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and secession (or Hegel was a clever guy)

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National Pluralism, Recognition, Federalism and Secession (or Hegel was a clever guy)

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1. Introduction. Michael Burgess, skepticism and *joie de vivre*.

Aristotle realized that human beings are insatiable in their search for knowledge. We know that the human brain is one of the products of the evolution of life on the planet. And evolution has prepared us well for some of life's most crucial challenges, such as survival and reproduction, but our brains are not so well equipped for solving problems of logic and often make incorrect inferences. But despite this they are inferences that we would prefer to avoid. Thus, one of the classical philosophical questions is whether knowledge is possible. Sceptics down the centuries, from Pyrrho and Sextus Empiricus to a number of postmodern authors (who, it should be said, are somewhat ill-informed in scientific terms), while accepting Aristotle's premise, have concluded that the desire for knowledge that drives humans is impossible to satisfy. This is a theoretical attitude that has its own personality in the political sphere.

In this regard, I believe that the practical scepticism of Montaigne and Shakespeare is thoroughly contemporary. Both authors ask whether we can know or be sure of other people's intentions, thoughts and feelings. This is the question about "other people's minds". Their answer is no, we can never be sure; there is always and there always will be a gap between the knowledge of one's own mind and the knowledge that others have of it. Both Montaigne's *Essays* and *King Lear*, *Othello* and *Hamlet*, which were clearly influenced by the *Essays*, display this scepticism regarding practical life. There are always hidden aspects of other people's minds that are beyond our reach; nowadays we would say that this is true even when we believe that everything is consciously

transparent for both parties. Whether we like it or not, human beings live in different interior worlds that are partially and mutually inaccessible.

What's more, our minds undergo changes based on the actions that we perform. Montaigne and Shakespeare show how this dynamic scepticism is present in our daily lives. Practical distrust is related to theoretical scepticism. Whether it is honest or dishonest, wanted or not, distrust is part of our nature and this impossibility of attaining certain knowledge, this inevitable ignorance, may give rise to disappointing, or even tragic, misunderstandings in human relations, as some of Shakespeare's best plays show.

Half a century later Hobbes approached the issue of trust from a more political perspective. Like Montaigne and Shakespeare, his ideas still influence us today. The main theme of his work is not that of the supposed selfish and rational nature of human beings, as some slightly misinformed neoclassical economists still repeat nowadays, but the impossibility of establishing cooperative relations between individuals in the absence of mutual trust. But this trust cannot exist, says Hobbes, without a superior political power that ensures that individuals respect laws and contracts. "Civilized" competition comes later. In order to work cooperatively it is essential to trust that the other parties will fulfil their part of the agreement. And in the absence of a coercive political power, it is irrational to believe that the other parties will respect any accord. Without political coercion, trust is destroyed. In his later years, Kant showed that he understood Hobbes well when he formulated his magnificent concept of the *unsocial sociability* which characterizes human beings and which is at the root of all changes and progress that our species has undergone. Kant, unlike Rousseau, would have applauded Darwin.

But it was political liberalism, and subsequently Hegel, which hammered the point home: political legitimacy that gives stability, trust and prospects for the future must be based on institutions that are able to protect rights and limit power; the politician's main task is to create institutions that can resolve political and social conflicts efficiently.

Patriotism, for Hegel, is not a feeling but a bond that can only be rational if institutions are able to manage conflicts. If not, a state's constitution becomes a mere "piece of paper" (*ein Stück papier*).

We could expand on the theme of legitimacy and scepticism, but let me end with an empirical statement regarding modern-day democratic societies: the political legitimacy of political institutions is related, among other factors, to citizens' trust of leaders, processes, policies and political parties. And this trust has more to do with the citizens' perception of these components than with how much they know about how the democratic system functions. Corruption, lack of expectations with regard to the main political and economic problems, the lack of efficiency and stability of the welfare state or the structural shortcomings of the accommodation of the country's internal pluralism are lethal for citizens' trust.

Here we are concerned with the issue of national pluralism and legitimacy and the possibilities and limitations of federal models or secessionism to politically accommodate one kind of pluralism: national pluralism. These are two questions that have also fascinated Michael Burgess for decades. Permit me to mention two personal things that have always impressed me in my relationship with Michael since I first met him in an academic workshop held in Montreal in 1996 (organised by the IRPP, Guy Laforest and Robert Gibbins): his passion for both academic rigour and his *joie de vivre*. It should come as no surprise that these two elements are present in the personality of a scholar. In fact they may well be common character traits of most university professionals in the western world. However, to combine them both in the same event, in the same discourse, or making everyone feel comfortable and happy in the seminars and workshops he organized in Canterbury is much less common. But this is second nature to M. Burgess as I have observed during the many analytical and research-based events that we have attended together over the years. (On a more personal level, and with this I will end this paragraph of personal "frivolities", I will always be grateful to Michael for having given me the opportunity to enjoy his interesting and charming company and that of his wife, Marie Louise, as well as having introduced me to the universes hidden within Laphroaig, a superbly nuanced Scotch whisky from Islay).

2. Plurinational federalism. A comparative approach

A few years ago, the United Nations clearly established that a *politics of recognition* is an integral part of the struggle for human dignity (*Human Development Report*, 2004). Moreover, it established that national and cultural freedoms, which include both individual and collective dimensions, are an essential part of the democratic quality of a plurinational society. Furthermore, it stated once again that when analysing legitimacy in plurinational contexts one often observes a juxtaposition between the perspectives of the paradigm of equality (equality vs inequality) and the paradigm of difference (equality vs difference). This juxtaposition interacts with the individual and collective rights of liberal democracies. As a result, values such as dignity, freedom, equality and pluralism become more complex in plurinational contexts than in those of a uninational nature. The overall challenge of plurinational democracies can be summed up in the phrase “one polity, several *demoi*”¹.

On the other hand, if we turn our attention to liberal democracies, it is clear that all of them conduct processes of nation-building that promote the predominant national identity among their citizens, even when this kind of state nationalism is implicit or “invisible”. Over the last two decades, analyses of democratic liberalism have shown the normative and institutional biases of traditional approaches (liberalism 1), which are of an individualist, universalist and *stateist* nature that favour the majority national groups of plurinational democracies. An alternative liberal-democratic approach (liberalism 2) has stressed the value that the national and cultural spheres have for individuals, both in terms of their self-image and self-respect, as well as in practical terms and in terms of the understanding of the societies in which they have become

¹ Normative definitions of minority nations (nations without their own state) tend to be controversial. One way to determine whether a specific case may or may not be regarded as a minority nation is by incorporating empirical criteria to the more classic normative definitions found in studies on nationalism. In earlier papers I have put forward two empirical criteria which could be added to the more traditional ones (e.g., the existence of historical, cultural, and linguistic singularities and the wish to establish some kind of self-government). These empirical criteria are: 1) the existence of a system of parties which is different from that present at state level; and 2) the presence of at least one secessionist party within that distinct party system (Requejo, 2010). As in previous works I prefer to use the term “plurinational” instead of using the most common “multinational” for descriptive and prescriptive reasons. See Requejo-Caminal 2012: 12-13).

socialized or in which they live. Therefore, this second perspective uses political and moral reasons to demand that state institutions and practices adopt measures in favour of the political and constitutional recognition and accommodation of a state's national pluralism².

The classic *institutional* measures offered by comparative politics in order to achieve the practical accommodation of national pluralism are basically of three types: *federalism* (in a broad sense, including processes of “devolution”, confederations, associated states, etc), *consociationalism*, and *secession*. While the first two types of measures have been studied for a number of decades through both theoretical and normative models and the analysis of different empirical cases and comparative analyses, secession has received renewed analytical attention in recent years, especially in plurinational contexts. One consequence of this has been the analytical refinement of the literature on normative theories of secession³.

However, before approaching these theories, let us establish what have been the main findings of federal comparative analyses based on updated data, especially regarding nationally plural societies (I will present these findings implementing the same methodology that I did in a previous comparative analysis⁴, but using updated information (2012).

Broadly speaking, current analyses of states that display a clear territorial division of federal or regional powers can be situated along five basic axes, depending on the research questions that one is attempting to answer:

- a) the uninational-plurinational axis
- b) the unitarianism-federalism axis
- c) the centralisation-decentralisation axis
- d) the symmetry-asymmetry axis
- e) the competitiveness-cooperation axis

² For normative arguments in favour of liberalism 2, see Norman, 2006; Requejo 2005, Parekh, 2000; Taylor, 1992. Regarding “invisible” state nationalism, see Billig 1995.

³ See for example Pavkovic, 2007.

⁴ See Requejo 2010

These analytical axes require a diverse battery of variables and indicators in order to carry out a comparative approach. The universe of the following analysis comprises democratic federations –excluding cases based on archipelagic federations such as Micronesia, the Comoros and St Kitts and Nevis, as well as federations which are a long way from the liberal-democratic logic (the United Arab Emirates, Nigeria, Pakistan, etc). Associated states/*federacies* and Supra-state entities such as the European Union have been also excluded. On the other hand, we include three European Western democratic regional states which display a clear territorial division of powers: the United Kingdom, Spain and Italy. Altogether, there are 20 federations or regional states in the following analysis.

- 1) The uninational-plurinational axis is applied according to the theoretical and the double empirical criterion –party systems/effective number of parties, and secessionist parties within them- I have developed elsewhere⁵.
- 2) The unitarianism-federalism axis focus on *how federal* is a federation (or a regional state). It is established using constitutional regulations which are more or less favourable to a federal institutional logic from the perspective of the federated units⁶.
- 3) The centralisation-decentralisation axis refers to the degree of constitutional self-government of the units with political autonomy⁷.

⁵ See Requejo 2010, sec2.

⁶ We will include as indicators the existence, or not, of: federated polities as constituent units (1); constitutional guarantee of their self-government (1); agreement for constitutional reform (1); an institutional dualism in relation to the three classic powers: the executive and legislative (2) and the judicial (1); a model of fiscal federalism (2); an upper chamber with representatives appointed by the institutions of the federated entities (1), and with seats distributed along territorial lines (not proportional to the population) (1); powers of the upper chamber within the institutional system (2); the allocation of unallocated powers to the federated units (2); a court to arbitrate in disputes (2), with the sub-state entities having a say regarding who is appointed to it (2); and, finally, the regulation, or not, of a right of secession of (some) the federated units (2). The numbers in brackets refer to the score given to each indicator. Altogether, the global scale of each case is situated between 0 (absence of a federal logic) and 20 (maximum degree of constitutional federalism). See annex 1. We do not consider in this axis “para-institutional” indicators, those which have an effect on federalism as a process (e.g. party-political systems; inter-governmental relations). An analysis applied to a group of 11 federal and regional countries using a number of slightly different indicators, in Baldi 2003 (2nd ed. 2005). See also Burgess 2006

⁷ The degree of decentralisation (or lack of centralisation) is here also measured on a global scale which goes from a score of 0 (maximum centralisation) to a score of 20 (maximum decentralisation). It is also

- 4) The symmetry-asymmetry axis includes the cases with *de jure* regulations of an institutional nature or competencies for specific territorial sub-units⁸
- 5) We do not include the competitiveness-cooperation axis in this analysis.

Table 1 situates the 20 cases according to the results of their degree of constitutional federalism and their degree of decentralization.

(Table 1)

Figure 1 relates the degree of constitutional federalism and the degree of decentralisation which exists in the cases studied. Plurinational cases are marked in red, while asymmetrical cases are underlined⁹

measured using different indicators: a) the kind of legislative powers enjoyed by these sub-units (8) - subdivided in specific areas of government as follows: economy/infrastructures/communication (2), education and culture (2), welfare (2), internal affairs/penal/civil codes and others (2); b) the executive/administrative powers (2); c) whether or not the federated entities have the right to conduct their own foreign policy, taking into account both the scope of the matters and agreements with federal support (2); and d) their economic decentralization (8), calculated according to a single average index obtained taking into account the distribution of the public revenues and the public expenditures (GFS/IMF indexes) in each country. See annex 2. Data from <http://www.worldbank.org/publicsector/decentralization/fiscalindicators.htm>. See also Rodden 2004.

⁸ See Watts 2005, Requejo 2011, Agranoff 1999. We exclude federal capitals from asymmetry criteria; in the following calculations, Quebec, Catalonia, Scotland and Flanders are the reference for the cases of Canada, Spain, the UK and Belgium.

⁹ The cases of Ethiopia and Malaysia are not included in the degree of decentralization due to the lack of reliable economic data.

(Figure 1)

The following are general comparative conclusions regarding the feasibility of federations to accommodate plurinational societies. We will consider five different aspects: the constitutional recognition of the national pluralism of these kind of polities; the degree of decentralization, the degree of constitutional federalism, the inclusion of de jure asymmetries in plurinational polities and, finally, the inclusion or not of a right of secession for national minorities in the constitutional rules.

- 1) *Political recognition of national pluralism in plurinational federations.* Ethiopia and Russia formally recognise their plurinational character. However, all other federations and regional states are reluctant to permit *explicit* recognition of national pluralism in their constitutional agreements.
- 2) *Degree of federalism, decentralisation and asymmetries.* Broadly speaking, the group of plurinational federations show, paradoxically, a degree of federalism which is more uniform and lower than the group of uninational federations (except for the special case of Bosnia-Herzegovina, which displays some confederal characteristics). That is, there is a *federalist deficit* in plurinational federations. However, these polities are more asymmetrical in constitutional terms than uninational federations. In fact, there are no cases of clearly symmetrical plurinational federations. Not surprisingly, the two regional plurinational cases –Spain and the United Kingdom- receive the lowest score within the plurinational group of states regarding their degree of federalism. These trends arise questions about the suitability of federations/regional states for properly managing plurinational polities when to accommodate politically minority nations is not only a question of decentralization, but also of political recognition of their national status, and of regulation of their constitutional *collective negative and positive liberties*.

- 3) The elements of asymmetry of plurinational federations is sometimes regulated within general guidelines of a symmetrical nature in the territorial division of powers (with the presence of pressure in favour of the symmetry of the system). This mainly occurs when the number of federated units is not small (at least nine) (Canada, India, Russia, Ethiopia and Spain in contrast to the cases of Belgium, the United Kingdom and Bosnia-Herzegovina)¹⁰
- 4) The construction of “federal trust” in plurinational federations/regional states requires the existence of at least two factors: a) the existence of clear mechanisms to allow the minority nations to participate in the shared government of the federation from their singular character and not diluted to just another entity in the federation (presence in the upper chamber, bilateral inter-governmental relations between these entities and the federation, consociational institutions, etc), and b) the existence of rules which protect national minorities from the actions of the majorities. This is an issue of a more “liberal” than “democratic” nature (related with the collective “tyranny of the majority”)¹¹. If specific participation and protection mechanisms are absent (Spain), or if they are insufficiently regulated (Russia), the perception of a *federalism of distrust* by the minorities (and the majorities as a reaction) will increase. From a normative perspective, this misrepresents the interpretation of collective liberal negative freedom in plurinational federal democracies. Moreover, it would seem to be advisable to develop a kind of political culture for the whole of the federation in order to develop a stable *federal trust*: a “plurinational culture” which makes the plurality of the internal *demos* a feature of the “political union”.

¹⁰ An analysis of the evolution of ten European multilevel cases which started their process of decentralization asymmetrically, in Requejo-Nagel 2011. It is currently an open question whether the federations’ reluctance to introduce more asymmetric regulations, especially when the number of subunits is not small, will or will not reinforce territorial tensions and secessionist positions. However, recent evolution of some empirical cases (Scotland since 2008, Catalonia since 2010) seems to show that this is the case. For the Catalan case, see Requejo-Sanjaume 2013.

¹¹ It favours the inclusion of institutional procedures such as powers of veto, “alarm bell” and opting-in/opting-out policies (which do not require constitutional reforms), the appointment of some of the judges of the Supreme or Constitutional Courts, the distinct participation in the processes of constitutional reform, asymmetrical intergovernmental relations, etc. Most of these procedures, which points out to models of *plurinational federalism* or *partnership*, are absent or have a low profile in the constitutions of most plurinational democracies. See Watts 1999, Requejo 2005, chap 4-5.

5) *Right of secession*. In conceptual terms, there is nothing to prevent the issue of where borders should be established from joining the democratic debate. But on an empirical level it is clear that states are jealous of their own territories. The introduction of a right of secession for the minority nations represents a clear break with the dominant logic of federations (and traditional political liberalism), although not with the tradition of federalism. This logic only accepts the right to self-determination for the federation. But it is an interpretation which a number of federations have recently questioned. This is the case of Canada (through the “federal pattern” of the 1998 Secession Reference by the Supreme Court) and Ethiopia (or the more specific cases of the former Serbia-Montenegro and of St Kitts and Nevis)(see table 2)¹².

(Table 2)

3. National pluralism, secession and political liberalism.

Empirical evidence suggests that plurinational federalism (plurinational federations and plurinational regional states) display shortcomings when regulating the recognition and political accommodation of national pluralism in liberal democracies at the constitutional level. Now we will turn to secessionism in order to discuss if it offers a better way to achieve these two aims. Here we are fundamentally still at a theoretical level –there is an almost complete lack of empirical evidence of peaceful practical secessionist processes in liberal democracies (exception: Norway-Sweden, 1905).

¹² In contrast to what the anti-symmetrical argument of the stepping-stone towards secession suggests, the states which went through secession processes during the 20th century were not asymmetrical federations but Unitarian states (United Kingdom, Ethiopia, Indonesia) or pseudo-federations of a socialist nature (USSR, Yugoslavia, Czechoslovakia). See McGarry 2002; Norman 2006.

3.1 Theories of secession

A fundamental motive behind liberal-democratic theories of secession is the justification of these potential processes based on three key aspects of political legitimacy: the political subject (who), the reasons that legitimize it (why) and the procedures (how). A well established typology divides secession into two basic groups: *Remedial Right Theories*, which link secession with a “just cause”, in other words, they regard secession as a remedy for specific “injustices”; and *Primary Right Theories*, which regard secession as a right belonging to certain collectives that fulfil a number of conditions. These latter theories are subdivided into those of an adscriptive or nationalist nature and those of an associative or plebiscitary nature¹³.

A) *Remedial Theories*, or those relating to a “just cause”, give priority to a number of reasons or specific cases that justify political separation. Secession is not regarded as a primary right of specific collectives, but as a legitimate remedy for a series of circumstances, such as territorial annexation by force (the case of the Baltic states and the USSR), the violation of the basic rights of a group of citizens by the state, genocidal practices, permanent negative discrimination regarding redistribution or socio-economic development, non-compliance with previous agreements of self-government or collective rights by the state, etc¹⁴.

These latter theories have received most analytical attention in recent years, despite the fact that, as we will see, they do not appear to be the most suitable ones for the study of political legitimation in plurinational contexts. The first difficulty is how one should characterize an “unjust” situation. This obviously depends on the theory of justice one uses. Moreover, there are differences of degree in empirical situations that make it difficult to decide when the line of what could be considered morally reprehensible has been crossed (regulation of collective rights, fiscal treatment, redistribution, policies concerning education, culture, the media, etc.). These theories assume that the burden of

¹³ This subsection is based on Requejo-Sanjaume 2013.

¹⁴ See Beran 1984, Birch 1984, Buchanan 1991, 2003.

proof resides with the minorities. In other words, they are theories that are biased in favour of the state, regardless of how the state was historically created. In this sense, they are conservative theories which legitimize state power and the status quo.

In general terms, they are basically theories associated with the individualistic, universalist and stateist postulates of liberalism 1 –state respect for individual rights and democratic principles, as well as the non-discrimination principle. They therefore turn a blind eye to democratic states’ lack of neutrality with regard to national and cultural issues (nation-building policies), marginalizing minorities’ collective demands for national recognition and accommodation –which are usually formulated nowadays through liberalism 2¹⁵. Nevertheless, a number of authors have recently tried to enlarge the conditions of “just cause” by including the state’s obligation to carry out policies of recognition and accommodation towards its minority nations¹⁶.

B) Primary Right Theories regard secession as a fundamental right associated with specific collectives. Adscriptive or nationalist theories take as their central element that the nation is a legitimate political subject endowed with this right. Thus, the legitimacy of secession would be based on a previous political unit that possesses this right, which would basically be understood nowadays in inclusive and universal liberal-democratic terms¹⁷. This is the sphere of liberal nationalists who, in liberalism 2 terms, are critical of the practical consequences of the implicit state nationalism defended by traditional liberals (liberalism 1) –despite their habitual legitimizing rhetoric based on moral individualism and state constitutional universalism. The collective rights of minority

¹⁵ Despite the comments Buchanan makes regarding this question in his first book (1991), he explicitly refuses to incorporate nations or any other adscriptive criterion into his later conception. See Hechter, 2000, Sorens, 2012.

¹⁶ Bauböck (2000), for example, focuses on a revised conception of federalism in plurinational contexts. The federal solution is given priority over the creation of “culturally homogeneous states”, which are linked, somewhat impulsively, to adscriptive and associative theories. Seymour (2007) reformulates Buchanan’s theory in order to incorporate the issue of the accommodation of national diversity. He does not rule out a conception of people which gives priority to their aims, but it is also necessary, he says, to include moral value related to peoples. This author’s “philosophical” approach has similarities with mine (2005, 2013), above all because both regard the Hegelian paradigm of *recognition* as normatively and institutionally complementary to the Kantian approach of individual *dignity* in plurinational liberal democracies. In my case, however, I do not limit secession to *internal* processes of self-determination. See also Patten 2002.

¹⁷ See Tamir 1993, Margalit&Raz 1990. The last two authors use the concept of *encompassing groups* instead of the nation as the subject of the right to secede. See also Walzer 1994.

nations are seen as complementary to individual rights, not antagonistic to them. And in many empirical cases the best and possibly the only way to promote and safeguard collective values would be the creation of one's own state. Adscriptive theories are often criticized due to the difficulty in defining a priori which groups have a primary right to secede. Once it has been determined which groups would have this right, the theory may provoke contradictions with regard to strict democratic normativity, as the minority nation may become a state without the need for majority demand. Moreover, it is commonly argued that, from a practical point of view, giving the right of secession to nations would multiply by thousands the number of secessionist demands in the world, which is associated with a high level of instability, above all where national groups overlap territorially. However, the advantage of nationalist adscriptive theories is that they regard elements of a "historical" and of a socio-political nature designed to personalize subjects to be legitimate in order to exercise the right to secede, to which could be added elements of a political nature.

Associative or plebiscitary theories give priority to democratic *procedure* in order to legitimate secession, whether this is through a referendum or based on the decisions of representative institutions¹⁸. The key values here are individual moral autonomy and the right to choose voluntary political associations. They represent the pillars of the consensual legitimacy of a democratic political authority. If this consensual base regarding the state's authority is not shared by the majority of individuals of a collective, secession is a legitimate act and constitutes a right that must be legally regulated. Thus, in this kind of theories secession is not regarded as a possible solution to the infringement of the rights or interests of a collective, nor is it linked to any kind of specific national or ethnic group. Rather it is a *primary right* of a political and territorialized nature based on the individual preferences of the members of a group of citizens. The authors who have formulated this kind of approach establish a series of conditions that must be met when this right is established¹⁹. For example, the state must be feasible in empirical terms –number of citizens involved, guaranteed rights for (trapped) minorities, that secession does not prevent the viability of the former state, that it does not generate political instability, etc. "Historical" considerations are alien to

¹⁸ Beran (1984) states that any group that has inhabited a given territory for a (small) number of generations has the right to create a state there if this is carried out democratically.

¹⁹ See Beran 1984, Wellman 2005.

the internal logic of this perspective. This may mean, for example, that it is considered potentially legitimate for a group of relatively recently territorialized immigrants to secede. Moreover, it is argued, on the one hand, that an a priori right to secession established in these terms might result in the fragmentation ad infinitum of political communities and, on the other, would not permit the correct development of democracy as it would be permanently threatened by fragmentation²⁰.

Finally, in the international sphere there are relatively few empirical examples of the constitutionalization of secession. The constitutions of Ethiopia and Saint Kitts and Nevis are the two clearest cases of the explicit inclusion of the right to secession. The former adopts an adscriptive approach, as the “nationalities” and “peoples” that constitute the state have access to the secession clause. The latter permits the secession of the island of Nevis through a referendum which must have the support of a majority of two-thirds²¹. The most recent cases of the secessions of Montenegro (2006) and Kosovo (2008) from Serbia occurred, in the first case, in accordance with international regulations based on a referendum with clear rules monitored by the European Union and, in the second case, as a result of a unilateral declaration of independence by the Kosovar parliament, which was recognized by a majority of international actors once negotiations had broken down. These two cases are examples of international mediation when a state of deadlock has been reached regarding internal constitutional rules. Another case of constitutional regulation, albeit less conclusive than the previous ones, is that of Canada which, following the referendum on the secession of the French-speaking province of Quebec (1995) in which the anti-secessionist option won by a narrow margin of votes, established, based on an *Opinion* of the Supreme Court, that political and constitutional negotiations must take place if a “clear majority” of Quebec citizens responded to a “clear question” regarding secession (Secession Reference, 1998)²². The lack of secession clauses in plurinational contexts constitutes a permanent

²⁰ See Moore 2001, Buchanan 1997, 1991.

²¹ While in Ethiopia there have been no secession proposals since that of Eritrea, which was preceded by a long armed conflict and occurred before the current constitution came into force, the island of Nevis conducted a secessionist referendum (1998) in which 61.7% voted in favour of secession without reaching, however, the legal minimum of two thirds.

²² These two references to “clarity”, however, have not been without controversy. Thus, the regulations of the Canadian Clarity Act (2000), following the Supreme Court’s *Opinion*, were countered when Quebec’s National Assembly passed the *Loi sur l’exercice des droits fondamentaux et des prérogatives du peuple québécois et de l’État du Québec* (2000). The contents of the Canadian *Clarity Act* is paradoxically « unclear » regarding the patterns of clarity.

factor of instability in these democracies. I think that they should be included in the constitutional rules for both moral and pragmatic reasons.

3.2 National pluralism, recognition and political accommodation. A little bit of political philosophy.

Moral and political philosophers, especially those who are members of university departments of philosophy and philosophy of law, usually work within a unilateral Kantian paradigm when dealing with contemporary political issues, including those of a multicultural and plurinational nature. I think this is a mistake because of its incompleteness. Kantian approaches, such as Rawls' conception of "justice", which is only a theory of *socioeconomic* justice, reveal a set of misconceptions and shortcomings when they deal with subjects that include patterns situated beyond an individual perspective. This is the case of plurinational democracies, which by definition involve tensions between different national collectivities. Recognition and political accommodation between groups are two perspectives inherent in this kind of democracies that make it necessary to go beyond the moral individualism usually associated with Kantian approaches. We may ask if the classical criticisms of the Kantian perspective made by Hegel represent a fruitful theoretical way to approach national pluralism in current liberal democracies²³.

As is well known, Hegel sets out a number of criticisms to Kantian philosophy, introducing a more social perspective in his philosophy. Hegel transferred antagonisms in society as a typically modern phenomenon. Civil society is the second part of the Hegelian ethics (along with the family and the state). And it is in civil society where the particularities that create conflicts reside and also the more relevant socializing and disintegrator trends. Hegel does not deny that the natural roots of conflict must be found in the passions and desires of individuals (Kantian concept of the *unsociable sociability* of individuals)²⁴. Through his philosophy, Hegel does not intend to say how things

²³ This subsection is based on Requejo 2013.

²⁴ Although the Kantian term *ungesellige Geselligkeit* is not used by Hegel, the concept remains in its philosophy. See Requejo-Valls 2007.

should be, but what things really are. This view realistic and social opens the door to two important elements for the analysis and the normativity of plurinational societies: the *politics of recognition* and *moral collectivism*. Both connect with the Hegelian concept of *ethicity* (in contrast to *morality*) However, this is done by providing a price to pay: to adopt a clear *statist* perspective.

A) Ethicity and the Politics of Recognition. Hegel stresses that the antagonism of civil society is the source of conflict, but also a factor in socialization²⁵. In line with his statist realism, he emphasizes its fight against moralism, showing a sceptical attitude about the Kantian ideals of the “cosmopolitan society” and “perpetual peace”, stipulating that the evolution of reality and its complexities generates interaction mechanisms that facilitate conflict resolution.

Moral imperatives do not have enough force to end conflicts. For Hegel, even the horizon of Kantian cosmopolitanism and perpetual peace are nothing but a moral sermon as beautiful as ineffective. From this perspective, we can deduce that the main political task is to establish a set of political institutions that help to prevent and resolve conflicts. The real constitution of a state lies in the interactive framework of its institutions.

In this way, Hegel introduced a new analytical approach to the study of modern societies. The basic idea is that the underlying strictly individual perspective of classical liberalism leaves too many normatively relevant elements out of focus. In addition to the dignity and identity of the individual considered in isolation, it is important to consider also the relationships between individuals in order to understand their dignity and identity themselves.

Deontology is not enough to the understanding of individual dignity. This dignity will always refer to particular social contexts, to societies with specific historical, linguistic, cultural and national features. The actions of the exercise of rights must not be based on the intentions of the actors, but on the consequences that these actions occur, which are never completely cognoscible a priori. To marginalize these features in the analyses

²⁵ *Philosophy of Right*, sec 142, 182.

using conceptual and purely individualistic abstractions means impoverishing them. Following this path, we move from the sphere of Kantian *morality* to that of Hegelian *ethicity*.

In summary, the recognition of other individuals is also part of the self. Our relations with the other components of the collective shape our political landscape ethic. Our identities are formed through our relationships; our freedom is neither solipsistic nor fragmented. Against the principles of some versions of liberalism, the individual, communarians will say much later, does not come earlier than his/her aims. Recognition is the target of this interaction. We seek a kind of recognition that satisfies the desire to be admitted in a specific way in the polity. There is here a human need: that others recognize our status as independent entities with our own characteristics. This implies a relationship which is not necessarily peaceful, but based on the confrontation between different subjectivities.

Individual autonomy outlines in part our subjectivity, but the struggle for recognition is what frames our political relations, that is, our intersubjective relations. Recognition is thus an aspect of political equality in the cultural and national spheres. The search for recognition occurs both among individuals and between collectivities, as individual autonomy only occurs within a specific community (characterized by its history, language, etc.). Individuals are at the same time independent and dependent from the collectivities that they are part, regardless they are voluntary (family, profession) or involuntary in nature (language, history). Thus, recognition, which presides the transition from morality to ethicity, requires going beyond the Kantian morality and the individualistic perspective of classical liberalism. This approach requires the recognition between collectivities.

B) Moral collectivism. Nobody has established more clearly than Hegel the human need for recognition. The “liberal” key of the recognition between majorities and minorities will be one that is reciprocal and established from an equal footing. This allows us to deal with the relationship between different national groups within a state from a perspective located beyond moral individualism²⁶.

²⁶ The position of *moral individualism* can be summarised by means of two assertions: 1) the autonomy of the self as a subject – conceived as “prior to its ends” – is the liberal value par excellence, and 2) the individual is the last source of any legitimate moral claim. In their “technical” language, Hegel defined the state as “the actual reality (Wirklichkeit) of the ethical idea”. See *Philosophy of Right*, sec. 257.

Thus, from the politics of recognition between groups inherent at Hegelian ethnicity comes the need to introduce the perspective of *moral collectivism* besides that of moral individualism. From the perspective of moral collectivism, 1) national groups are seen as legitimate sources of rights and moral claims, that is, they become legitimate actors from the normative links of its members to certain values, institutions and collective projects; and 2) it emphasizes that moral autonomy of individuals is not necessarily the liberal value par excellence; other values can take this place in specific contexts, as collective freedom and tolerance along with individual autonomy. These would be two requirements to establish a successful constitutional and political accommodation of national pluralism in a liberal state.

In a plurinational liberal democracy, the perspective of moral collectivism is pluralistic by definition. This is a point which takes us away from the Hegel's monistic view of the state. Moral collectivism in plurinational polities refers to a set of values, interests and identities of an agonist character, which encourages to reach agreements that will include some of a pragmatic nature (*modus vivendi*). Berlin (value pluralism) and Taylor (political recognition) meets inside a more diverse and complex ethnicity than that stipulated by Hegel. But both are needed, the more individual perspective of Berlin's liberalism and the more collective perspective of Taylor's recognition. To follow the path of the "atomized" individualism and the monist moral perspective that accompanies traditional state-liberalism means legitimizing relations of domination that exist in fact between national groups within plurinational democracies. In other words, keep us in the only perspective of moral individualism means legitimizing the status quo of factual relations of domination present in the institutions, rules and decision-making processes of traditional liberal democracies.

Obviously, to highlight the ethical importance of national groups for individuals does not mean accepting that these groups are of a static, eternal, or non-plural character. As almost all that is human, they are internally dynamic, historical and pluralistic entities. Over time, they change their values, their priorities and their internal composition. But they probably will be replaced by other forms of collective ethnicity that will be also a legitimate source of rights, moral claims, constitutional recognition and political accommodation.

Hegel provides a theoretical perspective that, despite his statism, is a shift towards a more interactive approach which is normatively and institutionally relevant for the relationship between majorities and minorities in plurinational democracies. In the language of the liberal tradition, this requires establishing collective rights for national minorities alongside individual rights, in order to break the monopoly of state nationalism and a notion of citizenship based purely on the moral individualism and the hegemonic state nationalism which are still very present in most approaches of political liberalism. Potential conflicts between individual rights and collective rights should be regulated in a similar way to how to regulate conflicts between individual rights (courts, *modus vivendi* agreements, etc). But to do it from the premises of pluralist and egalitarian recognition, composition and procedures of the courts of higher rank (supreme courts or constitutional courts) and intergovernmental relations in plurinational federations should take into account the national pluralism of the polity, ideally in a joint between national majorities and minorities following, for example, egalitarian *consociational* patterns.

The analysis of comparative politics show that the two general objectives of plurinational democracies –constitutional recognition and political accommodation of national pluralism- are done in a very incomplete and biased way through uninational and symmetric traditional federal formulas. However, the Hegelian wake of political recognition and moral collectivism, as enlargement of some Kantian concepts, facilitates a "fair and stable" and better implementation of national pluralism through institutions and procedural rules based on *plurinational federalism*, *partnership* and *consociational models*. Both the ethical refinement of democratic theory in relation to the relationship between national majorities and minorities in plurinational democracies, and the institutional practice that permits a fair recognition and political accommodation of national pluralism are still two challenges to liberal-democratic theory and constitutionalism in the twenty-first century²⁷.

Liberal democracies are always incomplete systems when we compare their values and legitimizing language with their constitutional rights, institutions and practical decision-making processes. Scepticism regarding the interpretation of liberal-democratic values always appears when we put what normativity says in contrast with what reality shows,

²⁷ I have developed the desirability of introducing a "Hegelian turn" in the political theory of plurinational democracies in Requejo 2012. See also Seymour 2008.

especially in plurinational contexts. It is probable that the 21st century will see political movements in favour of the “right to decide” by the citizens of minority nations²⁸ which wish to preserve as much collective negative liberty as possible in an increasingly globalised world. These are movements which democratic federal theory and practice should pay more attention to than they have been doing during the contemporary era. Here, recognition, moral collectivism and political accommodation (when possible) are new ways to complete and refine mere classical Kantian approaches. This is a way to prevent the state’s constitution from becoming a mere “piece of paper” (*ein Stück papier*). From the perspective of political philosophy, I think that a better way of approaching the main concepts and values of political liberalism in plurinational democracies is to introduce a “Hegelian turn” in order to overcome scepticism and to improve and refine the liberal-democratic normativity in this kind of complex democracies.

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²⁸ In recent years there have been examples of such movements in Quebec, Flanders, Scotland, the Basque Country and Catalonia.

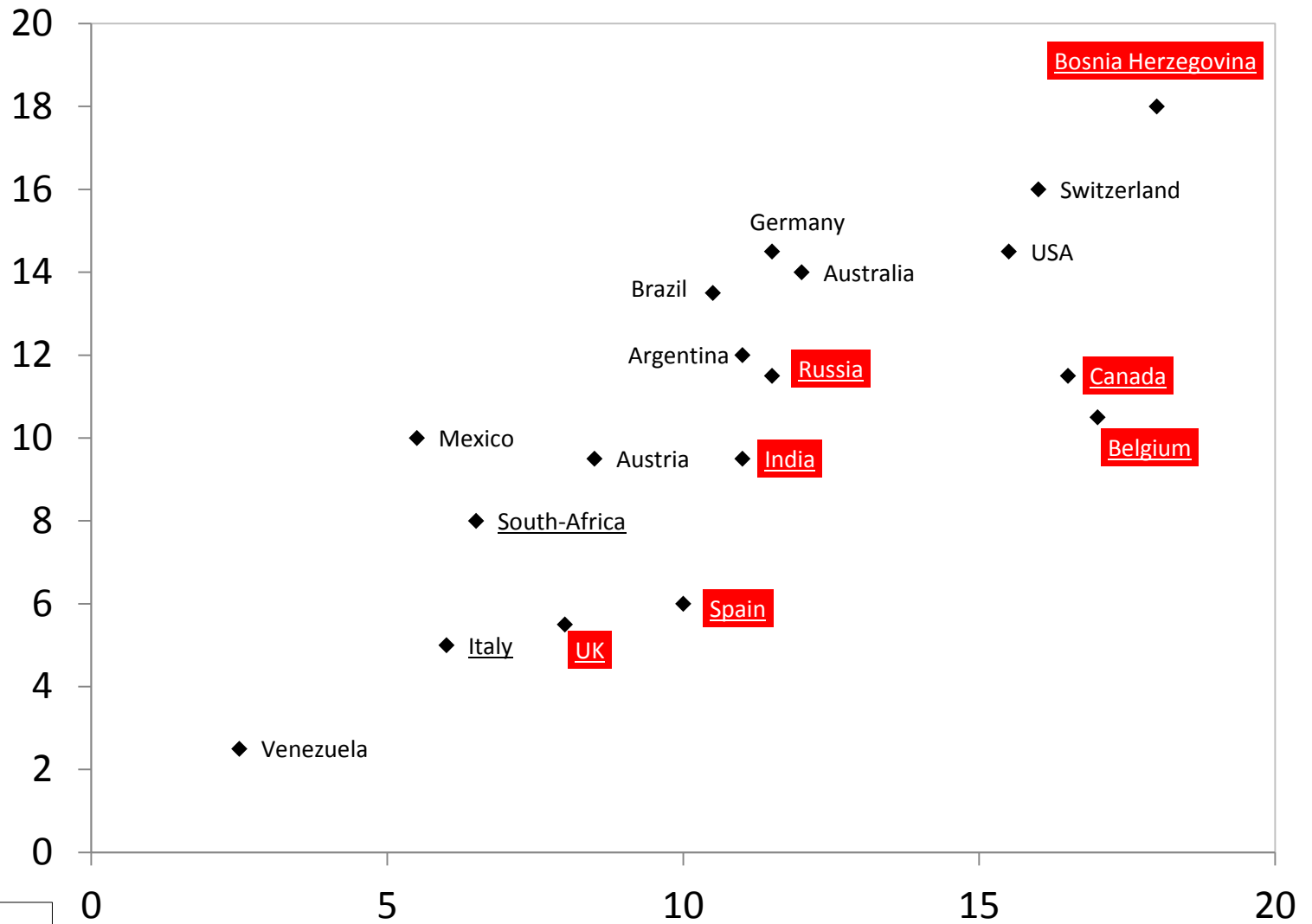
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| Table 1 Federation/Regional States | Degree of Constitutional Federalism <u>(20 points scale)</u> | Degree of Decentralisation <u>(20 points scale)</u> |
|---|---|--|
| Argentina | 12 | 11 |
| Australia | 14 | 12 |
| Austria | 9,5 | 8,5 |
| Belgium | 10,5 | 17 |
| Bosnia Herzegovina | 18 | 18 |
| Brazil | 13,5 | 10,5 |
| Canada | 11,5 | 16,5 |
| Ethiopia | 13,5 | N.D. |
| Germany | 14,5 | 11,5 |
| India | 9,5 | 11 |
| Italy | 5 | 6 |
| Malaysia | 5 | N.D. |
| Mexico | 10 | 5'5 |
| Russia | 11,5 | 11,5 |
| South-Africa | 8 | 6'5 |
| Spain | 6 | 10 |
| Switzerland | 16 | 16 |
| United Kingdom | 5,5 | 8 |
| United States | 14,5 | 15,5 |
| Venezuela | 2,5 | 2,5 |

ND: No reliable economic data

Degree of
Constitutional
Federalism



_____ with constitutional
asymmetries

Plurinational states

Figure 1: Degree of Decentralisation

| Table 2 | | Right of Secession |
|--------------------------------------|--|--|
| Plurinational Federations | Bosnia-Herzegovina Belgium Canada Ethiopia India Russia (Serbia-Montenegro) | No No Yes¹ Yes No No Yes² |
| Plurinational Regional States | Spain³ United Kingdom | No Yes⁴ |

¹ Right of Secession according federal (non unilateral) rules

² Federation broken by unilateral referendum in Montenegro (2006)

³ State with some federal trends

⁴ Referendum according to negotiated rules (2014)

ANNEX 1. Degree of Constitutional Federalism

| | ARG | AUSTL | AUS | BEL | BOS-H | BRA | CAN | ETH | GER | IND | ITA | MAL | MEX | RUS | S-AF | SPA | SWIT | UK** | US | VEN |
|--|-----|-------|-----|------|-------|------|------|------|------|-----|-----|-----|-----|------|------|-----|------|------|------|-----|
| Politics as constituent units (1) | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| Constitutional guarantee of self-government (1) | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 1 |
| Agreement for Constitutional Reform (1) | 0 | 1 | 0 | 0 | 1 | 0,5 | 1 | 1 | 1 | 1 | 0 | 0 | 1 | 1 | 1 | 0 | 0,5 | 0 | 1 | 0 |
| Executive/Legislative Dualism (2) | 1,5 | 2 | 0,5 | 2 | 2 | 1,5 | 2 | 1 | 0,5 | 0,5 | 1 | 1 | 0,5 | 0,5 | 1 | 1 | 2 | 1,5 | 2 | 0,5 |
| Judicial Dualism (1) | 1 | 1 | 0 | 0,5 | 1 | 1 | 1 | 1 | 1 | 0,5 | 0 | 0 | 1 | 1 | 0 | 0,5 | 1 | 1 | 1 | 0 |
| Fiscal Dualism (2) | 1 | 2 | 0 | 1 | 2 | 2 | 2 | 1 | 1 | 1 | 0,5 | 0 | 0,5 | 1 | 0,5 | 1 | 2 | 1 | 2 | 0 |
| Influence of the Federated Entity on the Federal Government (1) | 0 | 0 | 0 | 0,5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0,5 | 0 | 0 | 0 |
| Upper chamber: nomination by institutions of the federated entities (1) | 0 | 0 | 1 | 0,5 | 1 | 0 | 0 | 0,5 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 0,5 | 0 | 0 | 0 | 0 |
| Upper chamber: number of senators regardless of population (1) | 1 | 1 | 0,5 | 0,5 | 1 | 1 | 1 | 1 | 1 | 0,5 | 0 | 0,5 | 0,5 | 1 | 1 | 0 | 1 | 0 | 1 | 0 |
| Powers of the upper chamber (2) | 2 | 2 | 1,5 | 1,5 | 2 | 2 | 0 | 2 | 2 | 2 | 1 | 0,5 | 1 | 1,5 | 1,5 | 0,5 | 2 | 0 | 2 | 0 |
| Non-allocated powers (2) | 2 | 2 | 2 | 0 | 2 | 2 | 0 | 2 | 2 | 0 | 0 | 1 | 2 | 2 | 0 | 0 | 2 | 2 | 2 | 0 |
| Constitutional/High Court (1) | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 1 |
| Nomination of judges by federated entities (2) | 0,5 | 0 | 1 | 2 | 2 | 0,5 | 0,5 | 0 | 2 | 0 | 0,5 | 0 | 0,5 | 0,5 | 0 | 0,5 | 2 | 0 | 0,5 | 0 |
| Right of Secession (2) | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 12 | 14 | 9,5 | 10,5 | 18 | 13,5 | 11,5 | 13,5 | 14,5 | 9,5 | 5 | 5 | 10 | 11,5 | 8 | 6 | 16 | 5,5 | 14,5 | 2,5 |

* Single chamber with confederal trends

** Refers to Scotland

ANNEX 2. Degree of decentralization

| SUMMARY | ARG | AUSTL | AUS | BEL | BOS-H | BRA | CAN | ETH | GER | IND | ITA | MAL | MEX | RUS | S-AF | SPA | SWIT | UK | US | VEN |
|------------------------|-----|-------|-----|-----|-------|------|------|-----|------|-----|-----|-----|-----|------|------|-----|------|-----|------|-----|
| Legislative power (8) | 3,5 | 4,5 | 3 | 7 | 7,5 | 4 | 7 | 3,5 | 4 | 4 | 2,5 | 1,5 | 2 | 4 | 3 | 4 | 7 | 3 | 7 | 1 |
| Executive power (3) | 1,5 | 1,5 | 1 | 2,5 | 3 | 1,5 | 2,5 | 1 | 1,5 | 1,5 | 0,5 | 0,5 | 0,5 | 1,5 | 1 | 1,5 | 2 | 0,5 | 2,5 | 0 |
| Foreign Affairs (2) | 0,5 | 1 | 1 | 2 | 1,5 | 1 | 1 | 0 | 1 | 0,5 | 0 | 0 | 0 | 1 | 0 | 0,5 | 1 | 1 | 0,5 | 0 |
| Public expenditure (7) | 5,5 | 5 | 3,5 | 5,5 | 6 | 4 | 6 | ND | 5 | 5 | 3 | ND | 3 | 5 | 2,5 | 4 | 6 | 3,5 | 5,5 | 1,5 |
| Total (20) | 11 | 12 | 8,5 | 17 | 18 | 10,5 | 16,5 | ND | 11,5 | 11 | 6 | ND | 5,5 | 11,5 | 6,5 | 10 | 16 | 8 | 15,5 | 2,5 |

Legislative power (8)

| Sphere | ARG | AUSTL | AUS | BEL | BOS-H | BRA | CAN | ETH | GER | IND | ITA | MAL | MEX | RUS | S-AF | SPA | SWIT | UK | US | VEN |
|-------------------------------|-----|-------|-----|-----|-------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|------|----|-----|-----|
| Economy / Infrastructures (2) | 0,5 | 1 | 0,5 | 1,5 | 2 | 1 | 1,5 | 0,5 | 0,5 | 0,5 | 0,5 | 0,5 | 0 | 0,5 | 0,5 | 0,5 | 1,5 | 1 | 1,5 | 0 |
| Education & Culture (2) | 1 | 1,5 | 1,5 | 2 | 2 | 1 | 2 | 0,5 | 1,5 | 1,5 | 1 | 0,5 | 1 | 1,5 | 1,5 | 1 | 2 | 1 | 2 | 0,5 |
| Welfare (2) | 1,5 | 1,5 | 0,5 | 2 | 2 | 1,5 | 2 | 1 | 1,5 | 1,5 | 1 | 0,5 | 0,5 | 1,5 | 1 | 1,5 | 2 | 1 | 2 | 0,5 |
| Internal Affairs / Others (2) | 0,5 | 0,5 | 0,5 | 1,5 | 1,5 | 0,5 | 1,5 | 0,5 | 0,5 | 0,5 | 0 | 0 | 0,5 | 0,5 | | 1 | 1,5 | 0 | 1,5 | 0 |
| | 3,5 | 4,5 | 3 | 7 | 7,5 | 4 | 7 | 2,5 | 4 | 4 | 2,5 | 1,5 | 2 | 4 | 3 | 4 | 7 | 3 | 7 | 1 |

Public expenditure (7)

+ 48% = 7 points
 40-47,9% = 6 points
 32-39,9% = 5 points
 24-31,9% = 4 points
 16-23,9% = 3 points
 8-15,9% = 2 points
 - 8% = 1 point