POWER-SHARING VERSUS BORDER-CROSSING
IN ETHNICALLY DIVIDED SOCIETIES

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It is a pleasure to comment on such an instructive and gloomy paper.[1] Its instructiveness was particularly pleasurable, because it helped me see in a completely new light whatever I knew about the subject, not, as it happens, by virtue of any expertise I might possess in political theory, but rather by virtue of having lived for most of my life in what can plausibly be characterized (see below) as a severely divided society: Belgium. Less predictably, the paper's gloominess too was a source of pleasure as I prepared this comment, not at all because I enjoy learning that things go wrong, let alone understanding that they are bound to go wrong, but – quite the contrary – because the little I knew and understood about the subject implied, I thought, that I had some good news for the author. For his paper's central message I understood as follows: while we can get a pretty definite image of the coherent constitutional package needed by a severely divided multiethnic society, there are deep-seated reasons that such societies will adopt instead incoherent hybrids, which will do them no good. The good news will take the form of an argument to the effect that this grim message needs to be drastically qualified. Unsurprisingly (coming from a philosopher), it will rest on two small exercises in conceptual clarification, the crucial relevance of which will be illustrated by my reading of Belgium's constitutional development and debate.

1. WHAT IS A SEVERELY DIVIDED SOCIETY ?

Red spots and red spheres.

First of all, what is it, in Donald Horowitz's view, that makes a poly-ethnic society qualify as severely divided? By definition, its being prone to (acute, violent) conflict between ethnic groups. Let us take for granted that the notion of an "ethnic group" is clear enough and concentrate on the concept of "conflict-proneness". Conflict-proneness is clearly a dispositional property of the society concerned. But for our purposes, the term "society" is crucially ambiguous. Do we mean "society" in a comprehensive sense that encompasses a country's current constitutional arrangements? Or do we mean it in a lean sense, which counterfactually strips a country of these arrangements? In either case, a society's characterization includes the specifics of its territory and its economy, its ethnic features, including their geographical and social distribution, the overall level and distribution of income and wealth, etc. But unlike the first interpretation, the second one excludes "constitutional design", understood roughly and pretty narrowly as those rules that directly organize the distribution of political power? The comprehensive interpretation makes the notion of a severely divided society fairly simple, while the counterfactual definition makes it unavoidably tricky. Nonetheless, choosing the comprehensive interpretation would be most unwise, for present purposes. It would soon prove a recipe for depression, as it would turn into an oxymoron, not constitutional design as such, but any successful constitutional design for a severely divided society: the very success of the design disqualifies the society as a severely divided one.[2] Therefore, unless one takes some perverse pleasure in pursuing the logically impossible, there is no sensible way out of some variant of the counterfactual definition.

But what does it mean to abstract counterfactually from a country's constitutional design? Does a poly-ethnic society count as severely divided if and only if it would be torn by acute ethnic conflict if it had no constitutional design at all, or perhaps if and only if there exists at least one (sufficiently absurd) constitutional design under which the society would be prone to acute ethnic conflict? Under such characterizations, any poly-ethnic society – indeed, presumably, any society under a sufficiently broad definition of an ethnic group – would count as severely divided. On the other hand, if a society were severely divided only if it was prone to acute conflict whatever its political institutions, we would be back to making successful constitutional design an oxymoron. The appropriate definition must obviously lie somewhere in between. Here is one way of making it precise.

Consider a particular society at a particular time, as characterized by the current values of its non-constitutional parameters (in a sense that matches the definition of constitutional design adopted above), and think of the set of all logically possible constitutional arrangements for this society as a multidimensional hyperspace, each point in which represents such an arrangement. To make this more concrete, think of this space as a sphere, with each constitutional arrangement represented by a small spot within this sphere, and specified by the values taken by three continuous variables – for example, what percentage of the total vote is required for representation in the Parliament, how much veto power there is for ethnic minorities, and how strong the government is with respect to the Parliament. Next, colour in red any spot that represents an arrangement under which acute conflict is likely, while leaving in white any point that represents an arrangement under which acute conflict is most unlikely, and colour the rest in shades of pink. Under the comprehensive interpretation of what "society" means in that expression, a severely divided society would be one that happens to be in a red area of the sphere. Under the absurdly broad version of the counterfactual interpretation, it would be one whose sphere has at least one red spot: under a sufficiently broad conception of imaginable arrangements, any society, however safely lodged in the middle of a large white area, is severely divided in this sense. Under the self-defeatingly narrow version of the counterfactual interpretation, on the other hand, a severely divided society would be one whose sphere is completely red: no conceivable institutional arrangement could alleviate its conflict-proneness and only the delicate, often painful surgery of secession may enable the red to recede, as the one sphere is turned into two or more. Finally, under the intermediate counterfactual interpretation I propose to adopt, a severely divided society is defined as one whose sphere has a large red area: it is conflict-prone under a large proportion of the constitutional arrangements. The redder the sphere, the more severely divided the society: like fragility or vulnerability, severe division is a dispositional property that admits of degrees. For some countries, the red spots may be so few that the sphere looks white. The desperate cases are those in which red is all over and deep down. Constitutional engineering for deeply divided societies is concerned with the intermediate case, in which there is a serious risk of being in the red area, but also a serious chance of sticking to the white one.

On the background of this conceptual clarification, I can now try to express my first bit of good news. In the dispositional interpretation for which I have argued above, there are far more severely divided societies than is revealed by overt conflict. The United States is hardly less deeply divided than South Africa, or Holland than Ulster. It just so happens that some countries have chosen or stumbled upon institutions that have kept them safely in the white

area. Compare the Netherlands and Northern Ireland, for example. Both were carved out of a larger territory (the Spanish Lower Countries, British Ireland) in which Catholics were an overwhelming majority, to form a territory in which the Protestants came to form roughly two-thirds, and the Catholics roughly one third, of the remaining total. By the beginning of the 20th century, both had a history of pretty ruthless domination by the Protestant majority and of anti-Catholic discrimination. But in 1917, the Netherlands adopted a Pacification settlement that introduced proportional representation, protected both Protestant and Catholic school systems and ended discrimination against Catholics in access to public sector positions[3]. In Ulster, instead, no such pacification deal was struck. Discrimination and domination continued, at least partly as a direct effect of the political institutions. Proportional representation (in the form of Single Transferable Vote) was introduced by Lloyd George in 1920 and kept in place in the Republic of Ireland, where the Protestant minority soon dissolved, politically speaking, into a number of Catholic-majority parties. But it was repealed in Ulster in 1929 by the Protestant prime minister James Craig, precisely in order to hinder transconfessional parties[4]. The good news, for Donald Horowitz and his profession, which is illustrated by this contrast is of course not, as such, that there are more severely divided societies than they think, but that constitutional design (whether deliberate or not) can be so successful in some societies that one loses sight of the fact that they are just as severely divided as others in which conflict rages. Once severe division is interpreted, as it must, as a reddish sphere (of potentialities) rather than a reddish spot (in which one happens to find oneself), constitutional engineering holds great promise.

Shifting stains

The goodness of this news should not be overstated, however, and the illustration I just gave is not meant to suggest that there are quick fixes. The job is promising but it is not easy. The constitutional engineer's first task obviously consists in locating with some precision the red and white areas, whose sizes and shapes will vary a great deal from one society to another. When naively advocating the import of a ready-made package of rules that has proven its value through years, the clumsy Western do-gooders stigmatized by Horowitz in his contribution are simply oblivious to this fact: a point safely located in an immaculate area of the sphere associated with one country — for example, a presidential system with an Assembly elected by first-past-the-post — may be deep inside a dark red portion of the sphere associated with another, in which the ethnic set up is crucially different. The fact that the red patterns vary from one sphere to another does not mean that countries cannot learn

from one another. Quite the contrary: there is a lot to be learned from other countries' successes and failures, providing one does not make conflict-proneness an attribute of isolated constitutional devices, nor even of whole constitutional frameworks, but of a combination of a system of devices and the background non-constitutional conditions. Even though no two countries are anything like identical along these dimensions, insight into the mechanisms that underlie conflict-proneness and conflict-inhibition in one country can help guide choices in another. This is exactly what is at work when Horowitz ventures to say, for example, to South Africa: "Don't go there, it's red. Go there, you'll be safe."

The job does not stop at identifying the contours of the red and white areas, however, for the wisest recommendation is not always that one should move to the nearest white spot. Often reaching the red area will require moving along two or more dimensions at once. If one moves along one of these dimensions and gets stuck, one may end up in a darker red area than the one one was trying to steer away from. When making recommendations, one should therefore anticipate the possibility that one may be able to go only part of the way. One must also try to guess what the winds and slopes will be, driving the reform further or pushing it back to where it started.

All this seems hard enough. But there are more sophisticated tasks still.[5] For the contours of the red area are not fixed. Demographic or economic changes, for example, may upset the ability of current institutions to keep conflict-proneness under check, and constitutional engineering should anticipate such shifts of the red area and design institutions accordingly.[6] As a very simple illustration, take a country, such as Belgium, in which the constitution can be changed only with a two-thirds majority. If the majority ethnic group represents 60 percent of the population (which is currently the case in Belgium), this rule protects the minority group against a constitutional change unilaterally imposed by the majority. But if demographic trends lead to the majority ethnic group forming more than two-thirds of the population, then the current arrangements, without undergoing any change themselves, may suddenly find themselves in the turbulent red area.[7]

Or take the following, slightly more complex illustration, also taken from the history of Belgium. Throughout the 19th century, Belgium was marked by a sharp contrast between its mainly rural North (Flanders) and its far more industrialized South (Wallonia), with the result that, from 1884, Flanders sends 100 percent of Catholics to Parliament, and Wallonia a majority of liberals. In 1893, the country moves from highly restricted male suffrage (only taxpayers vote) to universal male suffrage with plural voting (one additional vote for married taxpayers, one or two additional votes for the educated), using a plurality type of electoral

system with small multi-member constituencies and a double ballot. As a result, the newly created socialist party obtains representation in Parliament, where Liberals and Socialists together win 40 of the 62 seats, while the Catholic party wins all 90 seats in Flanders and Brussels at the 1994 national election.[8] Obviously, the Catholics can retain power with a comfortable, overwhelmingly Flemish parliamentary majority. The government, which had no Wallone member at all in the 1880s, will have no more than one in the 1890s[9]. As the population of Flanders kept growing faster than that of Wallonia, while Wallonia remained far more industrial, there was no prospect of a change in the underlying situation.

It may therefore be tempting to claim that, by the end of the 19th century, severely divided Belgium was well into the red area, and to understand in this light the bold, unprecedented leap Belgium ventured in 1899, when it became the first country to adopt proportional representation (PR). Thus, D. Johnson[10] asserts that "the list-proportional system was introduced in Belgium in 1899 to remedy some of the irreconcilable differences between the Walloons and the Flemish", while D.M. Farrell[11] conjectures that what drove the move was Belgium's desire "to adopt an electoral system which could equalize the representation of the different communities involved". Such interpretations derive from the false presumption that if an area is red now, it must always have been so.[12] In fact, the 1899 reform was not motivated by the desire to alleviate an ethnic conflict, nor did it result in extinguishing an ethnic tension, which simply did not exist. But whatever it was driven by and achieved at the time, it certainly helped Belgium stay clear of the red area as the latter expanded through the following decades. Let me spell this out.

The history of proportional representation in Belgium starts with the creation of the Association réformiste pour l'adoption de la représentation proportionnelle (1881). One of its founding members is Victor D'Hondt, author of the first books advocating the list variant of PR, as opposed to the Single Transferable Vote variant advocated by Thomas Hare and John Stuart Mill.[13] An international conference was organized in Antwerp in 1885 to discuss the relative merits of STV and list PR. It closed with a motion advocating the D'hondt system and asserting "that proportional representation is the only means of assuring power to the real majority of the country, an effective voice to minorities, and exact representation to all significant groups of the electorate"[14]. Note that the "minorities" referred to are ideological, not ethnic minorities. The results of Belgium's 1894 election did come as a shock that noticeably strengthened the case for PR, but this had nothing to do with ethnic divisions. The fact that, with about 50 percent of the vote, the Catholic Party could get nearly 75 percent of the seats simply did not seem fair. Moreover, some of the most forward-looking Catholics

could see that, if the 1893 reform was only a first step to a "one man one vote" electoral system, there was a serious risk that the socialist party, still in its infancy but growing fast, would end up squeezing out the liberal party altogether and obtain an absolute majority, as a result of industrialization and rural exodus spreading to Flanders. Hence, the Catholic prime minister Beernaert, a member of D'Hondt's association, proposed list PR in 1894 but was defeated and resigned. There followed some unsettled years, culminating in strikes, physical violence inside the Parliament, further resignations and finally the adoption of list PR by a narrow majority on the 29th of December 1899[15]. As the average magnitude of the PR districts was small, larger parties retained a strong advantage, and the Catholics' absolute majority survived until the introduction of "one man one vote" universal suffrage in 1919, but the reform did secure that all three parties were significantly represented in all three regions.

Throughout this period all sorts of arguments were used.[16] Some were contingent upon the specific variants under consideration (e.g. the "immoral" alliances for the second ballot) while others related to the essential difference between plurality and PR (e.g. the number of viable parties). Some were unashamedly partisan while others were overtly impartial. And among the latter, some were consequentialist (the long-term public interest resulting from inclusion or stability) while others were not (fairness, genuine democracy). But nowhere is there a trace of any reference to "the irreconcilable differences between the Walloons and the Flemish". Why not? Because at the time Belgium was still run by a francophone elite that was ruling throughout the country. There may have been only Flemings in the national government, but the language they spoke at government meetings was exclusively French (as it remained well beyond the middle of the next century), and the fact that Wallonia was in effect run by an overwhelmingly Flemish government was not perceived, as such, as a serious problem.[17] The fundamental cleavage, so threatening that the national motto had to be "L'union fait la force", was still the countrywide ideological divide between Catholics and liberals, not the ethnic divide between Flemings and Walloons.

Yet, it became true, half a century later, that had the old plurality system been kept and thereby the ideological minorities deprived of any representation in whole regions, "the regional polarity would have been made more acute, hence nation-wide agreement would have been made harder to achieve and the unity of the State, indeed of the country itself, would have been endangered".[18] Owing to the steady progress of the "Flemishization" of the Flemish territory and its elites throughout the 20th century, it had become correct to say, by the middle of the century, that "majority voting, if it were introduced, would divide the state so deeply that its continued existence would be in doubt".[19] Though not driven at the time by

any concern with ethnic conflict, the move made in 1899 (and carried further later on through an increase of effective district magnitude) had kept the country for decades out of an area that was still white when Belgium left it but had gradually become dark red. The red stain, however, kept expanding further and by the 1960s – culminating in the expulsion of the French section of the Catholic University of Louvain from the Flemish town of Leuven in 1968 and the subsequent splitting of all three national parties along ethnic lines – it was clear that further constitutional reform was urgently needed to steer clear of the red. Belgium was then gradually turned into a federal state (1994), with significant regional autonomy, with veto powers for both linguistic communities in the form of supermajority requirements on touchy issues, and with guaranteed equal representation in the federal government. Concern with the red stain, this time, was clearly on everybody's mind.

2. WHAT IS A COHERENT PACKAGE?

Consociationalism and its rival

This extended example was introduced to illustrate the difficulties that arise – both when looking backward in order to explain and when looking forward in order to advise – when the red stain shifts, that is, when the extent to which a society is severely divided changes through time. The last episode of the example, however, leads naturally to the second conceptual issue I want to raise: What counts as a coherent constitutional package, and hence what is the relationship between the competing views of what this package should be? For jointly with proportional representation, the three features introduced in Belgium from the 1970s to alleviate the ethnic conflict are precisely the features listed by Don Horowitz as the defining features of consociationalism. Hence the arrangement currently in place in Belgium would seem to offer a paradigmatic example of what he presents as the main rival of the "incentives approach", which he himself advocates. But is it really? Some doubt is bound to arise, as one considers Horowitz's two main objections to consociationalism. One is that it is unable to mitigate conflict, because it generates no electoral support for ethnic compromise – an objection that is certainly not lacking relevance in the Belgian context and to which I shall return shortly. The other objection is that consociationalism "provides no room for a feature vital to democracy: opposition" – an objection that can only strike me as bizarre, not because I do not believe in the importance of opposition, but because I fail to see why consociationalism, as characterized and hence as illustrated by Belgium, should rule it out. Belgian politics displays daily both the salience of the four characteristic features of

consociationalism and the presence of an active, vocal opposition: the government is made up of an equal number of Flemings and francophones, but backed only by a subset of the parties in Parliament – currently the socialists and christian-democrats –, leaving a diverse opposition made up of liberals, ecologists and nationalists from both linguistic communities to vigorously challenge the government from all sides. To sort this out, some further conceptual clarification is in order.

To keep conflict-proneness under check in poly-ethnic societies – that is, to keep clear of the red area –, there are basically three methods. The first one – devolution – consists in reducing what is at stake at the level of the country as a whole. Since Karl Renner's[20] pioneering advocacy of institutional devices for accommodating diverse nationalities, it has come in two varieties: territorial federalism and personal federalism. How much the former can help depends on the separability of territories, that is, on the extent to which ethnic groups are concentrated in territorially contiguous areas or on the contrary dispersed throughout the country. How much the latter variety can help depends on the separability of competencies, that is, on the extent to which ethnically contentious policy areas can meaningfully be assigned to a decision-making body distinct from the one in charge of competencies with an irreducibly central spatial dimension.

If devolution in either variant could go all the way, nothing of significance would be left to decide at the central level, and the problem would not be solved but dissolved with the disappearance of the deeply divided society into two or more homogeneous societies. Under most conditions, this is not possible, and some arrangement must therefore be devised for poly-ethnic governance of whatever is left at the centre. There are two basic methods for trying to foster accommodation and compromise at this level. One is commonly called "consociationalism". It consists in making political power-sharing between ethnic groups possible, or rewarding, or even compulsory. It has been advocated most systematically by Arend Lijphart[21], but is traced back by himself to the 1979 British Nobel laureate in economics Arthur Lewis.[22] The other is sometimes referred to as the "incentives approach". It consists in making political border-crossing between ethnic groups possible, or rewarding, or even compulsory. It is being advocated most systematically by Donald Horowitz[23], but was anticipated in Seymour Martin Lipset's[24] emphasis on the importance of cross-cutting cleavages for the political dynamics of the United States.

Note that even though these two methods will unavoidably lead to different specific institutional proposals in given historical conditions, they are not defined by specific institutions. This was stressed from the outset by Lijphart[25]: "The grand coalition cabinet is

the most typical and obvious, but not the only possible, consociational solution for a fragmented system. The essential characteristic of consociational democracy is not so much any particular institutional arrangement as the deliberate joint effort by the elites to stabilize the system." Analogously, Horowitz notes: "The incentives approach does not require specific structures. It is, for example, at home with different electoral systems, depending on the context, provided that the system is strongly conducive to interethnic moderation in the appeal for votes [...]." This interpretation of both consociationalism and its alternative as methods rather than as specific institutional blueprints should help us sort out the puzzle with which we started about the relationship between consociationalism and opposition.

For one way in which power-sharing can be organized is by treating ethnic groups as sub-polities and using ethnically-based parties as the building blocks of central politics. This corresponds to a narrower characterization of consociationalism, which Horowitz sometimes adopts. If power-sharing can only be institutionalized using such ethnic blocs, in the form of a guaranteed presence in the legislative and the executive, mutual veto powers, etc., then there is a serious tension between consociationalism and a lively opposition. But power-sharing between ethnic groups can also operate with either poly-ethnic parties — as it does in Switzerland — or poly-ethnic families of mono-ethnic parties – as it does in Belgium.[26] These variants of consociationalism can still impose ethnic constraints on the composition of the executive or the assembly, or require separate majorities on certain issues. It is perfectly compatible with a lively opposition, including on interethnic issues, though not with one consisting of the whole of one ethnic group. Hence, the objection that rests on the claim that opposition is essential to democracy is quite relevant to the ethnic-bloc variant of consociationalism, but not to consociationalism as such.

Border-crossing for a power-sharing society

Conceptual clarification, on the other hand, can do nothing to counter the other objection Horowitz raises against consociationalism. As confirmed by the political history of Belgium – especially since, in the aftermath of the Louvain affair, all national political parties split up along ethnic lines – consociationalism does nothing to generate electoral pressure toward ethnic compromise. Admittedly, compromise needs to be reached at a post-electoral stage, whether because of the need to form a government or because of the mutual veto powers conferred by super-majority requirements. But this is consistent with electoral pressure that drives mono-ethnic parties to try to outbid one another in terms of ethnic

toughness and intransigence.[27] This generates a structural discrepancy between the platforms parties are driven to propose to their mono-ethnic electorates and the compromises power-sharing rules force government parties to settle for. The political forum does not construct a common interest. Instead, the whole of political life is essentially perceived as a strenuous bargaining between the distinct interests of the ethnic groups, with the government parties invariably selling out to the other side.

As an observer of the strain thus systemically generated by Belgium's current variant of consociationalism, I can only be favourably predisposed to the alternative, border-crossing approach, which emphasizes the importance of incentives for "pooling votes across ethnic lines", for "luring votes across group boundaries" (as Horowitz puts it). Indeed, I am convinced that conflict-proneness would be far better checked – that Belgium would dwell at a safer distance from the red stain – if arbitration between ethnic groups were done, not ex post between the sharply diverging platforms that mono-ethnic parties committed themselves to defend, but ex ante within the platforms of poly-ethnic parties put forward to poly-ethnic electorates. The final settlement would then be (perceived as) the outcome of a confrontation between rival views of the general interest, rather than a painful compromise between the particular interests of ethnic groups. And this obviously requires that one should make at the very least possible, preferably also rewarding, and perhaps even compulsory, the fishing for votes across ethnic borders. It is therefore not surprising that a number of Horowitz-like proposals have recently sprung up in the Belgian context.

Thus, the Flemish political scientist Wilfried Dewachter, who had long been advocating on independent grounds the double-ballot direct election of the prime minister, has recently opted for a variant in which both the prime minister and the deputy prime minister are directly elected, with the constraint that one should necessarily belong to one linguistic group and the second one to the other.[28] It is of course of the utmost importance that the Flemings should not elect one and the Francophones the other, in the way Greek and the Turkish Cypriots elected the president and Vice-president, respectively, in Cyprus's short-lived "consociational" constitution of 1960-63. The candidates must come in bilingual tickets (in Dewachter's proposal, only at the second ballot) with ethnic groups lumped together in a single constituency.[29] One problem with such a proposal is analogous to the one pointed out by Horowitz in connection with the 1978 Nigerian constitution. It is fine to build border-crossing incentives into the election of the executive. But if the executive needs the confidence of an assembly subjected to the same old incentives, precious little may have been gained. A natural response, for advocates of the above proposal, is to extend the double ballot single-

member system to parliamentary elections. Of course, most of the corresponding single-member districts will be mono-ethnic. But as the party system adjusts to the direct election of the executive, one can expect two cross-ethnic party blocs to form and to compete countrywide on the basis of platforms consistent with the one put forward for the crucial election of the prime-ministerial ticket. Unfortunately, for reasons spelled out above in the discussion of PR, this would be a most risky move for Belgium to make, as the emerging pattern of representation is likely to be very different in the North and the South, with the result that the elected executive is likely to enjoy dangerously slender parliamentary support from one of the two linguistic groups.

The alternative is to stick to both parliamentarism and proportional representation, while forcing vote-fetching across the linguistic border at the elections for the House of Representatives (the only chamber in which the government needs a majority in Belgium's bicameral Parliament). One option, inspired by an aspect of the system currently in place in Mauritius and recently proposed by the constitutional lawyer Francis Delpérée, consists in giving each elector two votes at these elections. One would be used, in the usual way, to elect, say, 130 of the 150 representatives in relatively small multi-member constituencies. The second one would be used to fill the remaining 20 seats by asking voters of each of the two communities to choose ten representatives among candidates from the other community.[30] Border-crossing will thus be institutionalized, and the House of representatives will comprise members of both communities whose task will be to represent — in the way they vote and even more importantly in the explanation of their vote to the community to which they belong — the interests of the other community. This is an interesting proposal that is worth pondering. As far as the creation of centripetal forces is concerned, here is the most serious difficulty I believe it raises.

Clearly, the impact of the scheme would be at best negligible, at worst seriously counterproductive, if candidates for the special seats could be "pseudo-members" of the other community — say, Flemings living in Wallonia and defending Flemish-nationalist positions or francophones living in Flanders and belonging to a single-issue party defending their own interests. For there is then a serious risk that campaigns would soon focus on concentrating votes on these Trojan horses instead of "wasting one's vote" on "real" members of the other community. The francophones of Brussels' Flemish periphery — less than 1 percent of Belgium's population — might then end up with 10 out of 150 representatives. To prevent such derailing, one can hardly put much hope in a language test (let alone a blood test!) or in a substantive screening of electoral platforms in order to prevent the special seats from being

usurped by non-members of the relevant community. But it is possible to have the lists of candidates for the special seats endorsed by their own communities. This could be done quite simply by requiring these lists to be presented by the parties competing for the electors' first vote and by allocating the special seats of one community exclusively to those parties that obtain more than, say, 5 percent of the first vote in the constituencies of that community: no hope then, for single-issue francophone parties in Flanders or single-issue Flemish parties in Wallonia, and competition for the special seats will really be between the parties of one community for the votes of the other community.

The next question is whether the role thus given to political parties may thwart the impact hoped for. The people elected to the special seats may well want to be reelected. But they will beware of diverging too markedly from their party's line, since they can be reelected only if endorsed by their party, whereas if their own voters are disappointed and therefore unlikely to re-elect them, their party may still offer them, as a reward for sticking to the line, a potentially victorious position in the election for the standard seats. The personal action of the holders of the special seats is therefore unlikely to have a great impact, especially as one cannot expect a party's big names to accept being relegated to one of them. However, the parties themselves will factor into their strategies what they may lose as a result of disappointing the voters from the other community. The smaller the number of special seats, the more rewarding a tough line will remain, and the more damaging a conciliatory stance. But as their number rises, parties cannot ignore this source of potentially crucial gains and losses, and it will have to care, to an extent unimaginable in the present context, about developing an appropriately inclusive discourse and recruiting a political personnel able to address the other community in its own language. As the share of special seats increases, however, the intrinsic tension with the proportionality principle grows, which may jeopardize the scheme's legitimacy in the eyes of the community that is losing out. [31] This trade-off may not be fatal, but it invites a search for alternatives.

A second, quite distinct way of trying to engineer vote-fetching across the linguistic border at parliamentary elections relies on the creation of a countrywide constituency. As such, this measure is both too much and too little. Too much, because it would abolish any guaranteed representation for any part of the country, and each group's fear of being seriously underrepresented would therefore secure the persistence of mono-ethnic parties. Too little, because overbidding by nationalist parties will still make it a losing proposition for countrywide parties to form again with platforms designed to appeal to both ethnic groups. Some versions of the proposal, however, may avoid both difficulties. Here is one.

Introduce a German-style dual system, with each voter casting two votes for the election of the members of the House of representatives. Using the first of the two votes, keep allocating 100 of the 150 seats with a list PR system in fairly small multi-member constituencies (for example 11, corresponding to the provinces, instead of the current 20), so as to make sure every part of the country is appropriately represented. Using the second vote, allocate the remaining 50 using open list PR, with the possibility of multiple votes on the same list, in a single countrywide constituency. The allocation of the first category of seats is made using the D'Hondt formula, with no apparentement across provinces – which amounts to a variant of PR that is quite favourable to (locally) large parties. The allocation of the second category, on the other hand, made so as to achieve maximum proportionality in the House as a whole, with no overall threshold, among those parties that have achieved, say, at least 0.5 percent of the vote in each of the eleven provinces or maybe 3 percent of the vote in each of the three regions.[32] Seats obtained by these parties in the provincial constituencies are taken into account in the overall proportional allocation. Seats obtained in the provincial constituencies by parties who do not present candidates in the countrywide constituency or fail to reach the quota in at least one of the provinces or regions, are retained by them.

The parties' best responses to these new rules is obvious enough: the former countrywide parties will reunite, or at least form common lists with single platforms at the federal level, and with candidates who will try to appeal to voters of both groups. The nationalist parties are also welcome to bid for votes in the countrywide constituency, but obviously they stand a chance only if they manage to gang up around a common platform – which may be easy enough if the key issue is autonomy, but is altogether out of reach if borders and net transfers are the key issues. In the latter case, nationalist parties are not excluded, but will have to narrow down their hopes to reaching the provincial constituencies' pretty high effective threshold. The central purpose, however, is not to get rid of any specific parties, but to reshape political competition and rhetoric, so that these will consist again in confrontation, not between the interests of mono-ethnic blocs, but between alternative versions of the common good.

"Incoherent": hybrid or centrifugal?

The various proposals thus briefly presented illustrate, for the severely divided society I am most familiar with, what the second, border-crossing approach might look like. But given the extent to which this society already uses, as mentioned earlier, paradigmatically

consociational, power-sharing devices, is this not, at the same time, a crystal-clear illustration of an "incoherent" package? Horowitz "want[s] to insist on coherence as a virtue of constitutional design for severely divided societies", and the requirement of "coherence" or "consistency" keeps popping up throughout his contribution. But what is "coherence"? Horowitz repeatedly suggests that a coherent package is the opposite of a "hybrid" package, as illustrated by the Fiji Islands or Ulster, that is, a package that puts together bits of consociationalism, of the incentives approach, of simple majoritarianism, etc. Under this interpretation, coherence requires us to choose between the power-sharing approach and the border-crossing approach, and therefore the vote-pooling measure suggested above would by definition make Belgium's constitutional design "incoherent" and should therefore be rejected.

But there is another way of understanding "coherence" or "consistency". The reason Horowitz says he "want[s] to insist on coherence as a virtue of constitutional design for severely divided societies" is that "their centrifugal forces are so strong that without equally strong, consistent, centripetal institutions their divisions tend to become acute." A coherent package, on this second interpretation, is not by definition one that is not a "hybrid", but rather one whose components interact in such a way as to be "centripetal", as to produce accommodation and compromise. Under this interpretation, there is no reason to suppose that coherence requires us to make an exclusive choice between the three methods of conflict mitigation – devolution, power-sharing or border-crossing –, which does not mean that specific devices may not turn out to be incompatible. For example, a variety of consociationalism organized around mono-ethnic parties with mono-ethnic electorates is obviously incompatible with the possibility, let alone the encouragement or obligation of vote-pooling. But these are not only formally compatible with power-sharing devices such as proportional representation, supermajorities or guaranteed presence of ethnic groups in the executive. They may well combine, as suggested above, to produce a more centripetal outcome. In this sense, a "hybrid" package can be more coherent than a "pure" one. The requirement of coherence then simply reflects, rather than a fixation on "purity" (with a given nomenclature of idealtypes), a down-to-earth search for a set of rules of the game that, taken as a whole, systematically defuse potential ethnic conflict.

No less than the first one, this second exercise in conceptual clarification can be interpreted as good news for Donald Horowitz. For suppose he is stuck, as most of the time he seems to believe he is, with the first construal of the coherence requirement. What is needed in a severely divided society must then be either consociationalism, which is coherent but won't work, or the incentives approach, which is coherent and will work. But, for deep-

seated reasons that Horowitz sketches and illustrates, opportunities for significant constitutional reform are rare, and often produce hybrids rather than coherent packages. No wonder therefore he sounds gloomy. But suppose we decide instead to drop all concern with coherence as ideal-typical purity, and interpret instead the coherence requirement in the second direction delineated above: what we are looking for is a set of rules of the game that jointly generate a conflict-mitigating dynamics. Territorial autonomy is then bound to help under circumstances in which ethnic groups are sufficiently concentrated. And so are some devices that make it possible, rewarding, or compulsory to share power <u>and</u> to cross borders. What and how much is required will depend on variable, though specifiable circumstances, but the three methods can certainly be combined, and not all features of any particular method need to be introduced in one go – even though, for reasons mentioned earlier, the order in which features are introduced must be carefully thought through.

This does not detract from the importance of Horowitz's observation that for any particular country, opportunities for significant reform are few and far between and that, when they occur, people often make a mess of it. But as the recent political histories of Italy, Japan or Eastern Europe show, situations that seemed completely frozen can suddenly come unstuck. And when this happens, well-intentioned insiders must be ready, duly equipped with principled and detailed proposals whose likely consequences in the relevant particular context have been properly thought through, at least in part thanks to the sort of perceptive and imaginative comparative research in which Donald Horowitz has been engaged. This message is nothing new. It is, for example, at the core of the <u>Memoirs</u> of Jean Monnet, the man who changed the shape of Europe more deeply than Hitler, de Gaulle and Thatcher together, through shrewed, sometimes counterintuitive yet amazingly successful constitutional engineering for a severely divided continent. [33] But whether new or not, I hope it will help Don Horowitz cheer up, shake off the despondency reflected in his paper. Gloominess is misplaced. "Never doubt that a small group of thoughtful committed citizens can change the world: indeed, it's the only thing that ever has." So at least Margaret Mead is quoted as saying on a bumper sticker that caught my sight on Berkeley's Telegraph Avenue while I was concocting my comment on Horowitz's paper.

¹ An earlier version of this paper was presented as a comment on Donald Horowitz, "Constitutional Design: an Oxymoron?" at the annual meeting of the American Society for Political and Legal Philosophy (San Francisco, January 5-6, 1998). Unless otherwise specified, attributions to Horowitz are references to this paper. I am grateful to Don Horowitz for the stimulation provided by his paper, his reactions to my verbal comments and the part of his work I took this opportunity to read, and to Paul Janssens for checking (and correcting) my interpretation of the political history of Belgium.

² A conceptual choice of this sort must underlie Horowitz's dismissal (above) of consociational arrangements as irrelevant: "they are more likely the product of resolved struggles or of relatively moderate cleavages than they are measures to resolve struggles and to moderate cleavages".

³ See Lijphart, Arend. 1968. The Politics of Accommodation, Pluralism and Democracy in the Netherlands. Berkeley : University of California Press.

⁴ See Farrell, David M. Comparing Electoral Systems. Hemel Hempstead : Prentice Hall/Harvester Wheatsheaf, 1997, 112-115.

⁵ Even if one were only concerned, as I shall suppose throughout is the case, with conflict-proneness. But there is no reason why the consequentialist evaluation of political institutions should confine itself to their impact on acute ethnic conflict or even, more broadly, on democratic stability – even though there are no doubt circumstances in which there are good reasons to give this dimension top priority. But among locations that are outside the red area, there is no good reason to decree that they are all equivalent or that the optimal one is the one most remote from the red border. A just or good or decent society is not simply one in which ethnic groups do not kill one another. It may also be one, for

example, in which the interests of younger or future generations are not sacrificed to older or present ones, and the design of political institutions might be of crucial importance in this respect (see Van Parijs, Philippe, "The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice", Philosophy and Public Affairs 27 (4), 1998, 292-333). Or one may be dissatisfied with a system that secures ethnic peace but at the same time disempowers some ethnic minorities, thus preventing them from defending their material interests as much as the sustainable achievement of distributive justice would require. The balance between two poly-ethnic conglomerates stabilized by the US plurality system, for example, may be quite effective to keep the country out of the red. But, as argued by Lani Guinier (The Tyranny of the Majority. Fundamental Fairness in Representative Democracy. New York: The Free Press, 1994.), for example, this may come at a heavy cost for the weaker, underrepresented minorities. If a more comprehensive (and defensible) view is taken of the overall objective, even reforms that take the risk of moving into a pinkish area would be fully justified if this were the price to pay for leaving a very dark area in terms of social justice.

[6] The contours of the red area are not only not fixed, they may also be responsive to the nature of the constitutional arrangement itself. Hence, constitutional engineering should not only anticipate exogenous movements of the stain but also try to bring about its endogenous shrinking. Presumably, the maxim "if you want peace, pursue justice" is relevant here, or the recommendation that, in multilingual societies, one should not go for some fuzzy bilingualism (as was tried in Belgium and Canada), but for a firm application of the territorial principle, as was in place from the start in the Swiss confederation (see e.g. Donneur, André. "Un nationalisme suisse romand est-il possible?", in Vous avez dit Suisse romande?, Lausanne: Institut d'études politiques, 1984, 25-52; Papaux, Alexandre. "Droit des langues en Suisse: Etat des lieux", Revue suisse de science politique 3 (2), 1997, 131-134.)

[7] Note that Switzerland, with a Germanic majority of more than three fourths, has a

different rule, which requires approval both by an overall majority and by majorities in a majority of cantons (see Moser, Peter. 1996. "Why is Swiss Politics So Stable?", <u>Swiss Journal of Economics and Statistics</u> 132 (1), 1996, 31-61, at p. 43).

[8] The population is then overwhelmingly French-speaking in the South (Wallonia), with a German-speaking minority in the South-East; it is overwhelmingly Dutch-speaking in the North (Flanders), with French spoken by part of the urban middle classes; it is mainly and increasingly French in Brussels, the capital of the kingdom completely surrounded by Dutch-speaking territory.

[9] See Wils, Lode. 1992. <u>Van Clovis tot Happart. De lange weg van de naties in de Lage Landen</u>, Leuven-Apeldoorn : Garant, 1992, p. 190 (French translation : <u>Histoire des Nations belges</u>, Ottignies : Quorum, 1996) ; and Mabille, Xavier. 1996 . "De l'indépendance à l'Etat fédéral", in <u>La Belgique. La Force de la désunion</u> (A. Dieckhoff ed.), Bruxelles : Complexe, 19-46, at p.41.

[10] Johnson, D. 1991. <u>Public Choice : An Introduction to the New Political Economy</u>. Mayfield, CA : Bristlecone Books.

[11] Farrell, <u>Comparing Electoral Systems</u>, 61.

[12] Analogous interpretations seem far more relevant for the introduction of list PR a few years later in Finland (1906) and of the Single Transferable Vote in the Republic of Ireland (gradually from 1918). In Finland, "all parties except the Swedes [a comparatively privileged ethnic minority strongly represented in the former Estate of the nobility] were in favour of a unicameral system, and when the Swedes realized that this would probably prevail they held out for a system of PR for the unicameral parliament, as the only guarantee of the continued representation of minorities in parliament." (Carstairs, Andrew McLaren. 1980. <u>A Short History of Electoral Systems in Western Europe,</u> London : George, Allen &

Unwin, 1980, 113). In the first Irish election under home rule (1918), First Past the Post was used everywhere except for one constituency where the Single Transferable Vote variant of PR was proposed and adopted in order to encourage political participation by the Protestant minority. Sinn Féin won a dramatic victory except in that constituency, where Protestants obtained impressive results. The Unionists hailed STV as "the magna carta of political and municipal minorities". The principle of PR was then incorporated in the first Irish constitution (1922) and its STV variant chosen, more out of ignorance of other systems than as a positive choice (see again Farrell, Comparing Electoral Systems, 112-115).

[13] See D'Hondt, Victor. 1878. Question électorale. La représentation proportionnelle des partis par un électeur. Bruxelles: Bruylant, 1878; and D'Hondt, Victor. 1882. Système pratique et raisonné de représentaion proportionnelle. Bruxelles: C. Muquardt, 1882; Hare, Thomas. 1859. Treatise on the Election of Representatives, parliamentary and Municipal. London : Longman, Green, Longman & Roberts, 1861 (2nd ed.) and Mill, John Stuart, Considerations on Representative Government (1861), in On Liberty and Other Essays (J. Gray ed.), Oxford: Oxford University Press, 1991, 203-467.

[14] Carstairs, A Short History of Electoral Systems in Western Europe, 3.

[15] Ibid., 49-56.

[16] See Moureau, Léon & Goossens, Charles. "L'évolution des idées concernant la représentation proportionnelle en Belgique", Revue de droit international et de droit comparé 35, 1958, 378-393.

[17] There were some faint, hardly audible noises on the Wallone side, for example the writer Albert Mockel suggesting in 1897, as a remedy to the antagonism between Walloons and Flemings, "a complete administrative separation between Flanders and Wallonia, with a Parliament for each of them": Flanders would have a conservative Catholic government and

Wallonia a liberal-socialist one, and the constant clashes of interests between the agricultural North-West and the industrial South-East would be avoided. But it is only from 1912, when Catholics unexpectedly retained an absolute majority, that a real autonomist movement got off the ground in Wallonia (Destrée, Jules. 1923. Wallons et Flamands. La Querelle linguistique en Belgique. Paris: Plon, 181-2, Wils, Van Clovis tot Happart., 193-5).

[18] See Moreau and Goosens, "L'évolution des idées concernant la représentation proportionnelle en Belgique", 387.

[19] Carstairs, A Short History of Electoral Systems in Western Europe, 57.

[20] Renner, Karl. 1918. Das Selbstbestimmungsrecht der Nationen, in besonderer Anwendung auf Oesterreich. Leipzig & Wien: Franz Deuticke, 1918, 67-85.

[21] See Lijphart, Arend. "Consociational Democracy", World Politics 21, 1969, 207-225; Democracy in Plural Societies. New Haven: Yale University Press, 1977; "Multiethnic Democracy", The Encyclopedia of Democracy (S.M. Lipset ed.), Washington D.C.: Congressional Quarterly Press, 1995, 853-865 ; and "The Puzzle of Indian Democracy: A Consociational Interpretation", American Political Science Review 90 (2), 1996, 258-268.

[22] Lewis, W. Arthur. Politics in West Africa. London : Allen & Unwin, 1965.

[23] See Horowitz, Donald L. Ethnic Groups in Conflict. Berkeley: University of California Press, 1985; A Democratic South Africa? Constitutional Engineering in a Divided Society. Berkeley: University of California Press, 1991 ; "Democracy in Divided Societies", Journal of Democracy 4 (4), 1993, 18-38.

[24] Lipset, Seymour Martin. 1981. Political Man : The Social Bases of Politics. Baltimore: Johns Hopkins University Press.

[25] Lijphart, "Consociational Democracy", 213.

[26] The relationship between consociationalism and opposition is not the only issue that the Belgian example should help clarify. See e.g. Brian Barry ("Political Accommodation and Consociational Democracy", in Barry, Democracy and Power, OUP, 1991, 100-135, at 135): "But would it be a contribution to social harmony if each ethnic group were represented by a single monolithic organization? If it were so in Belgium, then Belgium would be, as far as I know, unique in the annals of human history. Except where it is the prelude to peaceful scission of the state, a situation in which conflicting ethnic groups are mobilized behind monolithic organizations is a situation of potential civil war or of civil war averted by effective oppression by one group of the other." Barry's forceful indictment of a mono-ethnic-party-based consociationalism, as advocated for example by Kenneth McRae for Canada and Ulster, is not an indictment of consociationalism (qua power-sharing) as such (see Barry, Brian. "The Consociational Model and its Dangers", in Brian Barry, Democracy and Power, OUP, 1991, 136-155, at pp. 139, 145).

[27] At a national election of the late 1980s, the electoral slogan of the leader of the Parti socialiste (Wallonia's main party) was: "Why do you think they do not like me?".

[28]Dewachter, Wilfried. 1968 "De verdere democratisering van de Belgische politiek", Res Publica 10 (2), 1968, 253-78; Dewachter, Wilfried. 1992 "Une nouvelle technique d'élection directe du gouvernement", Res Publica 34 (1), 1992, 75-85; "Changer la démocratie pour sauver la solidarité?", Université catholique de Louvain: Chaire Hoover d'éthique économique et sociale, 1996.

[29] A similar proposal had been sketched by the (then) director of the Flemish liberal party's study centre Stefan Ector (1993). The idea of a mixed co-presidential ticket is also suggested for divided societies by Shugart & Carey, Presidents and Assemblies, 101-102, 219.

[30] See Delpérée, Francis. <u>La Démarche citoyenne</u>. Bruxelles: Labor, 1998; Delpérée, Francis & Dubois, F.X. "Le double vote ou le vote multiple", in Groupe "Avenir" de l'Université catholique de Louvain, <u>Des Idées et des hommes. Pour construire l'avenir de la Wallonie et de Bruxelles</u>, Louvain-la-Neuve: Academia-Bruylant, 1999, 69-84.

[31] If the number of standard seats in each community is proportional to its size, the scheme genrates overrepresentation either of the smaller community itself (if the special seats are distributed in proportion to the sizes of the populations they are meant to represent) or of its interests (if they are distributed in proportion to the sizes of the populations from which their incumbents are drawn) or both (under any intermediate formula). This is bound to look unfair to some members of the larger community, especially if the proposal is coming from the smaller one. The only way of circumventing this dilemma consists in abandoning proportionality for the standard seats at the expense of the smaller community. For example, with 60 percent of Flemings and 40 percent of francophones, a 10/10 division of the 20 special seats can be reconciled with overall proportionality (in terms of both which community the representatives belong to and whom they represent), that is, a 90/60 division of the 150 seats, if the standard seats overrepresent (in both senses) the bigger community (80/50 instead of 78/52). As soon as the number of seats is no longer marginal, serious departure from proportionality along one of the three dimensions mentioned may start jeopardizing the legitimacy of the scheme.

[32] The idea of nation-wide constituencies for either the House or the Senate is also defended in Vansteenkiste, Steven. "Staatsstruktuur moet via federale rol parlement versterkt worden", <u>De Standaard</u> 2.9.1993, p. 8; and Roland, Gérard, Vandevelde, Toon & Van Parijs, Philippe , "Repenser la solidarité entre les régions et entre les nations", in <u>La Revue nouvelle</u> 105, mai-juin 1997, 144-57. In the absence of regional or provincial quotas, however, the incentive for parties to provide platforms that are appealing to both ethnic groups is far too

weak, as the individual candidates' desire to gather preference votes across the border will be constantly thwarted by their party's concern not to lose out to more nationalist competitors. Regional quotas need to be set higher than provincial ones to avoid the risk of their being satisfied by the vote of linguistic minorities in border areas (a sharply francophone party could conceivably collect 1 or 2 percent of the votes in the Flemish region by mobilizing the francophone minority living in the part of Flanders around Brussels).

[33] Monnet, Jean. Mémoires. Paris: Fayard, 1976.