowed to grant child benefits parallel to each other, without any interference among each other. The first critical question would then be – as FVDB suggested – that this would give too much leeway for politicians to be expansive and to spend too much. Not doubting the wisdom of this statement, we point to other federations where such expansion indeed occurred, but where this trend was curbed. In Canada for example, a period of competitive expansion of social policy existed from the 1960s onwards. Keith Banting asserts: “during the

early phases of this process, the two levels of government often became competitive, in a process similar to recent experience in Belgium. Each level sought to strengthen its leadership and protect its jurisdiction by enriching its social programs or moving aggressively into newly emerging programming areas.... In the final decades of the 20th century, the competitive dynamics eased. As the fiscal position of both federal and provincial governments weakened in the 1980s and 1990s, both levels sought to protect themselves from the budgetary exposure inherent in social programs (Banting:2011).” Next to the fact that governments tend to sooth down their expansive urge in times of budgetary austerity, it is clear that exclusive powers in the field of social policy is certainly not a guarantee for budgetary restraint. Quite on the contrary. As Johanne Poirier puts it so aptly: “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”. She adds that letting go of the dogma of exclusivity could even reduce the costly “race to the top” between orders of government (Poirier, 2011).

This brings us to one model of power allocation which does touch upon the concept of hierarchy, but in a much less dramatic way than the word hierarchy implies. Concurrent powers allow for one level of government to act in a policy domain when the other level does not do so. This system exists in Belgium in the field of taxation. In such a system, when one level of government acts, the other cannot do so anymore. This form of ‘hierarchy’ however, should not be seen as a system where one level is completely subservient to the other level. Concurrent powers work in a much more subtle way, as a sort of network. They mostly concern priority rules, but that doesn’t mean that one level would always have the priority. True, in Germany *Bundesrecht bricht Landesrecht* most of the time. But in Canada for example, the opposite occurs, where priority is given to the subnational rules. And even in Germany regarding certain matters, both the federal level as well as the *Länder* can deviate from the rules in force. Another hierarchy softening aspect of a system of concurrent powers is that the level of government which has to give priority, can be involved in the decision making process. Additionally, the subsidiarity principle can be applied: the federal level of government is competent as long as the federated entities is not able to properly handle a competence. Then the federal government, in case it wants to legislate in a particular field, has to prove on rational (evidence based) grounds that it is necessary to legislate in a policy domain federally in order to keep things uniform across the country. When we apply this to our child benefit example, this would mean that both the federal and federated entities can introduce a child benefit, but that one will stop doing so when the other introduces one. Here, priority can be given both to the federal as well as the federated entities. If priority is given to the federal level, the federated entities can be involved in setting the standards. And based on the subsidiarity principle, the federal level will have to prove that its actions are necessary for the balance in the federation. Of course this scenario starts from a situation in which one would ‘re-draft’ the child benefits system entirely, which is not likely. As Belgian social security is already fully developed, not much room is left to give concurrent powers to the federated entities, except for smaller innovations such as the Flemish Care Insurance. In any case a concurrent system would require the development of an institutionalised form of participation in the decision making process by the federated entities, for example by turning the senate into a fully-fledged chamber of the federated entities.

To conclude, the “Cantillon Dilemma” should be rephrased as the “PCM Opportunity”: hierarchy is not what it sounds like, and is only relevant if one would think about introducing concurrent powers in the social policy and social security field. Additionally, allowing framework powers and parallel powers to be used in this policy domain can grant the desired increased autonomy to the federated entities while at the same time ensuring that solidarity remains intact.

References

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