The Limits to State Interference in the World of Business in the light of the Calvinistic life-and-world view

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All our reflections about the character of the state and the limits set for the task of the state are determined historically. This appears in a striking manner from the development which the theories about the state have undergone in the course of the past century.

This development shows two opposite poles. On the one hand we see the old liberal law-state, an idea from the end of the 18th and the beginning of the 19th century. In its sharpest form it is embodied in the attempt by Wilhem von Humbold to determine the limits for the activity of the state. On the other hand we see the modern political theories of fascism and bolshevism.

The first theory drew the boundaries for state power as narrow as possible and did not assign any competence to the state other than the maintenance of order and safety in the protection of the life and property of its subjects. The second - fascism and bolshevism - have realized a picture of the state before our very eyes in which the state, like the legendary Leviathan, has drawn all the vital juices of a free society towards itself and recognizes no independent right for any other area of life besides itself.

Unquestionably the center of gravity of the growing interference of the state is located in its involvement in economic life. The state has established absolute supremacy in the processes of production, distribution, and consumption of economic goods. In doing so a political ideal is embodied that stands in the most stringent opposition possible to the old liberal idea of the law-state. This is the ideal of the modern welfare state. It is thought that one can make the evolution from the law-state - in the sense of abstinence from interference with economic life

- into the modern welfare state - in the sense of absorbing economic life - plausible as the consequence of historical necessity.

The French revolution was born of an individualistic philosophy. It untied all bonds that restricted the free play of the social forces in enterprise. It swept away the long-outdated remnants of the guild system and introduced the period of free competition. Individual self-interest was the sole guide in which entrepreneur and employee freely entered into a contract under the fiction of equality before the law. The stronger could thus suppress the weaker and exploit him under protection of the authority of the state.

Government abstained from economic life. It viewed labor and capital as individual parties that could enter into joint contracts, formally as equals. In the final analysis the task of government could only entail enforcement of what these parties had agreed upon in complete individualistic freedom.

This was a law-state, indeed, but a law-state which applied a purely formal yardstick of law in economic matters. In the name of the law it sanctioned what the economically strongest party dictated to the economically weakest in the form of the contract. The state could not maintain this policy of abstinence, of "laissez faire, laissez aller," in the face of the immense development of the economy without imperiling to the utmost the conditions for the survival of the state itself.

The system of unfettered competition leads to ever more serious economic crises that ravaged all of society like an illness and caused unemployment and impoverishment. And it hit the state indirectly in its position of financial and military power. Already for this reason the state could never maintain the role of a passive onlooker where it concerns the economy. To this must be added the growing power of the workers, who began to have a militant organization at their disposal in their labor unions after the abolition of the law against organizing. As it turned out, this organization often turned out to be a power, on a par with the organization of capital in the struggle for better labor conditions. It ended the individual freedom of contract in the area of labor relations and exerted a strong political pressure upon the state to abandon its formal juridical standpoint of abstaining from interference with the economy.

Then subsequently the second phase in the modern relation between the state and the economy is ushered in. It is the phase in which government attempts to introduce material justice in the enterprise through social legislation. This took the place of its earlier policy of sanctioning the exploitation of the weak by the strong through a purely formal maintaining of the labor contract.

But again with this the process of development did not come to a halt. The form of enterprise in the free economy underwent a fundamental change under the pressure of circumstances. The limited-liability company more and more replaced the figure of the individual entrepreneur. The large enterprises formed nationally and internationally in order to escape the murderous consequences of unfettered competition into trusts, cartels, and corporations through which they gained a position of power that vied with that of the state.

Would the state not have to try and bring those centers of power in the free economy under its supremacy in its own vital interest? Did not this entire development, in which the ownership of the means of production became more and more impersonal, point in the direction of the socialized community enterprise and would the state, as the organization of power and the guardian of the general interest not have to take the supreme leadership of the future process of production in its own hands!

Long before the onset of the first world war the vital interests of hygiene, the armed forces and traffic had forced the state itself, in its executive organs, to run various enterprises in a monopolistic fashion. Under a socialistic regime in the post war period the city-state of Vienna alone managed to gain supremacy in 66 important independent economic enterprises, not counting the state enterprises which she herself runs. Should not this course of action have to be carried through in the entire process of production and did the state not have to expand its organization of its executive with flexible organs for management in order to be able to carry out its new economic task in a proper fashion? In this way the state would in the long run gain control of pricing policy. It would be able to regulate distribution and consumption in a rational manner and with its coercive power it would be able to bring to an end the conflicts of power between capital and labor.

Through all of Europe the tendencies point in this direction of government interference in the economy. It was realized in dictatorial fashion in fascistic Italy and bolshevist Russia. These tendencies ushered in a third phase in the relation between the state and the economy. It involves the direct interference in the structure of the economy itself in a gradual absorption of private initiative into the coercive activity of the state.

It need not surprise us that this course of events frightens all those who reject a complete absorption of the free social forces by the Leviathan state. It makes them exclaim in fear: “show me the boundaries before which the state interference must come to a halt.”

Liberalism was clearly struck a most painful blow by this course of events. Steeped in individualism, it saw its old political ideals of freedom and equality of individuals threatened by the welfare state and a power state that respected no legal boundaries. The old liberal idea of the law-state had given a firm footing. It limited the task of the state to an individualistic, albeit somewhat crude, view of law: Protection of the inalienable subjective rights of the citizens to life and property.

But this idea of the law-state itself had undergone a radical inner change on the basis of historical developments which had finally caused it to lose all material content. The first step was taken when justice, whose maintenance was earlier on seen as the only task of the state, was no longer taken to be the aim and purpose of the state. It was now seen as a form in which the state had to clothe its unrestricted activity in the area of culture and welfare of the population for the sake of legal certainty.

The material subjective rights to life and property were no longer the solemn anchor of civil liberty and equality. Instead it was the formal law and that could take on any content. The watchword of this new formal idea of the law-state was the administration, the executive power, subject to the legislature and the judiciary. Whoever saw a true protection of liberty in this however, and a real limit to government interference, was bound to end up being fooled.

Under the influence of parliamentarism, in which social democracy kept growing as a political power, formal legislation placed itself at the service of the new ideal of the welfare state and power state, which recognized no material boundaries to government interference. Where revolutions, as in Russia and in Italy, established the dictatorship of the minority, the law merely became the form in which the will of the dictatorial power of the executive was embodied.

On March 23rd, 1919, the socialization of industry was proclaimed in revolutionary Germany by law. It may be true that this law has never really been executed. Article 156 of the constitution of Weimar continued to build upon this law as a foundation. It gave the state authority to transfer private enterprises, that were felt to be suitable for socialization, to state property. It gave the state authority to participate in the management of enterprises or conglomerates of enterprises via government of the state, provinces, or municipalities. It included authority to interfere in the regulation of prices and in stopping an enterprise from functioning.

On February 4th, 1920, a law on industrial councils came into effect in which the state could brush aside the internal structure of the economy and interfere in the authority as organized in the enterprise.

In the form of law, on April 3rd, 1926, fascistic Italy issued its Carta del Lavoro in which the state was given authority to set the wages for labor when all attempts at a peaceful solution to wage disputes had failed. Prior to this the state had proclaimed the entire industrial apparatus to be under its power in compulsory corporations.

In the form of law in Bolshevist Russia all private rights to real estate were abolished forever. This put into effect the program of socialization of all means of production by the state.

The third phase in the development of the idea of the law state was the identification of justice with the will of the state. This was the case with the theory of the so-called law-sovereignty of Hans Kelsen, who at the same time proclaimed this thesis: Every attempt to deduce a minimum or maximum in the competence of the state from its essence is fruitless. To try and prove that an absolute limit to the

expansion of the state at the expense of the individual can be found anywhere is a wasted effort.

This emasculation of the idea of the law-state has now caused the theoreticians of liberalism to take up arms. Friedrich Darmstaedter recently issued a remarkable book entitled: *Die Grenzen der Wirksamheit des Rechtstaates* (The limits to the activity of the law-state). Once more an attempt is made here to revive the old liberal idea of the law-state with express reference to the ideas of Wilhelm von Humboldt.

Once more he tries to find the essence of justice in the limitations to the task of the state in the maintenance of natural freedom and equality behind the purely legal freedom and equality. This natural freedom and equality was to consist of this: No matter in what area the state may be active, it may only do so for the purpose to make a free social community of the people, as the source of all culture and prosperity, possible in mutual dependency.

The modern liberal idea of the law state was to be distinguished from the idea of the welfare state and the power state in the direction and purpose of the task of the state, not in the size of its task. The state is not to bring prosperity and culture, but it is to remove the impediments to the development of these material and spiritual goods from the free society. Through its legal order it is to encourage its citizens to devote themselves ever more to a free communal life in the process of giving and receiving.

In spite of the somewhat obscure manner in which it is formulated, this neo-liberal idea is not unfamiliar. It is rooted in the humanistic idea of the absolute value of the free, autonomous personality. In this trend of thought society is nothing but the exchange between these free and equal individuals. By imprinting a humanistic stamp on public education the state was to fan the true community spirit and foster a mentality which does not see man as a dependent part of the state organism that encompasses all areas of life. Instead, this mentality is to see man as a free "autonomous" being and the activity of the state itself is only the means for the development of the individual.

The neo-liberal concept of the law-state has not arisen from the Christian religious root of the absolute sovereignty of God but from the humanistic ideal of personality.

History has issued its judgment against this theory. Liberalism has never been more impotent than today. The fascistic ideal of the rational corporative power state, nurtured by the ancient Roman tradition, and the idea of the dictatorship of the vanguard of the proletariat, kindled the flame of enthusiasm in millions of hearts. In contrast, the neo-liberal slogan of the humanitarian community of man in which the value of the autonomous, free personality is nurtured as a religious ideal, has had its day. It sounds like the language of the wrinkled old-timer who no longer understands this period of the times and avoids it with a shake of the head, in his memories of the past.

The struggle against the modern state Leviathan can only be carried on if we stand on the unshakable foundation of the Christian life-and-world view, of which the recognition of God's sovereignty is the alpha and the omega. But in order to do this we must take the consequences of this life-and-world view very seriously. We must not impair the power of the Christian religion again through a compromise with the spirit of humanism.

I wish to show you the significance of the Calvinistic life-and-world view as the purest application of the basic Christian idea and its consequences for our view concerning the boundaries of state interference in the area of the enterprise. In order to do so, I have to formulate the problem more sharply for you. We must see the question concerning the limits to the task of government as a question of what is right in the full sense of the word. We cannot take it as a question of what is politically desirable.

This is the question: Can the state establish the boundaries of its own competence in the form of law in a manner that is binding? Or conversely, is the state bound by material juridical boundaries in its competence because of its own internal structure as founded in divine ordinance? In the latter case transgression of such boundaries would end the juridical obligation to obey.

In the first instance the powerful will of the state decides itself whether it has the right to violate the inner sovereignty of the area of economics and to destroy it. In that case there are indeed no fundamental limitations to state interference. State power simply decides, or rather the powerful will of any political current which has managed to become master of the power organization of the state.

As it is expressed in the idea of the formal law-state: the law is and remains the ultimate source of validity for all standing law. There is no area of law independent of the state. Such is the dominant positivistic view of justice. It has undermined the divine foundations of justice and in order to gloss this over it is willing to speak of a higher, ideal law, besides positive law that depends strictly upon the arbitrariness of the state. But this ideal law has no real validity and the state legislator is only bound by it in his conscience.

When asked on what basis its theory concerning the formal omnipotence of the legislator rests, this view turns out to have no juridical foundation for its theory. And indeed, the law itself can hardly be the legal basis for its own juridical omnipotence.

The positivistic theory concerning the juridical omnipotence of the state legislator does indeed not rest upon positive law. Much rather, it is founded in a subjective, deeply unchristian political philosophy, commonly called the theory of the unlimited sovereignty of the state. This theory concerning the doctrine of justice is nourished equally from two directions. One source is rationalistic individualism, that construed the state from a contract, made by all individuals who thereby transferred all their natural power and freedom to the state with the exception of a few natural and unalienable basic rights.

This theory sees the state fundamentally as the only absolute and sovereign legal community. The state only deals with individuals who themselves by contract have empowered the state legislature for all law formation. It was the idea of the state of the French Revolution which even subjected the church to the state-Leviathan. This idea also worked its way into the liberal theory of the state in the previous century.

On the other side we have the doctrine of unlimited state sovereignty as embodied in the doctrine of the juridical omnipotence of the law, nurtured by Hegelian philosophy. While it is true that it did not construct the state out of the individual, it saw the state as the all-encompassing and therefore absolutely sovereign organic bond, of which all other bonds, such as family, the association, the church and the enterprise, were merely organic parts.

This political philosophy infected German political science with its idolatry of the state. It is also the foundation for the modern, fascistic idea of the state, the idea of the stato corporativo as elaborated in the writings of Giovanni Gentile, Alfredo Rocco, et al., and has been realized in the fascistic corporate state.

The political idea of the law-state could obviously no longer be a serious adversary for this theory of the juridical omnipotence of the state, which was also confessed by liberalism. It adapted itself to the theory of state sovereignty and as a purely political confession of neo-liberalism it was a harmless armchair ideal that had lost its grip on reality.

The Calvinistic view of the world, on the other hand, possesses a fundamental doctrine that is deadly serious when dealing with the limits of state competence. And it strikes at the heart of the modern idea of the power state by attacking it on juridical grounds. The doctrine of the formal juridical omnipotence of the will of the state collapses like a house of cards when confronted with the Christian theory of law and the state.

The catchword of sphere sovereignty has taken on wings through the mighty influence of Abraham Kuyper. Today even the liberal likes to use it in order to give a striking expression to his political views. However, this sphere sovereignty in its real meaning is fundamental for the entire Christian life-and-world view. It is not a more or less vague political ideal that anyone can adhere to who does not wish to sacrifice individual freedom entirely to state absolutism. It is an organic religious doctrine that is carried through in the entire order of creation and is founded in the deeply religious confession of the absolute sovereignty of God as Creator.

Only he who does not seek the absolute within but above this world can accept sphere sovereignty as the basic law for the entire temporal, perishable, order of creation. If we wish to establish boundaries for the competence of the state with its interference in the activities of economic life in the context of God's unbreakable ordinance, we must give an account of the structure of the state and the structure of enterprise in our temporal world order.

And what is that temporal world order in which the state and enterprise each possess their own structure, bound by fixed laws? All perishable things and we ourselves in our perishable side are fitted into temporal reality, which shows an immense diversity of aspects or functions. They in turn each possess their own sphere of divine ordinances.

The fullness of temporal reality has a numerical function, a spatial function, a mechanical function, an organic, or biotic function, a psychic, a logical, an historical function, a linguistic function, a social function of human intercourse, an economic function, an aesthetic function, a juridical function, a moral function and a function of faith.

Each of these functions or aspects of full organic reality has its own divine meaning and is fitted into its own sphere of ordinances or laws, in a law sphere of its own. In this temporal world order there are as many law spheres as reality has aspects of meaning. But how must we see the relation between all these law spheres? Scripture teaches us in this respect.

This entire temporal world has its supra-temporal unity in the imperishable religious root of the human race, in its submission to the law of God in its eternal, imperishable meaning: the service of God. And all law spheres find their deeper unity in this imperishable, supra-temporal religious root of creation.

Just as sunlight is broken up by the prism into the seven colors of the rainbow, the absolute religious meaning is broken through the prism of time into a multitude of functions of meaning, each of which is located in its own law sphere. Just as none of the colors is the same as the unbroken light. And just as all the colors of the

rainbow reflect the relation to all the other colors, each law sphere reflects its own meaning in the organism of the law spheres.

Temporal reality, in this fashion ordered within an organism of functions, is given to us in the structure of individual things. There are natural and spiritual things. A tree is a natural thing. A state, a church, an enterprise, are spiritual things.

The structure of a natural thing teaches many things about the structure of spiritual groupings. The tree as a natural thing is a complex of real functions. It has a numerical aspect, a spatial aspect, etc. The leading function of the tree is the organic, the vital function. This function leads the numerical, the spatial and the kinetic function of the tree while strictly maintaining sphere sovereignty. The leading function of the tree limits its activity in the world order.

Now what can we say about the structure of the state and the enterprise? Both depend upon historical development in origin and evolution. They are not permanent like the structures of the family and kinship.

In primitive times the large communities of family and tribe fulfill all of the functions of human social life. We can only begin to speak of a state when a power is organized within a certain territory over subjects into an encompassing relationship of justice. The juridical function is thus the leading function of the state connection, tied to an historical function of power with a special character.

The juridical leading function of the state relation is a public-legal function of government which controls the sword of retribution. It does so primarily for maintaining government authority over the subjects in order to keep intact the internal public-legal organization of the state founded upon historical development.

In its internal structure the state has other functions as well, including the economical function. But all these other functions exist under the leadership of that public-legal government function. As soon as another function, let us say the economical or the moral function, would take over the leadership in the activity of the state, the structure of the state would be broken.

For this reason we need not be surprised that Marx and Lenin, who initially wished to use the state in order to bring property and management of the means of production under the control of the community by force, no longer have room for the state after this aim has been accomplished. As Marx already taught, the state will wither away. The management of things will replace government of persons.

Let us now turn to the structure of the enterprise. Human relations in the enterprise as a special organization in economic life has a variable foundation in historical development. During the period of primitive “Hauswirtschaft” (home industry) the natural relationship in the home also fulfills the economic function for satisfying the needs with the least possible sacrifice.

The relationship of the enterprise is only born when capital gains a powerful position of its own, during historical development and when economic life begins to organize itself independently. The organization of an enterprise is as much an internal unit as the state. It is a true community with authority and subordination, albeit not of the same kind as those in the case of government authority and its subjects.

Just as the state, the business organization has its internal juridical function. In this case however, it is tied to the economic leading function. This reveals itself already in the structure of the authority in the enterprise. By virtue of the internal structure of the enterprise its juridical authority rests with those natural persons or juridical persons who bear the risk of the enterprise and possess its means of production. This holds equally for a capitalistic and a cooperative business. The business relation can no more arbitrarily alter its structure than can the state relation, or assume the character of the state, a philanthropic association or a church relation.

Its leading function restricts and directs its activity. Internal business law is tied to the economic destination of the business and has its source of validity, which is sovereign within its own sphere in the structure of the business itself. Internal business law derives its juridical validity as little from state law as does internal church law and internal family law. The limits of competence for the state are determined by its own internal structure as well as by the structure of the other, non-state groupings.

Government arbitrariness is embodied in the form of law in the German law concerning industrial councils which violates the internal structure of authority in the business relation. It follows from the foregoing that such government arbitrariness is of no value whatsoever. In addition it has never attained practical application. Conditions can be such in an economic enterprise that representatives of labor are given co-determination. But the source for validity of this delegated authority can never be located in a state law, but only in the internal law of the business itself.

There is another point of current interest also in our country since the law of December 24th, 1927, has declared collective labor agreements binding. It concerns the relation between collective labor agreements as an internal business law and government which declares it binding. From the standpoint that I defend it follows that declaring it binding is subject to the collective agreement, and not the other way around. Consequently it can no longer have any validity when the business organs themselves change internal business law (see Dr. Meissinger and partly Oertmann).

The highest authority in the business relation does not only have the right but also the duty to maintain the sphere sovereignty of the internal business order against unlawful state interference. This follows from the fact that the internal business authority is based on direct divine delegation as much as the internal authority of the state. The state can never use coercion on internal business authority as its subject in the manner that it can force its subjects into military service or to pay taxes.

As long as the state does not expropriate, as is done in revolutionary Russia, and in that way incorporate the enterprise into the state, the internal authority of the enterprise retains the right of passive resistance against every attempt on the part of the state to brush aside the divine ordinance for the structure of industrial relations.

Undoubtedly you will ask me: “Is this not preaching the revolution?” My reply is: “In no way.” The principle of revolution finds its origin in the satanic revolt against the divine ordinances. Revolutionary is that government representative who

violates those ordinances. Revolutionary is the theory of the juridical omnipotence of the will of the state since it assigns a power to the state which only belongs to the Lord God.

Does not the church, which clings to the ordinances of God's word in its church order, take the same position against transgression of the competence of the state? Or does the Christian family head view parental authority as delegated by the state?

Let us remember that the so-called formal-juridical doctrine concerning the omnipotence of the legislator is not based upon positive law, but upon an unbindable revolutionary theory and is nothing but a mask of the principle of the revolution. Let us remember that God has only given a peculiar authority to state government just as he has placed an independent authority in every life relation.

If the internal structure of the enterprise is sovereign within its own sphere vis-a-vis the state, that sovereignty ceases to exist outside of its internal boundaries. In a certain respect the business relation, as much as the church relation and all other non-state groupings, is the subject of state government. For the business relation is a human relation and the state no more absorbs all of man than does the enterprise or the church. The state is the all-encompassing juridical community for all particular relations and it has received the task from God to guide the internal structure of the juridical community in all its functions through law. This does not mean that the state may wipe out the structural differences between the relations and interfere with their internal juridical structures. Instead, it means that the state must see to it that the economic sphere does not smother and absorb man as a legal subject.

In the days when the Manchester school issued its pernicious slogan of 'laissez faire, laissez aller', the state abstained from any interference with economic life. The laborer as much as the employer were viewed as "homo economicus," as people who were altogether absorbed in the economic function. When the state acted through its social legislation, it did not interfere with the internal rights of the enterprise but operated in the area where the enterprise itself is its subject. It

maintained the material legal balance between members of the same state organization.

The state also does not transgress the boundaries of state activity when it tries to guide in the direction of justice through measures such as the protection of businesses in distress, the execution of public works or the regulation of emigration. The state does not transgress the boundaries of its competence when it operates an enterprise that is vital for the entire internal organization of the state. In that case the state operates on the economic field in its economic function but it lets its economic activity be guided by its juridical task in the area of the internal structure of the state. But a juridical basis for such public enterprise must always be present, which is different in the case of private enterprise.

When the state, as in Russia, moves into the area of economic enterprise without such a juridical basis it abandons its structure as a state and operates as an ordinary private entrepreneur side by side with others. One can strongly denounce such activity of the state from a political point of view, but the juridical question only enters the stage when, as happened in Russia, the state begins to operate in the area of economics without a juridical basis and not as an ordinary private enterprise but in its internal structure as a government institution. In this case it abuses its position of government in order to subjugate or exterminate private enterprise.

It is a separate question whether the state has the factual power for this. The example of the bolshevistic policy of reform in the first years of the Soviet republic shows how little power bayonets have in forcing economic life to conform to a revolutionary theory. But under no circumstances can we assign compelling legal power to revolutionary laws that try to push through such a forced socialization. Private enterprise can indeed be murdered just as a human foot can trample a living plant. But to create state law outside of the boundaries set to the state by the Divine Sovereign in His ordinances, escapes the power of the state.

The historical development of business clearly points in the direction of increasing organization and socialization of the position of the enterprise and capital. The state can guide this development through its public-legal government function, but it cannot rule it as an economic despot. Economic life follows its own divine

ordinances and never lets itself be put into a mold through the power of a decree of the state legislator.

In modern times we must carry on a struggle against erasing the boundaries between the structure of the state and the economic structure of the enterprise. But this struggle would have no value if its deepest motive were the greed of a private profit maker. Nor would it have value for the Christian if its deepest mainspring was the liberal slogan of the sovereignty of the free personality.

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