THE CONSTITUTION, THE PARLIAMENT AND THE CONCERTED DECISION PROCESSES.
OBSERVATIONS BASED ON THE BELGIAN EXPERIENCE

Francis DELPEREE
Professor Emeritus of Constitutional Law at University of Louvain
Member of the Royal Academy of Belgium
Member of the Chamber of Representatives of the Kingdom of Belgium

The Belgian state is generally considered as a complex state[1]. In its recent history, it has seen institutional, multiple and sometimes contradictory developments. These affect, to a significant extent, the organization and functioning of parliamentary assemblies. The current constitutional system is the result of these transformations.

The Belgian state was formed in 1831 (one hundred eighty-seven years ago), in the form of a unitary state largely decentralised to the benefit of the provinces and communes (the Constitution of February 7, 1831). Applying the French and British experiences of the first quarter of the 19th century, it set up a liberal parliamentary system based on two chambers. The original Constitution could serve as an example for all states (in Europe and outside Europe).

Since 1952, the Belgian state has also embarked on operations aimed at achieving greater integration of the states in Western and Central Europe. The subject may seem anecdotal. It should be recalled, however, that Brussels now hosts some of the most important institutions of the European Union, including the European Commission.

Since 1970 (almost half a century ago), the Belgian state has been transformed in several stages (so-called "state reforms" in political jargon; there are currently six of them, the last one dating back to 2014) into a federal state. The regime of territorial decentralisation is not suppressed. But new political communities – communities and regions – are organised and given valuable skills and means. In all likelihood, this evolution of "dissociative federalism" is not yet completed.

It is 2018 now. Without showing excessive optimism and without ignoring the threats that the movement of independence ideas (in the north of the country) poses to the existence of Belgium, it is permissible to consider that at present the state, the federal government is in relative equilibrium – some will say: it is a real stabilisation – in the planning and operation of its institutions. It lives in peace with its neighbours. It seems, for the moment, immune to impromptu operations of dislocation (in the form of separation by common agreement or unilateral secession) or gradual decay processes[2].

1 F. DELPEREE, "La complexité fédérale" (Federal complexity), inPar tous.n doit se comprendre ntribuent à la stabilité de la société politique et des institutions qui en sont le reflet. alité.in L'esprit des institutions, l'équilibre des pouvoirs. Mélanges en l'honneur de Pierre Pactet (The spirit of institutions, the balance of power. Mixes in honour of Pierre Pactet), Paris, Dalloz, 2003, p. 117.

2 On all issues, see F.DELPEREE, L'Etat Belgique (The Belgian state), Bruxelles, 2017, coll. L'Académie en poche (Pocket academy).

How to explain this success[3]? Here we sketch an answer. For half a century, the Belgian Constitution has set up a set of rules, institutions, techniques and methods. It has also developed a set of practices. All are inspired by a master idea – perhaps we should speak of a true political philosophy. It is the idea of "**concertation**".

The idea is clear. The Belgian state does not want to impose on everyone the choice that would have been conceived in a unilateral and centralised way, even in an authoritarian way, by the government in office and the parliamentary majority which supports it.

The approach is different. It has to be inclusive. It involves involving a maximum number of political actors in the decision-taking process; if possible, they must be helped to define the most important political, economic, social or cultural choices; if possible, they must be involved in the implementation of the decisions taken.

The powers must go "in concert", said Montesquieu. Today, the Belgian Constitution goes further. By small steps, it imposes a new institutional philosophy. In order to attract the support of the greatest number of citizens, the public authorities should agree among themselves on the decisions they make; if necessary, they must involve economic, social and cultural groups in this process.

Specific rules of organisation and operation should allow the emergence of this idea. They are related to the planning of the state, taken as a whole (Chapter I), and, more particularly, of parliamentary assemblies (Chapter II).

It is not necessary to add that the "concertational" idea, if it is permissible to use this neologism, must go beyond the conception and writing of laws. It must be present in the minds of political actors. It must be translated into the ways of "doing politics".

This report illustrates, with some examples, the most significant manifestations of this institutional phenomenon.

3 When making the diagnosis as balanced as possible, one cannot help but form two methodological warnings. On the one hand, the techniques, methods, rules and procedures that are envisaged in this report cannot be understood as recipes that could be taken in isolation and tested "à la carte" in another state. Most often, they form part of an institutional set that has its own coherence but which, fragmented or disjointed, would lose most of its usefulness. Here is just one example; it is useless, in a bicameral regime, to question the operating modes of an assembly while ignoring all the techniques and practices of the other. On the other hand, it is not convenient to transpose into a given political system an institution that works (or even works well) in another system. The transplant does not necessarily take place. For it to succeed, transplantation requires a sufficient identity of concerns between the "donor" and the "recipient". A minimum common culture based, for example, on the practice of written law and the acceptance of the rules of a law-based state, may prove to be useful, if not necessary.

CHAPTER I. – THE CONCERTATION AT THE LEVEL OF THE STATE

The social contract, using the language of Jean-Jacques Rousseau, is the most complete form of the concertation. It is on a consensual basis that a sufficiently unified political society creates the state (I) and organises it (II). It also sets up institutions (III) and procedures (IV) which are part of it.

I. THE CREATION OF THE STATE

The birth of a state is based on facts that are not strictly legal or institutional, but are situated in a more general political environment. It would be wrong to ignore this reality, from both points of view, international and national.

1. It is necessary to have regard to the relations which the state can have with the neighbouring states and, more generally, with other states of the **international community**.

Belgium gained its independence in 1831. To this end, it benefited from the support of the great European powers. It had two world wars in the 20th century. With the help of her allies, it emerged victorious. Since the middle of the 20th century, it has been working in international coalitions of various dimensions to ensure the security of its borders and to be protected from armed conflicts that could affect its rights and interests (Constitution, Art. 168).

The exterior stability can help preserve the interior stability. In other words, a peaceful international climate is a guarantee of balance inside the state. It is so for no other reason than state institutions do not have, permanently or from time to time, to function under emergency conditions.

2. Besides, Belgium was created thanks to the union of catholic and liberal political forces (the phenomenon is generally called unionism).

The culture of debate, negotiation and concertation has developed from this moment.

Political parties, men and women politicians, public officials willingly agree to develop in-depth discussions on all subjects to be discussed – political, economic, social and cultural. They do it in the Parliament, in the press, in social

media and even in everyday life[4].

This is the commonly shared belief. For the most part, strained political and social relations are not settled in the street. Conflicting issues are the subject of negotiations, which can be long and difficult, but which, in a good hypothesis, lead at some point to an acceptable and practicable compromise. For all.

The "**culture of compromise**" rather than merciless struggle is an essential element in the search for and implementation of political solutions. "Discuss, discuss, discuss …" is the motto. It may seem inefficient, expensive, repetitive … But in the long run, learning and practice of discussion and, why not, dialogue can be beneficial in a democratic political society.

II.– THE ORGANIZATION OF THE STATE

The constitution is intended to install the columns of the temple. They must be as solid as possible. They must also be the subject of wide political support – in the assemblies and with the population. If necessary, they must be consolidated through review procedures.

Three institutional phenomena fit into this organisational perspective.

1. The Belgian constitution is qualified as rigid (Constitution, Art. 195). The constitution cannot be amended in the same way as a law can: it is necessary to establish a constituent body; it is necessary to comply with all procedures and their sequence (declaration, dissolution, elections, and, properly speaking, revision); we should account for required majorities (two thirds of those present and two thirds of those voting) in each house; it is necessary to work during five years' term of powers.

The text of the constitution cannot be modified "offhand". It is impossible to obtain "all and at once". A revision will be needed in the lapse of time. The Belgian state is not characterised by a complex system of modification of its Constitution. The system is based on the work written under the direction of S. GAMBINO and G. D'IGNAZIO (*La revizione costituzionale e i suoi limiti. Fra teoria constituzionale, diritto interno, esperienze straniere (Revision of the constitution and its terms. On the basis of the constitutional theory, the internal law and foreign experience),* Milan, Giuffrè, 2007) to identify the various procedural techniques that can be used.

Here is an essential element. The double majority of two-thirds that is required in Belgium and which must be met in each of the legislative chambers

4 One day someone asked me about the relations between Belgian male and female politicians and I took the liberty to say that they demand from themselves to respect a simple, even naïve rule: "The arms in the cloakroom". For clarity: this expression should be interpreted both in the proper and in the figurative sense.

obliges to carry out preliminary consultations which go, more often than not, beyond the parties that make up the parliamentary majority.

During the recent fifty years, the inviolability of the procedure for the revision of the constitution in Belgium is not an obstacle to the realisation of numerous constitutional operations. On the average, a revision is required every ten years (1970, 1980, 1988, 1993, systematisation of the text of the Constitution in February 1994, 2001, 2014…)

2. The institutional reforms that led to the creation of a federal state fundamentally changed the state of political relations.

The "**division of powers**", as practiced in a federal state, is superimposed on the "**separation of powers"** as it is implemented in a unitary state. This double grid of political and social relations can contribute to putting obstacles to the actions of public authorities which would be too enterprising.

The federal state is still based on a "foedus" – a pact, an agreement – between the various components – federal and federated – of the state. It is the most characteristic translation of a political choice based on a concerted decision.

A modality of Belgian federalism deserves attention. The federal state, made up of two large communities – French and Flemish – does not use an assembly that would take into account the existence of the components of the state and place them on an equal footing (for example, in the joint Senate). The state pushes further the egalitarian[5] and even concertational logic. It demands that the Council of Ministers, real engine of government action at the federal level[6], be itself composed according to the principle of parity.

If this principle is respected (which is not the case of the government in office), the political forces in the two communities have to bring to balance and to conceive the valid policies for the entire state[7].

---

5 F. DELPEREE and M. VERDUSSEN, « L'égalité, mesure du fédéralisme » (Equality as a Measure of Federalism), in Jean-François Gaudreault-DesBien and Fabien Gélinas (dir.), Le fédéralisme dans tous ses états. Gouvernance, identité et méthodologie (Federalism in all its forms. Governance, identity and methodology), Bruylant - Yvon Blais : Bruxelles – Cowansville, 2005, p. 193-208.

6 Y. LEJEUNE, Droit constituionnel belge. Fondements et institutions (Belgian constitutional law. Foundations and institutions), Bruxelles, Larcier, 2010, p. 451: "In a country where the multiplicity of parties – the superimposition of a linguistic divide and an ideological divide – necessarily generates non-homogeneous parliamentary majorities and coalition governments, the Council of Ministers can exercise its function only in respecting the rules of collegiality, consensus and solidarity … The consensus procedure is the procedure of taking negotiated decisions".

7 Excessive complexity of arrangement of public institutions may make the organisation of a state incomprehensible by a citizen. It can contribute to the creation of a gap between the public opinion and the established authorities. In this respect, it does not serve the democratic cause. Besides, the checks and balances system (the term used in the USA) may, if not applied properly, lead to a blockade, i.e. paralyse public institutions.

3. A proportional electoral system (the D'Hondt system) has been in force in Belgium since 1893, notably at the national level, but also at the regional level and, with different modalities, at the local level. It is known that this system causes the proliferation of political parties, not only during election campaigns but also in the composition of assemblies. Currently 13 political parties are present in the Chamber of Representatives. The largest one has 31 members out of 150, barely 20%. The Chamber is a mosaic.

Proportional representation affects the organisation and functioning of public authorities. It prevents the emergence of too strong majorities; it imposes the constitution of coalition governments – there has been no homogeneous government for a hundred years; it does not allow the appearance of a coherent opposition; it protects from overly marked political or ideological shifts.

Every five years, political parties must work together to establish a coherent programme of the government and to build a parliamentary majority – four, five or six groups – that can reach the 50% mark. During the legislature, the coalition system requires the governing parties to rule according to the consensus procedure.

We can see the benefits of the system. We also see the disadvantages. At the end of the federal elections, long-term political crises (more than 500 days from April 26, 2010 to December 6, 2011, with a very broad interpretation of what is known as the current affairs) can develop and organise a form of "vacancy of power". The concertation can take time.

III.– THE INSTITUTIONS OF THE STATE

In the modern state, institutions can be vested with a stabilising function. In this case, it is up to them to ensure the "regulation of the normative activity of the public authorities", according to the expression used in the law of the Fifth French Republic[8]. These institutions can be vested with a legal function, and even a jurisdictional one. This gives authority to their decisions that imposes itself on everyone, public authorities and citizens.

1. In Belgium, the Constitutional Court has served since 1984[9]. We tend to consider that the Court's action has helped to lay the foundations for a coherent federal state and to develop the rules of good practice which are binding on

8 Constitution Council, Decision No. 62-20 DC of November 06, 1962, cons. 2. Adde : G. BERGOUGNOUS, "Le Conseil constitutionnel et le législateur" (The Constitution Council and the Lawmaker), in Nouveaux Cahiers du Conseil constitutionnel (The New Records of the Constitution Council), 2013, No. 38, pp. 5 – 21.

9 On all issues, see F. DELPEREE and A. RASSON-ROLAND, La Cour d'arbitrage (The Court of Arbitration), Bruxelles, Larcier, 1996, coll. Répertoire notarial (The Notarial register Collection). Adde: M. VERDUSSEN, Justice constitutionnelle (Constitutional Justice), Bruxelles, Larcier, 2012.

both federal and federated authorities[10].

The question of the role of the institutions of constitutional justice has been the subject of extensive developments in the constitutional doctrine in Belgium and abroad. They are reliable.

2. One can, in the same way, consider that the activities of independent jurisdictions can have a moderating function. If it tries to apply sanctions on the acts of public authorities, especially governmental and administrative authorities, which do not recognise the rules in force in a law-based state, it contributes to giving citizens confidence in the activities of the state. The effective safeguarding of citizens' rights is an important element in the regulation of political relations.

3. The Belgian Constitution does not fail to refer to international treaties which, such as the Charter of Fundamental Rights of the European Union or the European Convention on Human Rights, also allow citizens to bring the dispute before an international court - the Court of Justice of the European Union or the European Court of Human Rights (Article 34). They do it discreetly but definitely.

Court decisions, which are adopted years after the disputed facts, but which finally put an end to the dispute, can in their way serve to disperse the debate and consolidate the political system as a whole.

We cannot ignore the problems that the coexistence of two institutions of justice, acting in different institutional frameworks and developing specific case law, can provoke[11].

10 The Department of Legislation of the Council of State is, for its part, to provide opinions on the constitutionality of the standards in preparation. It is required to do so with regard to laws, decrees, ordinances and regulations issued by federal or federated government authorities; it can do it with regard to rules introduced at the parliamentarians' initiatives. If these opinions are given in due time, if they do not merely give an opinion on the form or procedure, if the public authorities agree to follow the advice they have requested, the task performed by the Council of State can contribute to the quality of the legislation in force. The Constitutional Court can take over from the Legislation Department.

11 On this issue, see F. DELPEREE, La protection des droits fondamentaux en Europe : à quand un cours d'harmonie ? (The protection of fundamental rights in Europe: how long will a course of harmony last?), in Liberae cogitationes. Liber amicorum Marc Bossuyt (edited by A. ALEN, V. JOOSTEN, R. LEYSEN and W. VERRIJDT), Cambridge-Antwerpen, Portland, Intersentia, 2013, p. 197 : "The harmony deserves to be sought in two directions. The first way is often unknown. It is about making and interpreting standards. The second is more usual. It is about the design and writing of judgments ... If it develops in an intelligent, respectful and balanced context, normative and jurisdictional dialogue can be used to bridge conflicting concerns. It can help to bring about the peace among judges and, why not, lawyers. It can build a 'community of law' (CJE (the Court of the European Union), April 23, 1986, Les Verts (The Green Party), 294/83, Rec., p. 1365) ".

CHAPTER II.– THE CONCERTATION AT THE LEVEL OF THE PARLIAMENT

The Parliament is a place of debate. We talk to each other. We discuss social choices. Ideally, a dialogue is established between representatives of the political society, whatever the parties or movements they belong to – whether in the majority or the opposition.

The concertation can take several forms depending on the quality of the interlocutors: concertation between the two chambers, concertation of an assembly with the responsible government before it, concertation, within an assembly, between the political formations that make up the majority coalition, concertation between the formations that support the government and those that make up the opposition, concertation, perhaps, with political, economic and social forces that are outside the Parliament, but may be associated with some of its objectives…

In this regard, the Constitution, laws (especially special) and assembly rules are expressed in terms of opportunities. They provide opportunities to seek the necessary or useful consensus. It is not said that the political forces will seize them and renounce imposing their will without seeking wider adhesions. In addition to the laws, parliamentary practices can also encourage the use of concerted mechanisms. In a participatory perspective, they can, in particular, are used for a set of procedures which allow citizens or groups that bring them together to express themselves, with varying intensities, in the public debate.

Concretely, it is necessary to examine the issue from two points of view: that of the organisation and that of the functioning of the Parliament.

I.– THE ORGANISATION OF THE PARLIAMENT

As it is organised, the Belgian Parliament meets at least two concertation requirements. It is necessary to wonder about the way in which the assemblies and their commissions are arranged.

1. TWO ASSEMBLIES

Belgium has always practiced bicameralism. There are two assemblies: the Chamber of Representatives and the Senate. Together with the federal government, they form the "legislative power" (Constitution, Art. 36)

Originally, the pursued objective was essentially of a technical nature. Two

successive examinations, it was thought, made it possible to improve the quality of the law. As Professor Barthélémy said at the beginning of the 20th century, "the sight is one, but I can see better with two eyes".

Since 1970, the pursued objective has been more political. The Chamber of Representatives is supposed to represent the nation as a whole (Constitution, Art. 42). The Senate, for its part, represents federated communities at the federal level; it is composed, for the most part, of deputies who also hold a mandate in the Parliament of a community and a region; it provides an opportunity for federal communities to participate in the development of federal policies.

This bicameralism is largely unequal. It deprives the Senate of any involvement in the voting on the budget. It does not allow it to execute political control over the government and its services. Even in legislative matters, the scope of involvement of the Senate is reduced to the strict minimum.

As indicated, particularly, in the Constitution, there are three kinds of laws:

- *"unicameral laws" (the Senate does not have to know) (Constitution, Art. 74: "The federal legislative power is exercised collectively by the King and the Chamber of Representatives for matters other than those referred to in Art. 77 and 78"),*
- *"mandatory bicameral laws" (there are few of them, but, in this case, the concurrence of the two assemblies is required, on the basis of strict equality) (Constitution, Art. 77),*
- *"optional bicameral laws" (where the majority of members of the Senate, with at least a third of members of each linguistic group, can offer a draft law and possibly amend it (Const., Art 78).*

It goes without saying that difficulties may arise in the exact definition of the contours of these three categories of laws. The two chambers may not agree on the solution to the problem. How to solve these conflicts of competence? Article 82 of the Constitution provides the answer. A "parliamentary commission of concertation" – the word is important – is established. It is composed equally: 11 members of the Chamber of Representatives and 11 senators. It takes decisions by seeking to gather a majority "in the two components of the commission". If this objective cannot be attained, the commission shall act by a two-thirds majority of its members. This qualified majority can only be obtained through a dialogue between the deputies and the senators. It is, in any case, the desired objective.

2. PARLIAMENTARY COMMISSIONS

Proportional representation (supra) does not only affect the election of the

Chamber of Representatives. It is spread throughout the constitutional system and, in particular, in the internal organisation of the chambers. It produces the same effects.

Article 158 of the Rules of Procedure of the Chamber of Representatives proclaims, inter alia, the following. Appointments (all appointments, large or small) which the Chamber makes from among its members "shall be in accordance with the principle of proportional representation of political groups". The same article specifies that "this proportional representation of the political groups is fixed on the basis of the number of seats obtained by these groups after each election of the Chamber of Representatives". To the extent necessary, the Rules of Procedure add in Article 159 that "when the Chamber must designate delegates to international assemblies", it shall appoint them in accordance with the principle of proportional representation.

A parliamentary commission is the chamber "in a reduced format". It is composed identically. Commission presidencies are allocated according to the same principles. By necessity, they are occupied by both members of the majority and members of the opposition.

In other words, in a state that uses the electoral system of proportional representation, parliamentary work cannot be developed without permanent concertation between political parties of different persuasions, and even opposites.

The Conference of Presidents, in the Chamber of Representatives, and the Bureau, in the Senate, meet weekly to carry out these concertation and to determine, in collaboration with the Government, the programme and the schedule of parliamentary institutions. This way of working in a concerted way contributes to "putting oil in the wheels" of the parliamentary machine.

II. FUNCTIONING OF THE PARLIAMENT

How will the principle of concertation fit into the operation of parliamentary assemblies? Are there methods more appropriate than others to promote a dialogue between political actors?

A first answer is given on a technical level. Consideration must be given to the ways in which the Constitution applies, in particular, when it is necessary to ascertain whether the required majorities are met in the Parliament. A second answer is procedural. There are methods, such as the alarm bell procedure, whose purpose or effect is to calm people's minds, to calm the political debate, to temporise and to allow, in the best case, the emergence of new solutions based on a consensus.

1. CALCULATION OF MAJORITIES

In a parliamentary assembly, there is a simple rule of operation. To make a decision, **members shall be counted.** Yes, but how to count? How to calculate

majorities to make legislative work[12]? How can one verify that the majority is gained when it is necessary to bring confidence to the government or, on the contrary, to criticise it?

These are questions that may seem simple. The answers are not uniform, far from it, in all Parliaments. What are the solutions that prevail in Belgium?

To pass a law, two constitutional rules must be respected.

First of all, it is necessary to gather a sufficient number of parliamentarians, simply speaking. There are one hundred and fifty deputies. Seventy-six of them must be present in the assembly hall. If this figure is not reached, no resolution can be passed, no voting can be held in the assembly. A voting which could occur with less than 76 deputies present would be null and void.

It must then be checked whether a majority has been revealed during the vote. As stated in Article 53 of the Constitution, "any resolution is taken by an absolute majority of votes" - not the majority of seats. No proxy, no delegation, no remote voting. Only the deputies present in the assembly hall may cast a vote.

Is it too difficult to gather these majorities? Is this a phenomenon of absenteeism that leads to postponing the polls times out of number? No. And there are two reasons for that.

On the one hand, there is no surprise voting. Members agree to vote one day (Thursday) and at a specific time (between 18 and 20 hours). It is up to everyone to put the date and time on their political agenda and to make arrangements to be present at the right time. On the other hand, the deputies who are absent from the voting are penalised financially: a deduction, proportional to their absence, is made, each month, on their treatment. The process is dissuasive. At the time of Thursday's voting, there are, on average, 140 (out of 150) present: the others are sick or on a mission abroad.

Here is a second rule of majority. The Constitution requires, in certain cases, the meeting of a **qualified majority,** two thirds of the voters to amend the Constitution, two thirds of voters, plus one half of Flemish and one half of French-speaking members of the Parliament, to amend organic laws, for example, those that allocate powers and resources to communities and regions.

Two-thirds is enormous, especially in a mosaic parliament … However, we tend to consider the formula useful. And even essential.

The search for sufficient majorities (in Belgium, we speak of "qualified majorities" or "special majorities") can have a **positive effect**. It obliges to open a

12 *See our report in "The Meaning of the Law", Kyiv, February 2018*

dialogue with political forces which are, a priori, hostile to a particular solution, but whose assistance is necessary if one wants to make useful work.

The search for large majorities can also have a **dissuasive effect**. It prevents impromptu or improvised reforms. It stands in the way of reforms that do not have a sufficient consensus, especially between the north and south of the country.

There is an additional question. What is the majority required to overthrow the government? A disparate opposition challenges government actions. Can the opposition overthrow it? Is it easy or hard?

Until 1993, Belgium remained attached to a simple rule. A government that no longer has the confidence of the Chamber must withdraw. It resigns. A new parliamentary majority must be formed to support a new government. With these unavoidable consequences: chain crises, governments whose lifespan did not exceed six months, damaging economic and social consequences.

Since 1993, Belgium has introduced constitutional rules which are those of so-called **rationalised parliamentarianism**[13]. It is not enough that a majority of circumstance, made of "odds and ends" (*ragtag*), made up of parties hostile to the government, is manifested to provoke the crisis. There must be an effective, coherent majority in the Parliament that can take over and give confidence to a viable government.

Mistrust must be "**constructive**", as the saying goes. In other words, parties that aspire to govern must consult first to see if there is a sufficient base of values and projects between them.

The formula, again, can be dissuasive. This does not mean that it is useless. Since 1993, no political crisis has developed in this way.

3. THE ALARM BELL PROCEDURE

The Belgian Constitution can still try to defuse certain political conflicts. Certain procedures can be applied for this purpose. The most characteristic example is that of the alarm bell procedure.

What example can hypothetically be given? An important conflict appears in the federal Parliament. On the occasion of the discussion of a draft law or a proposal for a law, the French-speakers and the Flemish people oppose each other head-on. The first and the others are seriously affected in defending their concerns or interests. They rebel. They are on fire, as they say, the alarm bells. It is a way of warning the other that the alert is reached, that it is time to open a

13 It is clear that these techniques, conceived in the period between the two world wars, did not really work and did not prevent, in Europe, the emergence of authoritarian, if not dictatorial, regimes. As if the constraints imposed on a parliamentary system had their limits and even could produce effects contrary to those which were expected.

reasonable and balanced discussion, that it is urgent to seek consensual solutions.

This is where double concertation begins.

The first is parliamentary. There are one hundred and fifty deputies. 63 are French-speaking, 87 are Flemish. Three-quarters of the French-speaking or Flemish parliamentarians (48 out of 63 or 66 out of 87) consider that a piece of legislation under discussion seriously affects the interests of their community. In order to bring the number of three quarters together, it is necessary, in practice, for parliamentarians representing the majority and the opposition to come together to challenge the offending text.

The second concertation is governmental. A motion suspends the proceedings and refers the dispute to the Council of Ministers, composed equally, for the purpose of finding a solution to the encountered difficulty. In a month, it will come back to the assembly to propose the solution that it could develop.

The idea is quite simple. Time must be given time. We must give ourselves time for reflection. We must allow the concertation. We must favour the evolution of positions. A few days or weeks later, the perception of what is at stake in the conflict may be different. Not to mention that the national or international situation may have evolved. The conflict may lose its meaning or it will fade away by itself.

If the government does not find a solution and does not settle the dispute in a month, it signs its death warrant. It has no choice but to resign.

The alarm bell procedure has been used twice.

In 1985, French speakers protested against a bill to integrate a Flemish high school at the University Centre of Limburg; the council of ministers withdrew its bill.

On April 29, 2010, the French speakers protested against the putting on the agenda of the Chamber of two bills aimed to split the electoral district of Brussels-Hal-Vilvorde (BHV). It should be noted that the current government resigned on the 26th, and that the chambers were dissolved on May 7th. The proceedings were therefore not completed. It contributed to further deepen the current political crisis.

I try to explain, looking from outside, the institutions of my country – their organisation and functioning, both in theory and in practice. I show the advantages. I do not ignore their defects. I do not hide them.

I do not say that Belgium is an institutional paradise on earth. I am simply saying that, especially for half a century, Belgians have put to the test a number of techniques which do not produce bad results in the political life.

I am not a seller who would have a "turn-key" model at hand. To those who hear the message to check if it is of any use to them.

THE CONSTITUTION, THE PARLIAMENT AND THE PROCESSES OF COOPERATIVE DECISION-MAKING

THE BELGIAN EXPERIENCE

Francis DELPÉRÉE

Dear colleagues,

Ladies and gentlemen,

I am a Member of Parliament, and have been for fourteen years. I have also served as professor of constitutional law for thirty-five years.

I come from Belgium and I would like to speak this morning about the democratic institutions of my country.

To start my presentation, I want to remind you that the Belgian state is a complex state. During its existence, it has undergone significant institutional changes. You will not be surprised if I say that these developments have significantly affected the organization and functioning of Parliament.

I will very briefly summarize these developments, in three stages.

- *One. The Belgian State was established in 1831. It was created as a unitary state (with provinces and communes). It was a parliamentary system with two legislative chambers. This constitutional system served as a model for a group of states (both inside and outside Europe) during the nineteenth century.*
- *-Two. Since 1951, the Belgian State has undergone reforms aimed at ensuring the integration of the European Union Member States within Western and Central Europe. This may seem like a separate issue to the development of the Belgian state. But I would like to remind you that Brussels today welcomes the most important institutions of the Union, in particular the European Commission.*
- *Three. From 1970, the Belgian State has been transformed in stages (step by step) into a federal state. The decentralized system of municipalities and provinces has not been abolished. But new political communities - communities and regions - have been organized. They are given valuable powers and resources. This evolution, which is a kind of "federalism of dissociation" (the starting point is that of a unitary state, which is progressively depriving itself of its powers ...) is not completed.*

We are in 2018. Today, the Belgian federal state has a certain balance in the planning and operation of its institutions. It lives in peace with its neighbouring states. It seems, for the moment anyway, safe from rapid dismemberment (in the form of agreed or unilateral secession) or of wasting away.

How to explain this success? I would like to give you a precise answer. It seems to me that the Belgian Constitution has a key quality. It has put in place a set of rules, institutions, techniques and methods. All are inspired by a master idea - I should speak of a true political philosophy ". The idea is that of "**consultation**". That of the **cooperative or collaborative decision** , in French, *la décision concertée*.

What does that mean? It's simple. The Belgian state does not want to impose, in any circumstances, political choices that are conceived unilaterally and centrally by the government and the parliamentary majority that supports it. The approach is different. **The process aims to be inclusive.**

- *We must involve a maximum of political actors in the decision-making process,*
- *If possible, they should agree on the most important political, economic, social or cultural choices,*
- *If possible, they should be involved in the implementation of the decisions taken.*

In this presentation, I will not consider all aspects of a **political philosophy that is based on the idea of concertation.** I will limit myself to considering the mechanisms of consultation which, directly or indirectly, concern, Parliament.

To do this, I will speak from two perspectives.

- *The first point of view is that of the organization of Parliament (I).*
- *The second point of view is that of the functioning of Parliament (II).*

I. THE ORGANIZATION OF PARLIAMENT AND METHODS OF COLLABORATIVE DECISION–MAKING.

As it is organized, the Belgian Parliament responds in at least three ways to the need for collaborative decision-making.

I mention three phenomena here: **bicameralism (A), the composition of the House of Representatives (B) and the composition of parliamentary committees (C).**

A. THE BICAMERAL SYSTEM .

Belgium has always practiced bicameralism. There are two assemblies: the House of Representatives and the Senate. Together with the federal government, they form the "legislative power".

Originally, the intentions for bicameralism were essentially of a technical nature. It was thought that two successive legislative examinations would improve the quality of the law. As Professor Barthélémy said at the beginning of the 20th century, "the view is one but I see better with two eyes".

Since 1970, the objective being pursued has become more political. The House of Representatives is supposed to represent the Nation as a whole. The Senate, for its part, allows the representation of federated communities at the federal level; it is composed, for the most part, of deputies who also hold a mandate in a Parliament of community or of a region; it provides an opportunity for federated communities to participate in the design of federal policies.

This bicameralism is largely unequal. It deprives the Senate of any role in voting the budget. The Senate does not have a role in the political oversight of the government and its services. Even in legislative matters, the scope of the Senate is reduced to the strict minimum.

As indicated, however, the Constitution, there are three kinds of laws:

- *"unicameral laws" (the Senate has no role),*
- *the "obligatory bicameral laws" (these are small in number but, in this case, the concurrence of the two assemblies is required, on the basis of strict equality),*
- *the "optional bicameral laws" (for which the majority of the members of the Senate, with at least a third of the members of each linguistic group, can invoke a bill of law and possibly amend it.*

It goes without saying that difficulties can arise in the exact definition of the contours of these three categories of law. The two chambers may not agree on a resolution to the problem. How to resolve these conflicts of competence? Article 82 of the Constitution provides the answer. A "**parliamentary committee of consultation**" - the word is important - is put in place. The two chambers are represented equally: 11 members of the House of Representatives and 11 senators. It functions by seeking to gather a majority "in the two components of the commission". If this objective cannot be attained, the Commission takes its decisions by a two-thirds majority of its members. This qualified majority can only be obtained through a dialogue between the deputies and the senators. This is, in any case, the objective sought.

B. THE COMPOSITION OF THE HOUSE OF REPRESENTATIVES.

Second phenomenon. There are one hundred and fifty deputies. I am one of them. We are all elected by direct universal suffrage. Important question. According to which rules are we chosen by the citizens?

The answer has been the same since 1893. For one hundred and twenty-five years, without interruption. The electoral system is the D'Hondt system. This is the system of **proportional** representation.

The effects of such an electoral system are known. Let's study the political science texts. Proportional representation leads to the multiplication of parties in electoral campaigns and, consequently, the multiplication of parliamentary groups, in the assemblies. Currently, thirteen political parties are present in the House of Representatives; the largest has 31 members out of 150, barely 20%. The House is a mosaic.

Proportional representation has advantages. It prevents the emergence of majorities that are too strong. It leads to the need to form coalition governments – we have not had single party governments for a hundred years ... - It does not allow the emergence of a coherent opposition. It makes the political system immune to dramatic political or ideological shifts.

Every five years, political parties must work together to establish a coherent program of government and to build a parliamentary majority that surpasses the 50% mark. During the legislature, the coalition system requires the government parties to rule according to **consensus**.

Proportional representation also has disadvantages. After federal elections, long-term political crises can develop and cause a form of "power vacuum" (more than 500 days between April 26, 2010 and December 6, 2011 ...). Consultation can take time ...

C. THE COMPOSITION OF PARLIAMENTARY COMMITTEES.

Proportional representation is present not only in the election of the House of Representatives. It is spread throughout the constitutional system and, in particular, in the internal organization of the chambers. It produces the same effects. I illustrate my point with an example.

Rule 158 of the Rules of the House of Representatives proclaims the following. Appointments (all appointments, large or small) that are in the power of the House "shall be based on **proportional representation** of political groups". The same article specifies that "this **proportional representation** of the political groups is fixed on the basis of the seats obtained by these same groups after each election of the House of Representatives ". The Standing Orders add in section 159 that "when the House is called upon to designate delegates to international assemblies", it also appoints them by proportional representation.

Each parliamentary committee is the House "in a smaller format", and is composed through the same proportional system. I would add that committee presidencies are allocated according to the same principles. By necessity, therefore, they are occupied by both members of the majority and members of the opposition.

In other words, in a state which uses the electoral system of proportional representation, parliamentary work cannot advance without permanent consultations between political parties of different persuasions, and even opposite persuasions.

The Conference of Presidents, in the House of Representatives, and the Bureau, in the Senate, meet weekly to carry out these consultations and to determine, in collaboration with the Government, the program and schedule of parliamentary institutions.

I cannot help saying that this way of working in a concerted way contributes to "putting oil in the wheels" of the parliamentary machine. As a parliamentarian but also as a citizen, I welcome these ways of doing things.

II. THE FUNCTIONING OF PARLIAMENT AND METHODS OF CONCERTATION.

Parliament is, by definition,

- *the place where we speak,*
- *the place where social choices are discussed,*
- *and, ideally, the place where dialogue takes place between the representatives of the political society, whatever the parties or the movements they represent – and whether they are in the majority or the opposition.*

I do not want to be content with good words or good feelings. My question is the following. How can the principle of consultation fit into the work of parliamentary assemblies? Are some methods more appropriate than others to promote dialogue between political actors?

I would like to put forward three answers. The first is not very legal. It is political. It is necessary to have an understanding of the general state of mind which characterizes Belgian political society (A). The second answer is more technical. The techniques used by the Constitution must be taken into account, particularly when it is necessary to check whether the required majorities are present in Parliament (B). The third answer is procedural. There are methods, such as the alarm bell, whose purpose or effect is to calm people's minds, to calm the political debate, to defer and to allow, in the best of cases, the emergence of new consensual solutions (C).

A.- THE GENERAL STATE OF MIND.

I am not a psychologist, nor am I a sociologist I am a lawyer. But I see that Belgians are willing to practice a **culture of debate, negotiation and consultation**. Political parties, politicians and politicians graciously agree to develop in-depth discussions on all topics to be debated - political, economic, social or cultural -. They do it in Parliament, in the press and social media, and in everyday life.

Belgians share a conviction. Tense political and social relations do not subside in the street. Conflicting issues must be negotiated, which can be long and difficult, but which, in a positive mindset, will at some point lead to an acceptable compromise. And I specify: acceptable by all.

The "**culture of compromise**" rather than merciless struggle is an essential element in the search for and implementation of political solutions. "Discuss, discuss, discuss ..." is the motto. It may seem inefficient, expensive, repetitive ... But in the long run, we think that learning and practice of discussion and, why not, dialogue, can be beneficial in a political society that wants to be democratic.

B. THE CALCULATION OF MAJORITIES.

In a parliamentary assembly, there is a simple operating rule. To make a decision, one counts. Yes, but how to count? How to calculate the majorities to make legislative decisions? How can one define the necessary majority when it is necessary to vote confidence in the government or, conversely, to censor it?

These are questions that may seem simple. However, I note that the answers are not uniform, far from it, in all our Parliaments. I summarize the solutions that apply in Belgium.

- **To vote a law,** two constitutional rules must be respected.

First of all, it is necessary to gather a sufficient number of parliamentarians, physically speaking. There are one hundred and fifty deputies. Seventy-six must be seated in the hemicycle. If this figure is not reached, no resolution, no vote can be held in the assembly. A vote that took place with less than 76 deputies in session would be null and void.

It must then be checked whether a majority has been attained during the vote. As stated in Article 53 of the Constitution, "any resolution is taken by an absolute majority of votes" - I mean: the majority of the votes cast, not the majority of the seats -. No proxy, no delegation, no remote voting. Only the deputies present in the hemicycle can cast a vote.

Are these majorities too difficult to obtain? Is there a phenomenon of absen-

teeism that leads to indefinitely postponing polls? No. And this for two reasons.

On the one hand, there is no surprise voting. Members agree to vote on one day in the week (it is Thursday) and at a certain time (it is between 18:00 and 20:00). It is up to everyone to put the date and time on their political agenda and to make arrangements to be present at the right time. On the other hand, the deputies who are absent from the vote are penalized financially: a deduction, proportional to their absence, is made, each month, from their salaries. The process is dissuasive. At the time of Thursday's votes, there are an average of one hundred and forty present (out of one hundred and fifty): the others are sick or on mission abroad.

2. Second definition of majority. The Constitution requires, in certain cases, a **qualified majority**. Two-thirds of voters to change the Constitution. Two-thirds of voters, plus one-half of Flemish and one-half of French-speaking MPs, to change organic laws, for example, those that allocate powers and resources to communities and regions. I'll talk about this at a presentation I am making afternoon.

Let's recognize right now, that two-thirds is huge, especially in a mosaic Parliament ... However, we tend to think that this formula is useful; I would say: indispensable.

The search for sufficient majorities (in Belgium, we speak of "qualified majorities" or "special majorities") can have a positive effect .It obliges the opening of dialogue with political forces which are, a priori, hostile to this or that solution but whose assistance is necessary if one wants to advance with solutions.

The search for large majorities can also act as a deterrent. It prevents impromptu or improvised reforms. It is an obstacle to reforms that would not receive sufficient consensus, especially between the North and the South of my country.

3. Additional question. What is the majority needed to overthrow the government? A disparate opposition challenges government action .Can it overthrow the government? Easily or with difficulty? This is an issue that is being debated in all our countries.

Until 1993, Belgium kept a simple rule. A government that no longer has the confidence of the House must withdraw. it resigns. A new parliamentary majority must be formed to support the new government. With the following consequence: chain crises, governments whose lifespan did not exceed six months, and damaging economic and social consequences.

Since 1993, Belgium has introduced constitutional rules which are those of so- **called rational parliamentarism.** It is not enough that a majority of circumstance, made of "odds and ends" (*ragtag)*, made up of parties hostile to the government, can provoke the crisis. There must still be an effective, coherent majority in Parliament that can take over and give a vote of confidence to a

viable government.

Mistrust must be "constructive", as the saying goes. In other words, parties that aspire to govern must have consulted beforehand to see if there is a sufficient base of governing values and projects between them.

The formula, here again, can be dissuasive. This does not mean that it is useless. Since 1993, no political crisis has developed in this way.

C. ALARM PROCEDURES.

The Belgian Constitution supports other features designed to defuse certain political conflicts. Procedures can be put in place for this purpose. The most characteristic example is that of the alarm bell.

What are the circumstances when the alarm bell is used? An important conflict arises within the federal Parliament. When a legislative proposal is being considered, the Francophones and the Flemish-speaking people are in frontal opposition. One or the other are seriously affected in defending their concerns or interests. They rebel. They set off, as we say, the alarm bell. It's a way of warning the other:

- *- that the alert rating is reached,*
- *- it is time to open a reasonable and balanced discussion,*
- *- that it is urgent to seek consensual solutions.*

This is where a double dialogue begins.

The first is parliamentary. There are one hundred and fifty deputies. 63 are French-speaking, 87 are Flemish. It is necessary for three-quarters of French or Flemish Parliament (48 of 63 or 66 out of 87) to consider that legislation under discussion seriously damages the interests of their community for the alarm bell to be set off. In practice, to attain the three-quarters threshold, it is necessary in practice for majority and opposition MPs to come together to challenge the offending text.

The second *concertation* is governmental. The alarm bell motion suspends proceedings and refers the dispute to the Council of Ministers, composed equally of members of the two main linguistic communities, for the purpose of finding a solution to the difficulty encountered. Within a month, the Council of Ministers shall come back to the assembly to propose the solution which it has, hopefully, found.

The idea is quite simple. Time must be given time. We must give ourselves time for reflection. We must allow consultations. We must encourage the evolution of positions. A few days or weeks later, the perception of what is at stake in

the conflict may be different. Not to mention that the national or international situation may have evolved. The conflict may have lost its meaning or it will have resolved itself.

If, within the month, the government cannot find a solution and does not settle the quarrel, it signs its death warrant. It has no choice but to resign. This has occured twice.

- *In 1985, French speakers protested against a bill to integrate a Flemish high school at the University Center of Limburg; the council of ministers withdrew its bill.*
- *On April 29, 2010, French speakers protested against two bills of law aimed at splitting the electoral district of Brussels-Halle-Vilvorde (BHV) from being put on the agenda of the House. It should be noted that the current government resigned on the 26th, and that the parliamentary chambers would be dissolved on May 7th. The process was therefore not completed, resulting in the further deepening of the political crisis.*

I have tried to explain, to an external audience, the organization and the functioning of the Parliament of my country, in theory and in practice. I have shown some of its characteristics and qualities. I do not ignore the flaws. I do not hide them.

I am not saying that Belgium is an institutional paradise on earth, especially in the parliamentary sphere. I am simply saying that, especially for the past half century, Belgians have put to the test a number of techniques that have had reasonably positive results in political life.

I'm not a salesman with a turnkey model at hand. It's up to you to see if this message can be useful.

RADA FOR EUROPE

EU – UNDP Project

"Rada for Europe: Capacity–Building in Support of the Verkhovna Rada of Ukraine"

1, Klovsky Uzviz Str., Kyiv, 01021, Ukraine
Tel: +380 44 253 93 63
Fax: +380 44 253 26 07
E-mail: communications@undp.org.ua
www.ua.undp.org

THE PROJECT IS FUNDED BY THE EUROPEAN UNION

VERKHOVNA RADA OF UKRAINE

THE PROJECT IS IMPLEMENTED BY UNDP UKRAINE