

JUSNOMIA¹

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*Motto: The sociogonic function of social justice is ideonomically accomplished through the principle of **justice**, while socionomically it is accomplished through **equity** and politonomically through political **correctness**.*

Abstract

According to the political phenomenology of law, social justice is (or it should be) a way of extrapolating justice, the imperative moral norm which states that each individual should be equally treated in all his/her existential dimensions: anthroponomical, socionomic or politonomic. The jusnomia of social justice does not only imply that the legal system is (or it should be) just/fair, but also that the accomplishment of justice is a condition of socio-archy (which is opposed to anarchy). The demogonic character of justice states that individuals do not have a social behaviour as a consequence of the rational reasons they share, but under the influence of the existing social reasons; this means that their legal existence is pre-established through norms, independently of their will. As long as from an ideonomic point of view justice will remain an ideal for fairness, from a politonomic point of view, it will be regarded as a key legal principle.

Key words: jusnomia, socionomy, politonomy, ideonomic justice, socionomic equity.

¹ Ethymologically, **jusnomia** is derived from: Lat.: *justus, justa, justum* = fair, correct, and Gr. *nomos* = norm, law.

1. Introduction

Jusnomia is the social justice principle according to which from a socio-economic point of view justice means equality of the citizens, i.e. citizens have the same social value. Thus, this principle reveals equality between citizens (from a politico-economic point of view) and their value identity (from a socio-economic point of view). If from an ideonomic point of view justice can express itself rationally as mathematical equality, from a socio-economic point of view justice expresses itself only as virtual equality between two social values. Political phenomenology of law reveals that although the individual has the same chance to benefit from justice as all the others do (according to ideonomy), he lacks an equal chance when it comes to the distribution of social benefits, which is a form of justice (according to socio-economy). Consequently, social justice has to make the two ideonomic dimensions of justice agree with equity, as defined by socio-economics.

In special literature, there are no references to this type of political phenomenology, which the author of this article proposes and supports theoretically as an interdisciplinary domain between politics and law. In this respect, the author of this article has also published: *Ethics and Corruption in Administration*, Economică Publishing House, Bucharest, 1999; *Political Philosophy of Law*, in *Revista de drept public*, no. 1/2002, Bucharest; *Leaders and Political Organizations*, Economică Publishing House, Bucharest, 2008 and *Politonomy*, Viflaron Publishing House, Bucharest, 2003.

This paper analyzes current political systems and concentrates a series of juridical ideas, concepts and theories which bear the mark of the lawmaker's political will. The paper establishes several connexions and specific relations between political and juridical institutions and it points out the fact that the significance of normativity modifies itself according to the interests and the will of political power.

2. Ideonomic justice

One can consider that democracy reveals the force of law through the principle of justice, which it regards as an inner factor for any legal system. On the other hand, from a politico-economic point of view, ideocracy describes social justice as the expression of a sovereign will, of a supreme authority which is able to decide the way justice is accomplished. Politocracy promotes and uses social justice as an instrument of *supralegality*, in order to implement the preestablished political norms, principles and values; on the other hand, sociocracy regards social justice as an instrument of *semilegality* for social justice can deliver justice no matter if law is observed or not. The existence of these conceptual discrepancies makes justice an irreducible institution of social justice; though concepts are reasonable (they can be logically argued), it is impossible for them to make ideonomy unanimously accepted when it comes to see equity through J. Rawls' perspective. In this context, jusnomia points out that justice cannot exist outside the sphere of ideonomy and that, for social justice to be accomplished, it must be politically guaranteed (through its legal regulation).

From Saint Augustin onwards, it has been stated that the state should be a community that is founded on the principle of justice which was understood as virtue and by which every individual receives what belongs to him: *justitia porro ea virtus est, quae sua cuique distribuit*.

The distinction between justice and equity points out the distinction between the rule of law state and justice accomplished by the state. Thus, one can understand why politocracy has never adopted a passive attitude as to the way in which social justice is accomplished; on the contrary, it has acted through the juridical system in such a way that it made justice principles agree with a certain type of social equity. According to Rawls, the political meaning of *justice, when it is understood as equity*, can not be ideonomically denied, but it can be politonomically contested for it is built upon a wrong premise, namely that institutions (political, social, economic etc.) will enforce the principle of *justice as equity*, though institutions reflect certain relations of *inequity* (which are juridically formalized by a certain political will).

According to the phenomenology of law social justice manifests itself differently since the political system influences the justice norms and principles which are juridically formalized. Social justice is accomplished either objectively (in an unplanned way) in free societies that are based on a mixture of justice and injustice, or in a planned way, through norms of action that are subjectively imposed as in the case of totalitarian societies.

From an ideonomic point of view, one can notice the dichotomy existing between the two types of social justice: on the one hand one can speak of a form of justice which considers that equity can be accomplished in the absence of a juridical regulation and, on the other hand, one can speak of a form of justice which is based upon juridical regulation. Ideonomically speaking, a system which regulates equity is more useful (from a political point of view) since the legal system ensures the juridical protection of the regulated institution as well. Unfortunately, socionomically speaking, equity cannot be regulated for there is no social consensus as to the applicable norms and also for equity is defined as a function of the free market economy and not of the political system. This is the reason why the minimal state should not intervene in regulating equity and why it should accept *justice as entitlement*; this means that the distribution of goods is just if it derives from the just distribution accomplished through lawful means. Finally, from a politonomic point of view, the regulation of equity implies the intervention of politocracy for correcting possible unfair effects, a “correction” of social justice (supposedly objective) through actions of juridical correction (supposedly subjective). According to politocracy, the principle of justice seen as entitlement cannot be argued either historically or juridically since all political regimes are entitled to get rid of the former legal system principles (rather than assimilate them) and to replace them with norms that correspond to the new ideonomy.

In order to manifest itself as a political principle of law, social justice has to be first of all based on deontology, on the principle of justice, which implies that the juridical norm expresses this need through content, as determination, as modality and finality of law. From a phenomenological point of view, one can notice that the principle of justice seems to be identical to all individuals at ideonomic level, whereas at socionomic level justice is “distorted” (i.e. subjectively interpreted) by every individual according to his/her interests, needs and aspirations. This phenomenon requires the intervention of legal norms through which a rational, impersonal approach to social behaviour is created. At the same time, social justice requires the existence of “human” justice, meaning that any time the exercise of a right contradicts the humanity of the right *summum jus, summa injuria*, the socionomic principle of equity should intervene. Naturally, social justice is meant to promote “ethical” justice in a Kantian manner, so that the positive legal norms would guarantee justice and equity. This

criterion of checking the validity of law through morality has revealed its sociogenic dimension ever since antique times: *lex injusta non est lex*. According to J. Rawles, the fervent supporter of civic disobedience, authority lies within us in order to tell us what to do, rather than outside us, to tell us the same thing. The Rawlesian statement remains valid only at ideonomic level for, socionomically, justice is accomplished (or not) as justice in a form which is specific for a politocratic system, even if moral principles do not change.

Jusnomia deals with the aptitude of politocracy to guarantee the correct application of legal principles regarding equality between the members of the collectivity in administering justice. If, from a politonomic perspective, *the presumption of innocence* must not be proved, because it is formalized by politocracy as a legal norm, then from an ideonomic point of view, this presumption is false as long as no court passed a final and irrevocable sentence in this matter as to all the individuals. From an ideonomic perspective, both the *presumption of innocence* and *the presumption of guilt* are fair (rational), which means that the application of either of the two principles is unfair and justice cannot be unfair.

The statement that all people are guilty until the contrary is proved cannot be regarded as an absolute truth since it is not possible to empirically check this argument. The wish to promote social justice as a political desideratum led to the creation of legal principles which are socionomically unjust – see the statement: *a legal system which does not punish all the guilty persons is more correct than a legal system which punishes all innocent persons*. If ideonomically we cannot justify why one hypothesis is just and the other one is not, it means that another criterion must be applied instead of the logical one in order to justify the application of one of them as a legal principle; only one criterion can be applied and that is the politonomic one. *Exempli gratia*, the presumption of innocence is applied in democratic systems, whereas in totalitarian systems the presumption of guilt principle is applied instead.

Taking Aristotle's statement – according to which justice belongs to the judge – as a starting point, *jurisprudence* has striven to argue the judge's right to make the law. If ideonomically the law expresses the will of the majority that adopted it, socionomically the law follows its own destiny, including through the judges that apply the law as a necessity (not always properly) in conformity with the principles of justice. This sociogenic dimension of justice derives from the judge's interpretation, who appreciates not only its manner of application, but also the consequences of applying the law. Ideonomically, jurisprudence does not have the law as a final goal, but justice seen as social justice to the extent to which it interprets and applies justice in the same way, in all socially similar cases. Although ideonomically it is recognized as the judicial precedent by most legal systems, still jurisprudence does not have the same socionomic value: in the Roman-Germanic system of law, jurisprudence is not recognized as a source of law, while in the Anglo-Saxon system, the judicial precedent is an important source of law. This means that justice, as an institution of social justice, depends on politonomic factors, first of all on the political principles of the legal system, thanks to which politocracy recognizes (or not) either to the judge or to the law, the authority to make the law. Thus, the Rousseauian conception as to the judge who is obliged to observe the text of the law cannot explain justice as fairness at least at ideonomic level, on the one hand because the laws are unfair and on the other hand because the manner in which laws are applied is often unfair.

Jusnomia as social justice is useful firstly because it has ideonomic value for justice and secondly because through positive law it configures a certain type of juridical system which is

necessary and sufficient for maintaining the political status quo. Furthermore, social justice acts as a jusnomia function because on the one hand it defends the political system norms and principles, while on the other hand it defines and protects the legal system norms and principles. This pragmatic function of social justice is developed in a far-fetched manner in American ideonomy which states that individual rights and freedoms have to be above the law. The capacity of justice to be pragmatical and to accomplish social justice as sociality of justice depends on its capacity to apply the law to the benefit of the individual or to the benefit of social welfare which does not contradict individual welfare. Social justice has never been a simple act of applying the law, but an act of *understanding, interpreting and valuing* legal principles; a mechanical application would be much easier and faster to accomplish through the computers. From an ideonomic point of view, the theory can also be argued thanks to the fact that pragmatism recognizes the supremacy of justice and it gives nomocracy free leeway to act and restore justice through the force of positive law. Nomocracy – through the force of positive law – ensures the application of the principle of diversity since each juridical situation is unique and it has a unique solution. Nomocracy, through the force of reason, allows the judge to depart from the previous legal paragraphs in order to have a clear perception of justice in every case which is judged. Finally, nomocracy – through the force of the justice ideal – is above justice and, unfortunately, above social reality as long as it is not accepted and / or guaranteed by politocracy as jusnomic value.

The theory of justice is contested ideonomically by the *communitarian* doctrine which denies both the concept of “asocial” individualism and the universalist character of the Rawlsian theory of justice. For communitarians the limitation of certain rights is justified only if it ensures the fulfillment of other rights which are more important for the society than for the individual.

The individual is not in the position of a single “I” (*unencumbered self*) who must be placed within the social system, but in the position of the individual for whom society must recognize political equality. Communitarianism places itself in the sphere of ideonomy because it defines the human being as an “I” that is anchored in a certain tradition and according to this tradition he/she can obtain certain attributes and acquire a personal identity. Political phenomenology of law cannot accept the neutral character of justice not even through an ideonomic perspective for there are several communities which have different normative systems and, thus, more “spheres of justice”. Moreover, from a socioeconomic perspective, any theory regarding justice must be founded on the nature of every community, on the principle of a complex, differential form of justice so that the non-recognition of different legal systems would not lead to social injustice. Finally, from a politonomic point of view the political regime is not only a condition for the justice ensured by the system, but also a defence instrument for the legal system. Politocracy which ignores justice in all legal spheres leads to tyranny; only politocracy which admits that the principle of justice is diverse (complex) can ensure social justice (obviously within the limits of a community). Political systems must assume responsibility for the manner in which justice is accomplished at the level of community for three reasons: in order to ensure the development of the individual from an anthroponomic point of view; in order to ensure equity from a socioeconomic point of view and in order to ensure equality between citizens from a politonomic point of view.

3. Socionomic equity

Although fairness is an essential factor in ensuring social justice, fairness is not automatically accomplished as social equity, so that it is difficult (if not impossible) for politonomy to define (by a regulation) the concept of justice. Sociology of law has dealt with the ideal of justice *in extenso* and this has made it possible to know both the factors specific to the different forms of social organization and the institutions of law that influenced the evolution of social structures. Political phenomenology of law extends the field of justice beyond social organization, in the sphere of cultural, religious, spiritual systems, as well as in the peoples' civilization areas. If ideonomically speaking justice is defined as rational fairness, socionomically justice is defined as social justice (or equity) and it formally manifests as an application of the principle "equal treatment for equal persons". Social equity is an action principle of a form of justice that requires and defends a legal norm according to which the members of the same social category should be equal before the law. If we remained in the field of sociology, we should confine ourselves to offer the explanation that law has the role to establish the individuals who belong to the equal social categories according to certain pre-established criteria. This approach cannot explain who establishes the non-legal criteria of law and why these criteria are established, why certain criteria are preferred to other ones and why equity must be distributed (since inequity would increase the number of the content ones). In this respect, it has been stated that people prefer to be less free if they are equal than to be free but unequal. Mechanical application of legal provisions to all social categories can generate serious acts of inequity which are not allowed in a rule of law state and this is in fact the explanation regarding the impossibility to apply the same norm to different persons or situations. Thus, it is necessary to make use of ideonomy for explaining the fact that law formally defends equity as a principle of rational and not social justice. It is known that Roman solicitors used the sintagm *aequitatis* for defining the neutral (impartial) character of the legal norm. From a socionomic perspective, equity is not neutral, however, first of all because equity depends on the type and nature of justice and secondly because it depends on the manner in which justice is accomplished as *aequitas in actu*. Thus, for ideal justice to become social justice, equity must be set up either by the law maker, who can alter the legal norm in a positive way so that justice is accomplished, or by the judge who can construe the legal norm in order to produce legal effects that lead to accomplishing fairness.

Justice must lead to the accomplishment of social equity in order to settle the conflict between *fairness as reason* (in an ideonomic perspective) and *fairness as equity* (in a socionomic perspective) taking the ambivalence of human nature – split between the wish to find the truth and the wish to have the power – as a starting point. If we accept the premise that social justice is a goal for political activity, we come to the conclusion that social justice must be placed at the foundation of the legal system in order to guarantee **social equity**, or, in other words, in order to accomplish its sociogenic function.

Consequently, the concept of social equity is of concern for the phenomenology of law because it reflects a legal system according to which society is organized and functions to the benefit of all or, in other words, in a fair way (equitably).

If from a socio-economic point of view, social equity is a fundamental principle of justice, politically justice must represent the foundation of social equity. Demo-equity or social equity is a legitimate principle of socio-economic coherence because it ensures social justice.

Socio-economic equity is based on a *distributive* form of justice, which was depicted even during ancient times by Aristotle, because it is ideologically founded on the principle of proportionality, according to which each individual has the right to get what he is entitled to. J.J. Rousseau tried to found distributive justice from a socio-economic perspective as well, stating that it is unfair for several persons to oversaturate and enjoy the abundant goods they have at their disposal, while the hungry masses are deprived of the bare necessities. If at socio-economic level, social equity implies the obligation of sociocracy to *redistribute* goods and services that are necessary for the community, at political level, we identify the obligation to guarantee the services accomplished by justice through the existing legal institutions. In this respect, the assurance of social equity is an obligation for political power as long as justice is the defining function of the juridical power (system). According to legal phenomenology, an equitable legal system ensures a proportional distribution of social goods according to certain ideological criteria (the copyright), as well as socio-economic criteria (the right to property) or anthropological or political criteria (the right to private life, respectively the right to have a public authority position). It is logical for *absolute* liberalism to assimilate social justice with the guarantees that polity offers as to individual freedom, private property and market economy, because they generate welfare and without welfare nothing could be redistributed. The moderate doctrine of liberalism, *fabianism*, must also be mentioned, for fabianism considers that social justice is possible in a market economy only if the state legally regulates the redistribution of the welfare to the benefit of all individuals.

According to the phenomenology of law, the principle of distributivity which ensures social equity is absolutely necessary for justifying the concept of justice from a political point of view. *Distributivity* per se does not ensure the accomplishment of justice in any way, as well as justice, without distributivity, does not ensure in any way social equity. Starting with Aristotle, justice has been correlated with distributivity in the form of a relation established between the state and the individual, meaning that any person is entitled to demand and to be offered by the state in proportion to his/her rank, merit and contribution. According to the phenomenology of law, distributive justice defines the equity of distributing the social income to the population in order to ensure a minimum welfare for every individual by legal means. Ideologically, the principles of distributive justice configure a certain model of social justice which can be practically accomplished by applying certain technical and legal instruments and/or procedures. Consequently, from an ideological point of view, one can imagine a normative system based on the principle of equalizing all the incomes of the population. From a socio-economic point of view, one can create a legal system which favors the deprived persons by applying special social protection norms; in such a case, one would face the paradox of founding the system of equity on inequitable means. In a restrictive way, polity can assimilate social equity with the individuals' freedom and/or economic equality according to the classical liberal principle of *laissez faire-laissez passer*. According to the phenomenology of law, distributive justice can be defined only politically because, on the one hand, equity has social value and, on the other hand, because legal institutions issue political norms and principles. Thus, jusnomia reveals the usefulness of social justice first of all because it imagines

a legal ideal of justice, secondly because it legally organizes equity institutions and thirdly because it legally guarantees the distribution of justice through the legal system.

Jusnomia deals with social justice from a phenomenological perspective and it depicts it as a form of *horizontal equity*, because justice applies technical and legal norms that are necessary for ensuring an equal legal treatment to politically equal persons. If we do not remain strictly at an ideonomic level, we can consider that horizontal equity is a form of distributive justice because it implements legal principles that are set forth by politocracy in order to legally regulate the citizens' duties. From a socionomic perspective, however, horizontal equity is a form of *procedural justice* because it implements legal principles which are set forth by politocracy and by which legal obligations of the state (public authorities) to the citizens are provided. Phenomenology of law reveals the fact that social justice is accomplished as a form of *vertical equity*, meaning that it reflects the legal norms and principles according to which politocracy has the obligation to redistribute national wealth to the deprived citizens. Thus, social equity appears, *in essentia*, as a politonomic concept because it expresses the policy of equality as political equality; in fact, no reasonable legal system could justify equity at social level, by applying unfair norms at individual level. Any time an act of inequity could not be legally validated, it was politically justified by the necessity of maintaining social equality, *e.g.* by applying a progressive system of taxation for the income, which would allow the redistribution of wealth to the deprived citizens.

Social equity, as a jusnomia expression of justice, is accomplished in a *procedural way* by a set of jurisdictions according to which the state exercises the obligation to correctly distribute resources, goods or public interest values to all the beneficiaries of a certain public policy. According to the manner of regulating redistribution, procedural justice is defined differently. If the legal regulation is based on the universalist concept of justice, according to which equal citizens have equal rights, we come to the conclusion that justice only has the obligation to ensure an equal treatment of the citizens. If social equity is legally based on the principle of selective benefits, we come to the conclusion that justice can be accomplished by dealing with every individual according to several specific circumstances, on the basis of well defined and relevant criteria. If justice is regarded as a manner of treating a person according to his/her needs, justice obviously becomes a sort of personalized social service. That is why the phenomenology of law makes a distinction between the politonomic approach of equity, which refers to the teleology of the legal system (seen as a final goal of politics) and the socionomic approach of equity, which refers to the legal norms and procedures that lead to the accomplishment of justice (seen as a final goal of law). Phenomenology proves that political principles existed in all the legal systems which helped social equity accomplish and prevail over other principles; it is well known that when politocracy imposed state property, all legal norms and procedures were (re)structured according to this principle and, vice versa, when the political system allowed private property, legal institutions were restructured. These political phenomena lead us to conclude that the jusnomia function of social justice is always accomplished through norms and/or institutions that have a political character because they are more permissive in rule of the law states and, on the other hand, more oppressive, in totalitarian states.

Political phenomenology of law must also solve the problem regarding the ambiguity of the concepts used for defining social equity; if ideonomically one can consider both the premise

that *people are equal* and the premise that *society is equitable* to be true, it is often wrongly assumed that justice ensures equity as equality between people. We should also remember Pareto who underlined the fact that man is engaged in social (not rational) relations independently of his will, which means that the second assumption in the previous reasoning is false, that is to say that *society is not fair* and, in conclusion, justice does not express social equity. On the other hand, in order to accomplish social equity, justice must benefit from legal security and stability of the legal system, as well as of the guarantees that this system offers. However, phenomenology of law has pointed out that social equity cannot be accomplished if legal security is unstable. First of all, legal security is (anthroponomically) threatened by the modification of individual behaviours and of deflative behavior that break legal order. Secondly, legal security is (socioeconomically) instable because of the incoherence or contradictions existing between norms and legal institutions. Finally, (from a politonomical point of view) legal security mostly depends on the stability of the legal system because the latter is supposed to juridically formalize the modifications brought to the political system.

In order to be *de facto* accomplished, social equity must be ideonomically present in the content of public policies and socioeconomically - in the institutions organized in order to settle social inequity. From a phenomenological point of view, we can notice that the applications of law are more and more in favour of a form of social equity which has an *extranormative character*, that is to say of a type of justice which does not have a legal nature. This type of *non-legal* justice is accomplished by means of social institutions which are organized as collective inventories, as enterprises which generate public services, as communication associations or as social structures which control the way public funds are used. For the phenomenology of law, this type of social justice is important because innovative forms of social equity (as a form of non-legal justice) point out a unique political phenomenon which is determined by the increasing role of social institutions in delivering justice. Secondly, one can notice that modifications have been brought to the structure of administrative authorities in order to accomplish social justice in conformity with the desired political principles between the state and the citizens. Politocracy, which - as an organization - includes public institutions and authorities, sets up the legally "useful" norms in delivering social equity. The utilitarianism of the technical and legal procedures used for delivering justice is primarily necessary for politocracy as a form of self-protection and secondly for sociocracy as a form of accommodation. These are the reasons why legal institutions within the political system are the most unstable: ideonomically they permanently modify public decisions and policies; socioeconomically, they are permanently restructured and reorganized; politonomically, they are instruments for applying political decisions. According to politocracy, the way in which public authorities and institutions deliver justice is totally indifferent as long as they accomplish their mission to maintain social equity at an acceptable level. That is why politocracy institutionalizes different types of non-state structures which are meant to accomplish a form of equity in a limited segment of society; *equity institutions* such as the public-private partnership, the institutionalized participation of citizens in elaborating public policies and non-governmental organizations that manifest mutual concern for implementing social programmes are illustrative examples in this respect. The balance of powers is important to politocracy because, on the one hand, inequity existing in the relation between powers is reflected by the type of institutions which accomplish justice (the legislative, the executive or the judiciary), and, on the other hand, because this inequity points

out that justice is politically (not juridically) regulated. Political phenomenology of law aims to bring into evidence the political consequences generated by the appearance and deterioration of certain “inequitable” relations between powers which affect justice because, on the one hand, they make it less credible and, on the other hand, they lead to the setting up of certain *supra-equity* institutions which have a colleague-like character and intervene in order to regulate the balance of powers.

Phenomenology of law reveals a significant expansion of the normative institutions which are necessary for accomplishing justice as social equity: the complexity of social relations led to the institutionalization of new social regulation structures; social services offered by state institutions for the citizens require certain normative corrections which, in turn, require special juridical application; the enactment of social policies requires juridical techniques in order to be implemented. Legal security is a guarantee for the accomplishment of the jusnomia function of social justice because it ensures stability, security and protection for the citizens. The conceptual framework of ideonomy is insufficient for accomplishing justice and, thus, legal security must be doubled by social security. Demo-equity – based on social security – is accomplished through a more and more complex system of normative, legal and non-legal institutions, which are more and more numerous and justice-oriented. Ideonomically, demo-equity is the most expanded social form for defending human dignity because by applying the principle of legal security, every individual’s fundamental rights and freedoms are protected. From a socio-economic point of view, demo-equity is a form of social security due to the fact that social justice is ensured by the institutionalized protection of the individual from different social risks. If we take into consideration the correctness or equity of social protection forms, we enter the sphere of politonomics because the principles of organization and functioning are set up by politocracy. A proof in this respect is represented by the fact that politocracy promotes the *flexisecurity* policy as a principle of social equity through the legal institutionalization of the negotiation procedures between employees and employers as to the work, payment, social security procedures. Consequently, if we analyse the correlation between politonomics and social security, we notice that equity does not simply express the correctness of social policies but also the correctness of the way the social security system functions; in other words, social security is a condition for maintaining the political *status quo* as long as the political system considers that social security is useful.

Although politocracy does not generate justice, it organizes the legal system on the basis of the legal institutions and jurisdictions that are meant to eliminate the undesirable norms and impose politically accepted principles and values. Furthermore, the form of political organization also generates the type of legal autonomy either by the power conferred to a supreme authority (the Anglo-Saxon model) or by the legal authority assigned to a technical field (the French model). In its turn, jurisdiction – as an instrument used for accomplishing justice – can be analysed from three different perspectives. From an ideonomic point of view, jurisdiction ensures equity if it expresses the correspondence between the legally institutionalized norms and values and the principles of fairness and impartiality of justice. From a socio-economic perspective, jurisdiction ensures equity if it applies justice as an institution meant to deliver justice within the given social and economic system. Finally, justice ensures equity from a political point of view if and only if politocracy institutionalizes fairness. From a

phenomenological perspective, however, one can notice that a congruence of these three elements has never and nowhere existed.

Social equity can exist if and only if the legal system ideonomically is fair and if it is socionomically and politonomically equitable. Since no legal system is perfect, social equity which cannot be ensured by the law is ensured by the judge. Ideonomically, the creative role of the judge is ensured by the fact that theoretically it builds a juridical situation in which the legal norm can be applied and by the fact that it construes the legal norm so that the latter corresponds to the given situation. Socionomically, the interpretation of the legal norm can be verified by the judge on several jurisdiction levels to finally become a legal truth. Finally, from a politonomic point of view, a decision adopted by the judiciary, by which a legal norm is interpreted, is a decision which expresses a certain political truth since it regulates a social relation. For a real demo-equity to exist one has to take into consideration J.J. Rousseau's warnings which remain true at present; he considered that the fusion between the judiciary and the executive is dangerous because it could transform the judge into a tyrant. *Mutatis mutandis*, phenomenology of law states that the danger exists at politonomic level as long as the lawmaker – as a political force – has the right to impose his own social equity principles by normative acts. At least by *authentically* interpreting the legal norm the lawmaker can modify the principles that are necessary for accomplishing demo-equity and the way demo-equity is accomplished. All these legal actions prove that demo-equity is a fundamental factor for sociogony and a political principle of democracy.

4. Politonomic correctness

When we deal with social justice, we must take into account the fact that there is no relation of equivalence between *justice* and *correctness* not even from an ideonomic point of view. Social justice defines the correctness of the relations existing between society members from a socionomic point of view contrary to political correctness which defines the distribution of power between society members from a politonomic point of view. A law of social equity should define political correctness deontonomically as equality of individuals before justice (as participation in justice distribution). That is why social inequity generates conflicts as to justice ideonomy first of all; sociocracy supports an inequitable correctness, while politocracy tries to impose an equitable inequality. Socionomically, this conflict generates a paradox of justice; on the one hand, sociocracy tries to avoid legal norms in order to accomplish its own social justice; on the other hand, politocracy defends legal norms in order to perpetuate injustice. In the history of law there are numerous examples in which politocracy has imposed its own "justice" system breaking the law; but a contrary situation has never occurred. If we accepted the Pascalian paradox according to which justice is possible exactly because injustice is characteristic of man, we should re-embrace the idea according to which justice transcends society and thus we would find ourselves at a dead-end because, in consequence, equity institutions should be set up on other principles but not on justice.

Ideonomically, correctness is a *norm*, a supra-empirical behaviour (meaning that it is determined strictly in a rational way); this is contrary to the correctness of justice which is a political obligation, a *pseudo-norm* which can be checked empirically. In consequence, justice as political correctness must be accomplished by norms which are juridically institutionalized and

which imply both equity and the right to have access to equity. In the first instance, *equity* has socio-economic significance for it refers to the individual's equality of rights; as far as *access to equity* is concerned, it has politico-economic significance because the political system sets up the norms regarding access to justice (for example, only for the citizens of a state). Compatibility between the socio-economic character of right and the politico-economic dimension of these rights reveals the correctness of social justice. Social justice is politico-economically correct any time the legal system imposes the social ideal at political level and political equality at social level. Phenomenology of law reveals that any time an ideal of justice is in contradiction with a political system, the legal order has to be replaced exactly because the ideal of justice is unchangeable. Politocracy states that the correctness of justice is a form of impersonal justice, whereas sociocracy states that the correctness of justice is a way of doing justice to a certain individual.

If social justice is an apprehension of fairness, political correctness requires that justice should be accomplished not only ideologically, (conceptually), but also socio-economically (in a real way). Consequently, for justice not to remain an ideological principle, it is important for it to be enforced by norms, principles and procedures – however, these norms, principles and procedures depend on the lawmaker's policy (or the political lawmaker). J.J. Rousseau drew the attention to the fact that politocracy and democracy of justice are two different things; first of all, because legal norms adopted by the lawmakers do not reflect the people's will; secondly, because the way social relations are regulated is inequitable (the governors and the governed are treated differently); and last but not least because judges' acts (of legal enforcement) are inequitable. In consequence, from an ideological point of view, social justice cannot lead to a distribution of justice between individuals unless justice is regulated and guaranteed at politico-economic level. Discrepancy between the ideal of justice and the practice of justice is not reflected only in the denial of the way justice is distributed, but also as to the perception of justice as a temple of fairness. The theory of natural law could not settle the contradictions which exist in the sphere of social (in) justice through the antinomy between *freedom and equality* and this has determined juridical positivism to implement the relation social *facts-value* in the legal system.

Continuing to develop the Weberian doctrine, juridical positivism states that only through the knowledge of justice individuals can reach justice so that once the ideological stage is covered, the politico-economic stage can also be reached. Thus, justice which aims to find fairness must be politically supported since it aims to accomplish social equity. To politocracy, justice ensures social equity not matter the way in which justice is accomplished by juridical or non-judicial institutions. The *institution of mediation* accomplishes a form of social justice through the agency of extra-judicial means but it brings about the problem of political correctness regarding the adopted solutions. It is obvious that politico-economically a solution which was adopted by both parties consent cannot have a state character but a private one, which means that the state recognizes the possibility of parallel justice. Furthermore, *mediation* as a form of parallel justice in relation to state justice brings about the problem of social correctness regarding the settlement of conflicts by the mediators who are not magistrates and by making use of non-judicial means and procedures. Since it is difficult to distinguish between the social correctness of mediation and the juridical correctness of settling a conflict, one must accept the

fact that the only possible criterion remains the politonomic one, i.e. the criterion concerning the social utility of the mediation act.

The fairness of justice does not only refer to a person's right to bring a case before a court, but also to that person's right to have an *equitable* trial. Although the sintagm seems to be redundant, one has to distinguish between justice as ideonomy (an ideal system which ensures fundamental rights and freedoms) and justice as politonomy (a system which guarantees the individuals' *political equality*). Phenomenology of law reveals that access to justice does not involve access to all the procedural means by which justice is accomplished; setting up the rules for judging the trial and regulating the ordinary and extraordinary ways of attack are exclusively the competence of the lawmaker, a representative institution for politocracy. Thus, according to the phenomenology of law, politocracy should guarantee not only the right to have access to justice, but also the right to benefit from the services offered by justice, as well as the right to enjoy a fair judgement. From a socionomic point of view, correctness, celerity and publicity can ensure the fairness of a trial but they cannot ensure the accomplishment of justice if politonomically the right to a trial would not be guaranteed. Naturally, the sintagm *fair trial* seems tautological from an ideonomic point of view because, in definition, any trial should ensure the correct administration of the evidence, equal treatment in observing the parties' rights, the judge's impartiality, as well as the other conditions imposed by the legal system. Consequently, the notion of *fair trial* is created by politonomy in the meaning that the trial is possible in a political system because politocracy ensures the fairness of a trial thanks to certain legal institutions. In its turn, the right to equitable justice has a politonomic character because it necessarily implies the right to a fair trial. Ideonomically, one can imagine equitable justice outside a trial; politonomically, the fair trial ensures the preeminence of law thanks to the political importance that equitable justice has in a democratic society.

From an ideonomic point of view, jurisprudence promotes the idea of correctness of law and it materializes through the lawyers' effort to promote the principles of an ideal equity and fairness; jurisprudence only reveals the ideonomic dimension of law whereas juridical order reveals the socionomic character of law. According to the phenomenology of law justice has ideonomically determined the course of history through the decisions passed by tribunals in decisive moments in a society, especially when politocracy faced social injustice. Jurisprudence has been deeply influenced by political trials or perhaps we should say that law has been influenced by the politization of justice. If demo-equity (correctness) seen as a form of political justice exists, we should praise the magistrates who administered this type of justice. Jurisprudence proves that law is, at the same time, the instrument and the effect of the confrontation between politocracy and nomocracy; that is why, when the evolution of society surpasses legal institutions, jurisprudence adapts itself to reality before the legal order is modified in order to safeguard justice. Although the adaptation of jurisprudence to social reality is socionomically correct, politonomically it is unfair because it breaks legal order. The problem of political correctness exists also for the cases in which law does not foresee all the possible situations, while jurisprudence intervenes in order to accomplish social justice and to find the correspondence between the given facts and legislation. The fairness of justice is also a problem for the phenomenology of law as to the cases in which jurisprudence is, in its turn, surpassed by the permanent modifications of legislation.

Social justice obviously has a jusnomia effect because it is accomplished through legal institutions which regulate the relations between persons in order to set up and maintain a form of "equitable" social order. Phenomenology of law is particularly interested in the problem of social equity which it regards as a relation between politics and justice. First of all, from an ideonomic point of view, social justice distinguishes itself from social equity because justice means freedom of the act of justice, while equity is fairness in the manifestation of freedom. Secondly, from a socioeconomic point of view, social justice is an institution which must distribute equity in a social system which institutionalizes inequity at socio economic level between the favored ones and the deprived ones. Thirdly, from a politonomic point of view, social justice should ensure equality as a principle of political correctness since politocracy institutionalizes inequality between the governants and the governed ones. Phenomenologically, social justice – as a system of maintaining (guaranteeing) political equality – would be possible *if and only if* politocracy would not intervene before or after the act of justice is accomplished, i.e., in fact, a recognition of the judicial power by the political power. In other words, social justice seen as equality between individuals, can be accomplished only if it is supported politonomically by a political security norm which should guarantee the obligation of politocracy to observe the law even when the law refers to itself. As regards the political correctness of justice, it is important to appreciate the popular character or, on the contrary, the unpopular character of justice, depending on the way in which it produces equitable or inequitable social effects. Consequently, equality as a principle of social justice is ideonomically correct but it lacks politonomic value as long as it does not materialize itself in the act of justice. We can add to the theory regarding the political correctness of justice Alexis de Tocqueville's statement according to which democracy depends on the way in which politocracy manages to conciliate the spirit of equality with the spirit of freedom.

Political phenomenology of law must take into account a series of forms of *communitarian justice*, which are socially institutionalized and different from state justice, as well as from private law understood as an eye for an eye law. From an ideonomic point of view, communitarian justice defines the administration of justice for the acts that endanger the existence of a community or of its political leaders through a jurisdiction that is silently agreed upon by the citizens and the state. From a socioeconomic point of view, communitarian justice deals with social offences which are seen as an effect of interpersonal relations and/or of social interconditioning and it functions as a social institution that is meant to repair the evil that was brought and to rebuild the relations that were aggrieved in the community. This type of justice distribution known as *communitarian justice* involves social institutions, norms and mediation procedures, forms of negotiation, extra-judicial agreements and even the award of rewards to the victims. As to political correctness, one should explain that the state recognizes communitarian justice and, if the community cannot accomplish this form of justice, it can make use of state justice.

For the phenomenology of law, the politonomic significance of communitarian justice is particularly important because it involves both the state and the community in the act of accomplishing justice. The phenomenon is basically political because the communitarian legal system implies a transfer of the judicial authority from the public sphere to the private one. Communitarian justice tries to reconcile the individual's freedom with the juridical normativity at ideonomic level, while at socioeconomic level, it attempts to make "natural" rights

agree with social confinements. In this respect, communitarian justice is useful both for the inner social structures of the individual and for the institutionalized social state structures. Politocracy obviously prefers the transfer of the act of justice from the state level to the local community level for it diminishes the state responsibility to ensure social equity.

The phenomenological approach of law involves the problem of political correctness as to the *restaurating justice*, which is seen as a way of accomplishing justice by non-legal institutions through the direct participation of the conflictual parties and the state representatives or/and of the local community in order to find a solution to repair the prejudice caused by an illicit act. The socioeconomic aim of restaurating justice implies the recovery and/or the healing of the victims, the improvement of the relations between the victim and the offender, as well as making the offenders responsible for rebuilding the broken relations in the community. Naturally, the restoration justice has a political significance if the judicial initiative is approved by the public authorities for involving the offender in rebuilding, compensating and re-establishing the material, social or psychological situation of the victim, as a consequence of the evil perpetrated by the illicit act. From the point of view of political phenomenology of law, the restoration of justice attempts to rebuild the social relations that were aggrieved by the committed offence and it recognizes the fact that justice must satisfy the needs and responsibilities of all the involved parties: victims, offenders and community.

Political correctness of justice is an object of dispute whenever the conflict between *law*, seen as an amount of institutions which reflect a form of transcendent justice, and *politics*, seen as a set of institutions, must be settled. Ideologically, there is no difference between political justice and other types of justice since the principles of equity, justice and impartiality are identical. Sociologically, one can accept *lato sensu* that legal stability is guaranteed (ensured) by the ephemerality of social equity principles. Politologically, the stability of justice reflects the capacity of politocracy to self-perpetuate so that demo-equity depends more on political (correctness) *fairness* than on *social justice*. If we accepted the existence of a type of *political justice*, we should accept that there are more forms of correctness in law: one that is applicable to political persons (members of Parliament, ministers etc.) and another one that is applicable to non-political persons, but this is illogical. Even if we adopted the criterion according to which crime has a political character, one could not justify a form of *political justice* as long as *lato sensu* all crimes against social order have a political character. Finally, political correctness (as well as political incorrectness) of justice can be analyzed by the way in which it exercises the control function when the governants are responsible for power abuses or when, on the contrary, the governants are defended in front of the attacks generated by those who oppose power.

5. Conclusions

This article is part of a more complex research work, which deals with the political fundamentals of law (isonomy and sociology) and the political principles of law (jusnomia, politonomy and politocracy). By deciphering the juridical mechanisms which can ensure a correct governing or a rational government, the political activity performed by those who govern may be modified.

References

- Buche, H. (1962). La nature des principes generaux du droit. *Revue de Droit International et de Droit Compare*, No.2, 46-56
- Hayek, A. (1982). *Law, Legislation and Liberty*. London: Routledge & Kegan Paul, vol. II
- Hegel, G.W.F. (1969). *Principiile filozofiei dreptului*. Bucharest: Publishing House Academiei
- Kelsen, H. (1962). *Theorie pure du droit*, Paris: Dalloz
- Nozick, R. (1997). *Anarhie, Stat și Utopie*. Bucharest: Humanitas Publishing House
- Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press
- Vecchio, G. (1995). *Lecții de filosofie juridică*, Bucharest: Europa Nova Publishing House