Politocratic communitarianism, polyarchy and juridical-pluralist reflections on political community

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Opsomming

Die afgelope tyd het politokratiese kommunitarisme in Afrikaanse politieke literatuur verskyn. Hierdie artikel ondersoek die belangrikste denklyne van politokratiese kommunitarisme: die ontkenning van die staat as 'n politieke en regsentiteit; daarteenoor die nastrewing van die utopiese ideal van klein politieke entiteite in die vorm van die antieke Griekse polis. Politokrasie beoog die emansipasie van polis-tipe samelewingsentiteite bevry van die staat ten einde betekenisvolle politieke lewe moontlik te maak. Politokrasie deel die ideaal van politieke pluralisme met poliargie. Soortgelyk aan Robert Dahl se visie van 'n pluraliteit van sosiale instellings wat funksioneer as 'tussengangers' tusen die staat en die onderdane, maak politokrasie voorsiening vir klein samelewings-entiteite gebaseer op Aristoteles se meta-etiese konsepsie van gemeenskap. 'n Vergelyking met poliargie toon die noodsaak vir 'n juridies-pluralistiese model ter rehabilitering van die idee van

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politieke gemeenskap. Juridiese pluralisme onderskei die veelvuldige regsbelange binne materiele regsfere van sosiale samelewingsvorme sowel as die kompetensies van die instellings en strukture om sodanige belange te behartig. Voorts open dit perspektiewe ter transendering van die dilemma van staatsoewereiniteit versus atomistiese individualisme op politieke terrein.

Abstract

In recent years politocratic communitarianism has made its debut in Afrikaans political literature. This essay investigates the main thrust of politocracy: the debunking of the state as a political and legal entity and efforts to give expression to the utopian ideal of reviving small political entities in the form of the ancient Greek polis. The aim of politocracy is to accomplish the emancipation of polis-like habitative communities from Leviathan (the state) and "to lay the mortal god to rest with joy and thereafter enter into a meaningful political life". Politocracy shares the idea of political pluralism with polyarchy. Similar to Robert Dahl's vision of a plurality of social institutions functioning as intermediaries between the state and the subjects, politocracy envisages small habitative communities (Gemeinschaften) on the basis of Aristotle's meta-ethical conception of community. A brief comparison with polyarchy brings to light the need for a juridical-pluralist model for rehabilitating the idea of political community. Juridical pluralism distinguishes the plurality of legal interests within the material juridical spheres of social life-formations plus the competences of the institutions or structures to administer these interests. Furthermore it opens perspectives for transcending the dilemma of state sovereignty versus atomistic individualism in political life.

Key words:

politocracy; communitarianism; polyarchy; juridical pluralist; political community

1. Introduction

When Alexis de Tocqueville (1805-1859) visited the United States of America in 1830, the dogma of political sovereignty – traditionally regarded an unassailable truth – had been cast into the melting pot of criticism. De Tocqueville regarded intermediary associations and the concomitant pluralistic social and political structures as a safeguard against traditional expressions of sovereignty: tyranny by the majority and an omnipotent government. David B. Truman developed this view further and the classic pluralism of the Truman school saw the political system in the USA as a pluralist democracy in which a host of groups articulated the interests of the ordinary citizen, thus creating a balance between opposing interests and preventing any one interest group from dominating the political system (Truman, 1971; Johnson, 1971, pp. 385-386).[2] However, Kariel (1961, p. 182) observed that because of the nature and magnitude of modern interest groups, the demand of traditional pluralist theory for individual participation in the policy-forming process through primary groups has been made sentimental by modern organisational conditions (Kariel, 1961, p. 182). Consequently such voluntary associations or organisations on which early pluralist theorists relied to protect the individual against a unified government "have themselves become oligarcically governed hierarchies" (Kariel, 1961, p. 182) and have become "oligarchic and restrictive insofar as they monopolize access to governmental power and limit individual participation" (Presthus, 1964, p. 20). The tension between the aspirations, expectations and prospects of individuals to accomplish specific political goals on the one hand, and the intrusion of mass democracy into the spheres of freedom of the citizens in their individual and social forms of life on the other, is translated by Hans Blokland into positive freedom and negative freedom respectively (2011, pp. 1-7).

According to Blokland, there is a progressive decline in the political freedom of citizens in western democracies to influence the development of their society and their personal lives (Blokland, 2011, p. 1). Political systems seem less and less able to steer social change or to formulate solutions to pressing social and political problems (Blokland, 2011, p. 1). The possibilities (and abilities) of citizens to give their society meaning and direction Blokland calls "positive political freedom" (Blokland, 2011, p. 1). This form of freedom

2 Truman describes groups as "habitual interaction of men" (1971, p. 43) or "patterns of interaction" (1971, p. 24). He defines an interest group as "a shared attitude group that makes certain claims upon the groups in the society. If and when it makes its claim through or upon the institutions of government, it becomes a political interest group" (1971, p. 37).

has to be distinguished from "negative freedom", which is the area in which one can do or be what one is able to do or be without interference from others (Blokland, 1997, p. 1ff.). Enlarging positive freedom could therefore endanger negative freedom. Furthermore, to a much greater degree than in authoritarian systems, democracies can invade the negative freedom of individuals. According to Blokland any plea for a rehabilitation of politics to counter the detrimental consequences of modernisation has to confront this conflict (Blokland, 2011, p. 1).

The tension between positive and negative freedom occupies most of Blokland's book *Pluralism, Democracy and Political Knowledge* (2011). He is particularly interested in the solutions offered by Dahl and Lindblom, incorporating aspects of Harold Laski's (1893-1950) use of pluralism in their theory of polyarchy. Dahl and Lindblom's definition of polyarchy reflects a considerable degree of social pluralism – that is, a diversity of social organisation with a large measure of autonomy with respect to one another (Dahl & Lindblom, 1953, p. 302).[3] Together with Laski's work, Dahl and Lindblom reflect the philosophical inspiration of John Dewey's and William James's pragmatism, as well as the sociological influences of Leon Duguit, F.W. Maitland, John Figgis, Otto von Gierke, Felix Frankfurter, Roscoe Pound, Herbert Croly, and G.D.H. Crole. What all these social philosophers had in common was described in 1921 by Francis Coker as follows: "The pluralists maintain that sovereignty is not, in any community, indivisible, and they deny that the state either is or ought to be sovereign in any absolute or unique sense. They cite many facts of recent political and social experience to discredit the belief that the state does persistently exercise sovereignty over other essential groups; they argue that the tendency of social and industrial change today is in the direction of progressive weakening and narrowing of state power; and they hold that the effects of a still further disintegration and decentralization of authority will be to improve the economic, moral and intellectual well-being of man and society" (Coker, 1921, p. 186; Blokland, 2011, p. 26). Dahl and Lindblom credit Madison and De Tocqueville, together with Aristotle, with having provided the intellectual springboards from which contemporary pluralists have constructed their own formulations (Connolly, 1969).

Whereas Dahl's and Lindblom's polyarchic pluralism continues the political

3 The term "polyarchy" was not coined by Dahl and Lindblom. *The Oxford English Dictionary* had already defined polyarchy as, "The government of a state or city by many; contrasted with *monarchy*." Prior to this definition Ernest Barker had used the term almost two decades earlier in his book on *Greek Political Theory* (1918). Further back the term had been applied by Johannes Althusius in his *The Politics of Johannes Althusius* (1614) (Blokland 2011:86).

pluralist tradition on the pattern of Truman's and Laski's statement of pluralism in American political literature, South African political literature has contributed only marginally to the philosophical understanding of democratic pluralism. However, recently political pluralism has appeared on the South African political scene in the form of politocratic communitarianism. The emergence of neo-Aristotelian legal and political thought over the last two decades stimulated South African politocrats Danie Goosen and Koos Malan to debunk the state as a political and legal entity, to oppose the idea of state sovereignty and to give expression to the utopian ideal of reviving small political enclaves in the form of the Greek *polis.* Over and against the "territorial state", politocrats visualise the rebirth of Aristotle's idea of the *polis.* In his book *Politocracy. An assessment of the coercive logic of the territorial state* (2012), Malan aims to accomplish the emancipation of *polis*-like habitative communities from Leviathan (the state) and "to lay the mortal god to rest with joy and thereafter enter into a meaningful political life" (Malan, 2012, p. 272). Malan's motivation for the politocratic project is situated in the way in which the statist paradigm has impoverished key political conceptions, and "its resultant depressing effect" necessitating a positive response in the form of politocracy (Malan, 2012, p. 272). To this end Malan envisages a political dispensation "beyond statism" with the distinct features of a "comprehensive politico-constitutional order" in the form of the Aristotelian *polis* (Malan, 2012, p. 272). Goosen also contributed to the ideals of reviving ancient Greek political life in two book publications: *Die nihilism* (Nihilism) (2007b) and *Oor gemeenskap en plek* (On community and place) (2015) – both typical examples of the newly emerging genre of communitarian literature in Afrikaans. Similar to Malan's work, these publications also deal with aspects of the philosophical grounding of the concept of community and its relevance for contemporary challenges in social and/or political life. This essay considers the theoretical basis of politocracy as a form of political pluralism and the effects of its criticism of the "territorial state"; it also briefly compares the implications of the political ideals of politocracy with aspects of Robert Dahl's preceding theory of polyarchy – a comparable elitist theory of democratic governance and political pluralism. However, similar to polyarchy, politocracy associates itself closely with the historical concept of community in the work of Aristotle and De Tocqueville. Whereas Dahl and Lindblom follow the tradition of Laski, Malan and Goosen ground their views on politocracy in the communitarian thought of the last two decades.

Both polyarchy and politocratic communitarianism afford social pluralism a pivotal role because it envisages alternate ways for meaningful political participation to overcome the tensions between positive and negative

freedom, it fosters the dispersion of power, and it strives to enhance the quality of public decision making. A number of questions surface in this context: Is social pluralism sufficient for ensuring the individual and social liberties of human beings in the diverse social settings of society? Which are the criteria for determining the competences of the various social spheres in the dispersion of power? How can the legal interests of human beings in both their private lives and in their respective communal involvements be secured through social pluralism? Which criteria determine the legal competences of social entities for advancing both positive and negative freedom in society?

Politocratic communitarians' discontent with liberal democracy and their campaign for securing the positive freedom of communities follow Alisdair MacIntyre's (1984, pp. 43-47) and Michael Sandel's (2010, pp. 103-139) neo-Aristotelian critique of Kantian individualist autonomy, Sandel's (1983, pp. 4-14, 19-23, 173-183) commitment to personhood as the presence and participation in community life, MacIntyre's (1984, pp. 143, 172) argument in favour of the sense of shared immediate good characteristic of the ancient Greek *polis,* and Charles Taylor's (1985, pp. 248, 260-262) view that before the modernistic Western society's commitment to the unencumbered individualistic atomism, the good was understood as an intensely public life mediated by the larger group. The communitarian views of the past decades have found strong support in the legal and political works of Goosen and Malan. This essay considers three elements of politocratic communitarianism in Malan's and Goosen's work: participation in community life, the neo-Aristotelian sense of the common good, and the public life mediated by the larger group. Finally it reflects upon the absence of juridical-pluralism in politocratic communitarianism and the political implications emanating from their communitarian views. In conclusion the absence of juridical pluralism and the dilemmas confronting their neo-Aristotelian communitarian approach are briefly considered.

In this essay it is argued that a mere sociologico-pluralistic model is not sufficient to counter the negative consequences of state interference. Furthermore, in order to secure positive freedom in the social settings of human existence, a juridical-pluralist view of society is needed. Furthermore such a pluralist model should reflect the various domains of rights limiting the competences of the state and non-state social entities. Aspects of the sociologico-political thought of politocracy and polyarchy as well as the meaningful role of legal pluralism for securing both the realisation of positive and negative freedom in democratic political governance in a state subject to law are considered in this context.

2. Politocratic communitarianism, moral experience and participation in community life

2.1 Meta-ethical historicism and the neo-Aristotelian idea of community

In his article "Demonisering en demokrasie" (Demonising and democracy) Goosen (2007a, pp. 142-154) considers three traditions of community: firstly, modern liberalism's "atomistic isolation of self and other that results in a loss of community"; secondly, postmodernism's "collapse of self and others within a framework that induces indifferences" and a similar loss of community; and thirdly, the so-called "other modernity" (2007a, p. 142). According to Goosen the latter does not emphasise either the radical difference or the unity (indifferences) between self and others, but rather their democratic "unity-in-difference" (2007a, p. 142). Goosen argues that both modernism and postmodernism, despite their appeal to universality (modernism) and particularity (postmodernism) are essentially marked by an attempt to demonise historical communities. According to the Aristotelian perspective this is an understanding of community life as the democratic inter-play between self and others. He concludes that community is thereby not demonised but seen as an answer to "demonizing practices" (2007a, p. 142).

To Goosen, being human presupposes the "fact of community". Prior to the individual's appearance on the "historical scene" he/she had already been preceded and constituted by a particular community or communities (2007a, p. 143). It is, therefore, almost impossible to conceive of the individual without considering the communities mediating the existence of the individual (2007a, p. 143). Even the liberal view that man is a free-roaming individual was made possible and mediated by the Western world (2007a, pp. 143-144). In spite of liberalism's theoretical negation of community, it is dependent upon it in practical life (2007a, p. 144). In support of his views, Goosen cites Alasdair MacIntyre's *After Virtue* (1981), the "*locus classicus*" of communitarian thought, as well as Charles Taylor's *The Ethics of Authenticity* (1991), and Michael Sandel's *Democracy's Discontent. America in Search of a Public Philosophy* (1995). Where in the horizon of man's social experience is the ideal meta-ethical historical community located? To MacIntyre the Aristotelian concept of community provides a starting point because it can be restated in a way that restores intelligibility and rationality to moral and social attitudes and commitments (1984, p. 259). Elsewhere he credits the Aristotelian moral tradition with providing the best example

we possess of a tradition whose adherents are "rationally entitled to a high measure of confidence in its epistemological and moral resources" (1984, p. 277). MacIntyre's neo-Aristotelianism should be considered against the backdrop of his project to restore Aristotle's vision of the *polis* as the source of morality, as well as his teleological understanding of human nature (1984, pp. 143, 172). To Taylor, freedom is ideally embodied in the citizen's willing identification with the Aristotelian *polis* or republic (1989, pp. 165-172). The law has the primary aim to emphasise the importance and dignity of the status of *citizen* in the Aristotelian sense (1989, p. 165). Taylor adds that republican solidarity supports freedom because it offers the motivation for self-imposed discipline (1989, p. 171). The Aristotelian ideal of civic virtue arguably finds its strongest expression in Sandel's support of the "republican school" for revitalising public life and restoring a sense of community in order to orient citizens to a common good beyond the sum of individual interests (1985, p. 39).

2.2 The Aristotelian sense of the common good

Politocratic communitarianism regards the meta-ethical historical community of the *polis* as a substitute for the "territorial state". "Politocracy" alludes to Aristotle's views on the ideal community (Malan, 2012, p. 295). On the basis of the common interests of a community of people, among whom there are genuine communal ties, politocracy "links up with Aristotle who regarded a real community as fundamentally conditional to the existence of the *polis*". The true common good can only be realised in the *polis* community. The *polis* community is the source of individual identities, values, physical and psychological security (Malan, 2012, p. 295). This emphasis on the community as a fundamental *res publica* is credited with doing away with the premise of the statist order, "according to which the state is to be primarily regarded as a mere territorial arrangement in terms of a common legal order that affects *any number of men*" (Malan, 2012, p. 295). According to Malan the statist approach fails to appreciate community as a cornerstone and precondition of the public order (2012, p. 295).

2.3 Public life mediated by the larger group

The German social theorist, Ferdinand Tönnies' (1855-1936) distinction between *Gemeinschaft* and *Gesellschaft* had more than a mere incidental impact upon the politico-sociological underpinnings of politocratic communitarianism (Raath, 2015, pp. 113-116). Together with Alain de Benoist's "New Rightist" apology for the political elitism in the Greek *polis,* politocratic communitarianism reflects distinct elements of Tönnies' distinction between *Gemeinschaft* and *Gesellschaft.* In the tradition of Tönnies, Malan does not recognise substantive associational forms of human social life apart from communities. Implicit to Malan's sociological model for meaningful human co-existence is Tönnies' distinction between *Gemeinschaft* (community) and *Gesellschaft* (association) (Tönnies, 1974, pp. 16ff., 37ff.). The social status of individuals is described by these two social categories. *Gemeinschaft* forms are oriented to the interests of the relevant group rather than to the self-interest of the individuals of which the social body is composed (Tönnies, 1974, p. 42). *Gesellschaft* associations describe forms of social life in which the interests of the larger association never take precedence over the individual's self-interest and lack the same level of shared social mores as *Gemeinschaft.*[4] *Gemeinschaft* associations reflect a natural unity of volition (*Wesenswille*) shared by all members of the social institution (see Utz, 1964, pp. 25, 52). In this associational form, volition emanates from natural instincts and a shared community of common feelings: love and hatred, likes and dislikes, ideas and beliefs (see Tönnies, 1935, pp. 87ff., 123, 128ff., 133ff., 142, 159, 168, 171, 180, 138). Unlike *Gemeinschaft* social forms, *Gesellschaft* is based on secondary relationships rather than familial or community ties, and possesses less individual loyalty to the larger community (see Raath, 2015, p. 114). *Gemeinschaft* and *Gesellschaft* differ vastly in terms of ontological status, philosophical-historical sense and theoretical consequences (see Utz, 1964, pp. 12-13, 76; Raath, 2015, p. 115). Furthermore, these forms of association never co-exist: a period of *Gemeinschaft* is followed by a period of individualistic *Gesellschaft.* Whereas the former is characterised by concord, customs and religion, convention, politics and public opinion reflect the nature of the latter (Tönnies, 1974, p. 16ff., 37ff.). Tönnies' typology of associational forms culminates in politocratic communitarian homely communities (*Gemeinschaften*), juxtaposed with the territorial state as a *Gesellschaft* composed of individuals pursuing their own self-interest. According to politocratic communitarianism these so-called homely (or habitative) communities are the primary components to which political status should be assigned (Raath, 2015, p. 115).

De Benoist finds in Aristotle the true perspectives of society and citizenship. Aristotle defines man as a "political animal", a "social being", when he asserts that the city precedes the individual and that only with society can the individual achieve his potential (Raath, 2015, p.118). Following De Benoist's emphasis on the communal interests of the *polis* preceding and overarching the life and interests of the individual, Malan subscribes to the organic manifestation

4 A community like the Amish would be an example of a *Gemeinschaft*.

of social life and a return to the social organisational forms of the primitive sibs, guilds and patriarchal domestic communities of ancient Greek and Medieval times (see Raath, 2015, pp. 118-120). Similar to Tönnies and De Benoist, Malan depreciates *Gesellschaft* communities thereby lacking the appreciation in a material sense of the totality of communal, inter-individual and inter-communal forms of social existence. The theoretical limitations inherent in politocracy's alignment with Tönnies' distinction between the two main forms of human association could, albeit partially, be attributed to the Marxist critique of capitalist society and Marx and Engels' conception of the dialectical development of capitalist society.[5] Similar Marxist sympathies emanate from Malan's statement that the concept of human rights may be regarded as an aspect of globalisation, that the territorial state benefits as much, if not more, from human rights relationships, that human rights function as "a defensive strategy to bolster the existing statist order and to indemnify the order from the challenges of radical change", by fostering a culture of individual and group dependence upon the state (Malan, 2003, p. 94; 2012, pp. 206-225).

2.4 Politocratic communitarianism, habitative communities and state authority

Where do the habitative (or "homely") communities – resembling the ancient Greek *polis Gemeinschaften* – fit into the broader political context of the territorial state? Malan acknowledges that hardly any state can claim that its population is fully homogeneous. To a greater or lesser extent all states are heterogeneous and often deeply divided in terms of culture, language, religion and race (Malan, 2010, p. 434). National populations are multi-identity populations and are made up of a multitude of communal identities. Communities are mostly identifiable and distinguishable as communities because they differ from (the rest of) the national population, they have different interests, and they look, think and behave differently (Malan, 2010, p. 434). The multi-communal nature of national populations is reinforced by the fact that individuals are members of a wide variety of communities at the same time. Shaped by the various communities to which they belong, human beings are multi-identity beings. Malan alludes to Taylor's summary of communitarian insights in this regard: "The identities of individuals, their self-understanding, their ethical, moral and political convictions, their ability to make sense of the worlds they live in and the ways in which this sense-making takes place, are profoundly shaped by their belonging to

5 According to Lukács (1980: p. 593) Tönnies tried to "rework" Marx and "render him of use to his bourgeois purposes."

communities" (Malan, 2010, p. 434). Because individuals "cannot possibly live meaningful lives outside communities, (t)his communitarian picture of society reflects basic truisms and prerequisites for a meaningful and virtuous human existence" (Malan 2010, p. 434). Because the identities of individuals are shaped by their belonging to communities and because moral and political life without communities is inconceivable, communities are virtuous entities, worthy of protection (Malan 2010, p. 434). In his critique of the un-nuanced fashion in which the principle of representivity is applied in the South African political context, Malan concludes that the principle of representivity ought to have but very limited application, namely to state institutions serving equal state common interests. The application of representivity in South African political life constitutes a systematic invasion of various individual rights, particularly of those persons belonging to minority communities. Moreover it is inimical to the basic values of a pluralist democratic society and should have no place in a constitutional order that avows democracy: it engenders and entrenches majority domination, homogenisation and systematic suppression of minorities, instead of facilitating conditions for the accommodation of difference, tolerance of diversity, and the fair accommodation of minorities alongside the majority. Malan surmises that in the final analysis it concocts a homogeneous nation in the image of the state – and in particular in the image of and dominated by the majority (Malan, 2010, p. 448).

Politocratic communitarianism presupposes a hierarchical society in terms of which political authority is devolved from the "top" to the "bottom" on the basis of the principle of subsidiarity. This implies an indirect form of delegation of power through which higher governmental organs allow organs lower in the hierarchy of authority the power to manage those powers which are not exercised by higher organs of state. In terms of the legal nature of the delegation of powers in public law, this implies that bodies lower in the hierarchy of authority are only allowed those powers received from the state authority. Furthermore, the higher body (*delegans*) may at any time cancel the delegation and exercise the specific powers, with the responsible authority remaining with the *delegans.* In effect it means that communities lower in the hierarchy of authority have no material competences in terms of their respective structural essences, they have no material fields of competence providing them with the substantive legal independence for protecting their spheres of liberty over and against interference by the state authority.

3. Politocracy, polyarchy and the ideal of pluralist democracy

3.1 The political nature of habitative communities

Politocracy aims at the establishment of multi-spherical government by the citizens (*politai*) of every political community over the specific *res publica* – the commonwealth – of the relevant community. The "main markers" and "core characteristics" of politocracy are distinctly attached to the ancient Greek concept of the *polis* – the city-state (Malan, 2012, p. 272). The *politai* – the citizens – are directly responsible for the government of the *polis.* Therefore, politocracy "takes cognisance of Classical Greek political thought", and "attaches particular importance to aspects of Aristotelian political thought" (Malan, 2012, p. 272). The "restricted and solid" political units of the Greek city-states are of fundamental importance to politocracy – just like the active citizens – the *politai* – and the close-knit communities that formed the basis of politics (Malan, 2012, p. 272). To Malan a distinct feature of politocracy is that it aims to grant recognition and give constitutional expression to multiple identities, multiple communities and multiple systems of government. Therefore, politocracy is not unitary, but *politary.*[6]

Politocratic democracy aims at giving expression to the dignity of legally competent adults. This is achieved by emphasising not individual rights primarily, but the power and authority to control the *res publicae* – the commonwealth – autonomously, as individuals and also as members of different communities (Malan, 2012, p. 273).[7] Such governing power mainly concerns the so-called habitative communities, as well as the much more comprehensive communities. Therefore, habitative (or homely) communities may be regarded as one of the fundamental conceptions of politocracy (Malan, 2012, p. 273).[8] These habitative communities comprise the cultural and/or local communities in which people live their daily lives (Malan, 2012, p. 273). Politocracy "politicises" habitative communities to the extent that it imbues habitative communities with a political character, because it affords their members an opportunity to authoritatively govern their *res publicae* in their capacity as its citizens. Instead of "merely acknowledging the territorial state as a political community – serving as the foundation of citizenship and the *locus* for exercising political authority – on the basis of statism, politocracy would in fact recognise habitative communities as fully-fledged political communities". This implies that members of habitative communities would be able to become citizens thereof and that habitative communities would accordingly also become the *loci* for exercising political authority (Malan, 2012, p. 273).

Similar to politocracy, Robert Dahl's polyarchical pluralist theory has distinct elitist features. Dahl proceeds from the assumption that the power of leaders is restricted by competition between and within elites. Dahl states that instead of a single centre of sovereign power, there should be multiple centres of power, none of which is or can be wholly sovereign (Dahl, 1967, p. 24). The multiplicity of mutually restrictive power centres, none of which is wholly sovereign, characterises the American system, a "polyarchy" which best approximates the democratic ideal since the competing elites have to account to the citizens at periodic elections. In his book *Democracy in the United States: Promise and Performance* (1981), Dahl incorporates aspects of both democracy and elitist theory. Although, according to Dahl, all political systems fail in significant respects to achieve the goals of political equality and consensus, some systems do come closer to attaining these goals than others. Although these systems are not democracies in the ideal sense, they nonetheless contain democratic elements. Polyarchic systems constitute a mixture of democracy and government by elites. Such democratic elements exhibit themselves to the measure in which political equality, consensus and government by the people is achieved. The elitist feature of polyarchy is acknowledged to the measure that all human organisations have a propensity to develop towards inequality and the emergence of strong leaders. Dahl maintains that the difference between polyarchic and hegemonic rule by elites is the measure in which the political opposition is given the opportunity to question the actions of government. A second point of difference is exhibited by the extent of overt conflict between political leaders and public rivalry for eliciting the support of voters in elections. Thirdly, polyarchic systems are characterised by periodic elections on local and national level in which political parties compete for the support of voters. Dahl has doubts about the importance of these differences, since supporters of oligargic theory could claim that in the end, polyarchies and strong oligarchies show essentially the same consequences: The people do not rule, a critic might say, elites do (Dahl 1981, 432). In answer to such criticism, Dahl cites the views regarding the differences between polyarchies and dictatorships posited by Mosca.

6 Malan adds that the emphasis on multiplicity is reflected in the *poli* component of *politocracy*. (273).

7 These are public affairs communal to the members of every community (Malan, 2012: p. 273).

8 This word is coined from the Latin noun *habitation*, meaning "abode" or "dwelling", referring to the smallest possible communal unit to which a specific politico-constitutional significance is attributed (Malan, 2012: p. 273).

According to Mosca, representative political systems have the advantage of individual liberties protecting individuals from arbitrary action by state power. A free press and parliamentary debate have the positive effect of focusing public attention on possible abuses of power by political rulers. Dahl relies on Mosca's support for representative government as opposed to dictatorial systems to strengthen his claim that polyarchies, albeit not perfect democracies, are the best possible approximation of the democratic ideal (see Mosca, 1923, 7073, 75ff; 1925, 36ff.).

3.2 Pluralism and the political order

Politocracy aims at preventing state domination by "spreading out" government authority by means of awarding "a variety of public entities" legal recognition (Malan, 2012, p. 274). Malan envisages a dispensation of maximal joint government and provision for government authority ranging from the restricted community to the most comprehensive one (Malan, 2012, p. 274). It implies "radicalising" democracy by devolving political decision-making, including the exercise of fiscal power and the execution of decisions on the level of habitative communities (Malan, 2012, p. 274). In essence, politocracy aims at transcending the mere legal status of citizens in the "impoverished" territorial state, by ensuring "genuinely independent and continuous participation in, and acceptance of responsibility for the *res publicae*" (Malan, 2012, p. 275).

Dahl's restrictions of the conventional assumptions of majoritarian democracy point towards his critique of the notion of sovereignty of the people as being impractical in modern polyarchies. The answer to the question as to whom the nation consists of, is determined by restrictions of the franchise, and the assumption that segregation and mass-emigration of large minorities are not feasible options in plural societies. In a federal state, for example, the size and composition of the majority of the people will differ from those parameters at a national level. Furthermore, it could be that, on certain issues, the majority of adult citizens in the country as a whole are not entitled to rescind the decisions of the majority of citizens in a federal state.

Dahl considers the protection of minority rights to be an important restriction on majoritarian rule in polyarchies. The protection of minority rights fulfils a most important function in the restriction of the scope of majority government in three respects: (a) certain policy matters (such as religious beliefs and practice) fall outside the scope of majority government; (b) a large number of policy matters are placed in the hands of private, semi-public and local organisations (for example churches, families, businesses, trade unions, towns, cities, provinces and the like); and (c) majority government in polyarchies is restrained by the extensive opportunities afforded to groups who feel themselves prejudiced by aspects of national policy to state their case and negotiate a more acceptable alternative. Dahl (1982) affirms the rights of groups in addition to the rights of individuals. To Dahl, groups have a right to have their interests considered on an equal basis. The right of groups in consociational democracies to veto policies which their leaders consider detrimental is justified not only because of its usefulness, namely to obtain wide-spread consensus in a segmented society, but also because it guarantees the right of every group to have its fundamental rights taken into account.

Dahl acknowledges that determining the fundamental rights of individuals and particularly of groups/organisations/sub-systems in concrete instances is a complicated issue both materially and procedurally – one which is peculiar not only to pluralist but to all democracies (Dahl, 1982, p. 195) He regards it to be unreasonable to insist that a unique solution to the problem of fundamental rights first be found before the shortcomings of pluralist democracy can be overcome (Dahl, 1982, 195). One possibility accepted by many democratic countries is a system of judicial and legislative review under a constitution which defines certain fundamental rights (Dahl, 1982, 195). Although this solution has not been adopted by all democratic countries, those that have done so guarantee certain fundamental rights since any violation of these rights is considered impermissible and processes exist not only to determine what these rights are but also to ensure that they are maintained. Accordingly, Dahl claims that there is an acceptable process both for determining fundamental rights and for deciding whether an organisation's autonomy may be inferred from one or more of these rights (Dahl, 1982, p. 195). Four categories of rights are particularly relevant in this regard: political rights; freedom of organisation; freedom of choice; and ownership rights (Dahl, 1982, pp. 195-196).

3.3 Pluralism and the ideal of genuine community

Politocracy rejects the premise of a radical absence of genuine human community as a fundamentally erroneous interpretation of the human condition and way of life. All individual existence, identity, values and achievements are firmly anchored in communities. In the absence of communities, no individual existence would be possible. Therefore, politocracy is constructed on a communitarian basis. According to politocrats the coercive logic of state building would be an "inexcusable affront" to individual freedom and dignity, as well as to the integrity of cultural, linguistic and similar non-statist

communities (Malan, 2012, p. 276). Politocrats visualise the re-establishment of community and the demise of the "sovereign individual". Individuals cannot be detached from their respective communities (Malan, 2012, p. 277). In spite of individuals having become physically, socially and economically much more mobile, such relocation is still not free of community involvement. The identities of individuals are communally determined and their views and convictions are moulded by community involvement. Fact remains that despite individual mobility, individual human beings cannot live meaningfully without any involvement in community life and without communal human interaction (Malan, 2012, p. 277).

Politocrats award the community rights higher status than individual human rights. What is designated as individual rights cannot be exercised in any way other than in a group context, "no matter how individual they might appear at first glance" (Malan, 2012, p. 277). The right to freedom of expression, for example, loses all meaning if such expression is not directed at an audience – a community – of which the person entitled to the right to free expression also belongs. Similarly, rights to religion, education, language, as well as economic rights and the like, are equally non-existent or stripped of any fundamental meaning if such rights cannot be exercised in conjunction with other people belonging to the same community "who are keen to exercise the same rights". Malan surmises that communities are, therefore, absolutely indispensable for living a meaningful individual life. Obviously, says Malan, the existence of something like a sovereign individual – a free-floating individual, acting at random – is out of the question, because "(a)n individual can only *will and comprehend, believe and do* within the horizon of the community or communities in which he is present" (Malan, 2012, pp. 277-278).

Dahl's use of the term "democracy" refers to an ideal which is a necessary but insufficient condition for the best political regime (Dahl, 1982, 4ff.). His use of this term denotes a particular type of political system (Dahl, 1982, p. 4). With regard to actual political systems Dahl distinguishes between direct democracy in a city-state and representative democracy in a nation-state. Although the notion of representation did not originate from democracy, by the end of the eighteenth century proponents of government by the people had realised that representation might be joined with the democratic process to bring about democracy on the giant scale of an entire country (Dahl, 1982, p. 9). This combination was hailed as one of the greatest political discoveries of all time.

Like city-state systems, modern democratic systems – also called polyarchies – are nowhere near attaining democratic ideals (Dahl, 1982, p. 13). Democracy in the sense of self-government by the people is therefore not attainable in nation-states: "The high promise of democracy on the small scale of the city-state will remain forever unfulfilled in the nation-state and will remain so even if polyarchies become more fully democratized that they are now" (Dahl, 1982, p. 13).

Dahl's use of the terms "pluralism" (in "democratic pluralism") and "pluralist" (in "pluralist democracy") presupposes the existence of a plurality of autonomous organisations or independent sub-systems within the domain of the national territory (Dahl, 1982, p. 5). Hence a country qualifies as a pluralist democracy if it meets the requirements of a polyarchy and if several relatively autonomous major organisations exist (Dahl, 1982, p. 5). An organisation is considered to be relatively autonomous if its activities, although considered harmful by other organisations, cannot be prevented by any organisation – including the political authority – except at a cost higher than the demonstrable gain. Dahl distinguishes many such institutions ranging from families to government institutions, federal states, provinces, political parties, interest groups, business enterprises, trade unions and the like. To Dahl their value in large political systems lies in their ability to prevent domination and in providing a system of checks and balances (Dahl, 1982, p. 31ff).

4. Juridical-pluralist reflections on state sovereignty

4.1 The concept of law and the dogma of sovereignty

In a rectoral address, delivered on the occasion of the 70th anniversary of the Free University on 20 October 1950, the Dutch legal philosopher Herman Dooyeweerd, made a penetrating analysis of the assault on the dogma of sovereignty in legal theory in the 19th and 20th centuries. He pointed out that the notion that sovereignty ought to be rejected both scientifically and practically was not limited to sociology and political science, but had also gained momentum in public law discourse in democratic countries since the two World Wars. Already in 1888 the German constitutional law scholar Hugo Preusz (1860-1925) observed that the elimination of the concept of sovereignty from the dogmas of constitutional law would only be a small step forward on the road that this science had long since taken (Preusz, 1889, p. 135; Gumplovicz, 1891, pp. 343-345). Since then sociology of law has asserted itself as a contributor to this discourse and several of its leading exponents have pointed out that notably the important metamorphosis of the social-economical structure of Western society has shifted the state more

and more from its central position, which formerly seemed to be the basis of the doctrine of sovereign power.

However, almost three centuries earlier, the Herborn jurist Johannes Althusius (1563-1638) – at a time when the idea of sovereignty was scientifically quite ripe for the absolutist conception of state-law as postulated by Jean Bodin (1530-1596) – expounded a theory of the structure of society founded on the recognition of a divine world order and the intrinsic character of the social spheres of life. In his theory, Althusius pointed out that each of the social spheres of life has its *lex propria* and its own accompanying legal sphere, which cannot be derived from any other (Althusius, 1614; Strauss, 2013, pp. 93-123). Although it may be true that this doctrine of the "symbiosis" lacked the scientific apparatus for a deeper analysis of these social structures, that in its legal construction of every form of human society from some sort of contract it followed the uniform schematic methods of natural law, and that it was not yet quite free from the hierarchic-universalistic views of medieval theories, it had at any rate emancipated itself from the Aristotelian-scholastic theory, which only bestowed the autonomous competence for the creation of law on the so-called *societates perfectae*: the state and the church. For that very reason it could not resist Bodin's doctrine of sovereignty in the domain of secular law. The following centuries saw the reign of Bodin's concept of sovereignty and its expression in three core elements: 1) Sovereignty draws the boundary lines between the state and all other political and non-political social spheres of life; 2) it defines the concept of positive law as the certified will of the law-giver; and 3) it defines the relation between the different orbits of competence in the creation of law, all of which are to be dependent on the only original competence of the sovereign head of state by virtue of his legislative power (Bodin, 1606; Dooyeweerd, 1950, p. 5; Strauss, 2007, 61). In order to make Bodin's concept of sovereignty acceptable to the ideas of liberty and autonomy, it constructed the state from a social contract between naturally free and equal individuals, mostly complemented by an authority – and subjection-contract, in Pufendorf (1632-1694) even by a third contract about the form of government (Hommes, 1979, p. 115)[9].

In Hobbes' (1558-1679) *Leviathan* and Rousseau's (1712-1778) infallible and all-powerful *volonté generale* the concept of sovereignty received its most consistent absolutist elaboration (see Dooyeweerd, 1969 II, p. 167). With Bodin's concept of sovereignty his conception of the relation between legislation and custom was also accepted. The indigenous customary law had under the test of the classic-Roman tradition of the *ius natural et gentium* become a *ius iniquum,* a bulwark of feudal society. In the new order no other law was allowed than the civil law and the *ius publicum,* that is to say the two frameworks of state-law. With John Locke (1632-1704) the liberal idea of the constitutional state led to a vigorous distinction between the state and society (Krammick, 1969, p. 119); and the theory of the division of power, which was to get its definite shape in Montesquieu's doctrine of the *trias politica* (see Kriek, 1981, pp. 249-265)*,* was also bound to result in the inner decay of the dogma of sovereignty.

The Historical school of law, founded by Friedrich Carl von Savigny (1779-1861), proclaimed law to be a phenomenon of historical evolution that originally springs organically from the individual spirit (or conviction) of the people, broke with the preceding rationalistic conceptions as regards the relation between statute law and customary law. The Germanistic wing of the Historical school, through the work of Georg Beseler (1809-1885) and Otto Gierke (1841-1921), contributed to the further demise of the traditional concept of sovereignty by advancing the doctrine of folk law (Hommes, 1972, pp. 169-176). The Germanists' emphasis on the autonomy of corporations to be a formal original source of law was responsible for the idea that internal corporate law exists as *Sozialrecht* – unknown to the classical tradition (Dooyeweerd, 1950, pp. 7-8). Gierke strove to replace the conception of the bureaucratic sovereign state expressed in Bodin's identification of the *res publica* with the government, by an "organic" idea of state in which the government was to be recognised as an essential organ of the organisation of the state that comprised both the government and the people. To Gierke the conception of the organised state is just the same as any other social corporate sphere, a real "spiritual organism" with a personality of its own, although it is a *gegliederte Gemeinschaft,* in which both the legal subjectivity of the individual citizens and that of the narrower corporate spheres, integrated into the whole of the state, remain untouched. Consequently sovereignty in its fullest sense could not then belong to the government or to the people, but only to the state as a whole. The government can only exercise sovereign power as an organ of the essentially corporate state. Since the theory of folk law had led to the doctrine of the autonomous creation of law in different social spheres, the concept of sovereignty, when elaborated consistently, could no longer have the characteristic quality of being the only original competence for the creation of positive law. The transfer of sovereignty from the sphere of natural law to the historical sphere of power presented the problem of the relation of sovereign power of the state to "law" (Dooyeweerd, 1950, pp. 7-8). According to Gierke state and law are "zwei selbständige und spezifisch verschiedene Seiten des Gemeinslebens. Jenes manifestirt

9 Welzel (1958: pp. 65, 66), distinguishes four contracts for state formation.

sich in der machvolle Durchführung gewollter Gemeinzwecke und kulminirt in der politischen. That, dieses offenbart sich in der Absteckung von Handlungssphären für die von ihm gebundenen Willen und gipfelt in rechtlichen Erkennen ('für Recht erkennen')" (Gierke, 1915, p. 105).

The problem, in this form, had been put in a decidedly confusing way for "state" and "law" are not to be juxtaposed in this fashion. The sphere of law is – among many others – only a "model aspect" of human society (see Dooyeweerd, 1969 III, pp. 399, 400). The state, on the other hand, is a real corporate sphere of social life, which functions as such in all aspects, the juridical mode included (Dooyeweerd, 1969 III, p. 400).[10] The typical structures of the differentiated spheres of social life (for example state, church, trade, family and school) introduce into the juridical aspect/mode that typical variety which prevents speaking of the law as such without further social distinctions. So, for example, public law and civil law are two characteristic legal spheres of the state as such, which differ fundamentally from the internal ecclesiastical law, or the internal law of trades and industries, and can never be placed over against the state as a social structure. Strauss (2012, p. 58) surmises that the efforts to delimit (state) law in the course of the 18th and 19th centuries reflect "a constant struggle with the extremes of an individualistic or universalistic understanding of state law and society" and "none of them managed to generate on this basis a view capable of appreciating the limited jural competence of state law within a differentiated society".

4.2 The institutions and structures responsible for harmonising the legal interests of society

Influenced by Ferdinand Tönnies' historistic distinction between *Gemeinschaft* and *Gesellschaft,* politocratic communitarianism denies the co-existence of *Gemeinschaft* and *Gesellschaft* societies. The idea of folk law confronting the state predominates in the thought of both Goosen and Malan because of the reduction of all social relationships to the communal relations underlying community law (folk law). Following Aristotle's meta-ethical historical view of society, politocratic communitarianism does not transcend the historical forms of community life in order to identify the transcendental categories of our social experience. The multiple social areas of life as they function in a differentiated society and their respective theoretically delimited juridical

10 Dooyeweerd observes that even a profound thinker as Otto Gierke lacked the insight into the individuality of human society, and that into the relation of these structures to the modal aspects of reality; "this in spite of the fact that it was especially *he* who had laid full emphasis on the significance of the structures of the social organizations" (1969 III, p. 400).

spheres are reduced to the idea of community. The lack of a systematic penetration of societal relationships according to a horizontal systematic classification, overarching the vertical structurally-typical divergence of these relationships, reduces the whole of social life to communal relations only. Although Aristotle endeavours to mediate between the individual and political society (the state), his political theory leans distinctly in favour of socialism (Capelle, 1971 II, p. 83).

The lack of legal-sociological pluralism produces a simplistic scenario of society and lacks the principles for identifying the material boundaries of competence attached to all spheres of social life. Firstly, the categorical distinction between societal relations of a communal and inter-individual (or inter-communal) nature is absent in politocratic communitarianism. Communal relations are those wherein people function as members of a whole. The second are those in which individuals, respectively communities mutually, do not function as members of a whole, but in co-ordination. All structurally-typical distinctions in communal and inter-individual or inter-communal relations presuppose this basic distinction. Secondly, politocratic communitarianism does not distinguish between natural communal relations, and those of an organisational type. All social relations are manifestations of natural community. Natural communal relations (marriage, domestic family, the cognate-family in a broader sense) are inherently unorganised in nature and can, because of their natural character, actualise themselves at all times, even in extremely variable social forms. Communities of the second type, however, are dependent upon certain historical conditions. Their organisational nature lends them continuity, regardless of the life-span of their members or the duration of their membership. Following German sociological terminology these organised communities may be called *soziale Verbände* and their internal juridical order *Verbandsrecht.* Authority and subordination are typical features of these *Verbände.* Thirdly, the categorical distinction between institutional and non-institutional communities does not surface in politocratic communitarian theory. Institutional communities are those that, according to their nature, embrace their members either for their entire life (as in the case of natural kinship), or for a part of it, irrespective of their own will. Besides natural communities, the state and the church are also of this character. In undifferentiated societies the sibs, tribes and brotherhoods are of similar character. Non-institutional organisations characteristically rest upon the principle of voluntary membership implying the freedom to join and to leave at will. Fourthly, the social relationships need historically to be divided according to their historical level of development into differentiated and undifferentiated life-forms. Undifferentiated organised communities

confront sociologic analysis, legal-sociological investigation and the science of legal history with profound structural-typological problems. The reason is that the most diverse typical structural principles may be interwoven in one organisational form. Structural principles as different, for instance, as those of a unilateral and partially fictional family bond, a political defence – and peace – organisation, a cult community, and an economic enterprise – all together make for a bound unity of a typical structural whole. Can the socio-philosophical problems emanating from these social "conglomerates" called "super-functional groups" be reduced – as Georges Gurvitch did – by identifying for example the clan with the natural family, with the "politic" group, with the cult community, etc.? (Dooyeweerd, 1969 III, pp. 164, 165). From a sociological perspective it is untenable: the clan is an organised community that cuts across the natural family and the cognate kinship relation and therefore never quite absorbs them. And the clan is not identical with its function as "politic", or religious, or agricultural community. Although it can unite the characteristics of all these types, this undifferentiated social unit can only become a typical structural whole because the family-principle fulfils a central, leading function in it, so that even the organisation of the entire community depends upon a unilateral and partly fictional system of blood-relation. It can be said, therefore, that the undifferentiated structure of the clan or sib community is typically qualified by the family or kinship principle, and that this qualification expresses itself in every type of its internal organised communal relationships, which therefore remain enclosed within an undifferentiated whole.

4.3 The juridical-pluralist nature of the legal community and its legal-sociological roots

The need for analysing the transcendental-juridical experiential mode of the social life forms, their accompanying social relationships and juridical competences in legal-sociological and political life, appears where the issue of sovereignty confronts the nature of the state and the various limitations on the competences of state and non-state social forms. Political stability and justice cannot be attained beyond the limits of law and beyond recognising the plurality of material juridical spheres delimiting the material spheres of competence of state and non-state entities and their respective orbits of competence (Hommes, 1978, pp. 42-52). This implies that the legal interests in inter-individual and community relations should be harmonised by granting, demarcating, protecting and terminating the legal competences, rights and obligations of the legal subjects in the community. A legal interest is a general legal concept which assumes a specific form in different socio-juridical spheres, depending on the typical nature of the sphere in question. Hommes distinguishes three such spheres, namely public law, civil law and the private law of non-state entities (see Hommes, 1972b and 1978).Three spheres of corresponding rights and competences can be distinguished: fundamental rights (*grondrechten*), political rights (*politieke rechten*) and civil liberties (*burgerlijke vrijheden*) (Hommes 1978, pp. 47-49).

The sphere of public law is the internal communal law of the state which, by virtue of the nature of the state, is always governed by relations of authority – those of ruler and ruled. As the *res publica,* the state is the law-giver and is therefore called upon to maintain the universal system of public law in a harmonious fashion, by serving the various legal interests, irrespective of any non-state distinction that may be made between its citizens. Thus, by disregarding all differences of rank, class, nationality, race, income, religion or language, a diversity of people are integrated within the context of the state into a juridical entity consisting of government and subjects (Hommes, 1978, pp. 42-47). Furthermore, the internal public law of the state, being a public matter (*res publica*), is guided by the principle of public (general) interest. The principles of modern fundamental human rights (German: *Grundrechten*) surface in the orbit of the public law interests of legal subjects and the public sphere of legal competences. Since fundamental human rights are constitutive principles of constitutional law, a constitutional state can properly be said to exist only when these rights are recognised in positive constitutional law (Hommes, 1978, 46-47). They represent the material juridical bounds of state power over the juridical spheres of freedom of the human personality and of non-state societal spheres. These include the freedom of religion and of speech, habeas corpus (freedom from arbitrary arrest), freedom of religious organisation, association and education. The fundamental human rights, to which everyone in the national territory is entitled, irrespective of nationality, do not include active and passive franchise, which is reserved for citizens only.

Whereas public law is the internal communal law of the state, the private law of non-state societal spheres comprises the internal, inter-individual and communal law of non-state societal relations. Civil law, on the other hand, is the inter-individual law applicable to all individuals and societal relations in the national territory, irrespective of race, nationality, social class or whatever. Civil law is intrinsically different from public law and has the nature of free inter-individual relations, in which all people and societal spheres within the national territory are juridically equal, irrespective of possibly social and economic disparities (Hommes, 1978, pp. 48-49). Civil law is inter-individual because it does not conjoin legal subjects in a hierarchy of authority such

as a legal system or community. The cardinal reason why civil law norms are given by public law-giving organs lies in their inseparable connection with the idea of the modern constitutional state (German: *Rechtstaat*), since a system of civil law must necessarily be based on a system of public law. Hence material civil law liberties can exist only if a material constitutional state has been established (Hommes, 1978, pp. 43-44). Only when people in the national territory are integrated as subjects with equal rights within a system of public law does it become possible to integrate all people within the boundaries of the territory on an equal footing into a system of civil law which will afford them specific spheres of civil liberty in their free inter-individual relations, irrespective of their public law or other social status. Civil law is a system of private law, distinct from both public law and the internal private law of non-state societal spheres, and regards people as legal subjects purely on the grounds of their humanity, irrespective of nationality, race, culture, religious belief or denomination, political convictions, membership of free associations, social status, rank or any other consideration. The human rights recognised in this juridical sphere rest on the essential equality of all human beings, and as civil rights, are distinct from the fundamental rights of constitutional law (Hommes, 1978, pp. 48-49).The civil rights in the orbit of civil law are the rights of fundamental equality as distinct from constitutional fundamental rights, which are known as fundamental human rights. Any human being who enters the national territory is humanly entitled to these civil freedoms. Of particular importance is the fact that the constitutive principles are civil equality and freedom, which are inalienable human rights. The legal interests in the internal spheres of non-state entities carry with them rights and liberties of non-state entities in group life-forms (formations) e.g. clubs, schools, business enterprises, churches etc. These include the right to establish social institutions, as well as the liberty (competence) of their respective management structures to manage the internal legal orders of the respective entities across the spectrum of liberties these social institutions may have. The structural integrity and substantive liberty with the ensuing legal competences of the diverse social orbits are, from a juridical-pluralist view, essential to ensure protection of both positive and negative freedom in society.

5. Conclusions

Politocratic pluralism's view of the Aristotelian *polis* as the ideal form of meta-ethical historical community presupposes a highly disputable socio-political structure for providing a system of political governance. Politocracy's reliance on the ancient, relatively undifferentiated, social forms of human association is questionable with regard to the hierarchical structure of life forms in the *polis,* the socio-political implications of politocratic political life and the culture of political life in the city-state. In politocratic communitarianism all life-forms are absorbed by the meta-ethical whole of the *polis* community. The *polis Gemeinschaft* is a universal structure encapsulating all the rights and liberties of individuals and social structures. No provision is made for areas of competence of individual legal interests and/or spheres of liberty. In the Aristotelian *polis* all law was reduced to public law and the principles of the equality and freedom of all people were not acknowledged within the boundaries of the city-state. The political life in the city-state was markedly inferior to the political ideals set by Aristotle and others. Within the city-state, a large part of the adult population was denied full citizenship and the right to participate in political life was reserved for a very small elite. Not only were women excluded, but also long term resident aliens and slaves, while full citizenship was a privilege inheritable only by males (Dahl, 1989, p. 21). Although aliens (*metics*) were without the rights of citizens and prohibited from owning land or a house, they had many duties of citizens. Slaves were not only denied all rights of citizenship but were denied all legal rights whatsoever. In legal terms slaves were no more than the property of their owners, wholly without legal rights. Where even poor citizens had some protection against abuse by virtue of their rights as citizens, slaves were defenceless. Democracy existed only among members of the same *polis* and the idea of individual freedom and equality flowing from the humaneness of all people received no recognition in Greek political life. Consequently Greek democracy did not provide for the existence of universal claims to freedom, equality, or rights, whether political rights or human rights. Dahl observes that the Greek concept of freedom did not extend beyond the political community itself: freedom for one's own members implied neither civil freedom for all residents within the community nor political freedom for members of other communities over whom the *polis* community had power. Thus freedom did not include the possession of inalienable rights or competences to protect such rights. (Dahl, 1989, p. 23). The lack of sovereign spheres of legal competence beyond the ethical community of the state produced defects typical of the political culture in power states two millennia later: abuse of power in the politics of Athens was a common occurrence, and politics was

subordinated to politicians' personal ambitions (Dahl, 1989, pp. 20-21). The supposedly superior claims of the common good yielded in practice to the stronger claims of family and friends and factional leaders used ostracism by vote to banish their opponents for ten years. The political culture in the city-state set the tone for modern democratic countries by being more inclined to private interests than being actively concerned with the public good (Dahl, 1989, p. 21).

Overall Dahl's theory of polyarchic pluralist democracy contains some valuable insights regarding the promotion of a democratic culture in the state. Despite his defence of democratic ideals, he emphasises that in polyarchies government is by the political authority and not by the people. He points out the importance of "autonomous" organisations/sub-systems and of guaranteeing their fundamental rights for the functioning of pluralist democracies. Nevertheless his theory has certain significant weaknesses. Firstly, Dahl's social socio-political model does not provide for the horizontal differentiation of state and non-state social orbits reflecting the typical vertical structures associated with these independent spheres. Secondly, Dahl's use of the term "right" lacks clear-cut circumscription of the nature of rights as such and their relatedness to the different legal spheres in a differentiated society. Specific mention should be made of the sphere of public law, civil law and private law. He draws no meaningful distinction between state and non-state organisations/sub-systems and the character of the fundamental rights at issue. For example the important basic differences between the rights of group formations, say, a federal state and a business, university or association are not considered. The four fundamental rights of organisations are insufficient and are in any case not adequately substantiated with reference to an existing legal system. Although he refers to the right of groups in consociation democracies to have their fundamental interests considered, he does not indicate the nature of such interests and rights, hence his definition and explanation of justice – as being the equal treatment and consideration of the interests of every person – is insufficient to give practical guidance (and direction) in a material sense to solve issues in the sphere of social justice. It is therefore important to distinguish the legal relations in the state as a public legal consociation ("verband") and the primary duty of the state to integrate the plurality of rights and interests of all individuals and social life-forms within its territory. The consociational bond transcends all non-state jural relations. In the legal consociation of the body politic all non-state legal interests should be harmonised and integrated without reducing non-state entities and individuals to the status of bricks for erecting the universal and absolute state.

George Lukács' criticism of Tönnies' lack of supra-temporal perspective on social entities also applies to both politocratic communitarianism and polyarchy: similar to Tönnies, both approaches also "volatilized concretely historical social formations into supra-historical 'essences'" (Lukács, 1980, p. 594). This lack of supra-temporal vision produces a rather narrow perspective on social structures and their material fields of competence. The universalistic political domain (whether the state or the *polis*) to a large measure absorbs other social spheres. Although both politocracy and polyarchy provide for a plurality of relatively "autonomous" spheres of social life, their structural encapsulation within the state community reduces the juridical effectiveness of such spheres for demarcating the boundaries of competence of state and non-state entities. This leaves individuals and social spheres without adequate recourse to public law rights, civil law rights and the rights of non-state social bodies. Without adequate protection of these rights, the social and political critique of state universalism by politocracy and polyarchy has only limited effect. In view of the inherent limitations of the two pluralist models discussed above, juridical pluralism goes further in safeguarding the positive and negative freedoms of individuals and social groupings in political life. Furthermore, the juridical-pluralist principle gives expression to the universal ontological principle of what Dooyeweerd (1950, pp. 1-12), called "sovereignty-in-its-proper-orbit", receiving its special legal expression in the juridical aspect of reality and providing a deepened perspective on juridical-political life.

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From awareness to solution: Building blocks for business ethics decision-making

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Abstract

It is evident that the economic meltdown has raised questions on how ethical business decisions are, and whether values are evident in all business activities. Together with the questioning of the morality of markets, many people are also questioning the way business is done in a market-driven society. From the literature it is evident that there is a growing concern about the impact the market has on people's lives. At the same time, there is an emerging tendency to question society in general's market orientation and level of materialism. In view of these observations, the paper argues that the individual has as much responsibility for ethical decision-making in business as organisations have. In addition it promotes the perspective that business decisions are taken not only in formal business, but that non-business entities and entrepreneurs should also be guided on how to make value-informed business decisions. The emerging research question is therefore to identify how the individual inside and outside the formal organisation should deal with his/her ethical responsibilities in diverse business decisions and activities. This research question is examined from a qualitative research perspective to provide user-oriented knowledge. Five building blocks for ethical decision-making are identified. These building blocks are individual responsibility, sphere of influence, stakeholders, sustainability, and ethics as relationship.