

# Philosophical and Legal Basis of Territorial Self-Governance

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## Abstract

*The subject of the article are selected philosophical and fundamental legal (i.e., systemic and constitutional, foundations of self-governance and local democracy). The authors present a general concept and the most important pragmatic function of democracy. The subject of the analysis is also the legal principle of self-governance as a systemic postulate of the democratic state ruled by law. The theoretical inspiration for the deliberations on decentralization and local democracy are the philosophical and political concepts of Ostrom and the philosophical classics: Hobbes, Montesquieu, and de Tocqueville. Self-governance and democracy, also considered from the point of view of their merits and disadvantages, have been included as a counterweight to centralism and monocentric democracy carrying a number of threats to freedom. In order to illustrate general arguments based on the method of analysis of normative and philosophical texts, the authors also use the example of American local democracy; it was chosen as a form of self-governance and local democracy in a modern sense, yet the oldest one and very well-functioning in practice. In the conclusions, the authors state what territorial self-governance is and what role it plays in the democratic system. They also emphasize that territorial self-governance, through actual decentralization of public authority, ensures democracy and secures against the transformation of monocentric democracy into a dangerous oligarchy.*

**Keywords:** decentralization, self-governance, local democracy, political community, Ostrom, Hobbes

**JEL:** H7, H83, K19, R50

## The concept and function of democracy

Democracy is a political system whose historical origins date back to the turn of the 6th and 5th centuries BC. At that time, democracy was based on direct rule of the majority (in Athens, the so-called Athenian democracy), and (in republican Rome) as a system in which power was divided between plebeian assemblies, the senate and officials (polyarchy). It should be noted that among the ancient Greeks the elite conception of power was widespread, for which the counterbalance in the form of the doctrine of political equality was developed only by the sophists (Protagoras was the first to create the theoretical foundation of participatory democracy) (Gray 1995, 4). The term “democracy,” meaning “rule by people,” is most often used today when the “people,” (i.e., society, chooses their representatives to exercise governance on its behalf). Therefore, it is not society that “governs,” but what — semantics indicate — the “government” does. Historically, democracy is an element of the European cultural identity; nowadays, in the pragmatic sphere, as Kołakowski described it: “Democracy is a tool channeling interpersonal conflicts and enabling them to be solved — sometimes even to be erased, sometimes weakened — without using violence” (Kołakowski 2003, 290; translation mine).

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In the Western world, democracy is considered as the most perfect political system, guaranteeing the continuity of human civilization with all its key achievements. Such a conviction seems reasonable only with the assumption that the participation of individuals in governance is not only about voting in elections, but also that each of them can have significant, actual participation in exercising power. The full definition of a democratic system of power cannot be limited to describing actions of the government; to be adequate, it is necessary for such a definition to determine what every person, a member of a given community can do to truly participate in exercising power.

Therefore, in the concept of democracy, with the criterion of the extent of the citizens' participation in the exercise of power, direct democracy and indirect (representative) democracy should be distinguished. Although, in the historical sense, direct democracy was first, today, representative democracy is of fundamental importance, which, however, should be supplemented or supported by forms of social participation. There are certain advantages and disadvantages to be attributed to both forms of democracy. As Sartori points out, the advantage of representative democracy results from the fact that the foundation of its decisions in disputable matters is a compromise. On the other hand, within the framework of direct democracy, debate of the decision-makers is not possible, the decision is made only "for" or "against" (Doliwa 2014; Sartori 1994, 112ff.).

## 1 Democratic society

Democratic society is one whose members are fully aware of the role they can play in it, as they represent a certain civic model of thinking about state institutions and in a certain way they relate to each other; interpersonal relations have a specific form here, they are based on solidarity and a sense of community. The principles of self-organization and self-governance are today an indispensable element of the definition of democracy.

One of the greatest work addressing democratic society and the role of self-governance in it is "Democracy in America" by de Tocqueville. Fascinated with America, the author notes that it was the United States that became the space of a great intellectual social experiment, where new ideas or ideas that were previously considered impossible to implement became successfully implemented. The basic feature of the social system of Americans is "striving towards the essence of democracy," what distinguishes them is equality, greater than in all other societies of the world. Tocqueville writes about their innate "passion of equality" (de Tocqueville 1998, 259). Analyzing the functioning of the American society, he distinguishes three types of factors affecting them: the first ones refer to environmental and economic conditions, the second group is laws—i.e., pragmatic rules for solving various problems by institutions, the third factor is human habits and customs, including ideas shaping the Americans' way of thinking (pages 270–272). The last factor, especially interpersonal relations based on reciprocal agreements, is considered by him the most important one determining the maintenance of democracy in the United States. In second place, when it comes to upholding the democratic system, the French author puts the American law (institutions), distinguishing among them the federal form of government, communal institutions, limiting despotism of the majority and simultaneously giving people "the taste of freedom and the art of being free" (Ostrom 1991, 12; 1997, 13ff.), and the specific organization of the judiciary, holding democracy in check and preventing its degeneration (Grodziski 1998, 202–203). As the least significant factor, he recognizes the special and unique situation in which the American people opted for Providence, so different from the situation of Europeans, plagued by wars and, at the same time, dreaming of imperial domination (Ostrom 1997, 15).

De Tocqueville, accustomed to the highly centralized system of the French administration, constantly holding the watch over society, when traveling through America, is struck by no visible signs of governance; the writer observes here the presence of written laws and the fact that they are commonly executed, but he does not recognize the sources of this state of affairs. He is fascinated by the fact that the hand controlling the social machine is invisible here, unlike on the old continent (de Tocqueville 1998, 263).

## 2 The foundations and essence of the political community according to Ostrom, Hobbes, and Montesquieu

Vincent Ostrom,<sup>1</sup> the author of a monograph devoted to the US federalism, admirer of the idea of decentralization, inspired by the reading of de Tocqueville's work, compares the theory of American federalism to the Copernican theory, appreciating its fundamental importance for the development of political theory (Ostrom 1991, 13). Examining the conceptual framework of federalism and the conditions necessary for the development of a self-governing society, Ostrom refers not only (many times) to de Tocqueville, but also to Hobbes, the creator of the first fully modern concept of the state. The juxtaposition of the considerations regarding decentralization with Hobbes' extremely centralistic conception may come as a surprise; Hobbes' concepts and logic of sovereign power are significantly different from the logic of the federal system of governance. In his analysis, however, Ostrom reaches deeply and sees the common roots of American federalism and Hobbes' theory of sovereign power (expressed, *inter alia*, in the way in which Americans express their mutual commitments, as they talk about their expectations of the future) (Ostrom 1991, 21). Hobbes' theory and ideas underlying the federal republic adopt common assumptions: on the essence and immutability of human nature, the condition of man in the hypothetical "state of nature" and conditions in which individuals organize themselves into a community.

Ostrom fully accepts the assumption underlying the political system of Hobbes; human communities are a product of people themselves, created by them and meeting the objectives set by them. At the same time, they are beings of a special kind—people act both as the subject and object, they are elements of the community and its creators. Ostrom also takes Hobbes' view on human nature: it is common to all people, regardless of the time and place in which they live. The common biological heritage determines the similarity of thoughts and desires, and all variability is generated by cultural heritage. Everyone has the ability, based on the analysis of their own experiences, to understand how others experience reality (Hobbes 1909, 9), even when it requires overcoming cultural limitations. Everyone can predict the consequences of various human decisions under specific, hypothetical conditions; anyone can analyze politics. Ostrom approves such attitude—recognizing a particular human being as the basic unit of analysis in social sciences—and calls it "methodological individualism" (Ostrom 1991, 32).

Ostrom, as Hobbes (Doliwa 2004), considers language a key factor in the formation of human communities—societies. Both thinkers regarded the emergence of language as a kind of catalyst for human potential, anticipating the widespread concept of contemporary linguistics according to which language has made us human, and we, through language, created our reality. Civilization, culture and art, as well as the state and law along with its institutions, are derivatives of the "invention" of language (Bickerton 2009; Ostrom 1997, 154–157).

In Hobbes' opinion, one of the common features of all people is the pursuit of ever-greater power that lasts as long as human life (Hobbes 1909, 75). Power means all manners possessed by a man enabling to achieve certain desirable goods. In the state of nature preceding the state, conflicting human aspirations inevitably lead to a conflict—to a war of all with everyone. Each of the fighting parties fights for their own good—there are no binding definitions of good and evil (page 98). Paradoxically, the struggle for good, happiness—freely defined—causes suffering; people are constantly exposed to the risk of a sudden death and loss of possessions. Without any reservations, the pursuit of only one's own good cannot lead to the creation of a community (Ostrom 1991, 34–35). Its creation only occurs when people speaking a common language and able to communicate, will satisfy the laws of nature—the commands of reason depriving man of war and ordering to strive for peace (Hobbes 1909, 121), the state in which the basic value—life—is guaranteed. The principles of peace formulated by Hobbes constitute the ground for creating various interpersonal relations (Kuniński 2010).

1. Vincent Ostrom (1919–2012), a descendant of Scandinavian immigrants, Professor of Political Science at Indiana University in Bloomington, co-founder of the *Workshop in Political Theory and Policy Analysis* operating there. He was particularly interested in social and political philosophy, and together with his wife Elinor (Nobel Prize in Economics 2009), he propagated institutional terms in social and humanitarian sciences, becoming the precursor of the institutional approach popular in the United States today.

However, Hobbes' laws of nature are not laws in the strict sense—they have no binding force, they are not secured by sanctions. In order for the laws of nature to obtain real power, equal and free entities enter into a social contract, voluntarily organizing themselves in the state and delegating the lion's share of their powers to the sovereign, giving it the power to safeguard universal observance of the laws of nature (which, henceforth, function as state laws). The whole of power is concentrated in the sovereign, symbolizing the unity of the state and the unity of law. The sovereign's word becomes binding law in the state, but the ruler himself is not bound by law; in Hobbes' system the discussion on the principles of law is excluded, and the arbitrarily designated legal order cannot be challenged. Hobbes' sovereign is an absolute ruler, who can abuse his power arbitrarily. According to Hobbes and Ostrom, the state arises as a result of the "Faustian compromise"; it serves individuals and the community, guarantees peace, but also limits freedom and creates a threat (the sovereign, before the law, can threaten citizens' lives) (Hobbes 1845, 127). Commenting on Hobbes, Ostrom observes that the relations between the represented and the representatives are characterized by a considerable asymmetry—they are a source of inequality between individuals, implied by the very notion of power and inscribed in it. The key issue to be borne in mind by the creators of political systems is the extent to which these inequalities can be limited.

The Hobbesian political theory, with the only source of sovereign power, presented as the only concept that guarantees stability and security of the state, assumes that only unified countries make sense. According to the philosopher, the state can take one of the three forms: the state can be a monarchy, aristocracy or democracy. Hobbes understands the latter as an assembly of all individuals wielding full power (Hobbes 1909, 131–132), where the rulers are at the same time subjects, and decisions are made by the majority, even if it is the minimal majority. Hobbes' concept assumes that the unity of the representative gives the state a unitary character, and ignores the essential—according to Ostrom—aspect of the unity of the represented (i.e., subjects). According to Ostrom, governing through the assembly requires understanding by all its members what the nature of "governing," as well as reaching a universal agreement on the rules of the assembly, two types of rules: firstly, the rules defining the functioning of the assembly (being of constitutional nature), secondly, the rules created by the assembly itself and regarding current affairs (it would be "normal" law regarding the rights and obligations of citizens) (Ostrom 1991, 41).

Direct democracy is associated with significant problems: firstly, their range is limited by the distance to cover when going to the assembly, and secondly—they tend to follow oligarchic tendencies. Each discussion assembly requires electing a chairman, directing its works and equipped with appropriate prerogatives. As the assembly grows, debate becomes less and less coherent and the chairman's powers grow larger; over time, he may exceed them and usurp power (Hobbes 1845, 130–142). Oligarchic tendencies proper to any direct democracy are paradoxical—they are contradictory to the intentions of its members and deny the convictions of those who perceive decision-making by the majority as a sufficient guarantee of maintaining a democratic system (Ostrom 1991, 43). Hobbes called the moment of taking over power by abusing chairmen the death of democracy; the latter lasts as long as the power of the assembly prevails (Hobbes 1845, 140–141). Hobbes regarded democracy as an inherently unstable system, and, therefore, he did not support it.

Problems related to the democratic form of governance were also noticed by Montesquieu: small democratic republics are exposed to attacks of larger neighbors, large ones—often subject to degeneration (Montesquieu 1957, 199). According to the French philosopher, confederations—a combination of small republics with a strength large enough to oppose a foreign aggressor—could be a solution. He emphasizes that the confederation is a form that retains all the advantages of small democracies, providing them with the same sanitation power – if in any of them abuse takes place, alternative government structures can solve the problem. The theory proposed by Montesquieu did not work in America—the Articles of Confederation, ratified by thirteen states in 1781, did not bring expected stabilization. Only the adoption of the United States Constitution of 1787 gave Americans the desired sense of security and opened the way to building a fully civil society (Grodziski 1998, 199–204). The American Constitution is the first legal act in which the general wording of "federalism" was included in relation to the system of autonomous centers of power. The widely accepted definition of this concept provides that it is a system in which power rests

at the same time in the hands of the national government and state governments; the power has a two-level character. Detailed definitions require that each level has at least one area in which it is independent, and that there is a guarantee of autonomy of each government in its own sphere (Ostrom 1991, 7). The term “federalism” itself derives from the Latin word “foedus” meaning “contract,” which facilitates a full understanding of its essence; the agreement is at the heart of American federalism, it is based on the “self-creation” of self-governing communities. This idea was first expressed in the New England municipal documents, then in state documents and constitutions, the Articles of Confederation and, finally, in the Constitution (Ostrom 1991, 57).

### 3 The American example of implementation of the idea of self-governance

The assumptions of the American constitution were presented by Hamilton, Madison and Jay, and Ostrom is its creative continuator. In *Federalist*, a collection of essays considered the first comment on the constitution of 17 September, they developed the Montesquieu idea of the tripartite authorities (practically known from the English constitutional system), paying particular attention to the mechanisms of balance and control between them, and complementing them with regulations regarding proper relations between the federal and state authorities (Kamiński 1994, 16; Madison 1977). *Federalist* also diagnoses the reasons for the Confederacy’s failure. Hamilton repeats after Hobbes that the idea of the government is inseparable from the laws that it legislates. The confederal assembly was not a government in the strict sense of the term—its resolutions were only recommendations for the member republics, it could not implement them on its own. When the federal quasi-government considered it appropriate to use sanctions against one of the republics, it had to apply them to all its citizens, not only to those found guilty or responsible. Hamilton emphasizes that this is contrary to the principles of justice; therefore, the idea of “government of governments” is unjust. The principles of justice can only be realized if the federal government and, at the same time, every center of power, can make decisions directly affecting individual citizens, express their aspirations and meet their needs (Ostrom 1991, 45).

In his political analysis, Hamilton uses a fundamental assumption: it is individuals who build order in their communities. The limited national government envisaged in the American constitution has jurisdiction over all US citizens, along with limited state governments ruling independently on their territory. Individual states have limited and, at the same time, independent prerogatives with regard to local authorities. The highest legislative act of the United States implements the principle called by Hamilton “the general theory of a limited Constitution”; restrictions on the powers of each authority must be anchored in the general system of constitutional law. The constitution appears here as a charter of rights in which the principles of functioning of each authority center are provided, and the rulers cannot change constitution provisions themselves (Ostrom 1991, 45–46).

The measure of the society’s maturity is the ability to govern based on the guarantees enshrined in the constitution and educated by individuals creating it; a truly civil society is capable of making rational, well-grounded decisions, decisions to divide and combine power, decisions based on contradictory and competitive interests. It is important that individuals also actually rule: they take part in limiting governmental authority. The limited constitution of the American federal system focuses primarily on restrictions on the powers of the government and the enumerative enlisting of the powers of individuals, divides power between its various centers; giving power it also limits it. The inalienable rights of individuals guaranteed by the constitution enable them to form the rules of government’s operation, which allows them to manage their own affairs; they can control them and influence the socio-economic relations that they create, shape them through voluntary association, without supervision from the government (Ostrom 1991, 46–48).

Ostrom, the most prominent representative of the “institutional approach” in social sciences, on many occasions emphasizes the importance of institutions in the functioning of societies. They are the starting point of social analysis: institutions are planned and erected by individuals, to limit or encourage others to specific forms of activity, influence actions taken by their decisions and choices (Chmielewski 2013, 127). According to the researcher, the defense of democracy, as a system underlying a social understanding, requires constant effort. A monocentric democracy,



operating solely on the basis of representative institutions, always poses a risk of turning into an oligarchy. This risk may be significantly reduced by decentralization, implemented in a multidimensional way—by building institutions upholding the balance of authorities, through territorial division, as well as providing all citizens with the opportunity to participate in resolving issues of interest, create conditions of true self-governance, associated with the widespread belief that “governance” is not a matter of a “government.” Such decentralization is proposed by the American model of governance, an alternative to the theory of sovereign power. The functioning of American democracy depends on various communities acting as self-governing collectives having access to overlapping and competitive governing bodies (Ostrom 1991, 51). This is only possible in societies where there is a particular problem-solving culture associated with a specific level of knowledge and experience, a certain “habit of the heart and mind” of citizens allowing the perception of others as partners and understanding communication and discussion as a way to avoid using one by another.

#### 4 The legal principle of self-governance—general comments

Self-governance, practically present in the state: in a systemic, legal and institutional dimension, but also in a theoretical and cognitive one, in public debate, is a measure of the democracy of the state and society itself. Such a thought derives from the statement of de Tocqueville, quoted above, who wrote: “local assemblies of citizens constitute the strength of free nations” (de Tocqueville 1976). Self-governance, or the principle of self-governance, whose basic form of implementation is legal empowerment and independence of territorial self-government units, is of key importance for understanding and practicing local government and local democracy (Mączyński 2011). In the intention of the creators of the contemporary Polish local self-government, it was to be an element of the institutional and legal order in the state, thus, an element of the state—but based on the principle of self-governance. One of their programme theses was the postulate: “Legally, organizationally and financially self-governing self-governments must be a real representation of the local community” (Regulski 2000, 37; translation mine).

The content of the principle of self-governance is the postulate to build a state system that, together with an appropriate shaping of the territorial division, will ensure a real decentralization of public authority. From a social perspective, self-governance also depends on a broad participation of members of the local community in public life, including decisions regarding the community (e.g., through a local referendum). Public authority in a state of self-governance means that an independent local authority plays a significant role in the state. From the institutional perspective, self-governance is a property of the collectivity and its representation (municipal, poviats, voivodship councilors, mayors, and town presidents) and the function of self-governance is to independently meet the community needs of the local or regional community (Barański 2007, 8). In this sense, self-governance is a form of governance and, therefore, exercising public authority in the form of administrative authority, applied in local (regional) communities enjoying a certain autonomy with respect to the global society and its institutions. The condition of self-governance is independence from the government and its local administration, as well as social participation, i.e. participation of citizens in determining and solving local problems (Gąciarz 2004, 60ff.). The doctrine emphasizes that territorial self-governance should not be based only on legal provisions, but also, and perhaps first and foremost, on the will of residents and their participation in co-deciding on matters of the local management (Karpiuk 2008, 10). It can be added that the principle of self-governance is a direct consequence or even an extension of the principle of state’s sovereignty, as well as a stage and manifestation of shaping the political subjectivity of society; as Bałaban writes: “The principle of establishing territorial self-government, regulated in Poland by the Constitution and laws, should be treated as one of the forms of implementation of the principle of state’s sovereignty” (2003, 109; translation mine). Significant responsibility for promoting the idea of self-governance lies with the elites of a society.

## 5 Decentralization as a factor determining the position of local government units in the state

The modern legal doctrine formulates the view that decentralization is a process of dividing administrative tasks among various organizations, independent of themselves, as being legal entities of public law (Fundowicz 2005, 28). Such a position is justified by the argument that the guarantee of independence of decentralized entities is their public personality from independent the state. Decentralization is a process of transferring tasks by one legal entity—the state, to another, an independent legal person. However, decentralization as a way of exercising power cannot be reduced only to “passing tasks to the authorities of a lower level” (Sikora 2010, 15; translation mine). It has to be seen as a systemic principle assuming in the public-law system the presence of legal persons separate from the state, whose creation serves to empower the local community in the field of public-law relations (Bąkiewicz 2010, 37ff.). Decentralization is something meaning less than territorial autonomy, but, at the same time, more than even a far-reaching disintegration of public-law competences (Sarnecki 2004, 330).

Decentralization facilitates the performance of public tasks in the state—provided that the competences are properly divided between authorities (Wytrązek 2006, 5). And the function of the subsidiarity principle is to strive for the most rational division of power; vertically—between the government and local self-government (Saint-Ouen 1991). Decentralization implemented through territorial self-government is called territorial decentralization (except territorial decentralization—i.e., the performance of tasks by special—professional, economic, and agricultural—self-governments) (Wytrązek 2006, 50ff.).

In the Polish legal theory, Starościak formulated three sources (purposes) of decentralization. The first source is of a socio-political nature; decentralization, leading to ensuring citizens’ participation in the performance of the administration apparatus’ functions, brings specific benefits to the functioning of the state. The second source is of an economic nature; decentralization improves the management of public assets. Finally, the third source is technical or praxeological; the specificity of some administrative tasks means that they will be better performed by local, decentralized entities directly in contact with the object of these tasks (Starościak 1960, 40).

The essence of territorial decentralization is determined about independence (Starościak 1960, 10). In contemporary literature, however, in this respect referring to classical pre-war works, it is assumed that decentralization is a system in which administrative entities are independent in relation to the central authority. The decentralized system abrogates the principle of hierarchical subordination (Wytrązek 2006, 45)—with the reservation that decentralization does not lead to full, absolute independence; it leads rather to the assumption of the lack of subordination of decentralized entities to the state.

Decentralization concerns various spheres of “public life”: the political sphere (affecting an independent position of local authorities in the state, in terms of defining its own objectives and pursuing its own interests), the sphere of public functions (thus, defining the scope of rights and duties of public local authorities and the scope of the freedom to decide on the use of specific legal and economic instruments), the sphere of property and local economy (affecting local economy and growth), the sphere of public finance and administration (hence concerning the freedom to decide on the organization of local administration, building the body of local government officials) (Regulski 2005, 61).

Decentralization is a broad and superior concept, while local self-government is a type of decentralization (Nowacka 2010, 49). In this context, decentralization consists in transferring certain attributes of the government to representatives of local communities—independent of the government. Decentralization also involves the “statutory transfer of public-law liability for the implementation of specific public tasks to legally independent entities, authorities or administrative institutions, not being part to the centralized government administration” (Izdebski and Kulesza 1998, 123; translation mine). Thus, the decentralization factors are: the transfer of public tasks to the local level, the use of local assets by the local authorities, the use of rights guaranteeing independence

and the ability to decide on public matters and having financial resources for the implementation of local policy (Grabowska, Grabowski, and Skrzydło 2009, 129ff.).

Decentralization in the Republic of Poland is implemented in the conditions of a homogeneous state; local government units are by no means autonomous territorial unions (Fundowicz 2005, 23). Public and local subjectivity of territorial self-government is to serve as “a separation from the state administration and from other types of decentralized administration” (Nowacka 2010, 49; translation mine), however, in terms of content, the essence of administrative activity of government bodies and local government units is monographic and has a state character (Nowacka 2005, 45, 47).

## 6 Territorial self-government and the state — the Polish constitutional and legal context

Territorial self-government can be considered as an essential component of a democratic state. Thus, territorial self-government is not only an institution of public administration, but also an institution of democracy; the idea of democracy and the idea of self-government have complementary functions. Efficient local government administration is a guarantee of local legal and social security, but also empowerment of the local community, a legal form of real participation of territorial units' residents in shaping the public-law community (Schmidt-Assmann 1993, 65). As it is aptly noticed, local self-government and local democracy balance the omnipotence of the state (Clarke and Davies 1997, 52).

According to Articles 15 and 16 of the Constitution of the Republic of Poland of 1997, the territorial system of the state ensures decentralization of public authority, and all inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law (Każmierczyk 1993, 251; Skrzydło-Niżnik 2007, 296). It can be added that in the light of the preamble to the European Charter of Local Self-Government of 1985,<sup>2</sup> the right of citizens to participate in the management of public affairs is part of the democratic principles common to all member countries of the Council of Europe.

The abovementioned is predicted in the Preamble and Article 15 paragraph 1 of the Constitution, subsidiarity and decentralization of public authority together with empowerment of self-government communities (see Article 165(1) of the Constitution) are the legal pillars on which local self-government and local democracy in the Republic of Poland are based (Rabska 1995, 17). The doctrine specifies that territorial self-government is an activity of a decentralized and legally legalized corporation aiming at the public good (Niewiadomski 1990, 5). In this sense, territorial self-government is the right and duty of independent (Wiktorowska 2002, 13ff.) to perform public administration (Chmaj 1999, 75), transferred to citizens' associations by the state. Self-government, understood in this way, is created by a legal norm and implemented by a social group, territorially separated and legally subjectified (Leoński 2006, 6).

The idea of decentralization remains in close connection to the local self-government institution, however, the nature of relations combining the principle of decentralization with public and legal empowerment of local and regional legal communities can be understood differently (Dąbek and Zimmermann 2005, 8–10). Regarding Polish law, Panejko (1926, 81) considered that territorial self-government is a decentralized state administration based on the laws' provisions, performed by local authorities, hierarchically independent bodies and independent within the limits of the law and the general legal order. According to this concept, territorial self-government is reduced to the role of the state's organ; the state as a ruler appoints, abolishes and determines the scope of rights and obligations implemented by territorial self-government on behalf of the state, as well as a sovereign (Panejko 1926, 86–87).

A different position was formulated by Bigo (1928, 26ff.), who regarded territorial self-government as a social group, organized in a corporate manner and having a legal entity separate from the state. Legal subjectivity of local government units results not only from legal norms, but also from objective factors recognized by law, such as acts of will and an active attitude of human

2. See: Europejska Karta Samorządu Terytorialnego, sporządzona w Strasburgu dnia 15 października 1985 r. DzU z 1994 r. nr 124 poz. 607 [European Charter of Local Self-Government drawn up in Strasbourg on 1985.10.15, signed (1993.02.19) and ratified (22 November 1993) by Poland].



individuals — commune's members. In this respect, the commune is a public law association (i.e., an entity equipped with administrative authority by positive law). Bigo believed that the reduction of the essence of territorial self-government to the form of decentralization of the state administration means, as a consequence, giving up the very concept of self-government; he considered decentralization a broader and superior concept, including not only administrative activity, but also legislation. As a consequence, decentralization of the state becomes a factor of the public-law personality of local government units, which in the scope of their own public tasks act as separate legal entities and legal persons (Wójcik 1999, 175).

## Summary

The above considerations lead to the conclusion that self-governance is a postulate of such a formula of the state system which, together with the appropriate shaping of the territorial division, through the actual decentralization of public authority, will ensure democracy. Decentralization is a safeguard against the transformation of a monocentric democracy with a dominant representative factor into a dangerous oligarchy. Therefore, self-governance consists of a wide participation of local community members in public life. Public authority in the state of self-governance means local self-government; from this point of view, following Sartori (1994), the concept of territorial self-government can be determined empirically — the intensity and role of self-government in the state depend on how much power, public money and public local tasks local society has in its hands. Self-governance is a feature of the collectivity and its institutionalized representation, and the function of self-governance is to independently meet community needs. It should be emphasized that territorial self-governance cannot be based only on legal provisions, but also, and perhaps first and foremost, on the will of residents and their participation in co-deciding on matters of local management. The empowerment of local communities by territorial self-government and the decentralization of public authority systems is today the axiom of the European political system identity.

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