POLITICAL NATURALISM AND THE FRENCH "NOUVELLE DROITE": REFLECTIONS ON POLITOCRATIC COMMUNITARIANISM IN CONTEMPORARY AFRIKAANS POLITICAL LITERATURE

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Abstract

An increasing lack of confidence over the last couple of years in government's will and ability to govern South African political society has stimulated Afrikaans publications on the notion of community in general, and political community in particular. The publication, Politokrasie. 'n Peiling van die dwanglogika van die territoriale staat en gedagtes vir 'n antwoord daarop *(2011), focuses on the issue of political community in particular. In this work, Koos Malan envisages a political enclave in the form of the Aristotelian idea of the Greek city-state as an alternative to the "territorial state"; it is envisaged to be a small, natural entity governed by a small elite. In this essay the roots of the politocratic community envisaged by Malan are traced to the legacy of Ferdinand Tönnies and its further development by the French New Rightist author, Alain de Benoist. This contribution is a critical reflection of the political naturalism of the French "Nouvelle Droite" and its manifestations in Malan's politocratic communitarianism. It is hoped that this contribution will stimulate debate on the issues emanating from Malan's publication.*

Keywords: Politocracy; territorial state; Ferdinand Tönnies; Alain de Benoist; French "Nouvelle Droite".

Sleutelwoorde: Politokrasie; territoriale staat; Ferdinand Tönnies; Alain de Benoist; Franse "Nouvelle Droite".

1.   INTRODUCTION

The increased failure of the state to provide a stable public legal order and to dispense justice in an unbiased manner has contributed to the syndrome of the failed state.[2] The phenomenon of state failure is supported by the crude and undignified conduct of government, its inability to engender trust, its reluctance

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2   In this article "political community" and "body politic" are used interchangeably for the somewhat ambiguous term "state". The term "state" is used only to denote the depository of political power within a political society.

to perform its constitutional obligations in a normative fashion,[3] its lack of commitment to maintain law and order in an unbiased fashion and its unwillingness to enable social institutions to perform their respective destinies in accordance with their internal normative callings. In addition, the increasing lack of confidence in civil government's ability to meet constitutional aims and the phenomenon of crude majoritarianism have spawned renewed interest in the principle of self-determination of ethnic and cultural communities and their role in public life. As a consequence, publications on community and communitarian politics appear more frequently in Afrikaans literature. Koos Malan's book, *Politokrasie. 'n Peiling van die dwanglogika van die territoriale staat en gedagtes vir 'n antwoord daarop*[4] (Politocracy. An assessment of the coercive logic of the territorial state and ideas around a response to it), and Danie Goosen's, *Die nihilisme* (Nihilism)[5] and *Oor gemeenskap en plek*[6] (On community and place) are typical examples of the newly emerging genre of communitarian literature in Afrikaans. These works deal with aspects of the philosophical underpinnings of the concept of community and its relevance for contemporary challenges in social and/or political life. For purposes of this essay *Politocracy* is of particular interest because of its criticism of the "territorial state" and the plea for establishing a utopia in the form of a sort of Greek *polis*, "as a qualitatively more rewarding form of political life" to secure the integrity of public life in general and cultural communities in particular.[7] The debunking of the territorial state is particularly noteworthy. Because the state is normatively speaking a territorial entity, it means in effect the debunking of the state as such.

Malan levels his criticism at the modern state with its underlying "ideology of the state" (or "stateness") as a determinant of the individual's public identity[8] and the state as the sole and exclusive enforcer of a statist public identity.[9] He also criticises the ideological content of the term "state"[10] and the political "ideology" contained in the term "law".[11]

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3   See, for instance, the unsettling account of political misconduct since 1994 by RW Johnson, *South Africa's brave new world* (London: Penguin Books, 2009).

4   Koos Malan, *Politokrasie. 'n Peiling van die dwanglogika van die territoriale staat en gedagtes vir 'n antwoord daarop* (Pretoria: Pretoria University Law Press, 2011). All English translations of the Afrikaans version are by the author (AWGR).

5   Danie Goosen, *Die nihilism* (*s.n.*: Praag, 2007).

6   Danie Goosen, *Oor gemeenskap en plek* (Pretoria: FAK, 2015).

7   See the book review by Christoph Gröpl, "Politocracy: an assessment of the coercive logic of the territorial state and ideas around a response to it", *Tydskrif vir Suid-Afrikaanse Reg* 2, 2014, pp. 421-423.

8   Malan, p. 1.

9   *Ibid*.

10   *Ibid*., p. 109.

11   *Ibid*., p. 110.

Malan's discourse on what he calls the "territorial state" labels the politics of human rights as originating from the "paradigm of the state".[12] He adds that human rights testify to the extreme needs and dependence of human beings on the state[13] and the totalitarian character of the Leviathan state in its involvement with the well-being of everyone in the state territory.[14] Malan relies on the Marxist social critique of Friedrich Engels in describing the state as being mainly a conflict regulator to resolve economic, linguistic and cultural conflict in society,[15] the gradual (but unavoidable) alienation of the state from society,[16] and for utilising human rights as sources of an ideology of dependence.[17]

In contradistinction to the paradigm of the territorial state, Malan posits "politocracy" – a term derived from the classic Greek notion of *polis*.[18] To Malan politocracy gives expression to the dignity of "competent adults" as partners in their governance of the *res publica* (or commonwealth).[19] Different from the territorial state, politocracy elevates "homely communities" ("tuistelike gemeenskappe")[20] to the status of "political communities".[21] Homely communities are regarded as being good *per se*, because they presuppose personal autonomy and the competence of adult persons to act.[22] Whereas the territorial state is merely reflective of legal status, politocracy is more congenial for furthering the *res publica*.[23] Malan concludes that politocracy is, "an appealing space beyond the confines of the territorial state, to the measure that it is a truly political order".[24] Politocracy, according to Malan, is an order "beyond stateliness".[25] Politocracy "defines" an encompassing political-constitutional order and provides for multi-layered government by citizens (*politai*) of each political community over the particular *res publica* (the commonwealth) in a particular community.[26]

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12   *Ibid*., p. 217.
13   *Ibid*., p. 221.
14   *Ibid*., p. 222.
15   *Ibid*., p. 229. Also see Malan's observations in an earlier publication, "'n Kritiese evaluering van menseregte as eietydse globale politiek-juridiese verskynsel", *Tydskrif vir Geesteswetenskappe* 43(1&2), Maart & Junie 2003, pp. 94-111 & p. 102.
16   Malan, *Politokrasie*, p. 229.
17   *Ibid*., p. 235.
18   *Ibid*., p. 276.
19   *Ibid*., p. 277.
20   The term "homely communities" is a more apt description of Malan's utopian politocratic communities than the term "habitative communities".
21   Malan, *Politokrasie*, p. 277.
22   *Ibid*., p. 278.
23   *Ibid*., p. 279f.
24   *Ibid*., p. 10.
25   *Ibid*., p. 126.
26   *Ibid*., p. 276.

It needs to be emphasised that the homely community is the central politico-legal concept in Malan's politocratic theory. The politocratic community has, "both political and legal relevance"; it is the cultural and/or local community in which people live;[27] it emanates from the principle of "subsidiarity" and entails maximum self-government in the form of homely communities.[28] In the politocratic community, citizenship is more limited and the *res publica* is more intimately experienced than in the territorial state.[29] In essence, the ideal homely political community (specifically cultural community) should not exceed a quarter of a million people as its total capacity in order to avoid it from degenerating into a territorial state.[30] This article comments in particular upon Malan's concept of a politocratic community, the implications of his conception of community, and the implications for his theory of the state.

2. POLITOCRACY AND THE CONCEPT OF COMMUNITY

2.1 Tönnies, community and the associational status of individuals

The theoretical views in *Politocracy* reflect the combined legacy of the German social theorist, Ferdinand Tönnies, and the French New Rightist author, Alain de Benoist. Firstly, Malan campaigns for the restoration of *Gemeinschaft* in social life; secondly, he argues in favour of the Greek city-state (*polis*) as the ideal form of political government. He investigates the theoretical conceptions of both contending approaches to the social status of human beings: first, the liberal point of view, which regards mankind to be the sum total of individuals "contained" in each social entity – that is, one becomes first a "human being" and only then, as if by accident, a member of a specific culture or a people; and the second, the communitarian view, which regards mankind to be a complex phylogenetic network whereby the freedom of the individual is guaranteed by the protection of the family or ethnic group, which provides the human person with meaningful orientation to the entire world population.[31]

With a view to the issue of community and the associational status of individuals in society, Tönnies distinguishes two conceptual models for types of human association: *Gemeinschaft* (community) and *Gesellschaft* (association).[32]

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27   *Ibid*., p. 277.
28   *Ibid*., p. 286.
29   See *ibid*., p. 312.
30   *Ibid*., p. 316.
31   For an example of this type of typology of human social groupings, see T Sunic, "Gemeinschaft and Gesellschaft: A sociological view of the decay of modern society", *Mankind Quarterly* 34, 4 January 1994, p. 263.
32   See F Tönnies, *Community ("Gemeinschaft") and association ('Gesellschaft")* (hereafter referred to as *Community and association*), translated by Charles P Loomis (London: Routledge and

These sociological categories describe the way in which individuals achieve social status. The *Gemeinschaft* is an association in which individuals are oriented to the larger group as much as, and often more than, to their own self-interest, and are regulated by common social mores or beliefs about the appropriate behaviour and responsibility of members of the association.[33] *Gesellschaft* describes associations in which, for the individual, the larger association never takes precedence over their own self-interest, and the associations lack the same level of shared social mores as *Gemeinschaft*. A typical example of *Gemeinschaft* community would, for example, be a community like the Amish, whereas the South African state would be an example of a *Gesellschaft* society.

The distinction between *Gemeinschaft* and *Gesellschaft* as associational forms of human association, gathered for a common purpose, has vast implications for the status assigned to persons in such associations. In the *Gemeinschaft* community, persons have an ascribed status, meaning a fixed status given by birth. For example, an individual born to farmers will come to occupy his or her parents' social role (and status) until death. *Gemeinschaft* associations are characterised by a moderate division of labour, strong personal relationships, strong families, and relatively simple social institutions. In such societies there is less of a need to enforce social control externally due to the collective sense of loyalty that individuals feel for society. *Gemeinschaft* societies reflect a natural unity of volition (*Wesenswille*) by all members of the association. In this associational form, volition builds on natural instincts and is formed in an inner community of feelings: love and hatred, likes and dislikes, ideas and beliefs.[34]

In contrast, *Gesellschaft* associations are larger societies; they never take precedence over the individual's self-interest, and such associations lack the same level of shared social mores. *Gesellschaft* is maintained through individuals acting in their own self-interest. A modern business is a good example of *Gesellschaft* associations: the workers, managers and owners may have very little in terms of shared orientations and beliefs. Neither do they care that much for the product they are making, but it is in their self-interest to come to work to make money, and therefore the business continues. *Gesellschaft* society involves achieved status, or a status reached by education and professional acknowledgement. Unlike *Gemeinschaften*, *Gesellschaften* emphasises secondary relationships rather

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Kegan Paul, 1974), pp. 16ff., 37ff. For a full bibliography of Tönnies' work, see *American Journal of Sociology* 42, 1937, pp. 100-101.

33   See Tönnies, *Community and association*, p. 42. "[T]he theory of Gemeinschaft starts from the assumption of perfect unity of human wills as an original or natural condition which is preserved in spite of actual separation."

34   F Tönnies, *Gemeinschaft und Gesellschaft. Grundbegriffe der reinen Soziologie* (hereafter referred to as *Grundbegriffe der reinen Soziologie*), (Leipzig: Hans Buske Verlag, 1935), pp. 87ff., 123, 128ff., 133ff., 142, 159, 168, 171, 180, 138.

than familial or community ties, and there is generally less individual loyalty to the larger community. Social cohesion in *Gesellschaften* typically derives from a more elaborate division of labour. Such societies are, therefore, potentially more susceptible to class upheavals, as well as racial and ethnic conflicts. *Gesellschaften* reflect arbitrary volition (*Kürwille*) – a mere external agreement made in order to reach a specific external goal; in it, mutual profit interest is paramount and an inner unity of will is lacking.[35]

Gesellschaft is a modern rationalistic manifestation of human society, exercising a destructive influence upon the foundations of culture. It also marks the decline of civilisation and is opposed to all real *Gemeinschaft*.[36] Not only are *Gemeinschaft* and *Gesellschaft* ontologically different in terms of status and theoretical consequences, but they are also different in a philosophic-historical sense.[37] There are two main periods of cultural development: a period of *Gemeinschaft* is followed by a period of individualistic *Gesellschaft*. The former is characterised by concord, customs and religion.[38] The latter is characterised by convention, politics and public opinion, typical of which are large modern cities – national life with its opportunistic politics, and cosmopolitan life, conspicuously proclaimed in concepts by rationalistic science, adopted by literature and the press, and passing into public opinion.[39]

The legacy of Tönnies' typology of associational forms culminates in politocracy's homely communities (as forms of true community), juxtaposed with the territorial state as the social form composed of individuals pursuing their own self-interest. Malan assigns political status to these homely communities by reverting to the Greek political institution of the *polis*. To him the social bonds of the Greek polis serve as a model for politically organising the homely communities in the form of associational *Gemeinschaften*. To Malan the focus of ancient Greek politics and political philosophy was the *polis*-citizen in close relationship with his co-citizens, as well as their common experiences in the, "most important *polis*".[40] According to the classical Aristotelian view, the citizen is an entity with a high public profile, because citizenship is continually informed by the

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35   Tönnies, *Grundbegriffe der reinen Soziologie*, pp. 87, 133ff., 159, 168, 174ff., 180, 238.

36   See Herman Dooyeweerd's comments in *Verkenningen in de wijsbegeerte, de sociologie en de rechtsgeschiedenis* (Amsterdam: Buijten & Schpperheijn, 1962), pp. 113-114.

37   *Ibid*. For critiques of Tönnies' works, see Louis Wirth, "The sociology of Ferdinand Tönnies", *American Journal of Sociology* 32, 1927, pp. 412-422; Rudolph Heberle, "The sociological system of Ferdinand Tönnies: 'Community' and 'Society'". In: HE Barnes (ed.), *An introduction to the history of sociology* (Chicago: University of Chicago Press, 1948), pp. 227-248.

38   Because tribe, language, custom and settlement form the basis of all active life of a people. F Tönnies, *Custom. An essay on social codes*, translated by A Farrell Borenstein (New York: The Free Press of Glencoe, 1961), p. 103.

39   Tönnies, *Community and association*, pp. 16ff., 37ff; Dooyeweerd, p. 114.

40   Malan, *Politokrasie*, p. 11.

citizens' active participation in matters of the *polis*.[41] Therefore, citizenship is not a status assigned primarily to the state, but to the smaller and more closely-knit homely communities.[42]

2.2   Alain de Benoist, the French New Right and the glorification of pagan Greek political life

Alain de Benoist credits Ferdinand Tönnies with having properly identified the historical decline of *Gemeinschaften* into *Gesellschaften*. In an article titled, "Gemeinschaft and Gesellschaft. A sociological view of the decay of modern society",[43] De Benoist states that peaceful modern societies, which respect the individual, evolved from age-old familistic ties. The transition from band-type societies, through clan and tribal organisations, into nation-states was peaceful only when accomplished without disruption of the basic ties which link the individual to the larger society by a sense of common history, culture and kinship. The sense of "belonging" to a nation by virtue of such shared ties promotes cooperation, altruism and respect for other members. In modern times, according to De Benoist, traditional ties have been weakened by the rise of mass societies and rapid global communication; factors which bring with them rapid social change and new philosophies which deny the significance of the sense of nationhood, and which emphasise individualism and individualistic goals. The cohesion of societies has subsequently been threatened, and replaced by multi-cultural and multi-ethnic societies, as well as by an overwhelming sense of lost identity in the mass global society in which Western man, at least, has come to conceive him as belonging.

De Benoist has contributed to the establishment of the New Rightist movement in France to more than a substantial degree. For purposes of this article two prominent facets of De Benoist's philosophy are to be accounted for: firstly, his vehement criticism of the legacy of the Judeo-Christian religion, and secondly, his glorification of pagan Greek culture and social life. In his essay, "To be a pagan", De Benoist exclaimed that he preferred Heraclitus and Parmenides to St. Paul, or the universe of the Vetan to the one of scholasticism. In a contribution to the journal, *Chronicles: A Magazine of American Culture*,[44] he describes his conception of paganism as being, "Seneca and Tacitus; it is an artistic and cultural movement that swept over Italy under the banner of the Renaissance".[45] He added, "Paganism

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41   *Ibid.*, p. 74.
42   *Ibid.*, p. 312.
43   Alain de Benoist, "Gemeinschaft and Gesellschaft. A sociological view of the decay of modern society", *Mankind Quarterly* 34, 4 January 1994, p. 263.
44   Alain de Benoist, "Monotheism vs. polytheism", *Chronicles: A Magazine of American Culture*, April 1996, pp. 20-23.
45   *Ibid.*, p. 20.

also means Friedrich Nietzsche, Martin Heidegger, Charles Darwin and a host of other thinkers associated with the Western cultural heritage".[46] De Benoist blames the Judeo-Christian religion for having endeavoured to obscure paganism for two thousand years, in spite of which pagan thought has not disappeared, "even though it has often been blurred, stifled, or persecuted by monotheistic religions and their secular offshoots".[47] He credits Nietzsche with having understood the meaning of, "Athens against Jerusalem" and calls ancient paganism, "the greatest utility of polytheism".[48] Elsewhere, De Benoist stigmatises the Hebrew religion as, "the intolerance of the Semitic peoples" and, "the meritable consequences of their monotheism".[49] He transposes the alleged ill-born consequences of Christianity to the political heritage of absolutism. "The origins of modern totalitarianism are not difficult to trace. In a secular form, they are tied to the same radical strains of intolerance whose religious causes we have just examined."[50] He adds, "The *organisation* of totalitarianism is patterned after the organisation of the Christian Church, and in a similar manner totalitarianisms exploit the themes of the 'masses' – the themes inherent in contemporary mass democracy."[51] Reverting to paganism, De Benoist expresses his sincere appreciation of the pagan heritage, "What is important that they (pagan religions) speak to us, and for my part I draw more lessons from the symbolic contrast of Janus and Vesta, more ethical understanding from the Oresteia or from the account of Ymir's dismemberment, than from the adventures of Joseph and his brothers or the story of the aborted murder of Isaac."[52]

2.3 De Benoist's nominalistic treatment of the fundamental concepts of the state and political life

The demise of the state, democracy and fundamental rights in De Benoist's discourses undergird his rejection of these fundamental concepts as being repressive manifestations of power which maintain and support the autonomy of individuals, thereby creating an illusion of universal norms, truths, stable conceptions of meaning, subjectivity and identity.[53] To De Benoist, liberal democracy creates an artificial world of meaning and value isolated from social relations of domination and power. Having deconstructed the liberal idea of the state under law, De Benoist opts for the Greek conceptions of democracy and liberty with its particularistic

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46   *Ibid.*
47   *Ibid.*
48   *Ibid.*, p. 21.
49   *Ibid.*, p. 23.
50   *Ibid.*, p. 22.
51   *Ibid.*, p. 23.
52   Alain de Benoist, *On being a pagan* (Atlanta, Georgia: Ultra, 2004), p. 15.
53   A van Blerk, *Jurisprudence. An introduction* (Durban: Butterworths, 2004), p. 225, typifies the communitarian strain of jurisprudence in these terms.

manifestations of political power wielded by ethnically consolidated communities in pagan social life.[54]

De Benoist's veneration for the Greek *polis* accounts for his aversion to modern manifestations of democracy. De Benoist observes that to some extent *demos* and *ethnos* coincide; democracy could not be conceived in relationship to the individual, but only in relationship to the *polis*, that is to say, to the city in its capacity as an organised community. Slaves were excluded from voting, not because they were slaves, but because they were not citizens. He adds, "We seem shocked by this today, yet after all, which democracy has ever given voting rights to non-citizens?" De Benoist hails liberty in the *polis* not as "liberty-autonomy", but as "liberty-participation"; it was not meant to reach beyond the community, but was practised solely in the framework of the *polis*.[55] To De Benoist liberty means adherence; the "liberty" of an individual without heritage, i.e. of the deracinated individual, was completely devoid of any meaning. In Aristotle, De Benoist discovers the true perspectives of society and citizenship. Aristotle defines man as a "political animal", as a "social being", when he asserts that the city precedes the individual and that only with society can the individual achieve his potential.[56] He also suggests that man should not be detached from his role of citizen, a person living in the framework of the organised community, of a *polis*, or a *civitas*. To De Benoist, Aristotle's views stand in contrast to the concept of modern liberalism, which posits that the individual precedes society, and that man, in the capacity of a self-sufficient individual, is at once something more than just a citizen.[57]

Malan shares De Benoist's glorification of ancient Greek paganism and he traces the roots of medieval Christian political order to the gradual demise and ultimate downfall of the Greek city-state. Malan surmises that the term "politocracy" is derived from the Greek concept *polis* – the city-state. He adds that although politocracy does not wish to revive the ancient *polis* system of ancient Greece, the political thought of classical Greece is of particular value. Malan emphasises the political thought of Aristotle[58] and he links his politocratic theory to the Aristotelian view of the *polis* in particular. He adds that for Aristotle the *polis* is

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54   His views are reminiscent of Aristotle's remarks in *The politics*, III, 3(1276a), translated by TA Sinclair (Harmondsworth, Middlesex: Penguin Books, 1979). "(T)he identity of the state remains the same so long as there is continuity of race". All references to Aristotle's *The politics* refers to the book, followed by the chapter and the traditional mode of citation in brackets.

55   Alain de Benoist, "The ancients and the moderns", <http://www.unz.org/Author/DeDeBenoistAlain>, accessed 15 April 2015.

56   Aristotle, I, 2(1253a).

57   De Benoist, "The ancients and the moderns".

58   Malan, *Politokrasie*, p. 276.

a community of like persons whose end or aim is the best life possible.[59] Therefore, the *polis* is qualitatively something totally different to a contract (or pact) of mutual protection or a trade agreement between people who (incidentally) live in the same locality and where government merely facilitates trade, prohibits residents from injuring one another and regulates conflict between persons *inter se*.[60]

To Malan the focus of ancient Greek political life and political philosophy was the *polis*-citizen's close relationships with co-citizens and their common experiences in the *polis*. The subsequent rise of the *cosmopolis* destroyed the status of *polis*-citizenship and a new "theme" accompanied the cosmopolitan order – that of the modern state.[61] Malan credits Aristotle with defining the true status of the individual as, "an entity with a high public profile"; citizenship became a status to be spent through promoting the affairs of the *polis*. To Aristotle the citizen was attached to the state through his daily participation in the affairs of the *polis*.[62] To Malan the Athenian democracy was organised in a limited geographical area, and it functioned through a national assembly.[63] Citizens could participate in the proceedings; democracy was a visible and tangible experience and the Athenians were also involved in the execution of their own decisions.[64] Malan finds the Athenian system of governance particularly appealing because of its, "narrowness of space"; it was subject to geographical limitations and the closely knit bonds of the close community of the *polis*.[65] Malan finds the Athenian citizenship particularly suited because it did not have primarily juridical status (like the modern state), but firstly practical participation in the affairs of the *polis*.[66] Therefore, says Malan, the Athenian conception of citizenship was not the liberal conception according to which individual autonomy received emphasis, but rather the liberty to participate in the affairs of the *polis*.[67] According to the Athenian conception, liberty beyond the enclaves of the polis was unconceivable.[68] The political elite (political aristocracy) was constantly subject to re-composition

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59   See Aristotle, VII, 8(1328a). "When we speak of city or state, we mean the community of like persons whose end or aim is the best life possible."

60   Malan, *Politokrasie*, p. 299. See Aristotle, III, 9(1280a). "A state is also something more than a pact of mutual protection or an agreement to exchange goods and services; for in that case Etruscans and Carthaginians, and all others with contractual obligations to each other, would be taken as citizens of single state."

61   Malan, *Politokrasie*, p. 11.

62   *Ibid*., p. 74.

63   *Ibid*., p. 200.

64   *Ibid*.

65   *Ibid*.

66   *Ibid*., p. 201.

67   *Ibid*.

68   *Ibid*.

and dependent upon continuous achievement.[69] Malan detects an important link between the idea of *Gemeinschaft* and the Greek *polis*, and he establishes it in the organised community of the *polis*.[70] In the *polis* community equality was not based on, "some ontological equality or equality in terms of natural law thinking but the Athenian citizens' equal identification with the *polis*".[71] Malan also lauds the Athenian democratic form as being communitarian and holistic, in contradistinction to individualism in modern contemporary democracy. In terms of its democratic conception, citizenship was circumscribed on the basis of the origin of the citizens[72] of the *polis* and their active participation in the affairs of the *polis*.[73] Athenian democracy was an organic community; only a fraction of the population had the status of citizens (*politai*), foreigners and women were excluded, and slaves did not enjoy the status of *polites*.[74] In a nutshell, only birth conferred individual citizenship; democracy was rooted in the autochthonous concept of citizenship, which ultimately linked its performance to the origins of those who exercised it. Athenians of the fifth century celebrated themselves as the autochthonous people, "of the great Athens" and, "[i]nto that founding myth they grounded their democracy".[75] Malan continues, "Athenian democracy was primarily associated with the idea of a mainly homogenous community with the consciousness of that which characterises them as a people. The proper functioning of the Athenian democracy was accomplished through tightly knit common bonds and through a distinct experience of their common ancestry."[76] Over and against the homogeneity, the common ancestry and the organic holism of the Athenian *demos*, we have the current *demos*. Currently *demos* means everybody; a fluctuating, amorphous crowd of people who increasingly becomes more society (*Gesellschaft*) and increasingly less community (*Gemeinschaft*). Today the *demos* composes a highly unstable, atomised and normless number of people in the territorial state. This is the result of the magnitude of the current territorial state, and it was in recent decades strengthened by the free flow of capital and people across borders – a phenomenon caused by economic globalisation.[77]

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69   *Ibid*.
70   *Ibid*.
71   *Ibid*., p. 202.
72   See, for example, Aristotle's views in *The politics,* III, 2(1257b). "For practical purposes a citizen
      is often defined as one of citizen birth on both his father's and mother's side [...]."
73   Malan, *Politokrasie*, p. 202.
74   *Ibid*., p. 203.
75   *Ibid*., quoting De Benoist, p. 71.
76   Malan, *Politokrasie*, p. 203.
77   *Ibid*., p. 204.

3. POLITOCRACY, THE NEGATION OF THE STATE AND THE UNDIFFERENTIATED COMMUNITY

3.1 The axiological nature of *Gemeinschaft* and a return to undifferentiated forms of political life

Tönnies' typology of the forms of human association is largely based on an axiological standard of the virtues of undifferentiated society and his glorification of simple forms of human social intercourse.[78] His emphasis on the undifferentiated medieval corporations and his depreciation of differentiation in cultural life reflects the influence of Schelling's organic Romanticism,[79] whilst his depreciation of *Gesellschaft* was largely inspired by the Marxist conception of the dialectical development of capitalist society.[80] The glorification of *Gemeinschaft* as an organic manifestation of social life in effect implies a return to the social organisational forms of the primitive sibs, guilds and patriarchal domestic communities of medieval times. The depreciation of *Gesellschaft* communities prevents Tönnies from appreciating the variety of structural principles inherent to the various societal relationships and to the totality of communal, inter-individual and inter-communal forms of social existence.[81] By reducing all organised communities, which do not correspond to the romantic idea of *Gemeinschaft*, to mere artificial relations and disposable forms of human social life, Tönnies social theory has serious implications for political life and law in society. Law and rights are reduced to artificial bonds, subject to the interests of the primitive forms of cultural life. In addition, Tönnies eliminates any examination of the inner nature and structure of the state as a social entity responsible for the harmonisation and integration of legal interests in society. On the contrary, the undifferentiated forms of cultural life bear the responsibility of performing the typical functions of the state.[82]

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78 Max Weber, using Tönnies' terminology, states that, "a sect" is not a *Gemeinschaft*, but a *Gesellschaft* and is not to be confused with that undifferentiated "geniality" without which (as Germans are accustomed to believe) there can be no community. H Treiber, "Nietsche's monastry for freer spirits and Weber's sect". In: H Lehman and G Roth (eds), *Weber's Protestant ethic* (Cambridge: Cambridge University Press, 1995, pp. 155-156.

79 F Tönnies, *Einführung in die Soziologie* (Stuttgart: Ferdinand Enke Verlag, 1965), p. 32.

80 See Tönnies, *Community and association*, pp. 91, 102, 116, 192, 272. Also see G Lukács, *The destruction of reason*, translated. by P Palmer (London: The Merlin Press, 1980), p. 593.

81 See HJ van Eikema Hommes, *De elementaire grondbegrippen der rechtswetenschap* (Deventer: Kluwer, 1972), p. 408. "De correlatie van maatschaps- en gemeenschapsverhoudingen sluit ook uit, dat er een tijdelijke opeenvolging van 'gemeenschap' en 'maatschap' in de ontwikkeling van de samenleving zou bestaan, gelijk door Ferdinand Tönnies [...] wordt geleerd."

82 He defines the state as nothing but force, the holder and representative of all natural right of coercion. Tönnies, *Community and association*, p. 251.

3.2   The universalistic Aristotelian idea of the *polis* (state)

Why is the Aristotelian idea of the *polis* so appealing for establishing politocratic communitarianism? This question demands a brief analysis of Aristotle's metaphysical grounding of the *polis*. The innate social impulse (or disposition) to communal life[83] is realised in a hierarchy of lower and higher levels of communal life in which every lower community strives for its perfection in a higher association. The ultimate perfection of communal life is found in the *polis,* which is the perfect human society and embraces all other communities, as well as the individuals as its *parts* determined by the whole.[84] This implies that, according to the teleological order of human nature, the *polis* (state) is prior to the household and the conglomeration of households in the village and also prior to the individual human person.[85] This does not detract from it being posterior to the lower communities in terms of time. The *polis* carries the duty to provide its citizens with all things demanded for the good (or perfect) human life.[86] To Aristotle, the *polis* is a species of the general concept "community". It is logically distinct from other forms of human community and it embraces all other social forms. The reason is that the *polis* aims at the highest good – the perfection of man's rational-ethical nature. All other forms of human community are conceived as forming parts of the ideal (perfect) human community, i.e. the *polis*. According to this universalistic view of human society, no distinction is drawn between natural and organised institutional communities. Community and society do not exist at the same time; the whole of social life is either community or society. Also, the governmental form of the *polis* is transposed to the natural domestic communities (households). So, for example, the governmental form of the household is a monarchy (although including aristocratic and despotic relations), ruled by one head.[87] The *polis* (as a

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83   See Aristotle, I, 2(1253a). "Among all men, there is a natural impulse towards the state as partnership."

84   See ELH Taylor, *The Christian philosophy of law, politics and the state* (Nutley, New Jersey: The Craig Press, 1969), p. 114. "The object of history for Aristotle is not the individual persons but the state."

85   Aristotle, I, 2(1253a). "Furthermore the city or state has priority over the household and over any individual among us. For the whole must be prior to the parts. [...] It is clear then that the state is both natural and prior to the individual. For an individual is not fully self-sufficient after separation, he will stand in the same relationship to the whole as the other parts."

86   The *polis* exists not only to make men obedient, but also to make them virtuous. The city-state is both, "the source and executor of moral values". Taylor, p. 115.

87   Aristotle, I, 2(1252b). Out of the association of men with women and slaves the first households were formed (called "bread-fellows"); the next stage is the village (the first association of a number of houses for the satisfaction of something more than daily needs) – its government was inevitably monarchical; and the city-states too were at first monarchically ruled; the patriarchal rule entails each man having power over children and wives; the final association, formed by several villages, is the city or state.

form of state) is the perfect community directed to the good life[88] and functions autarkically (self-sufficiently), whereas the lower communities are naturally non-autarkical and require the state for their perfection. Aristotle's universalistic view of human society leads him to the conclusion that all natural communities are not ends in themselves, but only serve as means to the formation of good citizens and require the expansion and perfection of the *polis* in the community. Ultimately, all non-state institutions serve the *polis*, submit to its authority and provide in the needs of this all-encompassing entity. Thereby natural communities are devaluated to being mere servants of the political agendas and policies of the (mighty) *polis*. The destructive consequences of Aristotle's universalist construction of human society is apparent when considering the pyramidal construction of human social life; the natural communities of marriage and family are conceived of as dependent parts of an economically qualified organised whole, which in its turn is considered as a constituent part of the state.[89] Dooyeweerd aptly typifies this organisational view of non-state entities as oppressive forms of governance, "[T]he common Greek conception of a married wife as a child-bearer and domestic drudge, and, viewed from this background, is even to be called progressive in an ethical respect. But it cannot detract from its fundamental failure with regard to the inner nature of this natural community."[90] However, the social cohesion and solidarity of the Greek *polis* serves as the ideal for Malan's configuration of naturalistic micro political entities – the building blocks of his socio-political vision of oligarchical governance by biologically-related groups.

The absolutistic consequences of Aristotle's organic concept of the state are self-evident. The households and the villages form essential parts of the state, and the ideal state maintains an absolutistic division of its citizens into compulsory corporative occupational classes and, after the Spartan pattern, would have the government regulate common meals in which all citizens should be obliged to participate. Furthermore, the well-ordered state should be based upon a division of labour among different occupational classes, whilst private property forms

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88   *Ibid*., III, 9(1280b).

89   *Ibid*. "The state is intended to enable all, in their households and their kinship, to live *well*, meaning by that a full and satisfying life. This will not be attained unless these family-groups occupy one and the same territory and can inter-marry. It is indeed on that account that we find in various cities associations formed of relatives by marriage, brotherhoods, family re-unions for sacrifices to the gods, and other ways of social-intercourse. All these activities are an expression of affection, for it is our love of others that causes us to prefer life in a society; and they all contribute towards that good life which is the purpose of the state."

90   H Dooyeweerd, *A new critique of theoretical thought*, III (Philadelphia: The Presbyterian and Reformed Publishing Company, 1996), p. 204; Tönnies, *Community and association*, p. 186. "Consequently, the realm of life and work in *Gemeinschaft* is particularly befitting to women; indeed, it is necessary for them. For women, the home and not the market, their own or friends' dwelling and not the street, is the natural seat of their activity."

an essential condition for political rulers to perform their function. To this end, Aristotle considers it a corruption of the governmental system should the supreme authority be in the hands of a majority of poor citizens, since the latter are inclined to seek their own profit and to oppress the other classes.

Aristotle's (instrumentalist) universalistic views are not limited to the political organisation of the *polis* only. His universalism is also manifested in his views of the constitution (*taxis*) of the *polis*. The constitution does not possess a functional juridical focus for organising the inner political order of the state, but much rather serves to organise society in its totality, whose identical unity the *taxis* is supposed to ensure. The distribution of political power is only a means to the realisation of the end of the perfect society; the good or perfect life of its members. Because this is the ultimate end embracing human life in its totality, there is no material restriction of the competence of the *polis* as the supreme authoritarian legislature, because the inner structural principle of political organisation is absent in Aristotle's thinking, and the universalist view of the *polis* is to be maintained to ensure ethical, economic, religious and other forms of non-jural governance over the totality of the *polis* domain. The inevitable consequences of the totalitarian political spirit of governance were *inter alia* the demise and downfall of the Athenian *polis*. During the Persian wars the Athenian democracy gave a splendid example of patriotism and public spirit. By the time of Aristotle, however, it was already in an advanced state of degeneration and decline.

Aristotle's confusion of political governance with typical non-political interests for serving the aims of the *polis* caused havoc in his application of the principles for securing the interests of the universalistic *polis*. It implies that because, generally speaking, a small minority is rich and the majority poor, democracy is generally the rule of the majority, and oligarchy rule by the minority.[91] Consequently, even the rule of a rich majority would remain oligarchic and that of a poor minority democratic – testifying as to the confusion of political and non-jural-political criteria for governing the *polis*.

Aristotle's glorification of the culturally homogenous *polis* and the political superstructure emanating from the pagan-familial substructure is normative for Malan's politocratic ideals of biological solidarity, organisational simplicity and rule by the economic oligarchy. Malan hails the rediscovery and popularity of Aristotle's political philosophy as a, "strong impetus for the establishment of a political domain liberated from ecclesiastical instruction," because to Aristotle the

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91   See Aristotle, VI, 2(1317b). In democracies the poor have more sovereign power than the men of property; for they are more numerous and the decisions of the majority prevail. *Ibid*., VI, 3(1318a): "[T]he oligarchs say that it is whatever is decided upon by that part which is represented by the large property, asserting that amount of wealth is a proper criterion to use." In *ibid*., V, 1(1301a), Aristotle states that oligarchy is based on the supposition that those who are unequal in one respect are unequal absolutely; by unequal wealth they suppose themselves to be unequal absolutely.

person is a political being, politics is a "natural institution", and this is essential for human self-realisation.[92] Malan misses the essential point that Aristotle does not, in the first place, oppose majoritarian rule as a danger to be avoided because of its conflict with an internal legal function of the *polis*, but rather because of the possibility that the poor may govern in their own economic interest and subject the rich minority. In spite of Aristotle's universalism and absolutistic views, Malan hails the Aristotelian roots of his politocratic views as giving constitutional expression to the principle of human dignity.[93] The dialectical tensions emanating from Aristotle's confused disregard for the structural differences between, and competencies of, social organisations and natural social institutions inspire Malan to clothe such organic entities with political power. This implies, *inter alia*, that members of homely communities may become citizens thereof and such homely communities may serve as *loci* of political authority.[94] In spite of the universalistic and absolutistic implications of Aristotle's political ideals, Malan maintains that the Aristotelian-politocratic homely communities are "inherently virtuous".[95] The failure to penetrate the structural moments of the Aristotelian economic-organic nature of natural communities prevents him from appreciating the real meaning (and implications) of Aristotle's commitment to the *polis* as, "a community of like persons whose end or aim is the best life possible"[96] in the setting of a universalistic view of the city-state. Furthermore, Malan's theory does not adequately reflect the fact that the solidarity of a community (whether *Gemeinschaft* or *Gesellschaft*) cannot compensate for the lack of legal integration of the jural interests of individuals and entities in society. Consequently, politocratic communitarianism supports the idea of a "stateless" state,[97] a "state" without law and biologically interrelated natural communities, confronting the challenges of the modern legal environment – all of these to maintain social solidarity and the power formation of extended families, villages (composed of a number of families) and domestic communities.

The breakdown of public justice and the absence of material limits to the political power of the *polis* in Aristotle's totalitarian idea of the state foster a culture of totalitarianism in the city-state. Dooyeweerd aptly identifies the root cause of this political culture in the dialectical tension inherent to Aristotle's political views. In Aristotle's political philosophy the idea of political justice lacks any material

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92   Malan, *Politokrasie*, p. 36.
93   *Ibid*., p. 277.
94   *Ibid*.
95   *Ibid*., p. 278.
96   Aristotle, VII, 8(1328a).
97   Because a state by definition is a territorial entity, his rejection of the "territorial state" implies his negation of the state as a social entity responsible for maintaining law within particular territorial boundaries.

limitation of the *competence* of the city-state in its relation to the non-political societal spheres. In this way there remains a dialectical tension between the idea of justice and the totalitarian state idea, which in principle conceives the body politic as a power-state.[98] In a material sense Aristotle was the progenitor of the idea of the power-state in its modern manifestations.[99] The following extract captures some of the normative dangers inherent in reducing political society to such a naturalistic totality, "Undifferentiated spheres of life, such as that of the familia, neighborhood, guilds (in the sense of brotherhoods or fraternities), the communal life of […] the tribe, still encompasses human life totally, with respect to all spheres of life. These spheres take on all tasks that, at a deepened level of cultural development, are performed by independent differentiated societal collectivities. The undifferentiated sphere of power of these collectivities, often strongly rooted in pagan religion of life, is absolute and exclusive. The entire legal status of a human being, as a consequence, is completely dependent upon membership in these primitive collectivities. Whosoever finds himself outside this bond is *hostis*, *exlex*, i.e. without any rights or peace. The undifferentiated community absorbs the individual according to that person's entire legal status."[100]

4.　THE IMPLICATIONS OF MALAN'S STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE

4.1　Nominalistic views of community

Malan's politocratic views on society have merely nominalistic significance. His use of the term "community" does not appeal to any concrete social entity. In his thought, community encompasses a wide variety of social institutions, including both communities and non-communal entities, e.g. families, sibs, tribes, villages, trade organisations, labour organisations, etc. In addition, his concept of community encompasses both communal and inter-individual or inter-communal relations ("gemeenskapsverhoudinge" and "maatskapsverhoudinge"). Malan's encompassing idea of community is not concerned with the multitude of structures of individual totality; it is exclusively oriented towards the abstract social idea of community, thereby losing sight of the individual structures in social life in their cosmic social

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98　Dooyeweerd, *A new critique*, III, p. 398. Also see H Dooyeweerd, *The Christian idea of the state*, translated by J Kraay (Nutley, New York: The Craig Press, 1978), p. 24. "They [Aristotle and Thomas Aquinas] did not want to construct a state out of the individual, like humanistic natural law, but rather the other way around – out of the state the individual."

99　Dooyeweerd, *A new critique*, III, p. 398.

100　H Dooyeweerd, *Political philosophy. Selected essays*, Series B, Vol. 19 (Ontario: Paideia Press, 2013), p. 51.

coherence.[101] Malan's views on community in its denatured form are made the starting point of an abstract nominalistic construction of natural communities.

The complexities of the human person's involvement in the diverse social relationships of both a communal and a non-communal nature can, for example, be gleaned from Dooyeweerd's analysis of communal and inter-individual social relationships.[102] The former signifies a durable social relationship in which the members find themselves joined into a communal unity; the latter being a relatively loose relationship in which individuals or communities function in coordination, but without being united into a solitary whole, such as the relationship between friends, neighbours, enemies, contracting parties, etc.[103] Furthermore, communal relations can again be subdivided into organised communities and unorganised (or natural) communities ("verbande" and "natuurlike gemeenskappe").[104] Natural communities are based upon consanguinity, comprising the union of husband and wife and the cognate family both in the narrow sense of a set of parents and their children and in the broader sense of including all degrees of kinship, whereas organised communities lack the biotic foundation which binds the members of a natural community together, but are founded upon the historical form of organisation. Although there may be disagreement on the foundational functions of organised communities, the fact remains that human society displays a rich variety of communal and non-communal relations and that the whole spectrum of communities cannot be reduced to a single encompassing political or non-political entity.[105] The reduction of the rich variety of social relationships to those of community relations has vast implications for the internal organisational functions of non-state entities. Also, the organisational principles of the formal and the material law state are substituted for cultural, economic and other non-legal interests dominating public life.

Turning down the politocratic idea of community does not imply that natural communities (e.g. "ethnics") are denied a separate existence and internal structure; nor does the acceptance and recognition of the natural (unorganised) ethnic communities (ethnic communities or "ethnics") ("volksverbande") derogate from the individuality and independent structural existence of other forms of community

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101 Dooyeweerd, *A new critique*, III, p. 224.
102 See, in particular, *Ibid.*, III, p. 176ff.
103 *Ibid.*, III, pp. 177-178; Dooyeweerd, *Verkenningen*, p. 110; H Dooyeweerd, *De strijd om het souvereiniteitsbegrip in de moderne rechts- en staatsleer* (Amsterdam: H.J. Paris, 1950), p. 55; H Dooyeweerd, *De modale struktuur van het juridisch oorzakelijkheidsverband* (Amsterdam: N.V. Noord-Hollandse Uitgeversmaatschappij, 1950), p. 41.
104 Dooyeweerd, *A new critique*, III, pp. 178-182; Dooyeweerdt, *Verkenningen*, p. 111.
105 Dooyeweerd, *The Christian idea*, p. 24. Dooyeweerd observes that each social relationship (e.g. the family, state, church, etc.) reflects its own "law of life"; God created in each of them an inner structure in its own sphere sovereign.

life, viz. organised communities (e.g. the state) and inter-individual relationships (e.g. neighbourly relationships), etc.[106] In spite of the negation of the internal supra-temporal structure of ethnic groupings (ethnics) and their jural status as substantive social structures in liberal individualistic political theory, international law has increasingly recognised the jural status of such communities and has regarded them as worthy of legal protection. From a legal-philosophical perspective, the recognition of ethnic communities as institutionary social entities with a social and legal status transcending the empirical manifestations of such social groupings in temporal life, has important consequences for jural life in society. Firstly, all communal institutions (including ethnics) are in principle ("normatively") on an equal footing with other community structures (e.g. the state); secondly, ethnics have the internal competency to organise their own structural life, but externally to partake of the public law order managed by the state; thirdly, the deterministic view of societies fail to express the existence and functions of communal and non-communal bodies existing alongside one another in social life; fourthly, ethnics in principle have the liberty (duty and right) to express themselves in social forms grounded in the biological descent and common culture of their members; fifthly, with due regard to the internal right to nurture their own identities, ethnics have full right and liberty to give expression to the mores, traditions and cultural practices of their common cultural inheritance in relation to other individual and social institutions; sixthly, international law is gradually developing to the point where internal self-determination of ethnics may unfold (and be upheld) to the point of external self-determination as means of maintaining themselves.[107] The Balfour Declaration of 1917 provides a vivid example of recognition of, and support for the right to self-determination by creating a "natural home" for the Jewish people.[108] Great Britain issued the declaration on condition that, "nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country".[109] This step initiated a process culminating in the acceptance of ethnic self-determination of the Jewish people in the state of Israel. Although the legal requirements for attaining full external self-determination have not crystallised into a compendium of fixed conditions and norms, the principle that ethnic communities enjoy legal status worthy of protection to the point of external self-determination – depending upon the context of each case and the prevailing circumstances in a

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106 See AWG Raath, *Volk en kerk: 'n Bespreking van enkele aspekte van kerk en samelewing* (Pretoria: NG Kerk-Boekhandel, 1988); AWG Raath, "Die keuse vir 'n eksklusiewe demokrasie", *Tydskrif vir Rasse-aangeleenthede* 4(1), 1988, p. 13.

107 Note the author's submission to the South African Law Commission in *Suid-Afrikaanse Regskommissie, Projek 58: Groeps- en menseregte. Interimverslag,* August 1991, pp. 40-42, 65-81.

108 AWG Raath, *Selfbeskikking en sesessie* (Pretoria: Die Afrikanervryheidstigting, 1990), p. 52, n. 132.

109 See *ibid*.

particular country – has been clearly established.[110] Furthermore, the recognition of the structural identity of ethnics does not derogate from the general truth that human society is composed of an infinite variety of irreducible social forms, including the state, each with its own internal structural liberty and equal to other social bodies in the public law order.[111]

4.2 Community and the struggle for power in social life

The absence of a social entity with the normative basis, direction and appeal to maintain public justice confronts private social institutions with the challenge to maintain a public law order. Consequently, social life is confronted with the fragmentation of the public sphere. The struggle for power in monopolising the legal competence to integrate the multitude of public law interests of necessity fosters a culture of competition and conflict among entities with a non-jural external direction, thereby reducing the social order to an arena of conflict by non-state organisations in their efforts to wield the power to govern. In the absence of the state as the integrator of a universal public law order, private entities are challenged, firstly, to maintain their own internal private legal interests and, secondly, with the demand to integrate (harmonise/synthesise) the legal interests external to their respective legal competencies. The absence of a public law order externally integrating jural interests into a higher order of public justice contributes to the decline of the latter. Lynch law in the American West, practices of necklacing in the South African townships and private revenge of familial groupings, *inter se* in the Italian Mafia, are real testimonies of non-state entities' inability to meet the requirements of public justice in a normative sense.

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110 See M Ehlers, *Contemporary issues in the law of external self-determination and secession beyond decolonisation and dissolution* (LL.M in International Law, University of Kent, 2012), pp. 1-74; JD van der Vyver, "Boekaankondigings: Politokrasie; 'n peiling van die dwanglogika van die territoriale staat en gedagtes vir 'n antwoord daarop", *De Jure,* 2013, pp. 633-638, op 635 e.v.

111 HG Stoker, *Die aard en die rol van die reg – 'n wysgerige besinning*, RAU Publikasiereeks A 36 (Johannesburg: Randse Afrikaanse Universiteit, 1970), pp. 69-78. On p. 69 he observes, "[D]ie menslike persoon [is] 'n individueel-sosiale besonderheid [...], 'n onverbreeklike 'geheel' (of 'eenheid') met (onderling onherleibare) prinsipeel gelykwaardige (onderling onskeibare) individuele en sosiale 'kante' of 'sye'. Met sy sosiale 'kant' is hy [die menslike persoon] lid van die onderskeie samelewingskringe (huwelik, 'n gesin, 'n volk, 'n staat, 'n kerk, 'n industrie, 'n skool, ensovoorts). Aan die een kant het die mens as individu en so ook elke samelewingskring sy eie *indentiteit* [...] aan die ander kant is die menslike persoon [...] enkapties gebind, d.w.s met mekaar vervleg [...], m.a.w. elk van hulle vorm geen afgesloter nie, maar 'n afgeronde 'geheel' of 'eenheid'. Met sy 'individuele sy' gaan hy in geen enkele kring en ook nie in almal tesame op nie [...]."

4.3 The a-normative fusion of the state and the temporal manifestations of the forms of government

Politocracy testifies to the lack of distinction between the state as a constitutive social entity for human political life and the temporal manifestations of the forms of governance in political society. Politocracy fuses state and governmental forms into one. Because of the excesses of democratic government, Malan rejects the notion of the state; and *vice versa* – by embracing the temporal form of government in the Greek *polis*, he surmises that he has found a substitute for the state. Politocracy signifies "political community", the "body politic", as well as the political form of government responsible for giving expression to the political demands of the *populous*. The result is that he elevates a temporal form of undifferentiated political governance (politocracy in the *polis*) to the status of an immutable, universal, normative standard of a universal non-temporal nature.

5.   CONCLUSION

Theoretically, Politocracy reflects a synthesis of rationalism and romanticism, idealism and materialism, realism and nominalism; it is a synthesis culminating in the idea of *polis* government. Politocracy is an over-simplified (and reductionist) reflection of the complexities of modern social life and the challenges posed for the integration and harmonisation of all jural interests in the public legal order. This over-simplification is the consequence of casting modern social life in the simplified distinction of *Gemeinschaft* and *Gesellschaft*, similar to Ferdinand Tönnies' deterministic social theory. The implications of Tönnies' view of social life also make themselves felt in Malan's awarding undifferentiated natural communities; the competency to maintain public justice and integrating the jural interests in society through the power of the sword. Extended families and other natural communities serve as the protectors of public justice and also for harmonising the complex jural interests and duties, instead of the state. However, these natural communities do not have the competency to maintain the public legal order without somehow having the typical functions of states. After having unsettled the modern "territorial state", Politocracy hails the "organic state" in a naturalistic political sense – whether in the form of the ancient tribal enclaves or the village system of Aristotelian times.

Particularly noteworthy are the implications of De Benoist's legacy in this communitarian politocratic theory. De Benoist's rejection of both Christian and Hebrew religions as having normatively contributed to and provided contexts for man's socio-political life, as well as his methodological experiments with Marxist utopian ideological determinism, leave very little scope for individual freedom of choice and responsibility in the public law community. Politocracy reflects this approach. In effect, it lacks the normative basis and direction for explaining the

individuality of the human person in view of his involvements in diverse normative social settings. In the absence of specialised legal structures (viz. the state) to harmonise and integrate the diverse jural interests in society, the individual is left at the mercy of ancient (pagan) natural institutions which, in addition to their diverse normal structural identities, also have to serve as make-shift stately entities. In no way could the internal social solidarity of such natural communities – even if such solidarity and cohesion did exist – serve as substitute for the typical structural institutions which possess the irreducible character to maintain a normative public law order (viz. the institution of the state) and for maintaining public justice. Negating the irreducible structural character of the state as a jural entity has bred disastrous consequences over the centuries. Plato's transformation of the public sphere into the authoritarian power-enforcement of a teleological misdirected state aiming at attaining the virtuous good envisaged by its rulers, Aristotle's universalistic state as a virtuous regime for the individual's well-being, the German Nazi-state committed to preserve the Arian purity of its citizens and educating them into a consolidated community of blood and culture or the Russian Communist state's commitment to the instrumentalist regulation of capital and labour, were all of the same making and forged on the same authoritarian anvil. All these forms of state give testimony to their misdirected views of manipulable state aims and instrumentalist legal abuses. In addition – in contra-distinction to the modern state – Politocracy's authoritarian communitarianism provides for specialisation of the working classes, according to which work is divided according to personal talents[112] – a most discomforting view in the light of labour practices in totalitarian (e.g. Nazi, Facist and Communist) states of the 20th century. The organic homely communities in Politocracy harbour the same potential.

In Politocracy, the relationship between the individual and the community reflects particularly strong elements of both early romanticism and mid-nineteenth century idealism. This form of romantic communitarianism is a form of transpersonalism; above the individual personality there is a supra-individual community of personalities that, as an Überperson, is conceived in an irrationalistic way. Different from the *volenté générale* in the thought of Rousseau, the autonomy of the individual personality is maintained because the communal will is conceived as the true individual moral will of all the members of the community. It is only in the community that the individual attains its legitimacy; it can only be conceived within the community, just as in a living organism the individual functions of the organs can only be understood in their significance for the individual totality.[113]

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112   Malan, *Politokrasie*, p. 299.
113   H Dooyeweerd, *Encyclopedia of the science of law*, Introdution Series A, Vol. 8/1, translated by RD Knudsen, edited by AM Cameron (Grand Rapids: Paideia Press, 2012), p. 70.

Arguably the most important implication emanating from this discourse is that the state is not a disposable commodity which can be "eradicated" or "created" at will.[114] Perhaps the greatest legacy of Judaeo-Christian legal and political theory was the insight that the supra-temporal normative order of reality is not something to be tampered with or distorted by political instrumentalism for furthering a-normative aims. The fact is that no monopolisation of politico-jural power by natural communities can serve as substitutes for the public legal interests managed by the state.

Finally, it needs to be emphasised that the challenge presented to contemporary social sciences is to find, interpret and apply the individuality of the human person in view of the totality of his social life, and to find ways and means for maintaining individual dignity and for securing personal liberty within and as part of the great variety of equally important social entities of our time. This implies that neither endeavours to sacrifice man's individuality on the altar of community obligations, nor subjecting man's social responsibilities to the alleged supreme worth of the individual as such, can be acceptable. The injustices arising from both one-sided approaches have left both the individual and society in a turmoil of injustices.[115] Christoph Gröpl's astute observation on Politocracy provides an answer to the question of whether this work establishes the basis for the envisaged utopia in the form of the communitarian politocracy, "Whether Malan's sketch, however, would represent a real improvement for the people concerned is not to be taken for granted."[116]

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114   Dooyeweerd, *A new critique*, III, p. 170. The inner nature of societal relationships cannot be dependent on variable historical conditions of human society; they are bound to their structural principles without which we could not have any social experience of them. This does not detract from the great variability of the social forms in which they are realised. The real structural principles of human society can never be replaced by constructed "ideal-types" in the sense of Malan's idea of community.

115   See JD van der Vyver, "The state and society" (unpublished paper, *s.a.*), p. 1.

116   G Gröpl, "Politocracy: An assessment of the coercive logic of the territorial state and the ideas around a response to it", *Tydskrif vir Suid-Afrikaanse Reg* 2, 2014, p. 421.