Constitutional reforms and federal dynamics: Canada and Belgium in comparison

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Abstract: Federalism in multinational societies has raised scepticism with regard to its consequences for stability and possible disintegration of the political system. Special characteristics of the demands of distinct communities suppose centrifugal tendencies to be enhanced by creating federal arrangements in these contexts. Starting from these characteristics, the paper focuses on the relation between federal structure and processes leading to changes in these federal arrangements. Assumptions of federal theory about the relation between structure and process lead to the expectation that procedures of constitutional reform change after major shifts in federal arrangements have been taken place consequently fuelling federal dynamics. In order to identify factors affecting dynamics and stability, the paper traces the generative conflict, changes in federal arrangements and procedures of constitutional reform over time. It is argued that adaptations of procedures enhance centrifugal dynamics only if this adaptation follows the generative conflict. Changes in procedures according to alterations in federal arrangements in contrast can function as safeguard mechanism against disintegration but come with a cost for constitutional politics.

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1 Introduction

Questions of stability and dynamics form a central part of federal studies, even more in case of multinational or divided societies. Recognition of diversity and the development of solidarity have been regarded as essential for enduring federal arrangements (Rocher, 2009). The potential of federalism to accommodate diversity has been praised by some but also rejected as a suitable solution by others (J. Erk & Anderson, 2009). On the one hand, its advantages for regulating conflicts lie in the possibility of combining a certain degree of autonomy with a certain degree of shared responsibilities. Demands of distinct groups after deviating legislation in certain policy fields can thus be met without separating all government action or creating a new autonomous state. On the other hand, federal arrangements are supposed to set in motion a disintegrative spiral leading to separation. In this view, federalism is regarded as a trigger towards separate territories each composed rather homogeneously.
Nevertheless, it remains unclear under which conditions the alternatives become prevalent. In order to assess elements causing federal dynamics it seems crucial to look not only at features of the established federal structure but also at the processes in which these structures and the demands of distinct communities are negotiated. Two factors influencing procedures can be derived from theoretical reflections. Firstly, constitutional reforms are supposed to be exercised differently depending on the purpose of the reform, be it enhancing efficiency of political decision-making or ameliorating inclusion of group interests or minorities (Banting & Simeon, 1985). Reform demands in multinational or divided societies are therefore supposed to display special characteristics reflecting the underlying conflict between the communities. Differences in the institutional structure of the political system are secondly assumed to cause variations in procedures of constitutional reforms (Burgess, 2006; Elazar, 1987). A reform within a unitary context is assumed to be exercised differently compared to reforms of a federal constitution. In consequence, after substantial shifts in the institutional structure changes in reform procedures can be expected. In order to validate their influence on procedures the paper applies these factors on two cases, Belgium and Canada, aiming at a refinement of the relationship of constitutional reform processes and federal dynamics. The paper argues that frictions between the structural and procedural dimension of federal arrangements induce permanent pressure and cause further adaptation or disintegration. Former regulations of the generative conflict may furthermore prevent the successful development of solidarity between the distinct communities thus leaving the federal system without stabilizing elements. Procedures of constitutional reform can then provide a safeguard mechanism avoiding a disintegrative spiral in case ratification requirements are not adapted corresponding to the generative cleavage.
In section two, the paper briefly summarizes the arguments in favour and against federal arrangements in multinational contexts. The fear of triggering centrifugal tendencies stands out making federalism itself the reason for disintegration. In section three, the relation and interactions between federal structure and processes of constitutional reform will be addressed theoretically. In the empirical part in the fourth section, the three relevant dimensions will be traced over time for both cases: characteristics of the generative conflict, changes in the institutional or federal arrangements and the reform procedures over time. The comparison between developments in Belgium and Canada shows that firstly, institutional or federal arrangements have an influence on procedures but the latter are not automatically adapted according to achieved federal changes. Secondly, interactions of federal arrangements and reform procedures have different effects on federal dynamics. Centrifugal tendencies are not automatically accelerated in case procedures have been adapted. However, if reform processes were adapted according to the generative cleavage, federal dynamics are stirred towards greater disintegration.

2 Federalism in multinational contexts

The principal dilemma in societies divided by strong cleavages or multiple nationalities lies in the possible domination of one privileged group over another underprivileged group which often forms a linguistic, national or ethnic minority within the country. If majoritarian decision-making processes are applied, underprivileged or minority communities are exposed to the danger of being not only temporarily but permanently and structurally overruled by those that form the majority. Forms of power-sharing – consociational or federal – have therefore been regarded as the only possible way of governing divided societies (Lijphart, 2004). Apart from this normative argument, there is the empirical fact that minorities or structurally underprivileged groups have often demanded special recognition and protection in the constitution. Different steps can be taken in order to meet these demands: granting minority or collective rights, the guarantee of special representation in central institutions or vetoes in certain fields, decentralization of territorial self-administration, of competencies, or autonomy.

The potential of federal arrangements to accommodate diversity has been reflected upon with diverging evaluations in federal studies. Some authors praise the character of federalism being able to combine "forms of unity and forms of diversity" (Burgess, 2006: 145f.; see also Simeon & Conway, 2001) or regard asymmetrical solutions as the only possible alternative in multinational contexts (Keating, 2001; Stepan, 1999). Federalism facilitates accommodation because the territorial restructuring allows for boundaries that change a minority status into a majority position within a substate unit. Elazar emphasizes that the existence of distinct communities within one state almost necessitates federal structures. At the same time, however, this sense of distinctiveness includes a certain degree of exclusiveness and reduces the chances of agreeing on federal arrangements (Elazar, 1995: 7). A first dilemma occurs with regard to deciding on any agreements in order to accommodate diversity. Second, it is criticized that once established federal arrangements might themselves create a sense of distinctiveness where none has been existent before or enhance separatist tendencies (vgl. Linz, 1999). Against the positive evaluation of federal structures being a middle ground between separation into homogeneous parts or assimilation within a unitary system stand the fear of disintegration and end of solidarity as well as concerns that efficient governing won't be possible anymore. Some authors even go so far as to make a certain degree of homogeneity an imperative for the durability and well functioning of a federal system (see Duchacek, 1987; Tarlton, 1965). In consequence, some kind of unease often resonates if federal arrangements and the distribution of competencies are based on ethnic, linguistic or national differentiation. A unitary solution with some kind of minority protection is nevertheless assumed to be likewise insufficient for accommodating diversity successfully. Hence, federalism has been regarded as a possible solution for multinational societies allowing each group to pursue a certain number of policies in a distinct way and to control resources. Of particular importance are cultural and language policy and as well as education. But questions of regional development, immigration regulations and decisions of how to spend tax money follow close upon in terms of relevance for distinct communities. In order to accomplish changes in the distribution of competencies the constitutional structure usually has to be altered. But these reforms are themselves exposed to the special circumstances in multinational contexts. Under these conditions, interactions between federal structure and constitutional reform processes can have considerable effects on dynamics of the political system.

3 Constitutional reforms and federal dynamics

Demands of distinct communities comprise, as has been mentioned above, special recognition or protection in the constitution, amelioration of the underrepresentation in national

institutions or agencies, or decentralization of certain policy fields in order to take decisions autonomously. Drawing on the work of Rokkan and his adaptation of the exit/voice paradigm (Flora, 1999), demands for better representation can be framed as increasing 'voice' in national institutions and demands for more autonomy as 'exit' from uniform state-wide legislation. While the first strategies lower territorial and functional boundaries within the state, the second raises them. Constitutional problems in plural or divided societies comprise territorial boundary-restructuring and usually aim at shifting boundaries so that political ones match with sociological ones (Lijphart, 1999: 196). Generally, these boundary-shifts include changes in the vertical and horizontal distribution of competencies and resources and therefore require constitutional reforms.

The fields of federalism and constitutionalism overlap in case of successful constitutional reforms establishing or changing federal structures. Despite this overlapping, little is known about interactions between constitutional reforms and federal structures. Federal theory supports the idea of reform processes being dependent on the institutional structure of the political system. Based on these theoretical reflections, it can be derived that procedures change accordingly in consequence of changes in the institutional structure due to decentralization or federalization. The following questions therefore lie at the core of this section: How does the institutional or federal setting of a political system affect the way in which constitutional reforms are carried out? And what kind of effects do changes in this institutional structure have on subsequent reform processes? What kind of difference does the multinational context make for constitutional reforms and federal dynamics?

3.1 Peculiarities of constitutional reform processes in multinational contexts

The distinction between inclusion and efficiency oriented reforms made by Keith Banting and Richard Simeon provides a first clue in order to assess the special circumstances of constitutional reform processes in plural or divided societies. Following this distinction constitutional reforms in these contexts usually belong to the category of inclusion or group related reforms (Banting & Simeon, 1985). Even if a reform is primarily directed at efficiency or modernisation aspects in these cases, group related factors remain present at a subordinate level. In the view of Banting and Simeon the type of conflict has consequences for the way reforms are initiated and carried out. Group related reforms are supposed to be triggered within society and then enter the political sphere, whereas processes aiming at modernising the administration and enhancing efficiency of decision-making processes are executed in a top-down fashion. Efficiency-reforms proceed similar to ordinary legislation and embedded in the framework of every-day politics whereas inclusion-oriented reforms are characterized by a higher conflict potential and involvement of societal groups or public consultation (Banting & Simeon, 1985: 8f., 15; Schultze, 1997: 515ff.). Based on these reflections, actors' constellations as well as procedures of constitutional reforms differ reflecting the distinct characteristics of plural or divided societies. The special circumstances and diverging interests in multinational contexts affect not only the results of reforms but also the way they are carried out, thus the procedural dimension of a reform.

A second argument for the peculiarities of constitutional reforms in these contexts can be derived from the distinct nature of certain demands of national minorities. Demands from these communities challenge the constitution in various ways because they comprise not only special protection or decentralization of certain competencies but also recognition of their distinctiveness (Kymlicka, 1995; Taylor, 1993). Finding a compromise and eventually agreeing on federal arrangements in divided societies is regarded to be more difficult because of the diversity and sometimes exclusiveness of visions about accommodation (Elazar, 1985). Inclusiveness, participation and access to the process are therefore assumed necessary for a reform result to be regarded as legitimate (Tully, 2001). Furthermore, if demands of national

communities include the right to self-government, successful accommodation of these demands will be achieved only if these groups are enabled to control future changes in the distribution of competencies and resources (Kymlicka, 1995). Accommodation of different communities in multinational contexts thus may include special procedures of constitutional reforms reflecting the status of the communities. Therefore, strong arguments can be derived from different theoretical approaches that procedures differ form ordinary legislation and reforms in homogeneous contexts if group related questions are negotiated, and that these procedures are adapted in case of successful accommodation of community issues.

3.2 Relation between procedures and federal arrangements

A different argument for the relation between procedures and federal changes can be made when looking at institutionalist approaches and the influence of institutional arrangements on political processes. In a first step, these relations are formulated without relying on questions of heterogeneity or homogeneity but in a second step dynamics may differ depending on the respective societal context.

Federal systems are characterized by the existence of substate entities that are capable of acting autonomously in their constitutionally granted fields of jurisdiction. If a constitutional reform aims at changes in their jurisdiction substate entities are supposed to participate or even to have a veto in the decision-making. Thus, a higher number of veto players are assumed for reforms of federal constitutions compared to unitary ones (Burgess, 2006: 157f.; Cairns, 1977; Watts, 2008: 101ff.). Similarly, Elazars' description of federalism as institutional structure and guiding principle of political processes (Elazar, 1987: 21), also allows for the expectation that federalism makes a difference for constitutional reform processes. Reforms in unitary states, therefore, are supposed to be concentrated on the central level, involving the party or parties in government. Opposition parties might be included in case the threshold necessary for ratification surpasses the governing majority. Correspondingly, constitutional reforms in federal states are supposed to involve actors from both levels in a substantial way. The type of institutional arrangements, unitary, decentralized or federal, thus, has consequences for procedures and for actors, enhancing or minimizing their leeway in constitutional reforms.

According to this influence of the institutional structure on reform processes, it can be argued on the one hand, that changes in the institutional arrangements and the distribution of power between levels of government generate modifications in subsequent reform processes. The altered power balance between the levels of government is supposed to be reflected in reform processes, for example through different participation rights, new patterns of decision-making, veto-options, or a changed institutional framework of the process including more societal organisations or citizens.

On the other hand, theories of institutional change provide a counterargument assuming that adaptations of reform procedures do not occur by default and immediately after changes in the distribution of power have taken place. If an institution is changed in this view, adaptation characteristically reflects the historical traditions and developmental pathways of the institution (Pierson, 2000; Rueschemeyer & Stephens, 1997). Following this perspective, it cannot be assumed that reform processes adapt automatically according to the changes in the institutional structure of the political system. Reform processes rather remain stable or seize on some elements that fit into their developmental pats. Therefore, they are likely to change only slightly and to mix new elements with established long-term patterns. In this view, it seems adequate to distinguish between traditionally federal and recently federalized countries when analysing changes in procedures. The different pathways of the political system will produce a different outcome of layered elements in procedures (see Thelen, 2003 for the concept of layering).

Whereas federal theory suggests an adaptation of constitutional reform processes according to changes in the distribution of power, theories of institutional change, in contrast, suppose stable patterns or only small alterations in procedures. Two different options for the relation between reform processes and federal changes can therefore be formulated: processes can adapt according to changes in the self-rule and shared rule relation, or they resist adaptation despite these changes. In the latter case, processes can be conducted in the same way or they change but not according to the alterations in the federal structure.

3.3 Possible effects on federal dynamics

Altogether, the conflict type as well as the existing institutional arrangements influence the way constitutional reforms are carried out. Both factors support the idea that reform procedures are adapted in consequence of a successful reform that accommodates distinct communities and changes the institutional setting. If this adaptation follows the changes in distribution of power subsequent reform processes are supposed to reflect the new power relations between the actors. Thus, a symmetrical distribution of competencies would be followed by reform negotiations between actors with rather equal privileges; an asymmetrical distribution would entail distinct procedures for every group. If the demands after safeguards and control mechanisms are also met single groups will gain a veto over future reforms, thus being capable of blocking any unwelcome negotiation results. Although a veto does not empower these groups to determine the reform agenda completely or to realize a constitutional reform on their own, they can make their consent conditional to further concessions or even decentralization of policies. The threat of a veto forms a tool to direct institutional changes and to block unwelcome results only if a reform process has already been initialized. In case adaptations take place, it can be argued that the political system will be fuelled by centrifugal dynamics. Decentralization processes are accelerated and a further shift of competencies towards the substate level is very likely, even more if resources have been distributed to territorially concentrated communities in an asymmetrical way.
If, as in the second options, adaptations do not occur correspondingly to changes in the distribution of power, effects on federal dynamics will be limited as well. In this case, federal arrangements are established or substate entities were given more autonomy, but further reforms in the same direction will not be accelerated. Depending on the degree of alterations and layering different scenarios are therefore possible, from groups being overruled by the majority or other actors with veto-options, being able to prevent at least unwelcome results or to influence agendas by means of enhancing public pressure in subsequent reform processes. Acceleration of centrifugal tendencies, however, as in the first alternative, seems to be impossible without changes in the reform procedures.

4 Comparison of developments in Belgium and Canada

Belgium and Canada belong to the type of group related constitutional reforms. In both cases the existence of multiple communities differing in language, national identity or religious beliefs has led to changes in the institutional and federal order and triggered a number of reforms, successful and failed ones. Although the underlying conflict has been regulated differently the Flemish community in Belgium and the Francophone community in Canada have been similarly left without privileges and deprived of social advancement for a long time. However, the two cases differ in terms of historical institutional arrangements with Belgium being founded as unitary state and Canada as centralized federation. In order to assess the influence of the institutional structure on reform processes within a similar context this difference seems to be crucial. Procedures of early constitutional reforms are therefore firstly assumed to be different in comparison each reflecting the respective institutional

setting. If the theoretically supposed relation between institutional structure and procedures holds true then reform processes in Belgium are secondly expected to change corresponding to the accomplished federalization. Since the current federal arrangements of Belgium and Canada have several elements in common procedures of recent reforms are expected to show more similarities than before.
Subsequently, these theoretical reflections will be examined based on the two cases by means of comparative historical analysis. Changes in institutional or federal structure will be traced over time and compared with eventual adaptations of constitutional reform procedures. The conflict between distinct communities generates demands for extensive constitutional and federal change. In both cases, attempts were made to regulate the conflict without reforming the constitution. These early regulations of course had the potential to either appease or enhance demands for change but they also influenced later reform results. In both cases, economic changes altered self-perception and triggered demands for reformulating the traditional constitutional order. Before, analyzing the relation between federal changes and reform procedures, a brief description of the conflict issues and early modes of conflict regulation made will therefore be given at the beginning.

4.1 Type of conflict and modes of regulation

Multiple linguistic or national communities exist in Belgium and Canada but each state has treated this plurality in a different way. The formal recognition of the Francophone minority at the founding of the Canadian federation stands against the neglect of the Flemish actual majority in the Belgian case. The linguistic conflict between Dutch and French speaking people has been the generative cleavage of the federalization process in Belgium but the struggle for finding a solution on this conflict has a longer tradition without appearing at the level of constitutional politics (Covell, 1993; O'Neill, 2000). Several regulations of language usage have been established as ordinary laws and eventually formed the basis for later constitutional changes affecting institutional arrangements and the established federal system noticeably.
The Belgian State was founded in 1831 as a unitary system with French as the only constitutionally recognized language although the majority of the population had Dutch as their mother tongue. The usage of languages was left to everybody's choice but since French was the language of diplomacy and also regarded as being superior to Dutch and the Flemish dialects, discrimination of the language had been quite common. In consequence Dutch speaking people faced lower social status and fewer opportunities for social advancement (Beaufays, 1988: 64; Deschouwer, 2002a: 124f.). With the 'Equality Law' of 1898 Dutch gained the status of equal official language of Belgium and all laws were to be published in both languages. However, the practice of actual discrimination of the Dutch language did not end. Several language laws adopted at the end of the 19th century introduced an asymmetrical bilingualism with the Flemish region as only bilingual territory and the rest of the country monolingual (Deschouwer, 2009: 31f.; Hooghe, 2004). Since the Walloon territory resisted any attempt to become bilingual as well the Flemish side again felt discriminated. Therefore, no appeasing or lasting solution could be achieved with these language laws. The situation with regard to the use of languages was still instable and pending between bilingualism and monolingual territories. Another round of language laws in the 1930s introduced a clear direction towards monolingualism. In 1932 Belgium was divided into linguistic regions, three monolingual (Dutch, French, German) and one bilingual (Brussels) providing the linguistic conflict with a clear territorial dimension and officially monolingual Dutch or French speaking regions. In Flanders this meant a transformation of the whole administration operating then in Dutch and a change of social careers in Flanders. The national administration was supposed to work bilingual which meant double administrative units each

shaped in a monolingual fashion (Hooghe, 1991: 12). Although the implementation was often delayed in national institutions, the transformation of the Flemish administration caused lasting effects and the emergence of a distinct public service within Flanders. The question of territorial boundaries was not finally decided at that time and communities were shifted into the other linguistic region based on census results. This adaptation of linguistic borders became a constant threat to the Flemish people living in the surrounding region of Brussels. With the language law of 1962 these borders were fixed and instead of further shifts, communities at the borders were given special facilities for the respective linguistic minority. The principle of territorial monolingualism was further reinforced by splitting the province of Brabant into monolingual parts in 1993. If political actors agree on splitting the last bilingual constituency of Brussels-Halle-Vilvoorde (BHV) as is currently debated, this will complete a long lasting process to the utmost accuracy.
Summarizing, the regulation of the linguistic conflict took several steps and advanced slowly towards the creation of monolingual regions and only one bilingual region of Brussels. Conflicts about the use of languages have decreased over time and occur now only in the communities with language facilities around Brussels and with regard to BHV. However, changes in the economic performance of the northern and southern region starting in the 1950s have increased demands for decentralization on the Flemish side and questioned the unitary structure. With the transformation of the rural and agrarian economy into a modern industrial and international trade based one the Flemish region surpassed Wallonia in terms of GDP in the 1960s. Wallonia faced a decline of its coal and steel based industry in the meantime. Both sides demanded changed in the institutional structure, the Flemish in order to gain more autonomy in cultural policy and the Francophone more autonomy in the field of regional development and economic policies. The demands were met in a number of subsequent constitutional reforms starting the regionalization in 1970.

Canada, in contrast, was founded as a centralized federation in 1867 recognizing the existence of a French speaking population on the territory. French and English were official languages from the beginning and the differences in judiciary and religious beliefs were acknowledged in the British North America Act (later called the Constitution Act 1987). Within the province of Quebec the French speaking population formed a majority, thus realizing the advantages of a federal system and territorial boundaries according to societal criteria. With regard to early regulations, these arrangements made a difference but did not prevent all conflicts involving community issues, like for example the conscription crisis in 1917 where the support for the British troops in the First World War differed highly between Anglophones and Francophones leading to controversial measures of the Federal Government. Since Francophone people were concentrated in Quebec but also existent in a minority position in other provinces, their status and the survival of the French language was not definitely ensured (see for example the Manitoba Schools Question in the late 19th century). Despite the differences in starting points and formal recognition, people in Quebec and Flanders faced also a similar fate of being underrepresented in national institutions, dominated by the other linguistic group and economically deprived in comparison. Changes in the economic structures after the Second World War, later called the Quiet Revolution in Quebec, transformed the rural, agrarian into a modern industrial and service-sector related economy. The education system, formerly dominated by the Catholic Church, was also modernized leading to a newly created Ministry of Education. At the same time, the province faced an era of major province-building with a modernization of the administration and an extension of the public service and welfare state provisions.
The new economic status of Quebec reinforced demands for equal treatment and representation in national institutions. Increasing support for the national and separatist movement within Quebec and their threat to hold a referendum on secession created a sense

of urgency and triggered negotiations on language issues and the federal order. Questions of language use and promotion were covered in the federal Commission on Bilingualism and Biculturalism, and questions like the recognition of Quebec as distinct society, a veto for Quebec in constitutional reforms and changes in the distribution of competencies were discussed in a series of mega-constitutional rounds (Russell, 2004). The B and B Commission took note of the Québécois being underrepresented in the federal institutions and lower economic status of Francophones. The federal government reacted with an increase of the use of the French language in federal bureaucracy and of the visibility of politicians from Quebec. However, the federal policy with regard to preservation and promotion of the French language followed the personality instead of the territoriality principle. The vision of Trudeau focused on the Francophone community in Canada without making a reference to the province of Quebec (Trudeau, 1978). With the passage of the Charter of Rights and Freedoms in 1982 Canadian citizens were guaranteed the right to an education in their own (official) language where numbers warranted. The provinces were thus obliged to provide school education in the respective minority language, which also meant that Quebec had to make sufficient facilities available for the English speaking minority within the province. The adopted policies within Quebec, however, had different objectives and were largely directed towards stopping the decline of the French language due to changed fertility rates and immigrants assimilating towards the English language (Covell, 2002: 244f.; Esman, 2002). The territorial boundaries of the provinces at the founding of the state thus fulfilled only to some extent the function of preserving the French language but still they offered the opportunity of reacting autonomously to decreasing numbers.

Like in Belgium, changes in economic performance of Quebec triggered further reform demands directed at extensive constitutional and federal change and exceeding linguistic issues. However, these issues like the special recognition of the distinctiveness of Quebec or the constitutional veto could not be agreed upon despite several reform attempts. The special character of Quebec with its francophone majority and common law tradition has only been recognized at the subconstitutional level after failed reforms by means of House of Commons Resolutions.

4.2 Changes in federal arrangements

Triggered by the generative conflict and changes in economic performance, constitutional reforms altering the institutional and federal arrangements have been realized in both cases. In comparison to Canada, constitutional changes in the institutional arrangements have reached greater dimensions in Belgium.

Debates about decentralization started in Belgium in the 1950s but did not lead to a formal successful reform until 1970 introducing three cultural communities and three regions as substate entities. The federal Parliament was also divided along the linguistic affiliation with members of the Brussels constituencies having to choose to which group they wanted to belong to. Two types of substate entities, Communities and Regions, have been step-by-step provided with substantive legislative competencies and high degree of autonomy. Communities are responsible for policies related to persons, e.g. cultural and social policy, education, and Regions for policies related to territory, e.g. regional development, environment, housing or tourism. In the course of the federalization, the substate entities also received the competence to represent their interests in their fields of jurisdiction. After several rounds of constitutional revision and state reform, Belgium continued as a federal state with a high level of legislative autonomy but only little financial or fiscal autonomy for the substate entities (Berge & Grasse, 2003; Swenden, Brans, & De Winter, 2006). Although the demands of the Flemish and the Francophone side differed considerably competencies have been distributed symmetrically to both sides. Only with regard to the Region of Brussels-Capital

and the German community de jure asymmetries were incorporated at the beginning. The reasons for this asymmetry lie mostly in the difficulties in finding a compromise for Brussels. The failed Egmont Pact of 1977 envisaged three equal regions but in the following constitutional revision of 1980 only two of them (Flanders and Wallonia) were established. Several attempts were necessary before political parties agreed finally on a solution for the Brussels region in 1988 which provided for the representation of the Dutch-speaking minority in its institutions (Deschouwer, 2009). With the required numerical equality of Dutch- and French-speaking members of the executive and the over-representation in the regional parliament, the agreement reflects more the bipolar nature of the conflict than demographic realities within Brussels.
The creation of the federal system has clearly been shaped by the two linguistic communities with the Flemish side being often the driving force towards further decentralization. The split of the party system along linguistic lines between 1968 and 1978 reinforces bipolar elements. The merger between Flemish Community and Flemish Region was not followed by a similar process on the Francophone side, adding asymmetries to the system not intended in the constitutional reforms. Although, five substate parliaments have been created and provided with extensive legislative competencies, several features reflecting the bipolar character of the conflict have been included as well (J. Erk, 2008). The ongoing debate about further reforms now focuses on the splitting of social security as demanded by the Flemish parties while the Francophone community asks for solidarity between the communities and mechanisms of holding together the Belgium state.

In comparison, Canada has faced a different development in terms of changes in the federal arrangements. Founded as a highly centralized federation, the federal level has been given the possibility to intervene in provincial jurisdiction by means of its reservation, disallowance and declaratory powers. At the same time, Quebec was granted special protection against further centralization and uniformity of the property and civil rights law of the other provinces (Section 94 of the BNA Act). Thus with regard to the kind of union, the Constitution included some ambiguity at that time (C. Erk & Gagnon, 2000). The distribution of competencies between the levels of government left also room for different interpretations. It gave the federal level exclusive responsibility for trade, commerce, the military, monetary policy etc. and the provinces received exclusive jurisdiction in the fields of property and civil rights, non-renewable resources, education, management of local institutions, criminal courts and matters of local nature. Joint legislation was foreseen in the fields of agriculture and immigration. This constitutional distribution of competencies was amended formally only in the second half of the 20th century, giving the federal Parliament exclusive jurisdiction over unemployment insurance in 1940 and concurrent jurisdiction over old-age pensions in 1951. Over time and not by constitutional change, the federal level expanded its influence clearly using its spending power to encroach in provincial competencies (Broschek, 2009). Especially within Quebec this was felt as a threat to provincial powers and added another point of discontent with the functioning of the federal system. Together with the underrepresentation in national institutions and the Quiet Revolution, Quebec demanded changes in the federal arrangements and safeguards for its survival as a province with exclusive competencies and autonomy. The demands for a veto in constitutional reforms and for the possibility to opt out of federal programmes with full compensation, thus, was not only an expression of Quebec's distinctiveness, but also regarded as a necessity against creeping centralization.
The constitutional reform in 1982, however, did not address these questions of safeguards, but saw the creation of a Charter of Rights and Freedoms and a new amendment formula for the constitution without the demanded veto for Quebec. The following reform attempts, the Meech Lake and the Charlottetown Accord, would have brought significant in the distribution of power between the levels of government, including safeguard mechanisms for Quebec and

the recognition of Quebec as distinct society, but both failed in ratification. The different visions of federalism in Canada could not be reconciled in the constitution (Taylor, 1991). Despite the demands from Quebec for recognizing its distinctiveness and allowing for more asymmetry, the principle of equality of the provinces prevailed in the negotiation results (Cairns, 1991). This does not mean that there are no de facto asymmetries in the federal system. But according to the de jure distribution of power and competencies all provinces were offered the same. The failure to ratify the Charlottetown Accord in popular referendum in 1992 put an end to some decades of constitutional debates. Negotiation results were nevertheless partly implemented by means of non-constitutional change. Thus, federal changes were again predominantly achieved without amending the constitution. In consequence, however, the safeguards for Quebec were also only of non-constitutional character.

4.3 Procedures and negotiations of constitutional reforms

Differences in constitutional federal changes lead to the expectation that procedures of reforms are supposed to alter also to a larger degree in Belgium than in Canada. However, if non-constitutionalized federal changes are taken into account, Canada has also undergone significant shifts and alterations in procedures are supposed to reflect these changes.

Under the unitary framework in Belgium, constitutional reforms were only undertaken at the end of the 19th and beginning of the 20th century as part of the democratization process extending popular suffrage. The amendment formula foresaw an agreement to change the constitution in Parliament, the dissolution of Parliament and election of a constituent assembly. Negotiations took place at the beginning between the two major parties, Catholics and Liberals and later between Catholics, the Radical Party and Liberals (Vauthier, 1894). The requirement of a two thirds majority in Parliament in order to ratify constitutional amendments was intended to balance the interests of the Catholic and Liberal Party and prevent domination of on over the other since they had a similar share of votes at that time. Consociational patterns can be identified, where consensus between elites of the respective groups is necessary and negotiations take place behind closed doors. Although most of the reforms in Belgium were conducted with the purpose of accommodating diversity no special precautions for openness or participation have been established. Non-majoritarian rules of agreement with the purpose of bridging cleavages existed in Belgium from the beginning. However, the cleavage that was supposed to be appeased changed over time.

In the course of the federal transformation constitutional procedures were changed, though before federalization were completed. With the first constitutional revision in 1970 a higher requirement of consent for the change of the borders of the linguistic regions was introduced (Art. 4 of the coordinated text of the Constitution 1994) which foresaw finding a compromise between the two major groups, the Flemish and French speaking community. Although at first not intended to serve in institutional reforms, every major institutional and federal reform soon required to pass the same hurdle. A majority of positive votes in each linguistic group in Parliament as well as a total of votes in favour of at least two thirds of the votes cast is necessary for a reform to be ratified. Since 1980 changing the distribution of competencies or fiscal arrangements has been conducted by special majority laws bypassing the necessity of elections but not the double majority formulated above.

Negotiations of constitutional reforms in Belgium have predominantly taken place between the leaders of the governing political parties with the inclusion of opposition parties in case their votes were required to pass the threshold. Elitist accommodation and negotiations in closed sessions were also retained as stable pattern in the course of the transformation of the Belgian political system. The two major parties, Christian-Democrats and Socialists, were negotiating the reform proposals at the beginning, and later a commission was created

including delegates from the Liberals. Regional and community parliaments were established and given numerous legislative competencies and financial resources. But, this degree of autonomy and transferred power has not been reflected in later reform processes in a substantial and consistent way.
Only in the state reform of 2000/01, an interparliamentary and intergovernmental conference has been established where members of substate parliaments could participate in the debate (Jacques & Boromée, 2001). However, party affiliation dominated so that they were not capable of giving additional and different input into the process (Sinardet, 2010). The generally strong position of parties in Belgium also marks negotiations of constitutional reforms. Major parts of traditional procedures were kept stable despite the changes in institutional structure. In consequence, substate entities have not been equally represented in subsequent reforms and the adaptation that took place refers more to the conflicting parties. Converted patterns of consociationalism give the two large linguistic communities a mutual veto over federal developments. This affects mainly the region of Brussels-Capital because of its bilingual status and the fact that both linguistic communities have jurisdiction within the Region without a clear cut border. During the federalization process, a solution for Brussels could only be found after several attempts and postponing and negotiations on Brussels were held separately. Reforming Brussels institutions and financial resources in a different set of negotiations has been a necessity during transformation but has been repeated in the state reform of 2000/01 giving Brussels politicians at least some autonomy in defining their part of the federal structure (Nassaux, 2001). Since the distribution of competencies and financial resources is since 1980 generally written in special majority laws, the consent of a majority in each linguistic group in the federal or Brussels Parliament is required for every significant federal change.
Stability and change can be identified at the same time with regard to constitutional reform processes in Belgium. Negotiations and finding a compromise between party elites forms a stable pattern as well as consociational decision-making rules (Deschouwer, 2002b). Having served at the beginning to reconcile Catholics and Liberals, thus the church-state cleavage, they have been converted in order to reflect the dominant cleavage of the second half of the 20th century between Flemish and French speaking community. This conversion and introduction into constitutional reforms took place before federalization causing now frictions between constitutional procedures and federal structure. Contrary to federal theory, the realized federal structure with a high degree of autonomy of the substate units has had no significant effects on procedures of constitutional reforms. Instead, reform processes were adapted in order to reflect the dominant cleavage and before federalization was completed. Since only two major groups are directing this conflict, a strong bipolar effect has been incorporated into reform procedures pinning them always against each other without a mediating actor in between.

In contrast to Belgium, Canada has been founded as a federal system lacking a definite manual for constitutional reforms. Before the ratification of a new amendment formula in 1982, reforms required a final approval in the British Parliament. Constitutional change had been achieved until then by unilateral action of the federal level or by agreements between the federal level and several or all provinces. These agreements were mostly negotiated by members of the executives in closed meetings. Parliamentary debates were conducted only at the federal level before voting on the agreement. Numerous constitutional reforms concerned the establishing of new provinces and the changes in composition of the federal parliament (Russell, 2004). Changes in the distribution of competencies between the federal and provincial level were not at the heart of constitutional debates.
With the Statute of Westminster in 1931, Canada received full sovereignty and the debate about a new amendment formula solely based on Canadian institutions started. In 1949 the

federal level acted unilaterally and extended the powers of the Federal Parliament in constitutional reforms by enumerating subjects where no provincial consent would be required to change them. A definite amending formula, however, was still missing. After several decades and failed attempts the Constitution Act of 1982 introduced new amendment rules and a Charter of Rights and Freedoms as part of the constitution. These rules foresee the participation of the legislative assemblies of the provinces in ratifying numerous constitutional reforms, especially those concerning the federal structure and distribution of power. As has been said, the negotiations were still held in executive dominated and rather closed meetings, but the change of the amendment formula granted a veto to – depending on the subject – every single or several provinces together, thus reflecting the model of interstate federalism with a higher degree of self-rule for the substate entities. Contrary to Belgium, the rules were not changed in order to reflect the major conflict lines privileging Quebec over other provinces. The special status or veto that had been demanded by Quebec was not granted to the province leading to their refusal of the Constitution Act 1982 itself (Banting & Simeon, 1983). Although this special status was on the agenda of subsequent reforms it has never been ratified successfully. Due to these formally failed reforms processes changes in the constitutional distribution of competencies and resources have also only taken place to a minor degree in the reform of 1982 and could not be realized in the following reform attempts (Watts, 1991).

Altogether, adaptation of procedures of constitutional debates and ratification are marked by traditional involvement of the provinces in reform debates before 1982, constitutional convention and position of the provinces in terms of power and autonomy within the federal system (see also the justification in the Supreme Court Patriation Reference) as well as experiences with failed attempts. Aspirations of the Quebecois to be constitutionally recognized as distinct society and given a veto over future reforms were on the contrary not reflected in these adaptations. Federal changes were also less effectuated by formally successful constitutional reforms but by non-constitutional change partly based on negotiation results of the last mega-constitutional round in 1992.

4.4 Consequences for federal dynamics

The structural and procedural changes in Belgium and Canada have different consequences for federal dynamics. First, despite the lesser degree of constitutional changes in the federal structure in Canada, procedures have been altered to a larger degree than in Belgium. Where one would expect more changes owing to the far reaching transformation into a federal system, only small alterations can be identified. Both constitute cases of group related reforms, where successful accommodation and self-government would have included control over future changes in power distribution. In the Canadian case these aspirations have not been realized on the constitutional level. Vetoes were not granted especially to Quebec but also to provinces with no distinct sense of belonging. In this way, the particularities of special territorial group interests were counterbalanced with equally powerful interests of other territorial units. Hence, the risk of stirring centrifugal tendencies or secession did not arise by giving substate entities more power in constitutional reforms. Although Quebec did hold a referendum on sovereignty in 1995, in the long run and in comparison with other cases, the decision not to transfer power in an asymmetrical way and based on group belonging turned out to function as some kind of balance and therefore be favourable for the federal system. In contrast, the adaptation of procedures according to the underlying conflict reinforces centrifugal tendencies in Belgium. Additional substate units or interests were left without equal access or participation in constitutional reforms. Therefore, no transformation of the conflict has been possible and the bipolar nature of the conflict dominates negotiations, reform results and federal dynamics.

Adaptation of procedures in Canada, however, has also ambiguous consequences especially with regard to the ongoing dissatisfaction of Quebec still suffering from lacking recognition within Canada but also concerning the feasibility of constitutional reforms. The new amending formula of 1982 has only seldom been used. It contains different provisions for different topics with variations in terms of provincial involvement. The unanimous consent of provincial legislatures which is required for example in order to reform the Senate has never been met in later reforms. The 7/50-formula, where 7 provincial legislatures representing at least 50% of the Canadian population have to consent to a constitutional reform, has been applied one time in 1983 in order to include Aboriginal rights into the constitution. Bilateral agreements between one or several provinces and the federal level were accomplished, however, all other attempts at reforming significantly the federal structure failed to meet the hurdles of constitutional reforms. As has been said, several aspects discussed in these negotiations were later realized by non-constitutional change. Adapting procedures corresponding to the federal system, thus, had more severe consequences for constitutional politics than for the federal development in Canada. Constitutional reforms in Belgium, in contrast, have taken place repeatedly after adapting the procedures towards the conflicting parties.

5 Conclusion

Demands for special recognition and autonomy of distinct groups in multinational societies generally favours federal arrangements as mode of conflict regulation. However, fears of starting a disintegrative spiral if substate units are established based on national minorities and competencies and power are asymmetrically distributed between these units follow this positive approach towards federalism in these contexts. However, neglect of recognition and equality, as has been demonstrated, reduces the chances of establishing provisions of solidarity necessary for the holding together of a federal system.

Since major shifts in federal arrangements usually require constitutional reforms the paper focused on this procedural dimension in order to assess factors causing centrifugal dynamics. In both cases, the institutional structure had an impact on the way constitutional reforms were carried out confirming at least partly the theoretically assumed relation between structure and process. However, changes in one dimension did not automatically result in corresponding changes in the other. Procedures in the selected cases changed over time, but only by combining their established pattern with some new elements and not necessarily according to the new created institutional structure. When comparing traditionally federal countries with newly federalized ones, this means that they can be highly similar in terms of structure but differ to a large extent in terms of processes.

Concerning federal dynamics, it was assumed that stronger centrifugal forces were the consequence of adaptations of procedures according to the federal structure. However, the fear of enhancing centrifugal tendencies or demands for separation if a veto over further federal changes is granted to the substate units cannot be confirmed without reserve. As the Canadian case has demonstrated, plurality of veto position can be a way of counterbalancing demands for more autonomy and slow down centrifugal tendencies. However, this goes with the risk of blocking formal constitutional politics. In consequence, other ways have to be found in order to reform the federal system. Centrifugal tendencies are, in contrast, enforced if a mutual veto is granted only to the conflicting groups without the opportunity of other units or interests to balance the conflict in constitutional debates. Constitutional politics continue in this case as long as both sides have any interest in further reforms albeit diverging ones. Negotiations will be blocked if one side favours the status quo and does not wish to initiate a new reform. Belgium therefore faces recurring governmental crisis because of the necessity of mutual consent and the meanwhile only one-sided wish to continue reforming the federal

system. In consequence, Belgium is left with two options: further reform decentralizing what is still left on the federal level or permanent blockage of governing at the federal level. Adaptations of procedures leaving conflicting parties with a mutual veto, thus, turns out to endanger the stability of the federal system to a higher degree than adaptations towards the patterns of federal arrangements.

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