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The *Double vision* series is a compilation of articles for debate which bring together academics from different disciplines to provide converging or diverging views of the same issue.



How to find a way out of Belgium's linguistic stalemate? How to guarantee the respect of democratic principles in the use of languages?

These two questions, especially crucial to Brussels and its surrounding area, are at the heart of the latest paper that Henry Tulkens, professor emeritus of political economy and public finances at UCL (*Université catholique de Louvain*), has published in Brussels Studies ("Double vision" collection).

According to Prof. Tulkens, prospects to appease linguistic conflicts lie in determining the use of languages at the local level, abandoning the principle of *jus soli* and embracing the democratic and pragmatic values of bilingualism – rather than unilingualism – in the communes where a sufficient majority so wishes. This will restore a win-win situation – a positive sum game – among the communities where they would no longer be competitors, but partners with an interest in seeing the other language flourish. Brussels is cited as example, where bilingualism and firm guarantees for the Dutch-speaking minority have preserved the importance of this language, where the linguistic debate is less strident than in the city's outskirts, and where linguistic opening has been an advantage to all, as demonstrated during the recent Citizens Forum of Brussels.

As with all topics in the "Double vision" collection, the text published is an invitation for a reflection and dialogue on the many sides of an issue. In this context, we also publish comments by Victor Ginsburgh, professor emeritus of political economy at ULB (*Université libre de Bruxelles*), in a reply to Henry Tulkens.

Prof. Ginsburgh calls on the French-speakers to be realistic and grasp the national scope of the Flemish project. He rejects the idea that part of the population, at a local level, would be able to change the official language applied in the area. Instead he proposes that the minority simply learn the language of the majority, not in view of assimilation but in the interest of developing bilingualism. Lastly, he agrees with the proposal for a win-win situation: each linguistic community has much to gain when the other's culture thrives, even in "its own territory". Nonetheless, he feels that bilingualism perhaps must make some headway before such an attitude can truly be envisaged.

Henry Tulkens

Institutional design for the Brussels area and values for the Belgian community

Translation: Gail Ann Fagen

This paper is a response to a challenging invitation¹ to “rethink radically (...) *not shying away from spelling out the values and objectives which prospective reforms are meant to serve*”. I deal here with three issues that are problematic for Belgium, providing a rethink of the proposed radical approach by focussing on values that we all hopefully share within the Belgian community. On the basis of these three issues, I arrive at one precise and well-defined proposal for institutional reform in the Brussels area, a proposal whose “radical” nature derives, I believe, from the values that I shall raise.

Unlocking the *majority rule vs. democracy* quandary in Belgium’s overlapping constituencies

Democracy is one of these values. “One person, one vote” is a summative description, however a fuller description is gained from viewing democracy as an institution of collective choice that aims to achieve the best adequacy of social outcomes *vis-à-vis* the people’s preferences. Condorcet’s paradox and Arrow’s theorem notwithstanding, majority rule remains the most common way of implementing democratic values, and my intention is not to question this. However, majority rule is not without its flaws, mainly because when a majority exists, there is also a minority whose preferences are not retained in the collective decision that a majority vote leads to. Majority rule is thus a quite imperfect way of implementing democracy.

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¹ This was prepared for the exploratory workshop “*Rethinking radically Belgium’s socio-economic institutions*” organised under the initiative of Professors Paul De Grauwe and Philippe Van Parijs and held at the University Foundation in Brussels on 11th December 2008. The workshop has led to the creation, a few months later, of the *Re-Bel Initiative*. See <contact@rethinkingbelgium.eu>

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My point here is that this flaw is exacerbated within a multi-layered governmental structure, such as in a federation, where constituencies overlap each other or, more precisely, where larger constituencies encompass smaller constituencies. The exacerbation I have in mind occurs in the following way: when, in a larger constituency, a minority is at the same time a majority in a smaller sub-constituency, blinkered use of the majority rule within the encompassing constituency, on issues that are of concern to the majority in the smaller, encompassed constituency, appears to seriously go against the democratic principle of adequacy *vis-à-vis* the people's preferences. When a majority on one smaller level can only be a minority on another larger level, institutions that impose the will of the larger constituency's majority upon the smaller constituency's majority serves to induce an inescapable feeling of dictatorship.

In fact, there are two conflicting majorities at stake in this case; each being an expression of preferences, but both being flawed. Reference to the B.H.V. imbroglia should be clear here. The way out of this quandary is, I believe, to call upon the *subsidiarity principle*, which essentially consists of recognising "local" preferences as being primary ones, and establishing constituencies so as to allow expression of these preferences, and to make decisions accordingly.

Let us apply these considerations to the use of languages in local (*i.e.* communal) affairs within our country, particularly around Brussels. Reverting, as I have done, to the fundamental value of democracy, which is understood as adequacy *vis-à-vis* the people's preferences, I can only conclude on this point with the radical institutional proposal *that the use of languages² at the local level be decided by majority vote³ within each commune*, and no longer by either the federal parliament or a regional parliament.

Unlocking the rigidities of the "unilinguistic" territoriality principle

Apart from subsidiarity, there is also another principle floating around in some of the Belgian intelligentsia, namely the so-called "territoriality principle". In 2004, Philippe Van Parijs produced the best research paper⁴ I know of about the institutional aspects of the use of languages within European societies. This paper was remarkably supplemented in 2008 by another⁵, which was directly addressed to the Flemish community, dealing with the issues concerning Brussels. I urge you to read these two papers, firstly because they express (better than anyone has ever done before) constructive and substantial ideas that I strongly agree with, but also because they contain one thesis that I equally strongly disagree with, for the very fundamental reasons that lie at the heart of this present paper.

² In technical terms of constitutional law, this means that each commune belongs to one of the four (not three!) *linguistic* regions listed in article 4 of the Belgian constitution.

³ Where the proposed alternatives are a single language vs. bilingualism – NOT one single language vs. another.

⁴ VAN PARIJS 2004.

⁵ VAN PARIJS 2008.

The issue is as follows. Philippe Van Parijs is rightly concerned about the protection of those languages that are under threat of disappearing through being dominated by other languages. He searches for means for ensuring their protection. Among these means – the majority of which I subscribe to – there is one that I am not able to accept, namely the one summarised by an expression he uses as a subtitle in his 2004 paper, “*Grab a territory*”⁶, which is to make it *unilingual* and use the encompassing majority to establish institutions that would keep the state of affairs like this *forever*, no matter how local majorities may evolve.

But when institutions are established at some point in time (admittedly by democratic use of the majority rule) for the purpose of enforcing the territoriality principle in a unilinguistic way, regardless of the linguistic heterogeneity of the local population, is it not evident that the country is bound at some time to run head-on into the democracy quandary that I have just discussed? Many of our fellow citizens have sincerely considered that fixing a linguistic border for good would be a reasonable solution to our institutional problems. We are today learning that the problem lies in the “for good” terms. This is because life causes people and societies to change over time, and institutions should follow life. I believe that *the temporal rigidity of the unilinguistic territoriality principle goes against democratic values*.

To illustrate this point, allow me to refer to an interesting presentation⁷ about the territoriality principle that I recently heard in Louvain-la-Neuve, and how it is institutionalised in the linguistic arrangements of the Graubünden canton in Switzerland. The conclusion that clearly emerged is that for the “principle” to serve its purpose over time – that is, to ensure the survival of Romansh language – *and to do so democratically*, the canton does forego unilingualism and is moving, through appropriate *voting* procedures and to a reasonable extent, towards multilingualism. In other words, rigid unilingual territoriality and democracy have been experienced in the case of Graubünden as being incompatible and *the values of democracy have received priority over lexicographic unilinguistic preferences*. And, it is within this setting that Romansh survives pretty well.

Other examples abound: Singapore, with its four official languages of Chinese, Malay, Tamil and English; and, what a surprise, the Brussels Region itself, which is officially bilingual; consider also Luxembourg, where three languages are spoken, and all survive. All of these examples, and many others reveal the multilingual territoriality principle in action! By contrast, wherever *droit du sol/grondrecht* is invoked – be it for linguistic or other reasons – endless conflicts prevail.

⁶ To make sure things are well understood, let me make clear that the author means to say: have a constituency where the *jus soli*, *grondrecht* or *droit du sol* is effectively enforced.

⁷ By STOJANOVIC 2008

Unlocking the zero-sum game quandary generated by our outdated 1962 linguistic laws

Let me now call upon another distinguished colleague of ours, Mark Eyskens, who is also a *Minister van State* and who published a column in the *Trends-Tendances*⁸ business magazine a few weeks ago in which he advocates designing institutions that would have properties of “non zero-sum games”, thereby offering ground for cooperative behaviours that are potentially beneficial to all.

I was most pleased when reading this, because in saying so, he implicitly adopted a thesis that I had put forward a few months earlier in Leuven⁹, namely that our current institutions *are of the same logical nature as a zero-sum game because of the territoriality principle*¹⁰ implemented in a restrictive way through unilingualism.

The zero-sum game component comes from the close connection established between the territory of a constituency and the people of only one of the linguistic communities that live within it. Hence, if a minority emerges (not to mention a majority!) and asks for public support for some legitimate aspects of its social life, granting such support or recognition is perceived as a loss by those who consider themselves to be owners of the ground and who have a (democratically flawed) institution at their disposal that makes them feel entitled to regulate social life entirely according to their own will.

I now think that this situation is a result of a disputable interpretation of the linguistic laws of 1962, often called the (Gaston) Eyskens and Gilson laws. Beyond the formal definition of the four linguistic regions (in article 4 of the current version of our Constitution) – which was quite necessary to do¹¹ – the largely Flemish politicians and commentators later gradually attached a notion to this structure of *collective belonging* of the geographic area to a linguistic subgroup of people living within it, regardless of how these people may evolve. It is this *unilateral* interpretation of our laws, not the laws themselves, that have introduced a *zero-sum* game component in the functioning of our institutions, which serves as an inherent source of conflict¹².

⁸ See EYSKENS 2008

⁹ Pp. 7-12 of the invited lecture at the colloquium “35 jaar Openbare Financiën in België”, organized in honour of Professors Wim MOESEN en Paul VAN ROMPUY, 24 october 2006; see TULKENS 2006.

¹⁰ EYSKENS 2008 only invokes “nationalism” as inducing zero-sum game type institutions. But this weakens the argument by making it very general and not precise enough. My point is that the specific strategy of associating unilingualism with a territory – the “grabbing” strategy – is the source of our institutional quandary. I propose below a specific counter-strategy against this strategy, with precise *institutional* content. I do not know which institutions to propose against nationalism.

¹¹ Including well-defined procedures to modify the Regions’ frontiers, that is, and more importantly, the belonging of communes to one or another linguistic Region.

¹² And many subsequent *unilateral* decisions taken by the Flemish section of the *Raad van State* have reinforced this evolution, giving it an understandably disputed “legal” status (as e.g. with the so-called “circular” Peeters of 1997).

To unlock the situation, and move (as recommended by our colleague, Mark Eyskens and following my appeal to his colleagues in Leuven) towards institutions having the properties of positive sum games, I want to clearly state here that the appropriate way to do so would be to remove the cause of the block, namely unilingualism and “ground grabbing”, and to substitute this with an official bilingual status within the communes whenever a reasonable local¹³ majority requests this change to be made.

It would be simply dishonest to pretend that adopting bilingual status as an alternative to unilingual status (which is typically Flemish around Brussels) would mean “verfransing” (Francization) of the communes involved. Flemish is more prevalent within the existing 19 communes than it has been for many decades, as substantiated by unquestioned statistical evidence reported in JANSSENS 2008. Efforts aimed at promoting Flemish are usually well received. People do not object to it, and bilingualism works pretty well. Cultural life either in Flemish alone or in both languages is flourishing. Therefore, one can hardly have sympathy for those who would feel a loss each time a unilingual commune were to become bilingual as a result its inhabitants voting for this¹⁴.

Finally, this is surely the place to note that the main linguistic problems that plague the political life of our country are NOT within the officially bilingual 19 communes of the Brussels Region. They are concentrated in the Brussels vicinity where locally enforced unilingualism only results from an outside majority imposing its will on the local majorities, thereby inducing conflict. Instead, and as we learn from the experience of the 19 communes, a bilingual status induces peaceful coexistence, opening the door for voluntary cooperation that is based on tolerance and mutual respect rather than on discrimination and exclusion.

Summary and conclusion: abandon the “*droit du sol/grondrecht*”

In response to Paul De Grauwe and Philippe Van Parijs who have asked us “*to spell out values and objectives which prospective reforms are meant to serve*”, I propose that the following hierarchy of values be considered: (1) *subsidiarity* to resolve the situation when the multi-layer majority rule leads to an impasse; (2) *democratic mul-*

¹³ Note: the request and the choice should be made by a vote *within the communes*, NOT by a global vote within the whole region (e.g. the Flemish region...), for reasons that should be evident from the argument developed in Section 1 above. This is to obviate the usual objections voiced against “referenda” in Belgium. In the same spirit, there is no question here of making the whole of Belgium bilingual – an idea which also runs against the arguments in Section 1 above. Historically, as my colleague Jacques Thisse once rightly pointed out to me, the unilingual choice of French by the Walloons in the 1930s was not at all directed against the Flemish but is readily explained by the fact that the local languages at that time were Walloon and NOT French – so that French was already a second language to be acquired; Flemish would have been a *third* language that the population would have had to learn.

¹⁴ As to the appropriate majority to be sufficient for entailing such a shift, I would recommend going to see the remarkably prudent, intelligent and moderate provisions that are used in the Graubünden canton mentioned earlier. On may consult <http://www.tlfq.ulaval.ca/axl/etatsnsouverains/grisons-loi-langues2006-fr.htm> .

tilingualism instead of defensive unilinguistic protection; (3) *cooperative non territory-grabbing institutions* instead of conflicting zero-sum game territorial organisation.

The implied institutional message is therefore as follows: a fundamental reform that the Belgian community urgently requires is *to abandon the "droit du sol/grondrecht"* — that is, to abandon the notion¹⁵ that in our multicultural country, a territory belongs to a single community (in this case, a linguistic community), with its implication of unilinguism — and *to replace it by the idea*¹⁶ *that for each local constituency (each commune), the language or languages that have official status are those chosen by a reasonable proportion of its inhabitants*. Institutionally, this would transform the zero-sum game of exclusion that is present in our current institutions into a positive sum game of cooperation among individuals who effectively respect each other, irrespective of whether they speak, practice and wish to live with one, two or more languages¹⁷.

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¹⁵ Or the belief? (I hardly dare to call that an idea...)

¹⁶ I use that word here with absolutely no hesitation!

¹⁷ For my crusade against institutionalised unilinguism, I wish to acknowledge the inspiration I have found in the ideas put forward in MASKENS 2000, as well as in the actions of its author through the *Manifesto* group. Friendly conversations with Léon Verbruggen also spurred my motivation.



Victor Ginsburgh

A few comments on the text « Institutional design for the Brussels area and values for the Belgian community »

Translation : Gail Ann Fagen

Reimbursements will call for careful calculations.
"Paying back the interpreter's fees, that's going a bit too far..."

Jean-Claude Van Cauwenberghe,
returning from a mission by Walloon MPs to California,
RTBF, 16 April 2009

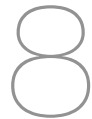
When I received Henry Tulkens's article, I was reading the latest book by Shlomo Sand *When and How Was the Jewish People Invented?* (Resling, 2008 in Hebrew, Fayard, 2008 in French). I'd like to share with you the quote at the start of the chapter "Building nations. Sovereignty and equality". It is by Etienne Balibar:¹ "No nation possesses an ethnic base naturally, but as social formations are nationalized, the populations included within them...are ethnicized...as if they formed a natural community, possessing of itself an identity of origins, culture and interests which transcends individuals and social conditions." If Balibar is right, then the notion of ethnicity does not exist; both *jus soli* and *jus sanguinis* are to be rejected, and all nations invent themselves.

The best example is the United States. Yet, yet... I lived there for a year in 1975. My son, who was six at the time, could not utter a word of English when we arrived. After his first few days at school, he came home and explained that each morning he had to recite the Pledge of Allegiance: "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands: one nation, under God, indivisible, with liberty and justice for all." Now I do not like too much the useless invoking of God, I am anything but nationalist, I am allergic to flags and national anthems, but yet I had no problem accepting that my son recite the Pledge of Allegiance and was delighted that after three months in school he wanted to speak *only* English. Americans (despite the G.W. interlude) do form a natural community – a bit late, undoubtedly, since African-Americans and Native Americans were long ex-

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¹ Our free translation.



cluded – and in a way my son, like myself, felt this need to be integrated there and share their language and their culture.

The true question is why does Flanders lack this quality (and I use the term *quality* – not *will* - intentionally – for it is definitely a matter of quality and not will) to integrate other social formations and/or why do the French speakers, and undoubtedly even more so those who live in Flanders (often through opportunism), have no desire to integrate there nor speak the language. I am not someone who thinks that integration can be organised by laws, decrees, rules and strolls along the IJzer. Or even less so by evicting those who do not integrate or turning away those deemed unable to. But those who take up residence there must make the effort to integrate and speak the language of the area.

The idea that nationalism is created by the political elite (as my French-speaking friends often claim) has been called into question by a good number of historians. For example, Hobsbawm states that nations are "dual phenomena, constructed essentially from above, but which cannot be understood unless also analyzed from below, that is in terms of the assumptions, hopes, needs, longings and interests of ordinary people." ² It is thus wrong to consider that a handful of politicians can move a whole population. People follow only if they are sensitive to what their leaders say, but they can also take the lead. The Battle of the Golden Spurs – and its later exploitation – was popularised by Hendrik Conscience who, while his early poems were written in French, in 1838 published *De Leeuw van Vlaanderen of de Slag der Gulden Sporen* in Flemish, because he had realised the low esteem held of the Flemish language.

I do not think the situation has changed much since 1838. While 59% of the Flemings know French, only 19% of the Walloons know Dutch. The situation is brighter in Brussels where 96% of its residents speak French and 59% speak Flemish.³ Unfortunately the data available do not indicate how many of the latter are of French-speaking origin (a good example of why the language section of the census would be useful). The current knowledge of Flemish among young French-speakers does not point towards any great changes in the years to come.

These considerations lead me to think that the proposals by my colleague Tulkens, as generous as they may be, are hardly realistic. ⁴ They are probably a bit late in coming because the French-speakers have taken their time, too much time (Conscience's *Leeuw van Vlaanderen* was written 171 years ago), and it appears that

² Hobsbawm, Eric J. , *Nations and Nationalism since 1780*. Cambridge: Cambridge University Press, 1990, quoted by Shlomo Sand, *Comment le peuple juif fut inventé*, Paris : Fayard, 2008, p. 62.

³ Data from a survey in EU15 by the European Commission in 2000. See also Table 4 of the paper by Victor Ginsburgh et Shlomo Weber, *La connaissance des langues en Belgique*, in Micael Castanheira and Jean Hindriks, *Réformer sans tabous*, Brussels: De Boeck, 2007, pp. 33-43. It should be noted that these figures differ from those presented by Rudi Janssens in "Language use in Brussels and the position of Dutch. Some recent findings", *Brussels Studies* 13, January 2008.

⁴ He should have done this when he was a student at the Faculteit Rechtsgeleerdheid at the Katholieke Universiteit Leuven, in the late 1950s.

they still have not understood, and even less accepted, that Flanders has become a nation. I will address his proposals one by one.

(a) In the Flemish communes that surround Brussels, the use of languages should be put to a majority vote by the population of each commune.

The United States is home to some 10 million Poles (immigrants or of Polish ancestry), and only 660,000 of them still speak Polish at home. Why were 94% of these Poles able to learn English? Over a million of them live in Chicago, and they make up 12% of the population of Greater Chicago. Of course they are not spread evenly throughout the city, but live in so-called "Polish patches", some of which have a population as large as that of the communes in the outskirts of Brussels. Imagine a vote in each one of these "patches" that would allow the Poles, if they attained the majority, to file their tax returns in their mother tongue, if they still knew it.⁵

(b) Philippe Van Parijs suggests that a community should "grab a territory", and turn it into a unilingual entity if it holds the majority and then hang on to it "forever". Henry Tulkens proposes to abandon the principle of unilingual territory when the linguistic majority changes. I propose that those who belong to the linguistic minority learn the language of the majority, even if they do not speak it at home (because quite reasonably they want their children to be bilingual). And matters will be arranged consensually, even if, eventually they become the linguistic majority.

(c) Marc Eyskens and Henry Tulkens suggest that the nature of the linguistic "game" played by the Flemish in the communes with French-speaking residents, through lack of coordination, leads to a *zero-sum* quandary. They feel it would benefit both communities if the French-speaking culture were allowed to flourish in the Flemish region, and even supported on the same footing as the Flemish culture. I agree wholeheartedly with this idea, and suggest accepting the principle. The final adoption, however, should be delayed for a few years (or more...) to see if the French-speakers not only agree to proposals (a) and (b), but act on them as well.

⁵ See http://en.wikipedia.org/wiki/Poles_in_Chicago.



Henry Tulkens

Response to the comments made by Victor Ginsburgh

My colleague Victor Ginsburgh has made some worthy comments. He has added a historical and geographical dimension to my efforts, which broadens the perspective. My personal experience at the KULeuven Faculty of Law attests to the realism of the ideas he brings to mind.

Nonetheless, I do not share the pessimism he expresses in his fifth paragraph. Surely the situation has changed somewhat. Although the figures he cites reflect a clear difference between Wallonia and Brussels – only 19% of the Walloons know Dutch, while "59% [of Brussels residents] speak Flemish". This latter figure, reflecting the current situation, is certainly higher than it was in 1960, as I stated in my text. An example of this evolution, which suggests just the opposite of my colleague's views on young people, is the impressive number of French-speaking students enrolled by their parents in the Flemish schools of Brussels (to the point of filling them up!). Bilingualism in these families, and throughout the city, I feel is a value that is making headway, clearly on the rise.

Of course, I am referring to bilingualism *in Brussels* not Belgium overall. But is not Brussels where this is most necessary, and thus in most need of institutional support? For we are speaking here of institutions.

Unrealistic? Failing to speak of Flemish style *jus soli* gives the impression that it is accepted. In the face of this gradual shift, my first motivation in this analysis was to highlight what can happen when democracy, non-discrimination and the justice they imply are abandoned. Does "being realistic" justify setting aside these values? In the reflection on new and lasting institutions, this would indeed provide them with a tenuous foundation. Over the years these values have been eclipsed through the unilateral interpretation, based on *jus soli*, of the 1962 laws. For this reason I feel that returning to values is a realistic way to denounce a false notion that has been overly tolerated.

Let us return to the three proposals discussed by my commentator:

"In the Flemish communes that surround Brussels, the use of languages should be put to a majority vote by the population of each commune." No, this is not what I propose. More precisely I propose submitting to the majority vote by the population in each commune the *alternative for a commune to belong either to a unilingual linguistic region or to a bilingual linguistic region*, as these regions are specified in article 4 of the Constitution. Although the linguistic implication is obviously the same, the purpose of the vote is not, for in this case it is an institution that is in question, which considerably expands the purpose of the vote. For the Poles in Chicago, no institutional alternative is proposed. In any case, they do not need one because speaking their language is not subject to ukases, prohibitions and many forms of discriminations experienced by the French-speakers living in the zones surrounding Brussels. The Chicago Pole example is picturesque, but institutionally irrelevant. On the other hand, linguistically speaking, it is consistent with bilingualism, a point on which we obviously concur.

What Victor Ginsburgh proposes instead of abandoning *jus soli* is actually inspired by the same idea that motivates me as well: making citizens bilingual regardless the language they speak at home. But if this idea is to take shape in a commune on the outskirts of Brussels, is it not better for it to belong to a bilingual, rather than a unilingual, region? In this realm my distinguished colleague's own comments provide me with the decisive argument: in a region that is officially bilingual, institutionally speaking there is no longer a majority or a minority. By law, both languages are on strictly equal footing (as is the case in the Brussels Capital Region). This appears to be the ideal framework for the consensual arrangements he would like to see, rather than the present framework which is forced unilingualism.

As for Mr Ginsburgh's final comment, I agree, as long as points (a) and (b) are rethought along the lines suggested in this reply.