Guaranteeing gender equality:
a new institutional assessment of constitutional reform as change

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‘Gender, Politics, and Institutions: Towards a Feminist Institutionalism?’

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Abstract

In 2002 the Belgian legislator inscribed in the Belgian constitution what is generally referred to as parity. Embedding gender equality in the founding principles of the Belgian state is to be considered an important institutional change. The paper examines to what extent this constitutional reform indeed reflects such a change. It deals with the history, the nature and the aim of the 2002 constitutional reform enshrining parity and assesses the impact of the revised constitution on the pursuit of gender equality through legislation as well as on the political culture, norms and values and more specifically on the frame of reference political actors hold. The analysis shows that the inscription of parity in the Belgian constitution does not meet with a broader societal, political or academic response and does not reflect an important institutional change.

1 Introduction

In 2002 the Belgian legislator inscribed what is generally referred to as parity in the Belgian constitution. Article 10 was amended with the phrase that ‘The equality of men and women is guaranteed’ and a new article 11bis was inserted stating that ‘The law, decree or the in article 134 mentioned rule guarantee women and men the equal exercise of their rights and liberties and more specifically promote their equal access to elected and public mandates.’ Article 11bis also specifies that the two sexes need to be represented in executives at all levels, in social welfare boards and in executive boards of intergovernmental and of local public institutions. In contrast with the introduction of parity in the French Constitution and notwithstanding long and heated debates in the Belgian parliament prior to the 2002 constitutional reform, the latter did not meet with a broader societal, political or academic response.

This lack of response to the insertion of parity in the Belgian constitution is interesting. A constitution is a fundamental institution. It contains “political rules, rights, and institutions” but “(C)onstitutions are also about encapsulating a country’s highest ideals and emphasizing its most significant identities.” (Dobrowolsky and Hart 2003: 2). Through these ideals, norms and rules the constitution “acts as an instrument of social design” and “creates and regulates a social order” (Ritter 2006: 8, 9). Guaranteeing gender equality through the Belgian constitution, then, can be considered as an important step. Constitutions are not easily subject to change. Enshrining gender equality in the Belgian constitution implies its embedding in the founding principles of the Belgian state, which, therefore, can be seen as an important institutional change. The constitution as an institution is subject to change. The encapsulated norms and ideals are also institutions that are changing. And both together should spark off change in other institutions.
The theoretical framework of the paper is the (feminist) new institutionalist literature. The paper presents a new institutionalist analysis of the inclusion of parity in the Belgian constitution and its effect on guaranteeing gender equality. The underlying question is to what extent this constitutional reform reflects an institutional change, and if yes, at what level. The paper is based on an analysis of the constitutional reform process and gender equality acts after 2002 (parliamentary debates; information and documents made available on the websites of women’s movements, women’s policy agencies, political parties and trade unions). Firstly, the paper will deal with the history, the nature and the aim of the 2002 constitutional reform enshrining parity. Why was parity included in the Belgian constitution? Who was the driving force? What was the underlying meaning of the inclusion of a parity clause? Secondly, the paper will assess the impact of parity on the pursuit of gender equality through legislation. Did acts regarding gender equality after the constitutional reform of 2002 (e.g. on anti-discrimination, on equal pension rights for men and women, on the alimony fund in case of divorce, the new divorce act) stem from or refer to the parity provisions in the constitution? Thirdly, the paper will discuss the impact of parity on the political culture, norms and values and more specifically on the frame of reference of political actors. Taken together, this threefold approach will answer the question whether the constitutional reform equals change in terms of intentions and effects. We thereby situate and assess change in different “layers of institutions” (Thelen 2004, referred to by Kenny 2007), notably constitutional reform, acts and frames of reference (as part of the political norms and values), paying special attention to the value of symbolic institutional change.

2 Changing the constitution, changing institutions?

2.1 Institutions, power and change

New institutionalism - being in fact not that new anymore – has introduced a new definition of institutions. Next to formal structures and organisations, institutions comprise a broad range of “cognitive, normative and regulative structures and activities that give meaning and stability to behaviour” (Peters 1999: 103). Next to “formal and political structures and organisations, institutions comprise rules, informal structures, norms, beliefs and values, routines and conventions, and ideas about institutions” (Mackay and Meier 2003: 6). Fitting in a post-structuralist tradition, institutions, in that respect, are a material and immaterial social construction, which in their turn produce and reproduce social behaviour. Interesting about new institutionalism is not only its broad conceptualisation of institutions, but especially its emphasis on the fact that they matter, thereby shifting the emphasis from agency to structure. Mainstream new institutionalists consider institutions to constrain and stimulate behaviour, along historic paths (historic institutionalism), rational calculation (rational choice institutionalism) or logics of appropriateness (normative or sociological institutionalism). Further interesting is the fact that institutions are not seen as given out there, but as creations of human agency, be it intentional or not, and that they are not considered to be neutral. All of the former explains why new institutionalism is an interesting prism for feminist scholars and
academics studying gender issues, making it all the more puzzling that for long there was very little cross-fertilization (Mackay and Meier 2003).

Feminist scholars and gender studies since long emphasise the impact of not neutral institutions (in the broad sense) on the everyday life of social groups, considering the concept of gender itself also to be an institution. “Understanding political and social institutions as gendered is central to understanding the practices, ideas and goals and outcomes of politics; the dynamics of change (and continuity); and also reveals the ways in which institutions reflect, reinforce and structure unequal gendered power relations” (Mackay and Meier 2003: 2). Institutions embody power relations, produce and reproduce them, an issue that tends to be underplayed in new institutionalist literature. The question then is not only on how power mechanisms function but also to what extent institutions can (be changed in order to) change power relations. Feminist scholars seeking to connect to the new institutionalist frameworks are especially interested in those features of the theory that have the potential to explain continuity and change in institutionalized power (im)balances (Kenny and Paantjens 2006, Kenny 2006).

Rational choice institutionalism views institutions as voluntary co-operations between rational individuals seeking to maximise their self interests. Institutions are created in order to solve collective action problems; they are ‘thin’, functional and neutral. These premises tend to ignore structural power imbalances between individuals. However, scholars of rational choice institutionalism have asserted the possibility of anchoring power relations through institutions: powerful actors creating institutions institutionalise their privileged positions and provide themselves with the power to direct institutional change so that it further empowers them (Kenny and Paantjens 2006, referring to e.g. Moe 1993, Olson 2000). The individualist and functionalist undertone of such approach to power distribution has been criticized for assuming a too simplistic relation between the intentions of the creators of institutions on the one hand, and the powerful currently enjoying institutional privileges on the other (Kenny and Paantjens 2006).

Sociological/normative institutionalism applies an encompassing view on institutions. Institutions are “frames of meaning” or “shared cultural understandings of the way the world works” (respectively Hall and Taylor 1996: 947 and Thelen 1999: 386, referred to by Kenny and Paantjens 2006: 4-5). Institutions define norms, determine what is appropriate and form preferences of individuals. Changing institutions therefore implies a fundamental shift in norms and values, which can occur in cases of ‘institutional contradiction’ (tensions between institutions) or ‘critical junctures’ (when institutions are simultaneously present). Kenny and Paantjens conclude that even so sociological institutionalism is very weak in explaining change and shifts in power relations: “… it is still difficult to see how processes of institutional change are set into action, and agency and change are still problematic concepts in the sociological institutionalist literature” (Kenny and Paantjens 2006: 7).

Historical institutionalism is more apt to explain instances of institutional change and shifting power balances (Kenny and Paantjens 2006, Kenny 2007). Here, institutions are viewed as “the formal or informal procedures, routines, norms, and conventions embedded in the organizational structure of the polity or political economy” (Hall and Taylor 1996: 938, referred to by Kenny and Paantjens 2006). Distribution of power amongst groups and the way power imbalances are entrenched are central to the theory of
historical institutionalism. But historical institutionalism also explains change in power relations. Historical evolutions such as political reconfigurations, realignments and inclusion of new groups in existing institutions create opportunities for powerless groups to obtain power (Thelen 2004). Nevertheless, as Kenny (2007: 92-93) points out, historical institutionalism is foremost strong in explaining the continuity of power thereby using the concept of path dependency. Change in power relations, as a distinct phase, is most often explained by unintended consequences. Recently, scholars like Thelen (2004), substantially contribute to the understanding of change from a historical institutionalist stance. She highlights two path-dependent historical processes leading to institutional transformation. The first one is ‘institutional layering’, in which some layers of institutions are changed while leaving others in place. The second one is ‘institutional conversion’, in which entire institutions are redirected to fulfil new purposes (Kenny 2007: 93).

2.2 Constitutions as institutions subject to change

From a new institutionalist point of view a constitution is an institution and it could be argued that it is an institution encapsulating institutions. Its formal character and importance in the legal hierarchy makes it a central reference to which there is no escape. Hence, its form as such makes a constitution be an institution. And the same goes for its contents. Constitutions define and enshrine the main state structures and organisations, rules, but also norms and values.

In this, constitutions, as part of the legal order, do – from a feminist perspective – not escape from being gendered. “(L)aws themselves, as well as the legal institutions in which they develop, are imbued with masculine assumptions and biases about the ‘correct’ roles of men and women in society” (Chappell 2002: 121, see also Baines and Rubio-Marin 2005). Constitutions then produce and reproduce gender relations. Many modern constitutions were written (by men) at a time when women were denied (full) citizenship, an argument that has extensively been dealt with by advocates of parity democracy. They were excluded twice, both in the process of defining the basic set of structures and rules and as citizens participating in these structures and enjoying these rights at the same level as men. And while women were little by little granted full citizenship, constitutions are not subject to frequent change.

Women’s activists and movements pursue and obtain constitutional reforms that aim at gender equality (Baines and Rubio-Marin 2005, Brown et al. 2002, Dobrolsowsky 2000, 2003b, Albertyn 2003, Russel 2003, Mackay et al. 2003, Chaney 2003). While the expectations are high (Dobrowolsky 2003a), scholars have documented many discrepancies between feminist constitutional provisions and the functioning of society (e.g. Smooth 2006, Baines and Rubio-Marin 2005, Green 2003, Harvey 2003, Celis and Meier 2006). While “gender equality can be used as legal, political and moral standards within and outside the state to interrogate, revise and revision norms, laws and policies” (Dobrowolsky 2003a: 236), such “constitutional innovations can also be lost. Equality claims can certainly be ignored, obscured, or circumvented. (…) (T)hey can even be re-directed to work against women” (Dobrowolsky 2003a: 237). Hence, “(w)omen cannot
be lulled into a false sense of security by the symbolic appeal of enshrining grand constitutional ideals” (Dobrowolsky 2003a: 249).

The question in this paper is to what extent the changing of the Belgian constitution, meant to insert the principle of gender equality as parity, is an institutional change. Constitutions are not quickly subject to change. Enshrining gender equality in the Belgian constitution implies its embedding in the founding principles of the Belgian state, then, should be an important institutional change. The constitution as an institution is subject to change. The encapsulated norms and ideals are also institutions that are changing. And both together should spark off change in the subsequent structured societal processes, being again institutions. But what is the scope of this change and can it be labelled an institutional change?

3 History, aim and nature of the 2002 constitutional reform

This section briefly describes the history, the aim and the nature of the 2002 constitutional reform. Our questions are: Why was parity included in the Belgian constitution? Who was the driving force? What was the underlying meaning of the inclusion of a parity clause?

The constitutional revision focused on three articles: article 10 dealing with the equality of Belgian citizens; article 99 dealing with the number of ministers and the linguistic balance in the cabinet; and article 104 dealing with the nomination of the secretaries of state. The history of the inclusion of the parity clause in the Belgian constitution in 2002 is tightly interwoven with legislative efforts to increase the number of women in politics in the nineties. Simultaneously to the introduction of bills that envisaged the revision of these articles, bills were introduced to make the quota act of 1994 more strict. The Belgian quota act of 1994 established that at least one third of the candidates on the electoral list had to be of the under-represented sex (read: women). Immediately after the act came into force, new legislative initiatives were taken to make it more effective (Marques-Pereira and Gigante 2001, Meier 2005). These efforts resulted in the 2002 quota acts establishing the obligation of an equal number of men and women candidates on electoral lists as well as on the two top positions on the list.

The first parliamentary bill to amend article 10 of the constitution with a clause stipulating the equality between men and women, was introduced by a group of women senators (belonging to the majority and the opposition) in 1997 (Marques-Pereira and Gigante 2001). The same senators submitted a bill to alter articles 99 and 104 of the constitution by which it would become compulsory to include an equal number of male

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1 We would like to thank Catharina Dehullu for her comments on the precise scope of articles 10 and 11bis of the Belgian constitution.
2 The present and the next section need to be completed with interviews involving amongst others Eliane Vogel-Polsky, Myriam Van Vaerenbergh, Sabine de Bethune, Herlindis Moestermans, Geraldine Reymenants, Patricia Popeliers.
3 Senate, Parliamentary Documents, 1-584/1 (1996-1997).
and female ministers and secretaries of state in the government. In 1999 Green MPs also introduced a bill in the House of Representatives to revise Chapter II of the constitution inserting a new clause envisaging “the promotion of the equal distribution of power at all levels between men and women.” One month later, the government deposited a declaration regarding the revision of the constitution that made reference to the inclusion of a new article about the equality between men and women. However, articles 99 and 104 were not included in the governmental declaration. In the same year three female senators from the Christian-democrats (from the opposition) reintroduced the old bill aiming at revising articles 99 and 104 (regarding the presence of women in government) in the Senate; two MPs (one liberal, one socialist) did the same in the House of Representatives. Also the Greens reintroduced their bills, first in the House of Representatives and then in the Senate.

As a result of this parliamentary pressure, in June 2000 the government deposited a bill to revise Chapter II of the constitution inserting a new article 10bis stating that the equality between men and women is guaranteed (that, notably, equal access to elected and public mandates has to be promoted), and that both sexes have to be represented in executives at all levels (read: at least one women in the executive). Again, Christian-democrat Senators (men and women this time) responded with a bolder counter proposal stipulating that effective equality is guaranteed, implying a 50/50 representation of men and women in all executives.

Notwithstanding the many parliamentary efforts, only the governmental bill of 2000 was seriously taken into consideration and debated in the parliamentary committee. It was amended due to a hearing with four constitutionalists. The constitutional article proposed by the government was split into 1) an extension of article 10, stipulating that the equality between men and women is guaranteed, and 2) a new article 11bis stating that the equal exercise of rights and duties is guaranteed for men and women; that especially the equal access of men and women to elected and public mandates needs to be furthered; and that both sexes need to be represented in executives at all levels, in social welfare and in interregional boards. On 8 Mach (International Women’s Day) the Senate voted the constitutional revisions and the text was transmitted to the House of Representatives. The latter voted the constitutional revisions without further altering them and the revised constitution came into force in February 2002.

The parliamentary documents and debates regarding the constitutional revisions, and especially the ones envisaging article 10, explicitly follow a logic of parity (Marques-

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6 Published in the Belgisch Staatsblad on 5 Mai 1999.
Pereira and Gigante 2001, NVR 2003). The first bill submitted in 1997 based the need for a guaranteed and effective equality between men and women on the fact that women and men constitute the two equal components of the population, and that, by consequence, a society cannot claim to be democratic if it is not based on the effective equality and equal value of men and women. The right for equality between men and women is seen as a fundamental right, and, therefore, needs to be explicitly enshrined in the highest law of the Belgian nation:

“Even if we generally accept that the legal equality of the Belgian citizen as guaranteed by article 10 implies the equality of men and women, (...) such an implicit interpretation is not sufficient. The right for equality between men and women needs to be inscribed as a fundamental right in the constitution, which is the highest juridical norm of the nation. (...) Hence, it would turn the equality of men and women into a permanent mission for the government (...) independent from political priorities and successive government coalitions. ”

Also the governmental bill of 2000 leading to the 2002 revised constitution stresses the ambition to guarantee real equality as opposed to formal equality; revising Chapter II of the constitution aims at:

“(...) guaranteeing the institutional recognition of the right to equality for men and women and to found it in a way that it transforms formal equality into effective equality.”

As mentioned earlier on, the revision of the constitution was embedded in political discourses and initiatives aiming to increase the numbers of women in politics. When asked for advice on the new quota acts, the Council of State (Raad van State) requested that the constitution would be altered first. Nevertheless, the constitutional revisions exceed this strategic and instrumental approach and the focus on the political arena. The senators’ bill to alter article 10 in 1997 highlight that:

“(...) they do not seek to exclusively promote women’s rights, but rather to promote the idea of a new social balance, a new ‘social partnership’ between men and women, according to which women and men assume an equal part of the responsibilities in the family, on the labour market, in politics, and in civil society”.

Another important reason for the constitutional reforms resides in international treaties and engagements like the CEDAW (1979), the UN Peking Platform of Action (1995), and the Amsterdam Treaty (1997).

An important question regarding the constitutional reform regards its status and reach: Is the institutional change a consolidation of norms and practices or does it set new ones? In

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18 CEDAW explicitly invites to inscribe equality between men and women in the constitution.
the 2000 Christian-democrat counter proposal senator De Bethune et al. contend that the constitutional reform reflects the concerns of citizens regarding real equality and therefore has important symbolic value. It proves that the Belgian state considers equality as a principle that is essential to the legal system. Furthermore, positive action would find a legal basis in the reform of article 10 and 11. Hence, the constitutional reform consolidates the evolution of the conceptualisation of equality (from formal to substantive equality) and the role the state plays with regard to realizing gender equality (from preventing discrimination to actively furthering equality through positive actions such as the quota acts). According to senator De Bethune et al. the constitutional revision would not only remove any legal obstacle to state intervention to generate gender equality. It also implies that the state has the duty to realise gender equality in an active manner.

Whether the constitutional reform would oblige the state to take action to assure real equality between men and women was one of the issues debated by the constitutional experts in 2001. Other questions concerned the gains of explicitly referring to gender equality next to equality in general, the concept of equality and the possibility of legal actions by citizens based on the constitution in case of inequality between the sexes. Regarding whether or not the constitutional reform would oblige the state to actively generate a policy to realise gender equality or to fight it where it occurs, did not receive a unanimous answer from the constitutionalists. According to one of them the constitutional reform has a political meaning in the sense that it highlights the importance the state attaches to gender equality. It also enshrines gender equality in the highest juridical norm of the country which implies that all acts at all political levels in Belgium will need to be interpreted according to these new constitutional articles. A second constitutionalist stressed that the new constitutional provisions would furthermore imply 1) an obligation for the government to undertake action to create gender equality; and 2) take gender equality into account when taking legal action in other policy domains and make sure that the equality clause is respected. If not, citizens would have a legal basis to object and, furthermore, claim compensation in those cases where the state had to take action in order to assure gender equality. According to another specialist the new constitutional provisions would, on the contrary, only have the status of an ‘instructive norm’ and only incite the government to take action. Hence, positions ranged from the enshrining of a principle without any need to undertake proactive action to make this right work to the obligation to do so, thereby meeting the claim put forward by advocates of parity democracy.

In his analysis of the revisions of the constitution, constitutionalist Goedertier (2003, cited in NVR 2003) contends that the new constitutional provision regarding article 10 only implies that the state has to make sure not to introduce new discriminations. It foremost has a political and symbolic meaning and responds to the UN and State Council demands to enshrine equality between men and women in the constitution. Article 11bis, on the contrary, constitutes the basis for governmental action to realise gender equality. It obliges the state to adopt measures to realise gender equality. According to his reading, the juridical reach is however rather constrained: 1) in case of conflict of interpretation

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regarding constitutional conformity the judge will have to opt for the most ‘women friendly’ interpretation; 2) the state cannot stop ongoing gender equality policies (‘stand still’ –obligation); and 3) the Constitutional Court can judge whether a discrimination resulting from an act is in contradiction with the constitution. What it, however, cannot do is to object to acts on the basis that they lack measures aiming at realising gender equality. Nevertheless, parliaments can evaluate governments on the basis of their gender equality policy and the constitution can strategically be used by civil society actors to put pressure on the state in order to make the latter undertake action.

To a certain extent the new articles 10 and 11 confirm more explicitly the old content of these articles, the principle of equality. However, the fact that the equality of the sexes is explicitly stated gives it an extra dimension and makes it for the legislator all the more complicated to introduce a differential treatment of both sexes. However, while the advocates of parity democracy request that the legislator would have the obligation to achieve substantive equality – be it not necessarily sameness – of both sexes, other constitutionalists are more cautious on the issue. In this respect the constitutional change does not go as far as the advocates of parity democracy claim (Meier 1998). While the reactive force of the articles is very broad, a broad right to fight discrimination in order to make rights work, its proactive force to make rights work, the achievement of gender equality, is of a more limited nature. It is not excluded but also not mandatory. The only obligation is to guarantee the presence of both sexes in all executives, but this does not even need to be on an equal footing.

4 Impact of the 2002 constitutional reform

This section of the paper assesses the impact of the inclusion of parity in the constitution on the pursuit of gender equality through legislation. Our hypotheses is that constitutional reform is a fundamental institutional change that alters the normative foundation of the state and has broad implications that should be visible in state action through law and leave an imprint on the political culture, norms and values and more specifically on the frame of reference of political actors.

We conceptualise the impact of the constitutional reform in four concentric circles. The narrowest concentric circle, closest to the ‘epicentre’ of change, encloses those acts that are considered to be a direct enforcement/execution of the constitutional reform. In order for the constitution to have an impact at all, we contend that there has to be at least some acts that are a direct spin off of the constitutional revisions. If that is not the case the institutional change is purely symbolic, being of a cosmetic nature, or meant to adjust the constitution to rules, norms and beliefs prevailing in society. The second circle encloses acts with an outspoken effect on gender relations. It is to be expected that acts touching upon gender relations established after the constitutional reform would refer to the

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22 Notwithstanding that the Belgian constitution is in force in the whole of the Belgian territory and by consequence also in the regions, this analysis is limited to the federal level. We recognise however that in order to reach a full response to the research question, the regional levels need to be considered.
constitutional articles that concern gender equality. The third circle encompasses general acts where the gender dimension is not evident. If such acts would also relate to the gender equality clauses of the constitution, we would say that the latter has a solid, substantive impact and that, subsequently there has been a similar institutional change.\(^{23}\) The outer circle regards the frame of reference of political actors. If the constitutional revision is part of the frame of reference of key political actors, long-lasting effects of constitutional change are to be expected.\(^{24}\) This circular approach reflects Thelen’s distinction between layers of institutions. By using the metaphor of the concentric circles – like waves resulting from throwing a stone in the pool - we want to capture, like Thelen, dimensions of change, but at the same time add broadness. The idea is that the broader the circles in which we find references to the constitutional reform, the more fundamental this constitutional change is.

The first sub-question we will now turn to regards whether acts regarding gender equality after the constitutional reform of 2002 stem from or refer to the parity provisions in the constitution. According to the constitutional expert Goedertier (2003, cited in NVR 2003) there are three direct enforcements of the constitutional: 1) the installation of the federal Institute for the Equality between Women and Men (2002), 2) the 2002 quota acts; and 3) the anti-discrimination act of 2007. Besides these acts we also include four important acts with an outspoken effect on gender relations.\(^{25}\)

For each of these acts we investigate:

- whether the text of the act refers to the constitutional articles 10 or 11bis
- whether the explanatory note refers to the constitutional articles 10 or 11bis.

The explanatory note is attached to the act as it is submitted in parliament. In this document the initiators explain the reasons and aims of the act. We would expect to find a reference to the constitution in the explanatory note if it played a role in introducing the bill.

- Whether MPs refer to constitutional articles 10 and/or 11bis in the parliamentary debates prior to the act.

Here we limit ourselves to the plenary debate preceding the vote in the Chamber where the act was first submitted. During the debate in the plenary session, the key elements of the committee debates and the different/opposing point of views are resumed. We would expect to find a reference to the constitution during the plenary debate in the case it played a role in the arguments for or against the act.

\(^{23}\) This type of acts has not been included in the research at this stage, due to a lack of time, but also due to a hesitation on this point. A spill over of the insertion of the parity clause at such a level equals its mainstreaming. The question is whether it is right to deduce such a mainstreaming logic from the parity concept and whether, in more general terms, such type of reference to the principles enshrined in the constitution can be expected to be found in Belgian legislation.

\(^{24}\) This outer circle could also be the inner and first one, especially if we conceive such effects at a purely discursive level, not engaging action. The fact that the constitution sparks off legislation then becomes the second and broader gender equality legislation referring to it the third circle.

\(^{25}\) This selection is based on the overviews of acts indicated as important for women by the Institute for Equality between Women and Men and the Dutch speaking Council for Women.
Our findings are presented in table 1. Only the explanatory note\textsuperscript{26} and the plenary debate in the Senate\textsuperscript{27} concerning the quota act make reference to the parity clauses in the constitution. They confirm that the quota act should be interpreted as an execution of article 10 and 11bis. During the debate it was stressed that the constitutional reform made the quota acts possible. Hence, we did not find proof for Goedertier’s contention that the installation of the Institute for Equality and the 2007 antidiscrimination act were a direct result of the constitutional reform.\textsuperscript{28} The explanatory notes of the 2007 act fighting discrimination\textsuperscript{29} and the 2007 act concerning divorce\textsuperscript{30} refer to articles 10 and 11, but not to the gender equality sections of these articles.

\textsuperscript{26} Senate, Parliamentary Documents, 2-1023/1 (2001-2002)
\textsuperscript{27} Senate, Parliamentary Documents, 2-187, 7.3.2002
\textsuperscript{28} The 2007 antidiscrimination act has a long history. It has been on the political agenda for nearly two decades. Since 1985 the LGBT movement pleaded for a broad and general act against discrimination. When the coalition comprising liberals, socialists and greens came to power in 1999, the issue accelerated. All of the former confirms that the constitutional amendments were not crucial to that act. Also, a first antidiscrimination act was adopted in 2002, amongst others in order to transpose two European directives against discrimination on ethnic and racial grounds. This, too, argues against an extensive impact of the new articles 10 and 11bis of the Constitution. The 2002 antidiscrimination act was replaced by an improved version in 2007 in order to meet points of criticism raised by the Constitutional Court.
\textsuperscript{29} House of Representatives, Parliamentary Documents, 51-2721/1 (2006-2007)
\textsuperscript{30} House of Representatives, Parliamentary Documents, 51-2341/1 (2005-2006)
Table 1: Reference to constitutional articles 10 and/or 11bis in post 2002 legislation on gender equality

<table>
<thead>
<tr>
<th>Acts in direct execution of the constitutional reform</th>
<th>Reference to constitutional articles 10 and/or 11bis in the text of the act</th>
<th>Reference to constitutional articles 10 and/or 11bis in the explanatory note</th>
<th>Reference to constitutional articles 10 and/or 11bis in the parliamentary debates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act of 16.12.2002 installing the Institute for the Equality between Women and Men</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>18.7.2002 Quota act</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Act of 10.5.2007 fighting discrimination between women and men</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acts with an outspoken effect on gender relations</th>
<th>Reference to constitutional articles 10 and/or 11bis in the text of the act</th>
<th>Reference to constitutional articles 10 and/or 11bis in the explanatory note</th>
<th>Reference to constitutional articles 10 and/or 11bis in the parliamentary debates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act of 28.4.2003 concerning complementary pensions</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Act of 21.2.2003 installing an Alimony Fund</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Act of 12.1.2007 on gender mainstreaming</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Act of 27.4.2007 concerning divorce</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
In order to assess the impact of the constitutional parity clause on the political culture, norms and values and more specifically on the frame of reference of political actors we screened information and documents made available on the websites of women’s movements, women’s policy agencies, political parties and trade unions. It is to be expected that especially women’s movements and women’s policy agencies would make reference to the constitutional reform since it fits their programme and tasks. But also political parties and trade unions involved in equality policies can be expected to relate these initiatives back to the constitutional reform.

An analysis of the press releases, memoranda and newsletters of the Dutch speaking and Francophone Women’s Councils learns that the constitutional articles 10 and 11bis are not central to the frame of reference of these feminist organisations. Not even press releases on the 2007 vote-for-women campaign, the 2006 press release concerning the composition of local executives or the 2006 press release regarding the number of women elected at the 2006 local election (which even explicitly referred to parity) mention the parity articles of the constitution. On 19 March 2008 the Dutch speaking Women’s Council launched a press release on the government coalition because only one out of the seven Flemish Ministers was a woman. The Council regrets the missed opportunity to bring the promise of the government to realise more gender equality in decision making into practise. It refers to the act of 2007 on gender mainstreaming, to the fact that female suffrage had been granted back in 1948 and to the declaration on human rights, but not to the parity clause in the constitution.

Press releases in other than the political domain also fail to refer to the constitutional clauses. In a press release concerning sex discrimination regarding health insurances the Dutch speaking Council refers to the 2004 EU Directive regarding equal treatment of women and men concerning access to goods and services, but, again, not to the Belgian constitution. Idem in the 2007 press release concerning wage inequalities between women and men: it makes a reference to the Treaty of Rome, but not to the constitution. The same goes for the Francophone Council’s advice concerning equal treatment of men and women in insurance matters, their 2007 memorandum for the political parties involved in the formation of a new government and their advice concerning equality in education.

However, the parity clauses are not entirely absent in the Councils’ efforts to bring about more gender equality. The most important reference to the constitution was found in the 2004 memorandum of the Francophone Council regarding the formation of the government of the Capital Region of Brussels in which it demands the implementation

31 The Dutch speaking Women’s Council (Nederlandstalige Vrouwenraad) and Francophone Women’s Council (Conseil Francophone des Femmes Belges) are two pluralistic umbrella organisations grouping the most important women’s organisations. We researched the press releases of the Dutch speaking Women’s Council between 2003 and 2008; advise et memorandum 2002-2008 and Francophone Women’s Council (http://www.cfffb.be/index.html?current=4&page=4&page2=4&lang=fr) and its trimestrial bulletins 2006-2008.
33 http://smooz.4your.net/cffb/files/assur.pdf
34 http://smooz.4your.net/cffb/files/memo07.pdf
35 http://smooz.4your.net/cffb/files/egalite.pdf
of article 10 ‘everywhere and at all levels’. Three years later the Council undertook action against the 2007 divorce act. In its plea against the acts it repeatedly referred to the equality clause in the constitution (however, without specific reference to article 10 or 11bis). In the same year the editorial of the December-February 2007 bulletin also referred to the equality clause in the constitution in order to criticize the discrepancy between the constitution and reality when it comes to the wage gap, gender related violence, etc.

Notwithstanding the scarce use of the constitution in their communications, both Councils want to strengthen the parity clauses in the constitution. A 2008 press release of the Dutch speaking Council addressing the government did refer to article 11bis. The Council requested an equal number of male and female ministers in stead of the current requirement of at least one minister of each sex. Its memorandum to the party leaders concerning the new government coalition after the 2007 election, the file on the federal elections and the analysis of the 2003 governmental agreement contain the same demand. The Francophone Women’s Council also expressed the wish to change article 11bis so that it obliges real parity in executives (in stead of a minimum of one woman).

The two political women’s groups included in our screening are the Flemish Christian-democratic ‘Vrouw & Maatschappij’ and the Francophone Liberal ‘Femmes MR’. Notwithstanding the closeness to politics of these two feminist organisations, they only seldom refer to the constitution. The Christian-democratic women’s group demanded constitutional enshrinement of real parity in the government in 2003 and in 2006 incited political parties to go further than one woman in the local executives. The only reference the Femmes MR made to the constitution is in a document regarding its campaign on equality between men and women in which the constitutional article 10 and 11bis are mentioned as one of the legislative milestones (Femmes MR, s.d.).

We now turn to the women’s policy agencies. We screened advises of the federal Council for Equality between Men and Women and the advices, press releases and brochures of the Federal Institute for the Equality between Women and Men. Of the 65 Council’s advises between 2002 and 2006, 8 made reference to the constitutional reform. These references were mainly made in advises related to political issues, but not exclusively. Besides some neutral references to the fact that article 10 and 11bis exist, enshrine gender equality and pave the way for the new quota acts, the Council strategically used the

37 http://smooz.4your.net/cffb/files/avisdivo.pdf
38 http://smooz.4your.net/cffb/files/bulsep.pdf
41 As mentioned in their 2005 requests towards the federal parliament listing the priorities in the battle against the discrimination against women http://smooz.4your.net/cffb/files/revend2.pdf
42 We screened the press releases and political standpoints of Vrouw en Maatschappij and the action plan of Femmes MR concerning equality between men and women.
43 https://webmail.hogent.be/mime.pl/36%2520Actualiteitstandpunten-5.doc

Comment: keuze voor deze partijen verantwoorden
articles to demand further state action to realize gender equality. More precisely, based on the constitutional equality articles it requested: a local equality policy, an equality policy for women above 50, inclusion of female judges in the Constitutional Court, positive action for more women as provincial governor and district commissioner. Furthermore, the Council requested that it would be consulted concerning bills that touch upon the principle of gender equality (like the one regarding supplementary pensions) and that in the future the constitutional clause regarding the composition of executives would be extended from at least one woman (or man) to a 50/50 distribution of executive mandates.

In contrast with the Council, the Institute for Equality only once mentioned the constitutional articles in the advises, press releases and brochures concerning their four action domains (i.e. gender mainstreaming, decision making and politics, employment and the follow up of the Beijing Action Platform). It did not base claims on these articles, but only mentioned the constitutional reform as a milestone in the evolution of the political rights of Belgian women by highlighting that it had made the 2002 quota acts possible (IGVM 2004).

Next to the women’s organisations and the women’s policy agencies, we also included ‘traditional’ political actors in our analysis. We screened the official documents and the section in the party programme regarding gender equality of the major political parties: the two Liberal parties (Open-VLD and MR), the two Christian-democratic parties (CDH and CD&V) and the two socialist parties (SP.a and PS). None made reference to the constitution. Maybe the francophone socialist party is an exception; in the 2007 party programme section ‘the right person for the right job’ it stated that constitutional equality to public jobs needs to be guaranteed.

Finally we also research whether the constitutional parity articles were part of the frame of reference of the trade unions, which are important political actors in a neo-corporatist state like Belgium. We selected the Flemish socialist union ABVV and the catholic

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46 Advise 60 (2002) regarding the reform of the electoral acts
47 Advise 106 (2006) regarding the local executives
48 Advise 49 (2002) regarding the results of the local elections
49 Advise 58 (2002) regarding the rights of women older than 50
50 Advise 59 (2002) regarding the composition of the Constitutional Court:
51 Advise 105 (2006) regarding provincial governor and district commissioner
52 Advise 77 (2003) regarding the act regarding supplementary pensions
53 Advise 106 (2006) regarding the local executives
54 http://www.ps.be/_iusr/programme_ps_legislatives2007.pdf, there was also a brief and vague reference to the constitution in a press release of the Open-VLD concerning the wage gap (http://www.vld.be/page?&orl=1&ssn=&lng=1&pgw=484&nws=135) and in a SP.a press release regarding local elections of 2006 that stated that executives should contain men and women
francophone union CSC. In none of their initiatives that concerned gender equality a reference was made to the constitution; not even in the campaign material regarding the 2008 Equal Pay Day, the 2004 Charter on Gender Mainstreaming in the trade union (signed by the three representative trade unions) nor in the CSC brochure ‘L’égalité n’a tout à y gagner! Carnet de bord de l’égalité entre hommes et femmes’.

5 Conclusions: constitutional change as institutional change?

The paper presented a new-institutionalist analysis of the inclusion of parity in the Belgian constitution and of the impact of this constitutional change. The underlying question is to what extent this constitutional reform reflects an institutional change, and if yes, at what level. The analysis shows that the inscription of parity in the Belgian constitution does not meet with a broader societal, political or academic response and does not reflect an important institutional change. From our analysis we cannot but conclude that the constitutional reform had an extremely limited impact and foremost seems to be the preliminary step for implementing the 2002 quota acts for electoral lists. Hence, the impact of the constitutional reform seems to be restricted to the political domain (i.e. more women in the electoral lists and the executives). Especially article 11bis concerning the composition of the executives was referred to; article 10 that has a much broader range than the political sphere and includes all policy domains and spheres of life is foremost ignored. This contradicts the broader ambitions of the MPs who initiated the constitutional reform, and, more in general, the high expectations attached to changing the constitution as a means to change institutions. For the advocates of parity democracy enshrining the explicit equality of both sexes into the constitution was meant to be a means to oblige the state to actively pursue this equality.

Our hypotheses that constitutional reform is a fundamental institutional change that alters the normative foundation of the state and has broad implications that should be visible in state action through law and leave an imprint in the political culture, norms and values and more specifically on the frame of reference of political actors is not confirmed. Our findings nonetheless confirm Thelen’s concept of institutional layering, be it in a specific way. Our analysis confirms that institutional change can occur at one level leaving other levels mainly untouched. However, we found but little confirmation that this institutional change will in the longer run also transform other layers of the institution, which is implied in Thelen’s concept of institutional layering. On the contrary, we only found an explicit reference to the constitutional reform in an act that was established simultaneously and was interwoven with the constitutional reform from the beginning (i.e. the 2002 quota acts). Later acts that dealt with gender relations did not refer to the parity clauses in the constitution.

54 http://www.fgtb.be/ CODE/nl/fram012.htm
The explanations for this absence of a spill over of the constitutional revision can be multiple. At first sight we see five of them. A first may reside in a general absence of a tradition to refer to the constitution. Although this is less the case with respect to parliamentary and governmental activity, civil society actors not necessarily tend to refer to the constitution when underlining their claims.

A second explanation may be a lack of satisfaction with respect to the principle of equality as it is enshrined in the constitution. An indicator for this is the fact that the constitution is mainly referred to in claims for making rights work, mostly with respect to balances of men and women in positions of political and other decision-making. The underlying idea is that the current formulation is not sufficient. From this point of view, then, it makes no sense to refer to the constitution when trying to pursue issues of gender equality.

A third explanation for the lack of reference to the constitution is related to the former but somewhat different from it. It involves that the scope of articles 10 and 11bis is considered to be very limited and hence contrary to what the advocates of parity democracy had hoped for many advocates of gender equality do not conceive it as being the legal basis for their claim. Hence, the articles are simply not referred to.

A fourth explanation for the lack of reference to the constitution can be related to strategic considerations. The fact that the Dutch speaking Council of Women refers to the 2004 EU Directive regarding equal treatment of women and men concerning access to goods and services might indicate that it considers the directive to be more relevant than the constitution or of higher strategic importance in order to make a clear claim. In many cases articles 10 and 11bis might not lend themselves to such forms of strategic framing whereby social actors try to bend their claims in order to make them fit into and get picked up by mainstream frames. Is the parity claim out? Is it off the agenda because it is no longer (thought to be) appealing? It might be the case. Nevertheless, actors such as the Council for the Equality between Men and Women did base their claims strategically on the constitutional article. Thus, the constitutional reform is at some points turned into a frame of reference for claims of gender equality.

A final explanation for the lack of reference to the constitution is of a different nature. Similarly to what senator de Bethune and others claimed in their bill in 2000 the constitutional reform might have consolidated the evolution of the conceptualisation of equality. It is meant to adjust the constitution to norms and beliefs about equality prevailing in society. To a certain extent the constitution is corrected, the constitutional change is a consolidation of norms and practices but does not set new ones. The new articles of the constitution are no new milestone, they are a sign of the constitution catching up with the evolutions society is undergoing. In that case the revision of the constitution does not reflect a change of the constitution as an institution but of the enshrining of such an institutional change, i.e. the evolution of the concept of equality, that has taken place before and elsewhere.

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57 An indication for this might be the fact that at the occasion of the latest federal elections in June 2007 there was nearly no campaign for gender equality among candidates and those elected. Such campaigns – although limited in scope – were only organised when the government was finally composed in March 2008.
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