

# POLITOARCHEA

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## Abstract

According to the political phenomenology of law normative systems have multiple poles. From a politonomic point of view it is important for the number of communities which are poles of power to directly determine the forms and content of central power. In a one-pole system *politocracy* establishes, imposes and controls normative institutions for all communities (regional, local groups etc.); the advantage of this system is that it can settle disputes among those communities which pursue their activity autonomously as local power centres; the disadvantage of the system is that it limits normative autonomy of communities and it reduces their social power. As to the bipolar systems, in which there are two centres of normative power, each centre attempts to regulate the other one; the advantage of this system consists in the fact that each centre creates more and more efficient regulatory systems; the disadvantage is represented by the fact that a permanent confrontation between two forces uses up time, material and human resources. In tri-pole systems, each power system attempts to co-exist with at least one of the other two power poles or, anyway, it attempts not to conflict with the other two at the same time; the advantage consists in the fact that the normative system is the result of a legally institutionalized "compromise" between different principles and community values. Multi-pole systems have a set of rules of which the most important is the rule of not destroying the system the community belongs to.

**Keywords:** *politoarchea*, normative policentrism, territorial policentrism, power distribution, institutional policentrism.

## Introduction

The concept of *politoarchea* is used to define the phenomenon of power distribution by which (self) regulation is ensured so that each community acts autonomously; this leads to normative polycentrism and the polarity of the legislative system.

*Politoarchea* defines the phenomenon of (self) regulation power distribution thanks to which each community can be normatively autonomous and determine the multiple poles of the legislative system. Political phenomenology of law reveals the fact that normative systems have multiple poles. From a politonomic point of view it is important to notice that the number of communities which are centres of normative power directly determines the form and content of central power.

According to ideonomy, *politoarchea* is a system of norms and fundamental principles by means of which each community elaborates its own ideology as to the way in which its organization and functioning should be regulated. According to sociometry, *politoarchea* illustrates the multiplication and diversification of normative institutions for every community. From a politonomic point of view, normative, legal and non-legal autonomy is accomplished thanks to the right and capacity of any community to govern itself. As far as terminology is concerned, we have used the concept of community - within the field of phenomenology of law - for defining a group (structure) which has a particular profile thanks to its normative institutions.

Political phenomenology of law illustrates the fact that the decline of legal centralism appeared as a consequence of administrative decentralization, which led to the multiplication of the legislative power centres.

*Politoarchea* illustrates state evolution towards the efficient organization and functioning of local and regional powers in conformity with the principle of subsidiarity according to which public

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responsibility must lie with the authorities that are close to citizens in accordance with their social tasks, the general interest and economic progress. *Politoarchea* defines a normative system which regulates social processes at different legislative levels in order to achieve public interest objectives; in Austria a formal system was set up for implementing public policies by administration structures; in Sweden the budgetary planning process is correlated to administrative structures objectives; in Germany the result-oriented management system is supported at land level; in Switzerland performance standards are established for public authorities.

### (a) Normative policentrism

In monopolar systems politocracy sets up, imposes and controls legal institutions in all communities; the advantage of this system is that it can settle disputes incurred between communities which are local centres of power; the disadvantage of the system is that it limits normative autonomy of communities and that it reduces social power. In bipolar systems, there are two centres of power and each of them tries to normatively subordinate the other one; the advantage of this systems is that each centre of power creates more and more efficient regulation systems in order to impose itself; the disadvantage is represented by the fact that a permanent conflict incurred between two forces uses up time, resources and effort. In tripolar systems each power centre tries to coexist with at least one of the three poles or, anyway, it attempts to avoid conflict with the other two power centres at the same time; the advantage is represented by the fact that the normative systems are the result of a legally institutionalized compromise between different principles and values shared by the community. Multipolar systems have a set of rules, among which the most important one is represented by the interdiction to destroy the legal system thanks to which that community exists. From an ideonomical point of view, *politoarchea* is a system of principles according to which each social structure can develop its own ideology regarding the regulation of its organization and functioning. According to soscionomy, *politoarchea* represents the multiplication and diversification of normative institutions within any community. Politonomically, normative autonomy (legal or non-legal) is manifested as the right and capacity of any community to govern itself. As far as terminology is concerned, we have preferred to use the concept of community because we intend to bring into evidence the fact that a group (social structure) is defined by its normative institutions, too. *Politoarchea* may be better illustrated by using the concept of community, firstly because it illustrates a certain mentality as to (self)normativity, and secondly because it expresses solidarity as (self) regulation and thirdly because it describes (self) government forms more precisely. Normally, a community is self regulated by its institutions (religious, cultural, spiritual etc.) which, as normative systems, are different from legal institutions. The first conclusion we can draw is that normative plurality is based upon the community norms and principles (not upon territoriality); as the phenomenology of law illustrates some communities are normatively structured according to the same professional, ethnic or sexual relations although they are dispersed from a territorial point of view and, thus, cannot be regulated only according to territorial criteria.

If we deal with normative plurality from the perspective of each community's regulations, we have to take into consideration the other side of the coin, too, i.e. the capacity of norms to modify a community's preferences. In other words, the normative force derives both from each community's force to elaborate its own norms and from its capacity to apply them in conformity (or not in conformity) with a centralized legal system. If all communities adhered to the principles of justice (seen as social justice), the centralized legal regulation of social relations would no longer be necessary. From a soscionic point of view, one can easily notice that the system of norms elaborated in the interest of a community does not identify with the normative centralized system which is meant to satisfy "national interest". The main problem regarding regulation autonomy focuses on the contradiction between the institution of normative "centralization" and "decentralization". If we consider that any centralized political system is soscionomically dominating

and politonomically oppressive, then we can conclude that the system is obliged to ideonomically justify these prerogatives. Political phenomenology of law illustrates the fact that the state uses the legal system in order to oblige communities to observe certain norms such as the norms regarding individual rights and liberties; moreover, the legal system guarantees the fact that no community ever breaks the universal principles of law, among which one has to mention the defence of individual rights. On the other hand, normative centralism would limit the tendency of communities to become tyrannical and to restrain individual rights and liberties. One should mention here "lenient communitarism" according to which state confinement policy should be replaced with policies that encourage community norms which can ensure the emergence of plural normativity. To solve this socioeconomic dichotomy governmental policies include, among others, institutions and resources by which certain social groups can be reintegrated in a centralized normative system. Phenomenologically, normative multipolarity appears as a multiplication of regulatory institutions (systems) which, paradoxically, regulate the same types of social relations differently, depending on the type of each local community. It is useful to refer to the programme of gentrification (Engl. *gentry* = person with a high statute), characterized by: the *recolonization* of old city centres with residents who have a high social statute; *rehabilitation* of the built areas and the introduction of new local services; *bringing* persons who have the same culture, customs, language or traditions in spaces which are especially designed for this purpose; economically *reordering* property values. Ideonomically, another form of pluralism may be illustrated by the multiplication of virtual communities which, even if they exclude direct (*face to face*) relations, they are "real" communities as regards their capacity to form, regulate and support a certain community type. Such virtual communities do not rely only on technical computer-based communication means (CMC), but also on a set of common norms and values which set forth specific behaviour norms. Thus, *Facebook* does not only facilitate communication between individuals, but also coordinates social and political movements; at least in the sphere of ideonomy the set of norms used and officially accepted does not agree with the problem of dispersing "ideal" power centres within a society. We consider that the spread of Internet isolates the individual from the community since more and more often and more and more deeply people get lost in cyberspace or better said become alienated. Lastly, a conflict arisen between virtual (*online*) community and the real (*offline*) community brings about the question of politically recognizing the rights of each community. Thus, we can use as a work hypothesis the fact that an ideonomic community can ensure socioeconomic *politoarchea* thanks to the fact that conceptual identity determines individuals to conform to a regulation system.

Phenomenology of law deals with normative plurality which it regards as an effect of each group's (community's) manifesting its own will, thus, trying to regulate its own (adequate) system of norms, principles and institutions. Ideonomically, self-regulation requires being aware of the existing normative, legal or non-legal norms, principles and values, which are valid for the entire community. Normativism without subjectivism (understood as an inherent will of any person) would be impossible; let us remember Abraham Lincoln's statement according to which no man is sufficiently good to govern another man, without the latter's consent. Although the fact of being aware of a norm is not a coercitive (physically speaking) process, as Dennis Wrong points out, awareness generates a certain tension; according to Freud, the fear to lose someone becomes a threat, so it is coercitive. Ideonomically speaking, being aware of one's obligations is essential for a decentralized normative theory; each attempt to break a norm generates a risk. The problem of legal deconcentration has been ideonomically dealt with *avant la lettre* by Max Weber who considered that - for the members of the legal profession - norms have value only if they reflect the idea of justice; this approach is different from the sociologists' perspective, according to which norms have social value only if they can be used. Ideonomically, the existence of a decentralized normative system relies on the idea that individuals can become aware of their obligations and thus the observance of norms is simpler and quicker for them in comparison with the situation in which norms would be imposed on them from the outside. According to Kohlberg's theory, there are three levels which mark the evolution of any

person's moral judgement; on the first level, the "pre-conventional" one, individuals observe laws for fear of a penalty or because they have a certain interest to do so; on the second level, the "conventional" level, individuals observe the law because they understand that moral principles represent a necessity; on the third level, the level of "abstractization", individuals observe legal norms, contractual obligations and justice considering that they are rational forms of existential regulation. Normative polarity is socionomically revealed by the distribution of the regulation capacity among more social power centres; however, ideonomically the situations is different for it is the individual's consciousness that adopts, rejects or is neutral to the social norm. A. Lipietz adopts the same perspective. He states that progress by itself must not be obtained by any means unless it ensures the progress of the individual and collective options; from this point of view, he suggests a form of solidarity which can be accomplished by granting subsidies to "self-organized" or social utility activities. Thus, ideonomically, normative pluralism requires the existence of institutions that allow regulation centres and autonomous institutions to interfere; this is particularly important for it ensures solidarity and community development. If we agree with the premise that any community has its normative system and that this system constitutes the "law" of the community, we can draw the conclusion that *politoarchea* illustrates the lawfulness of law's self-regulation. Ideonomically, *politoarchea* is the cognitive dimension of a community and it represents its vision regarding the system of norms which ensures its existence; in this context, community norms are landmarks for the evolution of the legal system, for the modification, regrouping or the replacement of certain law principles. From a socioeconomic perspective, the dimension and importance of individual, group or collective interests imposes a *path dependence* upon the values and principles of the legal system. According to *politoarchea*, a system of norms, once settled, distributes normative power among different regulation centres according to community norms, values or principles, which are more or less socialized.

The dissemination of the regulation power among communities illustrates the fact that normative policentrism is indisolubilely linked to trans-community relations. Starting with the Middle Ages corporatism has proved to be a phenomenon which distributes socio-economic power among corporations and crafts organizations that were meant to regulate and control industrial and commercial activities and which, besides the clergy and the noblemen, formed the third socially important category in the state. The corporatist phenomenon is much older; thus, we can mention Titus Livius who used the phrase *corpus civitatis* to designate the community and Sallustius who used the phrase *corpus fabrorum* to designate the iron smiths craftsmanship. According to the phenomenology of law, corporative normativity is important for us from two points of view: from a sociocratic perspective, since it reveals that these two non-state organizations have the authority to impose generally-compulsory norms for all its members and from a politocratic perspective, since these corporations function as normative institutions which represent an interface between the state and its citizens. Although the industrial revolution surpassed this form of social organization, the idea of corporatism was embraced by E. Durkheim in sociology and it was depicted as a useful institution for the moral training of the population, for the regulation of social discipline and for reducing *anomia* that modern society is suffering of. From a socioeconomic perspective, E. Durkheim understood that the state cannot surmont *anomia*, first of all because it does not establish a direct link with citizens and secondly because it has a neutral position as far as the civil society is concerned. Corporatist ideology was subsequently embraced by political interwar fascist institutions, which had an ethnically strong connotation. Franco's plan to build a corporatist Spanish society was the most sustainable and probably the most authentic plan, though in Italy under Mussolini there existed a series of corporatist institutions. In Spain and Italy, national assemblies and state councils were organized in a similar way with corporations and less as constituencies or in accordance with the changeable electoral system. According to the fascist ideonomy, corporatist ideonomy was good for it avoided class disputes during democratic elections. *Politoarchea* affects relations between politocracy and the civil society since normative decisions are the result of conflicts between the

interests, strategies and ideologies specific for different social organizations. Politocracy may impede access of other social structures to the decision-making process for saving its values and interests and this might lead to a normative blockage or to a legislative lack of decision. In this context, some European states accept the neocorporatist process of law-making according to which normative decision is the product of an institutionalized dialogue between politocracy and the sectorial sociocracy. In this context we mention European integration as a phenomenon which implies decentralization and economic liberalization processes and which offered sociocracy ideonomic arguments for contesting the supremacy of the state in the law-making process. According to the political phenomenology of law, *politoarchea* determines the clash between the law-making political system and decentralized law-making systems; the unification, coordination and integration of normative systems do not depend upon the state but upon non-governmental decentralized networks. "State-sectorial corporatism", normative pluricentrism tend to be replaced with negotiated normative centralism, which is more efficient because it allows the creation and implementation of public policies that are accepted both by the state and the local or sectorial communities. Normative pluralism functions thanks to neo-corporative institutions which currently indicate that politocracy is more and more inclined to closely cooperate with sociocracy (corporations, trade unions, employers associations, etc.) in the legislative domain with a view to more efficiently accomplish its functions of coordination and political control over society. Policentrism ensures a form of state organization in which there is a limited number of power centres which are ranked and differentiated per technical, scientific, economic etc. sectors of activity. What is important from a politonomic perspective is the fact that these corporations are regulated by the state and the legal statute they acquire ensures their representation monopoly in the sector in which they are active; on the other hand, these corporations are subject to the control of the state, as well as to the legal forms of access to political leadership. From a politonomical point of view, neo-corporatism proposes that public power distribution, as a multiparty governing system, should be accomplished by state representatives and social partners, as well: trade unions, employers associations, professional associations, farmers. Neo-corporatism is an institutionalized political compromise accomplished through legal norms according to which social organizations accept the *status quo* (by which trade unions give up salary expectations) and the government representatives offer guarantees for a certain level of social welfare (by means of social security). The beneficial effect of this compromise consists in the participation of corporations to the legislative process, as well as to a more facile implementation of social norms. Moreover, we can talk about legal policentrism as an effect of the normative system multiplication determined by the requirements imposed by corporations or public utility foundations through the legal norms that regulated the organization and functioning thereof. Politocracy allows the setting up of corporations because these institutions can regulate and offer public services in sectors in which the state does not provide them: the physicians' association, the architects' order, bars associations, public notaries associations, experts associations, evaluators associations, farmers associations etc. Obviously, neo-corporatism as a state phenomenon generates legal modifications; see the mixt legal regime of corporations, which are subject to public law and civil law. In these cases, the polinormative system is favourable because it leads to the specialization of management; the legal regulation is accomplished by specialists, by persons who have the same specialization as the people who manage the system; physicians for medical services; professors and teachers for educational services; artists for the field of art, etc.

Normative pluralism – according to the sociocratic theory – states that certain social (structures) groups are entitled to set up normative institutions within a public area. The plural character of self regulation systems – which are specific for local communities – has been borrowed from the socialist theory of self-management, according to which society must be politically organized as a system of political centres (commune / town / region councils) economic centres (cooperative societies, mutual societies, worker councils). The possibility of setting up multiple normative systems within the state is supported by the postliberal democratic doctrine which states

that it is necessary to introduce "economic responsibility"; the new structures of socio-economic power could be considered as institutions which are accountable to the community even though they are not subject to official legal norms. According to H. Gintis, a democratic control of the economic power structures would allow the collectivization (as a marxist concept) of property and the use of property for promoting individual rights. From an ideconomic point of view, we should reverse the relation between the individual and the economic organization of society in order to create a normative system in which work no longer remains a goal in itself but rather an evolution (a progress) of the individual within a democratic state. These sociocratic arguments form the basis of the theories regarding regulatory autonomy of local communities and the self-governing concept. Phenomenology of law states that local self-government cannot be assimilated with the notion of autonomy since it mirrors the executive dimension of normativity, i.e. the obligation to apply state legislation. A real autonomy of local authorities, which would give free leeway to normative pluralism, is possible only if "executive responsibility" was transferred from these authorities towards social structures, as G. Boismenu, P. Hamel and G. Labica have pointed out. Sociocratic polarity also implies the problem of determining the subject of normative institutionalization, which may be a community (local, regional, national etc.) or an authority of public administration. One of the suggested solutions is to transfer normative power from public authorities to citizens or, more precisely, to certain citizen structures (committies). The so-called "re-invention of governing" has as a starting point the possibility to distribute regulatory power and social control within community structures. Decentralization is more efficient than the centralization of legislative power because it allows communities to adopt autonomous decision and because it ensures the setting up of communities. Adopting such a normative structural model leads, according to M. Massenet, to the creation of a system of mutual and continuous dependence which would represent an alternative to the pyramid-like bureaucracy which is specific for the state. Sociocratic normative polarity manifests as an institutionalization of the relations between the existing different power centres: sociocratic supporters (who want to increase their profit), politocracy supporters (who want to maximize their decision-making power) and bureaucratic representatives (who want to augment their influence). Within a competitive system, distribution of regulatory power between institutions depends on the political force of each of them: according to this axiom the state is obliged to modify legislation in order to be able to counterbalance the normative efficiency of private institutions. The state which cannot (self) regulate its institutions is surpassed by private institutions: corporations, interest groups, non-governmental agencies. From this point of view, the phenomenon of "agency transformation" is in its turn conclusive for legislative policentrism; the state "transfers" regulation and control power towards private agencies, which it supports financially, totally or partially, by means of state subsidies. On the other hand, one cannot leave aside technical and scientific deconcentration thanks to which special institutions (moral persons of public law) have become autonomous - as far as their regulation is concerned - in relation to the state and territorial collectivities. Sociocratic normative policentrism must be analysed as a form of "socialization" of normative power because it expresses freedom to adopt decisions from an ideconomic perspective thanks to the capacity to self manage socionomically and to the right to self-government.

First of all, *politoarchea* seems limited by legal centralism which is justified most of the times by the obligation of the state to ensure "general interest" as opposed to normative decentralization that gives free leeway to group or individual interests. Ideonomically, the theory of normative centralism is difficult to support with arguments simply because "general interest" is an ideal goal and it can be accomplished both in a centralized and decentralized system at a community level. The ideal of normative centralization is to centralize a community ideal so that no normativity is necessary. Socionomically, it is however proved that a right is ensured in a "centralized" way to the extent to which the political system guarantees it as a "decentralized" right, which means that the right is guaranteed at local level, even if by means of the confining force of the state. The state guarantees individual freedom as any other right of general interest; however, this "general interest"

can be accomplished in a centralized way as well as in a decentralized way (under certain conditions). J. Chevallier sustains that general interest theory is used as an ideological weapon to harmonize the adherence of public administration to the state policy. Thus, legal centralism is ideonomically justified by general interest which stems out of the Christian ideal of the "common welfare" and out of the "general will" principle. Legal centralism comes to an ideonomic deadlock when it tries to legitimate, by means of the general interest, both normative power (the right to regulate) and normative autonomy (the right to self-regulate). Political phenomenology of law states that general interest paradoxically represents an ideonomic contradiction: on the one hand, it justifies obedience to political power (the only legitimate power which is entitled to define a collective interest) and, on the other hand, it represents the basis for political freedom (the only force which is entitled to limit power). From a politonomic point of view, we can notice that only authorities which are invested with public power are entitled to consider that an activity represents a public service; moreover, not any activity of public interest is a public service; consequently, we must accept the idea that public service expresses the will of the state, which illustrates the political nature of law. *Politoarchea* is meant to prove that political power attempts to establish what rights and liberties concur to the accomplishment of public interest and it also attempts to legally enforce them. The idea that general interest is a political basis for normative institutions comes to support the theory developed by *politoarchea* because normative institutions are in extremis normative "services" meant to serve general interest. Thus, the normative service constitutes a legal version of the general interest concept; justice, administration, national defence, etc. are institutionalized forms of normative services that are subject to general interest. Socionomically, one can regard "general interest" as a premise for the decentralization of normative power so that the state can implement its policy regarding individual rights and liberties in a centralized way at all levels. *Politoarchea* is not concerned with normative centralization or decentralization, but with the fair or unfair effects of normative power; from this point of view, the right of central authorities to take fair measures is preferable to the right of decentralized authorities to take unfair (discriminatory) measures and vice versa. Normative power cannot justify any discrimination though in administrative law certain discriminations are accepted under certain circumstances and under the obligation to observe the principles of equality and proportionality. Decentralization of normative services has permanently faced with ideonomic centralism: as the state decentralized regulatory power within the community sphere, it had to justify its normative power. That is why the normative system is *still* centralized in areas like education, communications and information services with a view to supporting ideocracy. From a socioeconomic perspective, decentralization is necessary because an absolute decentralization is not possible from a social point of view, which does not mean that centralization cannot be maintained by deconcentrated institutions. The setting up of such institutions (the prefect is the typical example) has a double purpose: on the one hand, to maintain the normative power of the state through the exercise of legality control over local authorities acts and, on the other hand, to maintain state cohesion by coordinating contradictions between centralized power (territorial state administration) and local power (local administration autonomous authorities). From a politonomic perspective, the correspondence between legal decentralization and normative deconcentration is determined by the fact that administrative units have the same territorial limits as local collectivities. The more numerous deconcentrated jurisdiction prerogatives of state institutions, the bigger in number normative attributions of local powers. Thus, *politoarchea* refers to the transfer of normative power from the state to the deconcentrated institution level; deconcentrated structures have an ever increasing regulatory competence on socioeconomic level in comparison with central authorities which are confined to the ideonomic (concept, design, evaluation, etc.) perspective.

**(b) Territorial policentrism**

From a territorial point of view, normative pluricentrism implies the distribution of the regulatory power by the local (regional) collectivities which from an ideonomical point of view makes regulation to be mistaken for local autonomy. At territorial level, normative pluralism is relevant for the phenomenology of law because it mirrors the *divide et impera* (i.e. *organize in order to govern*) governing principle; this principle illustrates the territorial delimitation of a state out of political reasons; we should not forget that the root of the word "territory" - *jus terrendi* refers to the right to frighten (to terify). With its modern connotation, the term "territory" is an ideonomic representation of political frontiers and it started to be largely used after the French Revolution in 1789 as a political and legal system for the administrative coordination of the nation-state; *e. g.* in the French doctrine territorial units were considered as internal spaces of the national territory. Phenomenology of law illustrates the fact that territorial organization is just an application of the Roman political principle (not the application of a legal principle) because its role is basically a politocratic one. Normative multipolarity proves that the organization of the state does not depend on criteria like: "population" or "territory" but on political criteria. If parts of the territory were "sovereign", they would become states, a fact which would anihilate political power at central level (politocracy) and politocracy has always perceived itself as the sole sovereign authority. At territorial level the polarization of the legal regulatory power is mirrored by the normative regionalization phenomenon according to the principle of organizing the state into territorial administrative units which are smaller than the state and bigger than local collectivities. The policy of *regionalism* has evolved in several stages and it was determined by the development of national states within multinational empires such as the Austrian-Hungarian Empire and the Russian Empire. Regional organizations were interested in administrative, cultural and political autonomy for promoting the rights of certain nationalities. Starting with the 8th decade in the 20th century, regionalism has been more valued as a consequence of the European integration which leads to the creation of consociative democracies; at this point in our paper one should mention Denis de Rougemont, who noticed *avant la lettre* that regionalism is an element of the new European construction because it pushes *federalism* towards *regionalism*. Regionalism related to the political polarization of normative systems is important for several reasons: firstly, because regulations mirror the unbalance existing between the different parts of the national territory; secondly, because normative systems allow differences to exist between different territories as regards the regulation of cultural and linguistic rights; thirdly, because local normative systems are opposed to the normative centralism of the state. Normative plurality implies the existence on large geographical areas of many regional decision-making institutions, which comprise several territorial administrative units of the state. From a politonomical point of view, regionalism mirrors a certain territorial configuration of the state, which is easier to manage by means of local administrative structures. Consequently, from a politonomical point of view the essence of regionalism consists in applying a political principle regarding the administration of the territory on several local communities which are grouped in so-called "development regions". We can notice that regions are in fact institutions which have their own self-regulatory systems; from this perspective it would be relevant to mention the fact that at European level there are two forms of territorial division: *normative* regions, created by establishing borders according to legal and administrative criteria and *analytical* regions which function through the association of geographical complementary areas or as homogenous regions (they are created through the aggregation of areas which have similar characteristics).

Phenomenology of normative policentrism proves that those forces which vehemently require the modification of normative systems in accordance with the principle of regionalization were and still are local ("peripherical") political parties because they represent the interests of ethnic and cultural communities. The analysis of party systems which pursue their activity in European states proves that the setting up of new normative institutions is the result of the opposition which exists

between political trends which support decentralization and those which support normative decentralization. In unitary states, excessive concentration of political power has led to the emergence of conflicts between *center* and *periphery*, which led to a revision of constitutional principles through the extension of territorial and administrative decentralization types. The clash between *center* and *periphery* makes the object of the confrontation between centralists, unitarists or nationalists on the one hand, and regionalists, autonomists or federalists, on the other hand. If we accept the hypothesis that the center is the state, then centralism means maintaining a unique regulatory system within peripheries, too, though local communities are different from each other from an ethnical, linguistic, cultural and religious point of view; that is why national parties support legal centralism in contrast to ethnic-regional parties which support decentralization. Legal policentrism socioeconomically mirrors the capacity of local communities to autonomously regulate themselves, while politonomically legal policentrism mirrors the right of local communities to set up their own regulatory institutions. This type of legal policentrism socioeconomically illustrates an administrative decentralization which does not affect politocracy directly especially because it does not imply political power but the functioning of normative institutions; on the other hand, politocracy is rather interested in the way in which normative institutions accomplish their political mission than in the way in which politocracy is organized and it functions. Since local (regional) public authorities are led by political party representatives, decentralization may also imply a transfer of normative but not political power; although the right to make decisions is decentralized, paradoxically, the content of decision is centralized: no matter the legal form the decision act may have, that decision is going to illustrate the local political parties representatives' will simply because party representatives are obliged to comply with the party policy. Consequently, the transfer of attributions (including the legal regulation law) from the central to the local level cannot be regarded as political decentralization. Since this normative decentralization does not affect politocracy, the legal system is permissive for it recognizes the right of local sociocracy to set up organization and functioning norms for its own institutions. That is why *politarchea* as Robert Dahl defines it should not be assimilated with a multiplication of command centers or with the dispersion of power but rather with self regulatory systems in which public authorities are influenced by sociocracy and in which citizens can control their leaders. In this respect, *The European Charter of Local Self-Government* (Art. 3 section 2) states that the autonomy right shall be exercised by councils or assemblies which are made up of members elected by free, secret, equal, direct and universal vote and which can use executive and deliberative bodies that are subordinated to them; moreover, autonomy implies the right to organize citizens assemblies, referendum or any other form of citizen direct participation. The election of public authorities is legally regulated by politocracy; furthermore, citizens' direct participation is ideonomically a way of self-government. For politocracy it is difficult to accept a parallel, external or competing form of government which might have different results, as it is difficult to accept an enlargement of the democratic frame determined by the mitigation of government resources that might be used to defend the opposition or to accept a confinement of the democratic frame through the mitigation of the opposition resources. Consequently, from a socioeconomic perspective, territorial decentralization may be legally regulated through norms that reduce the volume of workload from the "center" and allow the functioning of more "peripheric" local power centres. From a politonomic point of view, territorial decentralization may be legally regulated though it cannot be politically justified as long as sovereignty implies the unique character of power (rather than its multiplication). In conclusion, we can say that legislative policentrism mirrors a normative autonomy which is politically regulated while the very power of autonomy is legally supported.

Phenomenology of law brings into evidence the fact that normative polarity has at territorial level a politonomic character since normative policies are elaborated and implemented in the territory in accordance with political will. We should not forget that the notion of "territoriality" became important during the French Revolution thanks to Paul Auliez who used it to directly refer to the natural representation of political frontiers to which the legal significance of state administrative

organization was added. From an ideconomic perspective, territoriality is only a compromise between the elective principle and the bureaucratic principle, according to which political authority functions only through the agency of administration; this is the reason why ideocracy attempts to argument territorial delimitation by non-political institutions and consequently legitimate state authorities at local level. From a socioeconomic perspective, territorialization means dividing the state according to politocratic criteria and transferring public authority to local elites, i.e. sociocracy; thus, a "peripherical" power is created and it is exercised by local representatives and public officials etc. who must accomplish the general (state) will at territorial level. Territorial political polarization is accomplished through deconcentration governmental policies at local level; political polarity of normative systems is accomplished socioeconomically through self-governing institutions which are specific for any local collectivity; finally, political polarity is ideonomically justified through the theory of the local welfare which prevails over general interest. This multicentrism is considered by P. Gremion as a manifestation of "peripherical" power since both high officials and local civil servants guarantee the accomplishment of general interest since they represent the state in its deconcentrated structures. From a politonomic point of view the notion of "peripherical" power is improper because by definition power seen as a form of exercising social dominance is centralized. According to the phenomenology of law, J. C. Thoenig's opinion regarding the fact that all local collectivities acquire the statute of legitimate spaces for integrating public policies is much more useful for understanding normative polarity; in fact, the way regulatory power (and not the territory) is used may be legitimate or illegitimate in a state. Thoenig refers to the French type of territorial state when he defines the new forms of collective power institutionalization at the level of "communes" and "departments" from a socioeconomic perspective. Normative polarization reveals at different territorial levels that legal institutions and regulation procedures of the "local interest" are different and often come in contradiction with state institutions which promote "general interest". Political polarity of normative systems is determined by the content of regulation; e.g., in the Anglo-Saxon doctrine, different terms are used to define territoriality of a public policy: *local government, urban governance, policy networks or alliance for development*. Consequently, at ideonomic level, institutions which are regarded both as a central and as a local normative authority come to be considered legitimate. The distribution of regulatory power among a central and a local authority led to paradoxical situations such as the coexistence of two different authorities in the same individual – this is the case of "competition" generated by normative decentralization between different authority positions; moreover, this competition can be noticed with persons who occupy two public positions, one at central level and one at local level (see systems that allow a person to simultaneously occupy more public positions). According to the phenomenology of law, political polarity is important for it determines the subject of a regulation in a particular case – e.g., in some legal systems, such as the French one, a Member of Parliament can also be a mayor. In this respect, O. Duhamel comes with a socioeconomic solutions, i.e. to neglect the political dimension of normative acts since decentralization refers to the executive system not to the legislative system. Such an approach cannot be ideonomically supported for normative acts always illustrate a certain political ideology; moreover, the solution cannot be politonomically argued for normative acts generate effects only if they are guaranteed by a political and legal system.

From a phenomenological perspective, *politoarchea* can be set up through the distribution of regulatory power in the elaboration of local policies by the state through the investment of local authorities with different powers. In fact, the phenomenon of *politoarchea* appeared in the European states once local development principles were created; let us not forget that public authorities were entitled and obliged to facilitate relations between enterprises and local institutions in order to ensure the economic and social progress of the local collectivity. As the process of decentralization spread, forms of *politoarchea* improved so that regulatory power became "specialized": e.g. in France, *regions* have regulatory power in territorial planification, professional training, etc.; *departments* exercise their regulatory authority in healthcare, social security, transport, education activities a.s.o.;

*communes* exercise their regulatory power for commune urbanism, schools etc. In a negative sense, *politoarchea* illustrates that the implementation of "central" legislation depends on a multitude of "local" application norms; *e. g.*, let us take into consideration environmental legislation in which there are a large number of technical instructions which illustrate a certain political connotation to application norms. Normally, dispositions issued by local public administration authorities comprise interdiction norms, preliminary authorizations, fines which hinder the application of central legislation. In a positive way, *politoarchea* implies regulations which stimulate the implementation of central legislation and contracts whereby the state associates with local collectivities for accomplishing common interest projects. The normative capacity of *politoarchea* is illustrated by the augmented regulatory power of local collectivities which - beyond the normative frame established by the central power - have created specific ways of adopting decisions: within towns communities, regional councils, trans-border development committees, etc. The phenomenon is illustrated in the American economic doctrine which approaches local development through the perspective of "administrative" regions because both state and private institutions can benefit from these decentralized structures; all towns can be administrative regions and can ensure what is known as a relational economy. *Politoarchea* is also illustrated by a large number of economic structures which are autonomously organized at local level; moreover, from an ideonomic perspective, these decentralized structures are known as "focal point regions" even if they are not recognized as legal persons from an administrative and territorial point of view. The concept of focal point region implies the idea that there are regions within other larger regions which have the same regulation form, *e.g.* commercial regulation. Phenomenology reveals the fact that *politoarchea* is also illustrated by "public conventions" which are normally concluded at regional or local level between public administration authorities and private legal persons as public-private partnerships. From an ideonomic perspective, the public-private partnership defines a rule which refers to the research, designing and creation of normative acts that could not be accomplished if the public and private sectors acted separately; as a socioeconomic institution, public-private partnership requires a set of rules as to the share each one is entitled to obtain from the resulted benefits and the responsibility each party has; politonomically, partnership is a form of settling social and economic disputes and of controlling normative policy making. What is of interest for the phenomenology of law is the fact that by public conventions several types of contractual relations – which are different from private and administrative contracts since they have a *political* rather than legal nature – become official.

Phenomenology of law has recorded essential modifications at all territorial levels; ideonomically, one can notice a change in the mentality of local authorities, which is illustrated by the issuance of normative acts that are specific for a certain community and, thus, different from the acts that are applied for other communities; socioeconomically speaking, one can notice the modification of community regulatory systems according to the interests of local pressure groups; politonomically speaking, one can notice that regulation for the "public interest" is a construct limited to *a territory* and *a community*, without any interference with the "general (or national) interest". If we take into consideration the politonomic criterion, territorialization actually indicates a deconcentration of the public power as a reply to legal state centralism; to politocracy the aim of territorial administrative delimitation is to facilitate the exercise of power and not to apply the decentralized principles. In reality, these plans interact so that the phenomenon of legal regulation appears either as a manner of justifying a normative policy at territorial level or as a necessity to solve territorial problems by an adequate normative policy. Phenomenology reveals that the limitation of the state normative power started when legislative autonomy of certain deconcentrated institutions was recognized; subsequently, this phenomenon extended to public authorities which are elected by the citizens; finally, the state "tutelage" was reduced to its *a posteriori* control as regards the legal nature of normative acts. Paradoxically, to allow decentralization the state enlarges legal limits in order to defend individual freedoms by means of centralized institutions: hierarchical administrative (or tutelage) control; the control exercised through the initiative of the aggrieved person; the conciliation

procedure through the agency of the Ombudsman; civil administrative liability, etc. Legal policentrism has a series of supporters of *public choice* who consider that public institutions are set up, evolve and disappear under the influence of the exchanges between individuals. Taking this opinion as a starting point, another hypothesis was developed according to which the most important factors of normative deconcentration are not political decision factors, as E. Kiser stated, but rather the administration representatives (agents) and the administered persons who regulate administrative activity as a consequence of their interaction. The idea of coparticipating in the regulatory activity was borrowed from the public option theory by state representatives for improving regulatory services and also for adapting to budgetary limitations imposed by governments. Supporters of public authority autonomy and subsidiarity consider that the application of the "public option" principle at the level of deconcentrated institutions is opposed to the traditional bureaucratic model by which civil servants were obliged to confine themselves to executing political decisions. The results of researching "public options" have substantially contributed to the reform of regulatory systems: they have led to transformations in law enforcement besides social *extranormative* regulation, to free election management systems which stimulate state agents adopt innovations, conventions, collaborations, etc., to focusing controlling budgetary expenses on public utility services and to improving citizens-beneficiaries relations by introducing new communication and decision-making systems. Actually, the theory of public option does not contradict the fact that politocracy determines the nature and functions of the normative system; in this respect, normative policentrism illustrates content diversity and public policy application. Public option policy can be accomplished as an option for certain normative policies which can promote policentrism or on the contrary confine it. We can give a single illustrative example in this respect: the state still prefers to centralize social security policy and support expenses for offering unemployment payments though it could use the same sum for subsidizing enterprises which offer workplace to the unemployed. From a socioeconomic perspective, a decentralization of state obligations means an extension of normative policentrism by setting up non-state structures which can assume both social rights and duties. From a politonomic perspective, policentrism is supported by a "modular policy", a concept which was introduced by E. Gellner to define the flexible structure of political opportunities in forming (modifying) collective identities which are specific for modern societies. Modular policy has first of all an ideonomic significance for it refers to multiple collective identities, mixes, interdependence and combinations thereof which influence political phenomena. Modularity – which is specific for territorial policies –socionomically determines legal policentrism because it imposes upon normative systems rules that are specific for ethnical, racial, sexual, professional and associative communities and that determine the so-called "volatile collective identities", according to Krieger's terminology.

### (c) Institutional policentrism

Multipolarity of normative services does not exclude the unique nature of regulating service standards; in this respect, we mention the right of government to exercise authority in maintaining uniformity (standards) services at national level, in domains such as: educational policy in France, the Austrian higher education system or the British social security system. *Politoarchea* illustrates the regulatory centres multiplication process which is determined by the political and legal decentralization process; the legal effect of this process is the legitimate possibility of each power centre to self regulate. Self-regulation politonomically represents a transfer of the state regulatory power towards institutions, basically local public authorities. Sociocracy (local political and administrative elites) will never give up the power that has been granted to them by the state; in this respect, the most important sector is the normative one. The state, in its turn, is interested in legal decentralization for avoiding political responsibility and transferring the task of social problem regulation to local level; multiplication of decision levels represents an insignificant cost in comparison with politocracy evasion. Thus, the welfare state yields normative activity to local

communities or, more precisely, to local socioocracy; consequently, territorial elites (represented by politically appointed persons or by persons elected by the citizens, as well as by a part of the high officials) become directly responsible for local problems. *Politoarchea* destroys state monopoly over social regulation and it makes society a democratic one because it distributes decision-making power to lower levels. Although Robert Dahl used the concept of "poliarchea" only with a politonomic connotation, as a form of public authority control over government policies (except for ideconomy and sconomy), one has to appreciate his contribution to defining procedural democracy. A form of "structural" *politoarchea* has started to be more and more used as a consequence of legislative authority decentralization from the state to regions and other territorial administrative units besides transferring legal responsibility from governmental to the local authorities level. Structural *politoarchea* is sconomically legitimized by the fact that decentralization allows (self)governing institutions to be more democratic, on the one hand, and more efficient, on the other hand, thanks to subsidiarity. It is known that within a legal bureaucratized system the activity is pursued in conformity with the norms established by the central power, which hinders the evolution of law firstly because political management is limited to controlling conformity of institutions and the system and, secondly, because it limits institutional innovation. According to politonomy, normative authority decentralization is necessary for the rule of law state to function, that is why many governmental policies have as a political objective the transfer of the regulation right towards local authorities; from a sconomic point of view, one can notice that community normativity is more efficient if it is accomplished through citizen institutions, simply because it expresses the others' interests. Normative power decentralization does not anihilate the power of central authority but it distributes regulatory responsibility between different political decision-making levels. *Politoarchea* creates a systems of distributing legal responsibility between different public authorities, system in which a central authority is entitled to monitore the way in which local authorities ensure uniformity; obviously, citizens must be equally treated by the law and this requires a limitation of the regulatory power entrusted to local authorities.

*Politoarchea* has become an "institution" as a consequence of the fact that regulatory power was decentralized leading to the multiplication of normative public institutions and services. The distribution of normative power is a reaction to the tyrannical state which dominates civil society and imposes legal formalism. According to the phenomenology of law, *politoarchea* illustrates the fact that the regulatory keynesian model, i.e. centralized control of social institutions from top level management to the lowest hierarchical level, is still being debated. *Politoarchea* is the reaction to a political voluntarism which imposes a one-direction conception as to public policies and the way they are implemented in order to obtain the effects a wholly integrated system expects to obtain. Abandoning trust to the superiority of the state centrist system is the sconomic effect of legislative decentralization and institutional deconcentration. Paradoxically, the state intended to apply deconcentration because it is the quickest method for implementing political decisions and the most permissive form of political control. Once institutions are deconcentrated, the state has lost the right and capacity to regulate more specific domains. It is obvious that a legal decentralization is preferable to an excessive legal system that rejects any community regulatory form or method; however, refuse to centralized legal control implies the risk of setting up anarchy for this refusal is opposed to the state and it leads to organizing ad-hoc regulatory forms. In order to conciliate state legally formalized institutions with normative autonomy, some authors, such as J. Donzelot, suggested (without using the term) an institutional *politoarchea* (formal meeting) which would ensure adhesion of social partners to a certain normative system. These decentralized "institutions" are an alternative to state formalism and allow original societies, regions and even individuals to exist so that social and economic problems could be solved. Phenomenology of law reveals that institutional *politoarchea* was first of all created in the sphere of ideconomy; if the meaning of "public regulation" phrase was initially correlated to collectivity, subsequently the phrase was interpreted as signifying regulation no matter what form regulation takes. Secondly, from a sconomic perspective,

*politoarchea* illustrates the multiplication of regulatory services distribution criteria; initially, a public regulatory institution was preferred because it implied free of charge services; however, subsequently, institutions that offer paid services were preferred (because they proved to be more efficient) even if they were set up as private persons. Finally, at politonomic level, normative decentralization created a *politoarchea* of corporations; public notary services, as well as legal assistance / mediation / consulting services are examples of regulatory power distribution from the state to corporative level. From a phenomenological point of view, one can notice a movement away from centralized normative power to multipolar regulation forms, i.e. towards the policentrism of regulatory communities.

To the political phenomenology of law *politoarchea* is also very important; its forms are set up by formalized cooperation agreements concluded between different social structures in order to obtain common objectives, including in the domain of self-government. The idea of setting up a conventional *politoarchea* is present in Leopold Kohr's theory; according to Kohr the ideal of state organization creates a conglomerate of organizations, towns or smaller regions because they are more efficient and more creative than a huge state. According to Kohr, bigger states must transform into smaller ones which need to organize themselves as a federal system, like Switzerland, which has more equal and autonomous cantons. In its turn, R. H. Tawney pleaded for the radical democratization of society by dispersing power with a view to becoming aware of the "common welfare"; one of the ways in which power can be dispersed is regulating social and economic equality. Even if power must be concentrated, the process must be justified by "general interest". Tawney actually replaces the politonomic meaning of power with its ideconomic significance when he states that power is founded on the idea of "welfare" because power, understood as authority, can enjoy more legitimacy and social recognition in consequence.

Ideonomically, self-governing supports *politoarchea* because it ensures the autonomy of local collectivities; this significance is illustrated, e. g., in common law, through the concepts of *local government* or *self-government*. From a socioeconomic point of view, the principle of self-government implies the decentralization of administrative and financial competences from governmental level to the local public administration authorities level. The socioeconomic character of decentralization derives from the fact that public power which is exercised by local authorities is circumscribed by a political convention, i.e. delegated (or separated) competences. In other words, the degree of decentralization depends on the limits imposed by politocracy. These *political* limits define the content of decentralization, the territory / population size, the volume of resources and autonomous authorities. According to the phenomenology of law, the vulnerable point of conventional *politoarchea* is represented by the fact that any transfer of normative attributions towards local collectivities – in the context of maintaining the right of the state to pass laws – cannot generate political effects.

Institutionalized *politoarchea* is characterized by the fact that it centralizes power and it decentralizes its execution function; in this respect, *legal centralism* is the most eloquent example for the way in which public authorities, services and institutions implement centralized normative state policy in the territory. Legal centralism illustrates politocracy, the effort of government members to elaborate and implement normative policies by which certain legal principles or values could be justified. One has to recognize that legal centralism was *avant la lettre* defined by Thomas Hobbes when he stated that without a sovereign a society faces anarchy; we should not forget that in Hobbes's society it was not possible to have a *non-legal* social control system; today we have this possibility thanks to the existing ways of imposing normative decentralization. Both social and legal norms constitute premises for social order, which means that institutional *politoarchea* must ensure the correlation thereof; first of all, because fair social norms mitigate the public authorities intervention for enforcing the law; secondly, laws which ensure social equity are more easily enforced; finally, because laws which satisfy social interests have more chances to be applied. *Politoarchea*, thus, requires the organization of decentralized institutions that would allow power concentration be maintained; even if an institution is set up in order to increase the efficiency of

political power, this institution does not survive unless it confines itself to concentrating its power. As Alan Minc points out, social factors (especially psychological and cultural factors) play a more important role in establishing precedents than in expressing subsequent appreciations that might influence the individual's decisions (or the decisions of the social group) to avoid risks; economic factors are also important for the phenomenology of *politoarchea* because they direct the individuals' decisions towards low risk investments. Legal centralism obviously implies normative policies to be adopted at central level; however, this does not cancel the right of individuals or social groups to make decisions autonomously; for example, environmental regulations entitle enterprisers to independently choose their own methods for reducing pollution.

### **Conclusions**

*Politoarchea* is limited as far as *deconcentration* is concerned because regulatory power distribution is accomplished at local level by means of public institutions which are meant to implement a unique political power and maintain legal centralism and because they are invested with decision-making power in a domain which is strictly legal. Deconcentration as a way of organizing administration allows politocracy to maintain its right to adopt decisions at central level, including the right to adopt power-like prerogatives, to appoint or remove from office those in charge with the running of different institutions and deconcentrated services, to impose compulsory obligations on the institutions in the territory, to control or even to be subject to the activity pursued by these institutions etc. It is obvious that these institutions cannot be defined otherwise than politonomically since from a socionomical point of view it is difficult to justify the functioning of similar institutions while there are different legal regulations. *Politoarchea* grants a local institution the power to legally regulate at territorial level though politically this institution is subject to central power. *Politoarchea* implies institutional deconcentration since politonomically it illustrates the right of politocracy to set up its legal institutions.

The most illustrative example is the right of central authorities to appoint political persons in managerial positions within public institutions; governments appoint *representatives* in the territory to coordinate the deconcentrated public services for central administration. This *leadership* concept has, from an ideonomic perspective, a political significance since the prefect, e.g., exercises his authority in the name and interest of accomplishing the government political programme. *Politoarchea* illustrates the political transfer of social (state) leading powers at the level of communities in conformity with the existing legal norms and procedures. Socionomically, a decision adopted by a public local authority generates legal effects on the whole collectivity though it is not issued by a sovereign authority but by a local public authority: land assembly, regional committee, county or local council, etc. Politonomically, the interpretation, amendment or application of law is a formal positive legal source thanks to the political character of local autonomy and not to the legal character of self-government.

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