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BELGIAN FEDERALIZATION PROCESS

The first question which a Belgian invariably hears abroad is : "Are you Flemish or Walloon ?".

The image of Belgium abroad is mostly that of a small country torn apart by major internal strife between its two large linguistic communities.

In conversations with foreign friends I notice that more often than not, they oversimplify the problem of the coexistence of the Flemish and Walloon communities in Belgium by reducing those problems to mere differences in language and culture. This leads to a mistaken perception of the Belgian situation since there are, besides linguistic and cultural differences, marked distinctions between the communities in the ideological, economic and philosophical spheres.

When the Belgian state was established in 1831, Flanders was underdeveloped whereas, thanks to the coal and steel industry, Wallonia stood at the European top as far as economic development was concerned. This imbalance in economic development still exists in Belgium (although somewhat attenuated), but since the decline of heavy industry in Wallonia and the establishment of hundreds of multinational companies in Flanders, it is now mostly in Flanders that economic development takes place.

The differences in socio-economic development in the preceding century led to marked philosophical and ideological distinctions which still exist nowadays between the two parts of the country. The more rural Flanders was and largely remains to this day a traditional stronghold of the Church and the Catholic Party, whereas the Walloon towns, which underwent industrialization early on, remain socialist -and often secular- strongholds.

Two communities, with their marked differences in language and culture, in philosophical and ideological beliefs, in economic growth and prosperity, are presently living quite peacefully together in Belgium. This was achieved by trial and error after many crises solved after days and nights of negotiations between representatives of both communities.

In my country, I belong to the group of politicians - a fairly large one, I am happy to say- which advocates a more important and continued support in favour of the Central and East European countries presently experiencing a difficult transition process. I am therefore happy and proud to be given the opportunity today to exchange views with you about our Belgian experiences.

I would like to avail myself of this opportunity to provide you, in 10 points, with information which might be helpful, in my opinion, to help you understand the problems of the coexistence between Flemings and Walloons in my country.

1. A QUITE REMARKABLE WILL TO CONSENSUS AND COMPROMISE

If one takes a closer look to the history of the Belgian transition from unitary to federal state, one cannot but notice a factor of the utmost importance, that is the willingness of the whole of the Belgian political class to reach, by way of compromise, a consensus that allows for solutions to the problems of Flemish-Walloon coexistence.

Those forms of consensus always signify that the Flemish majority agrees to a solution which is acceptable to the Walloon minority, without however harming the vital interest of any group. The reason for this undeniable willingness to consensus and compromise must indeed be found in the Belgian electoral system, which is a proportional one, meaning that all post-war Belgian governments have been coalitions where at least two parties from both communities were represented.

Secondly, I think that this phenomenon might be explained by the negative experiences originating in the lack of consensus about what is known in Belgium as "the royal question". This lack of consensus led to a referendum. The three politically most sensitive topics were to be found here : class oppositions, religion and language. A vast majority of conservative Catholic Flemings voted in favour of the return of King Leopold III, whereas a vast majority of left-wing, and above all secular, Walloons voted against it. In order to avert an impending regime crisis a consensual solution could be found : the King abdicated, but the monarchic institution was maintained. Thus both Flemings and Walloons were partially satisfied.

Compromise bears all too often a pejorative connotation. As far as I am concerned, I am of the opinion that both in order to achieve centrifugal federalism and to make it a liveable option, willingness to compromise is the most essential condition for a bipolar, pluri-ethnic state.

2. FEDERALISM RELEASED A STALLED DECISION-MAKING PROCESS

In the Sixties and Seventies Belgium was a perfect example of a country with a stalled decision-making process. At the central level, the Flemish and Walloon blocks achieved total mutual neutralization. Every governmental decision could only be made after going through a lengthy procedure. Consensus was often only achieved at the cost of expensive compensations in favour of the other community. All this led to governmental inaction and to an inflated budget. This inaction was responsible for the absence of Belgian reaction to the two oil crises of the Seventies, which led to the enormous public debt with which Belgium still is saddled today.

3. A BI-POLAR STRUCTURE DEMANDS AN ARSENAL OF CHECKS AND BALANCES

Mainly, but not exclusively, in order to protect the Walloon minority, a certain amount of measures guaranteeing the protection of the minority were incorporated into the Belgian federal structures.

Let me give you a few examples :

3.1. Guarantees regarding the legislative branch

A new type of **special majority law** was introduced, defined as "an act of Parliament, passed on a majority vote in both the Dutch and French linguistic groups in Parliament on condition that the majority of members of each linguistic group are present and the total votes in favour within the two linguistic groups attain two thirds of votes cast."

This constitutional requirement was clearly intended to forestall the growth of a body of fundamental laws governing the structure of the State against the wishes of either of the country's two main Communities - hence the requirement for the assent of both the French and Dutch linguistic groups of each legislative chamber.

As the Dutch linguistic group holds a majority in each of the two legislative chambers an **"alarm-bell procedure"** was introduced. This procedure tends to prevent any legislation being adopted by majority vote of a single linguistic group.

The "alarm-bell" is sounded by a reasoned motion signed by at least three quarters of the members of one of the linguistic groups and results in the suspension of parliamentary procedure. The Cabinet must then give its reasoned findings on the motion and invite the Chamber before which it was tabled to reach a decision either on those findings or on the bill, amended as may be. The preventive action of the procedure is clear : the Cabinet, composed of equal numbers of Flemish or Walloon ministers, will endeavour to reach a consensus solution on the problem and avert a government crisis.

3.2. Guarantees regarding the executive branch

Just as the "alarm-bell procedure" is chiefly designed to protect the interests of the French-speaking minority in the national legislature, equal representation in the federal government offers its assurances in the **central executive** : "With the possible exception of the Prime Minister, the Cabinet comprises **an equal number of French-speaking and Dutch-**

speaking ministers". The very number of by-laws, regulations and decisions which the Constitution, statute, regulation, and even more so the custom of Belgium's coalition governments, require to be discussed in Cabinet suffices to show the importance of the equal representation rule.

With the possible exception of the Prime Minister, the parity principle does not apply to Secretaries of State : albeit members of the Government, they have no seat in the Cabinet, thus allowing the Dutch demographic majority to be reflected in some extent in the composition of the government.

In the **State central administrative departments** whose remit runs nationwide, posts from a certain grade upwards must be **equally divided** between employees in the French-speaking service and those in the Dutch-speaking service.

3.3. Guarantees regarding the judicial branch

The higher organs of judicial power - the Court of Arbitration, Court of Cassation and Council of State- must have equal numbers of French- and Dutch-speaking judges on the bench.

4. ATTRIBUTION OF COMPETENCES

In Belgium, Flemings and Walloons chose together for a "top-down" option, meaning that the federal level holds all power and that Flemings and Walloons decide together, through "special majority laws", which competences are to be given to the constituent entities.

I wish to emphasize that this "top-down" solution has not prevented the federated entities from achieving considerable autonomy. Flemings and Walloons have seen to it that, because of the bipolar and centrifugal character of the Belgian state reform, a choice was made in favour of the exclusivity of the devolution of competences to the composing entities. This choice was first and foremost inspired by the fear that federal authority could well be tempted, in case of non-exclusive devolution of competences, to regain its former competences on the sly. An added advantage was that, with the exclusive devolution of competences possible disputes over the attribution of competences could be considerably reduced.

The Communities and Regions are invested with legislative power equal to that of the federal legislature. In many areas of social life sole authority to legislate by "decrees" lies with the Communities and Regions, rather than the federal legislature. Decrees may repeal, amplify, amend or replace prevailing statutory provisions in the allocated areas of responsibility and escape review by the ordinary courts and the administrative courts.

The following competences are vested in

- the Communities :
 - cultural matters
 - education
 - personalised matters
 - health policy
 - aid to individuals
 - international cultural relations to a certain extent
- the Regions :
 - area development planning
 - environmental policy

- rural development and nature conservation
- housing
- water policy
- economic affairs
- energy policy
- the subordinate authorities (provinces and cities)
- employment policy
- public works and public transport

5. THE COURT OF ARBITRATION

A major innovation, introduced in the 1980 constitutional revision, was the setting up of a Court of Arbitration which, according to one of its own judgements, is "a constitutional court of limited jurisdiction". Its task is to ensure that legislation on federal or on regional level is not unconstitutional.

6. FINANCING THE COMPOSING ENTITIES OF A FEDERATION

Some federal systems have chosen for granting the composing entities "total independent revenue raising powers". This idea was also toyed with in Belgium, although a compromise was finally adopted. This compromise offers the double advantage of not endangering the Economic and Monetary Union (EMU) whilst, on the other hand, providing the federated entities with the necessary financial autonomy.

The Communities and Regions have substantial financial resources with which to finance the responsibilities allocated to them.

The greater part of their revenue derives from "transfers from federal taxation revenue", allocated on locational criteria or the "fair return" principle. The Regions alone are entitled to levy surcharges or grant tax refunds or remissions, and even then only within strict confines, notably designed to preserve economic and monetary union. Over and above the power of taxation vested in the Communities and Regions by the Constitution, the Regions -and in the future also the Communities- enjoy a limited additional power of taxation.

7. FEDERALISM AND SOLIDARITY

The more prosperous Flanders has approved three mechanisms of solidarity on behalf of Wallonia.

- a. For the communities in educational matters, by taking account of the needs for each pupil.
- b. For the regions, by providing for a federal solidarity contribution for regions where the average per capita income tax revenue is less than the average per capita income tax revenue for the kingdom as a whole.
- c. Finally, the federal solidarity is manifested in a federal social security scheme which remains the exclusive preserve of central government.

8. FEDERALISM AND ECONOMIC AND MONETARY UNION

When adopting the Flemish-Walloon compromise on economic policy, both Flemings and Walloons chose to maintain an EMU. The principle is explicitly stated in the institutional legislation. An explicit choice was also made in favour of preserving federal competence over certain matters, so as to prevent possible distortions in the field of economic circulation. Thus, Flemings and Walloons chose not to go against the present tendency toward liberation of economic circulation and growing economic integration on the European scale.

In Belgium, we think that federalization of the economic policy can only mean that the composing entities are in charge of the implementation of the economic policy, provided this competence be exercised in the federal and European framework of a maximally integrated economy.

By so doing, the composing entities can set their own priorities and conduct a policy taking their own needs into account.

A thus conceived federalization of the economy is but an application of a presently popular rule of good management. In company management, one no longer advocates strictly centralized management of a holding company, but preference is being given to coordination between, and autonomy of, the various units constituting a multidivisional corporation.

9. A NEW FORM OF FEDERALISM : COOPERATIVE FEDERALISM

An interesting tendency that has appeared in the Belgian federal thinking in recent years is the evolution away from dual federalism towards cooperative federalism.

By dual federalism I mean this kind of federalism in which the union and the federated units are seen as completely autonomous authorities which exclude cooperation in the exercise of their functions. This dual federalism has been obliged to give way to the general finding that complete separation of the levels of authority was impossible and that inter-dependence and mutual influence in the exercise of powers was inevitable. The emphasis now lies more and more on complementarity and cooperation than separation and autonomy between the constituent authorities.

The inevitable interferences between the exercise of federal, Community and Regional responsibilities prompted the emergence between 1980 and 1988 of certain forms of cooperation not based on written law, such as the "management agreements" in health policy, for example.

The strict autonomy of the respective authorities often created a legal obstacle to associating the bodies of one authority in the operations of those of another authority, for example. The merit of the 1988 reform of the State was to eliminate certain legal objections rooted in the principle of autonomy and to widen the scope for cooperation. Hence, Belgian public law as it stands today recognizes a variety of forms of cooperation between the federal state and the federated entities, such as : the possibility of reciprocal representation in management and decision-making bodies, cooperation agreements, which may even on occasion be mandatory, a multitude of concerted agreement procedures, more particularly at executive level, ranging from simple "consultation" to "concerted agreement", a consultation committee and inter-Ministerial conferences composed of members of the national government and those of the Executives of the Communities and Regions. The highest form of cooperation, the "second Chamber of States" is likewise lacking.

10. SAINT-MICHAELS AGREEMENT IN SIX POINTS

1. Refining and broadening competences of communities and regions :
 - environment
 - foreign trade
 - scientific policy
 - agriculture
2. The direct election of the regional parliaments.
3. The "constitutive autonomy" of the regional parliaments.
This means that the regional parliaments decide themselves on essential elements as to their
 - composition
 - election
 - number of ministers in regional governments
4. Refining of the financing mechanism by
 - linking the growth of the regional means to the evolution of the gross national product
 - regional tax competences are broadened
5. Reinforcement of the federal structures
 - abolishing the so-called "dual mandate"
 - adjustment of the bicameral system
 - House of Representatives = political chamber
 - Senat = chamber of reflection
 - enhancing the stability of Federal Parliament and Federal Government
6. International competences of the Regions
 - Reform confirms the autonomy of the regions to regulate international cooperation within the scope of their competences. This includes the power to conclude treaties.
 - The coherence with the foreign policy -which remains a federal competence- is reached through
 - information schemes
 - right to appeal by federal government on the basis of objective criteria
 - setting up of an interministerial conference for foreign policy
 - conclusion of cooperation agreements

So far, in 10 points, what I think are for you the most interesting elements from the Belgian federalization process. Allow me to conclude with some personal comments on the relation between the Belgian and the European federalization process and some general remarks on federalism.

First the personal comments which I have centered around three questions.

Is the Belgian federalization process compatible with the European unification process ?

Yes !

The goals underlying Belgian decentralization and European unification are identical, namely the setting up of policy levels which are most suited to meet the social requirements of the citizens.

Technique = subsidiarity principle

This means :

- something which can be solved on a lower level should not be dealt with on a higher level
- whenever the solution of problems requires an increase in scale, the competence should be exercised by a higher level, the Belgian federal level or the European level

Institutional result = structure having federal characteristics

After Maastricht Europe is a pre-federation. Belgium has developed from a regional state structure towards a federalism sui generis. So the institutional movements are identical : the framing of a federal structure.

Is there a complementarity with the European unification process ?

Yes !

Belgian federalism is characterized by

- enumerated competences of Regions and of the federal authorities
- no hierarchy of legal norms

This system would not be or much less workable without the replacement of Belgian legislation by European rulemaking.

For between the European and the federal and/or regional norms, there is a hierarchy of norms.

Are there any parallelisms between the two federalization processes ?

Yes !

I see myself 5 parallelisms in the two processes.

1. Gradual process in subsequent stages which are the result of political agreements based on compromises between various points of view.

2. Asymmetrical solutions

The Saint-Michael's agreement has only been made possible by accepting asymmetrical structures for Flanders and Wallonia. At Maastricht, the boost towards the European Union has only been possible by granting a special status to some countries.

3. Financing the federation

The double issue in both cases is

- no political responsibility without some degree of financial responsibility (no representation without taxation)
- no federalism is possible without a sufficient degree of solidarity

The Saint-Michael's discussions revolved around those two issues and in the making of the European Union Belgium has for this reason insisted on

- Europe must at maximum be financed through its own resources rather than by contributions coming out of the national budgets
- European solidarity = cohesion fund

This is comparable to the solidarity based on objective criteria in Belgian federalism.

4. Both structures were accompanied by democratic deficits in their initial stages.
5. The political decision making process does not always operate very smoothly and sometimes gives the impression to get stuck or to go off the rails.
In the moments of truth in both cases there are
 - the imaginative power
 - responsible politicians who want to get things done mostly on the basis of mutual concessions

And now I really want to conclude with some general remarks on federalism.

For a constitutionalist, federalism is the legal construction which, in the institutional structure of a state, creates a balance between the power of a central authority and the autonomy of its constituent parts. Contrary to what many maintained in the past, the Belgian example proves that a bipolar and centrifugal federalism is a liveable form of federalism. It is of course true that finding a good equilibrium is more difficult in this kind of federalism. But the Belgian facts prove it : one can reach a federal consensus without revolution. Of course, errors have been committed in Belgium too, there have been many government crises and moments of political bickering - but is this not better than violence or shedding even one drop of precious blood ?

There were in Belgium sceptics who asked themselves whether separatism would not be much simpler after all. Let me clearly state my views. I do not think separatism is worth the economic price that must be paid because of the loss of the advantages of an integrated economic market. Besides, I am convinced that following this path is an error in purely human terms. As a Fleming, I experience daily that living with Walloons in a pluri-ethnic state such as Belgium makes my life richer.

Did Goethe not say : "Nur wer fremde Sprachen spricht kennt was von seiner eigenen".

Federalism is for me without a doubt the best possible solution to achieve pacification in a pluri-ethnic state, a way to disarm internal contradictions so that the own traits of the various communities may develop.

This is a challenge which the European Community as a whole must face today. The European Community has to confront the following challenge : how to build a European identity whilst maintaining this diversity which so enriches us ?

There is but one way to achieve this : let us therefore give time the time it needs to accomplish its work.

Dirk Van der Maelen
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