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THE GUILDS, CORPORATE SOCIETY AND SELF-GOVERNMENT IN INTRA-STATE INDUSTRY*

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THAT man is a social and political animal may be a trite dictum of Aristotle: it is also irresistibly true and actual. Man has need of his fellow men. He does not wish to live apart or isolated from them. He craves social intercourse. He leads a natural normal life in the family—the basic unit in a larger and more perfect society. Man realizes that in the mutual assistance of family life alone can he develop human life in any fullness. Man's social consciousness becomes acutely aware of the power, impulse and need he has for the institution of a natural and juridical social unit second to the family and developing life's full faculties, physical, mental and moral. Thus there springs into being, determined by the natural purposes and exigencies of men that civil society which we have come to call the state—a community of freemen working together for the common happiness of life under a government which is administered for the benefit of all making for peace and prosperity, promoting the general welfare.[1]

There have, however, developed within the state in a natural way numerous societies. Man it seems cannot escape the natural urge to form numerous associations and societies and thus reach a very high state of development in social life. Such associations and societies he has also used to ameliorate his economic condition. Those societies are natural because they respond to a necessary and natural urge in man. They are not perfect societies for they are dependent on a larger society—the state, to which they have a distinct juridical and moral relationship.[2] Man can achieve what are termed the proximate ends of the state, peace and prosperity without such societies or associations. They, however, advance the proximate ends of the state, make for public order, promote the general welfare and respond to that multiplicity and diversity of desires innate in man which the larger unit cannot effectively promote. They are rooted in man's social nature. They do not originate in or spring from the state. They may be at odds with certain forms of the state. They do presuppose the autonomous self-governing person whose natural rights are prior to the state and its basic law.

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*This paper was read at the National Catholic Conference on Social Action in Milwaukee in May, 1938.

[1] See MACKSEY, THE FOUNDATION OF DEMOCRACY.

[2] See BILLOT, DE ECCLESIA CHRISTI.

We note in the Encyclical *Quadrigesimo Anno* the following significant statement: "The aim of social legislation must therefore be the reestablishment of vocational groups. For as nature induces those who dwell in close proximity to unite in municipalities, so those who practice the same trade or profession economic or otherwise combine into vocational groups. These groups in a true sense autonomous are considered by many to be, if not essential to civil society, at least its natural and spontaneous developments." Such vocational groups fulfill that "unity in well arranged multiplicity" which St. Thomas regarded as the essence of true order. Thus true political order is distinguished from that dull static uniformity which we associate with the servile society of the Communists and Socialists.

Any discussion of such vocational groups, associations and societies naturally bring us to a brief consideration of the guilds, which were a determining factor in the social and economic order of medieval society. Said Hilaire Belloc in that very original and almost prophetic monograph *The Servile State*: "Meanwhile side by side with this emancipation of mankind in the direct line of descent from the old chattel slaves of the Roman villa went in the middle ages a crowd of institutions which all similarly made for a distribution of property. Thus industry of every kind in the town, in transport, in crafts, and in commerce was organized in the form of guilds. And a guild was a society partly cooperative but in the main composed of private owners of capital whose corporation was self-governing and was designed to check competition between its members and to prevent the growth of one at the expense of the other. Above all most jealously did the guilds safeguard the division of property so that there should be formed within its ranks no proletariat upon the one side and no monopolizing capitalist upon the other."[3]

Said the same author in a current comment, with respect to the individualistic and unmoral society of our day in which neither the guilds nor the spiritual order upon which they reposed function: "All men of my generation remember the times when pretty well all economic activity though motivated by individual gain, was checked and made useful by active competition. Under unrestrained competition, however, the ownership of means of production, transport, distribution, information and especially credit in the hands of a few, increasingly tends toward monopoly."

We must not, however, idealize the medieval guilds or imagine that they covered the whole period and the whole economic life of medieval society. We know that in those centers where cloth was manufactured particularly for foreign export, and production was in-

[3] BELLOC. THE SERVILE STATE 48.

tended not so much for the limited patrons of the town and its environs but for international commerce, that there were two distinct classes in the economic order—a capitalist class and a proletariat class. We do know that in the middle of the fourteenth century the city of Ghent had over 4,000 weavers and 1,200 fullers. The manufacture of cloth dominated the economic life of Ghent. The total population of Ghent was around 50,000.[4] There were crises and stoppages. We had all the incidents of the capitalist society of our day, insecurity, instability and even strikes. However, the conditions that obtained in Ghent and in other cities engaged in the manufacture of products for international commerce were not the characterizing and determining conditions of economic life in the Middle Ages. Men owned property in significant amounts.

We must, furthermore, bear in mind that the industrial and economic conditions and the social order of our modern world are totally distinct from that which obtained in the age of the guilds. Modern fuel, electric power, costly labor saving machinery were not even discovered. The corporation, the joint stock company, the factory, the bank as we know such today were not known. The state was not the powerful absolute thing that it endeavours to be today. There were not then the manifold departments of state, the bureaucracies, the commissions, the investigators, the intelligence system—those myriad eyes of the modern state. Does it not, therefore, seem a mere utopian dream to urge the development of corporate and vocational groups in a society that is diametrically opposed to the metaphysics, the economics, the finance, and conditions of labor, the moral and spiritual order of those ages when such corporate and vocational groups flourished under the name of the guilds? Is it not idle to discuss fair trade practices, a living wage and the just price in a society the determining number of whose members deny the very foundations of the moral order on which such realities were based?

Men, however, have come to realize during the past decade that all is not well with the economic and social order even in this promised land of ours whose proud boast, and justly so, has been equal opportunity for all. Men have more and more through those years of economic stress and recurrent depressions come to realize that contract has taken an abnormal preeminence over status. We have seen the Supreme Court of the United States in the case of *East Coast Hotel Co.* v. *Parrish*[5] affirm the power of states to establish, upon bases of health and morals, minimum wages for women and children. This case it seems to me is a distinct departure from those legal views

[4] PIRRENE, ECONOMIC AND SOCIAL HISTORY OF MEDIEVAL EUROPE 189.
[5] 300 U.S. 379 (1937).

with respect to absolute freedom of contract and the consequent negation of status so clearly and vigorously expressed by Justice Southerland in *Adkins* v. *Children's Hospital*.[6] Furthermore, men have come to realize that the taking of the increment from a non-productive loan or usury is an evil immoral thing—that unlimited competition makes for monopoly; that there is a concentration of credit which makes for arbitrary discrimination and which has been described in the Social Encyclical as a veritable stranglehold.

Congress and the legislatures of different states have endeavoured by legislative enactments to remedy such crying evils in the social order. We cannot quarrel with the economic and social values of the objectives sought by those acts. It is a familiar fact that to stabilize industry, to regulate wages and hours, to regulate prices, to prevent unfair competition and unfair methods of competition were the major objectives of the National Industrial Recovery Act.[7]

An examination of the Wisconsin Statutes shows that in 1921 there was enacted what is now Section 100.20 prohibiting in general terms "unfair methods of competition and unfair trade practices." The old idea associated with the philosophers and economists of the Manchester School that the only function of the state was the protection of life and property is long since dead. In fact economic individualism has brought about state regulation of business and industry on a scale hitherto unknown. Too often, however, the state has become a kind of unwelcome law enforcement officer following in a routine perfunctory manner the rules and mandates detailed and set out in some impersonal manual. Regulation by the state after the manner of the police manual has been neither welcome nor effective. It must also be said that the endeavour of the law to protect free and unrestrained competition as to the state and federal anti-trust acts has not been successful. May we then seek a solution to the problem of regulating unfair competition and unfair trade practices by means of codes which originate within the various industries, vocations and professions? What has been done in the state of Wisconsin for instance with respect to such regulation of trade practices by means of codes? What is the legal status of such codes? What should be the relationship and attitude of the state but particularly the legal relationship of the state to industrial self-government diversified according to industries, services, professions, vocations, associations, societies? What can such industrial self-government effect with respect to predatory competition? The following paragraph from *The Crisis of Civilization* by Hilaire Belloc is a fair summary of what the guild partially effected

[6] 261 U.S. 525 (1923).
[7] 48 STAT. 195 (1933).

in other days: "The craftsman of the town guild could not form a monopoly; he could not undertake more than a certain amount of work to the detriment of his fellow craftsman. The same was true of the shopkeeper, whose activities were regulated, or at least limited, by the Company or Guild of which he formed a member. The number of apprentices he might take was subject to license; and the prices he might charge lay between certain known limits. He might not forestall. He might not speculate. Still less might he temporarily sell at a loss and so ruin a competitor artificially."[8]

The Wisconsin law enacted in 1921 was evidently intended to be limited to dealings in food products particularly agricultural. It will be remembered that in 1932, there was a price war among the distributors of fluid milk in Milwaukee. The result of the price cutting was that farmers, already almost bankrupt by the depression, were particularly hard hit. The Department of Agriculture and Markets acting under the 1921 statute, Section 100.20, fixed minimum prices of sale with respect to consumers and minimum prices of purchase from producers of fluid milk in the Milwaukee market. The authority and power of the Wisconsin Department of Agriculture and Markets was never tested in the supreme court of the state. One must remember that the statute was a general statute and sought to prohibit in general terms "unfair methods of competition and unfair trade practices." However, in 1933 the legislature enacted specific legislation conferring specific power with respect to this matter on the Department of Agriculture and Markets. The Wisconsin Supreme Court in *State* v. *Lincoln Dairy Co.*,[9] sustained this legislation on the authority of the now historic case, *Nebbia* v. *New York*,[10] in which a similar enactment of the state of New York was sustained by the United States Supreme Court. The reasoning of the Supreme Court with respect to sustaining the New York legislation ran as follows:

"The private character of a business does not necessarily exempt it from the regulation of prices by the state.

"There is no closed class or category of business affected with a public interest, and the function of the courts under the Fifth and Fourteenth Amendments is to determine in each case whether under the circumstances the regulation is a reasonable exertion of governmental authority, or is arbitrary or discriminatory.

"The phrase 'affected with a public interest,' as used in decisions upholding public regulation of businesses affected with a public interest, means only that an industry, for adequate reason, is subject to control for the public good.

"So far as the due process requirement is concerned, a state is free to adopt and enforce whatever economic policy may reasonably be

[8] BELLOC, THE CRISIS OF CIVILIZATION 150.
[9] 221 Wis. 1, 265 N.W. 197 (1936).
[10] 291 U.S. 502 (1934).

deemed to promote public welfare, whether by promoting free competition by laws aimed at monopolies, or by curbing harmful competition by fixing minimum prices.

"Where a law is not arbitrary or discriminatory, the courts cannot deal with the wisdom of the legislative policy or with the adequacy or practicability of the law enacted to forward it.

"The Constitution does not secure the liberty to conduct a business so as to injure the public at large or any substantial group.

"Price control is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty.[11]"

The state of Wisconsin in 1933 enacted Chapter 110 of the Wisconsin Statutes. This was in a sense the state counterpart of the federal act now familiarly known as the NIRA. This chapter of the Wisconsin Statutes came to be known familiarly as the WRA. It had for its objectives the relief of unemployment, the stabilization of industry, the regulation of wages and hours, as also the regulation of prices. This act was declared unconstitutional in the case of *Gibson Auto Co., Inc.* v. *Finnegan.*[12] The theory on which the decision rests is that the statute authorized individuals in industry to determine whether there should be codes of fair competition and to adopt such codes which, when approved by the governor, should become law with penal sanctions. This was clearly an unlawful attempt to delegate the law-making power vested in the senate and assembly by Section I, Article 4 of the state constitution. It resolved itself into this, an endeavor to delegate the power of the legislature to determine whether or not there shall be a code, or, in other words, a law, to a preponderant majority of some unascertained group of a private and non-legislative nature. The Wisconsin Supreme Court had previously in the case of *State* v. *Whitman,*[13] charted the limitations to be observed in making a valid delegation of legislative power in the following language: "The power to declare whether or not there shall be a law; to determine the general purpose or policy to be achieved by the law; to fix the limits within which the law shall operate,—is a power which is vested by our constitution in the legislature and may not be delegated. When, however, the legislature has laid down these fundamentals of a law, it may delegate to administrative agencies the authority to exercise such legislative power as is necessary to carry into effect the general legislative purpose."[14]

The Wisconsin Legislature in 1935 revised Chapter 110. In September, 1935, upon petition of the state on relation of the Attorney

[11] Nebbia v. New York, 291 U.S. 502 *et seq.* (headnotes) (1934).
[12] 217 Wis. 401, 259 N.W. 420 (1935).
[13] 196 Wis. 472, 220 N.W. 929 (1928).
[14] State v. Whitman, *supra* note 13 at 505.

General and others, the Supreme Court of Wisconsin granted leave for an original action in that court for a declaratory judgment as to the constitutionality of Chapter 110 of the Laws of 1935.[15] The court sustained the statute as constitutional. The statute is distinctly an emergency statute and provides for its own determination. Now an emergency may enlarge the field over which the legislature may exert the police power. An emergency, however, does not affect the delegability of legislative power. The statute has a definite legislative standard. It vests the governor with power to investigate, ascertain, declare, and prescribe reasonable codes of fair competition and trade practices for the various trades and industries in the state. [Section 110.04 (1) (a)] This is not unconstitutional as an unlawful delegation of legislative power. The Act restricts the governor's power to the elimination of unfair methods of competition or unfair trade practices and thereby subscribes a sufficient standard. On this standard the governor must proceed and any regulation made with reference to certain specified subjects mentioned in the act, as for instance the establishment of maximum hours of labor, must bear a reasonable relation to the elimination of unfair methods of competition or unfair trade practices. Thus with respect to such a subject, or point, will it conform to the standard prescribed by the act.

Evidently much had been learned in the two years previous to the passing of this act with respect to the failure of the legislature to enact a sufficiently definite legislative standard, one of the two defects found by the Supreme Court of the United States in the National Recovery Act. This was the defect on which Justice Cardozo put such vigorous and explicit emphasis in the famous case of *Schechter Poultry Corp.* v *United States*:[16]

"If codes of fair competition are codes eliminating unfair methods of competition ascertained upon inquiry to prevail in one industry or another, there is no unlawful delegation of legislative functions when the President is directed to inquire into such practices and denounce them when discovered * * * .

"But there is another conception of codes of fair competition, their significance and function, which leads to very different consequences, though it is one that is struggling now for recognition and acceptance. By this other conception a code is not to be restricted to the elimination of business practices that would be characterized by general acceptance as oppressive or unfair. It is to include whatever ordinances may be desirable or helpful for the well-being or prosperity of the industry affected. In that view, the function of its adoption is not merely negative, but positive; the planning of improvements as well as the extirpation of abuses. What is fair, as thus conceived, is not

[15] *In re* Petition of State *ex rel.* Attorney General, 220 Wis. 25, 264 N.W. 633 (1936).
[16] 295 U.S. 495, 552, 553 (1935).

something to be contrasted with what is unfair or fraudulent or tricky. The extension becomes as wide as the field of industrial regulation. If that conception shall prevail, anything that Congress may do within the limits of the commerce clause for the betterment of business may be done by the President upon the recommendation of a trade association by calling it a code. This is delegation running riot. No such plenitude of power is susceptible of transfer."

The Wisconsin Act is then distinctly an emergency statute.[17] It has a definite legislative standard—elimination of unfair methods of business competition and unfair trade practices. All administrative orders under the statute must bear a reasonable relationship to this legislative standard of the law. An aggrieved member of an industry or service group had the right to petition the authority charged with the administration of the act, then the Trade Practice Commission, for a hearing and to have findings and a determination made upon such petition.

The Supreme Court of Wisconsin dealt with this latter point in the case of *State ex rel. Attorney General* v. *Fasekas*.[18] An analysis of this case shows that a member or members of an industry who are dissatisfied with the provisions of a code or who feel that their rights are thereby unwarrantably invaded, must proceed in the manner provided by the statute. The statutory method and scope of review is exclusive. An order establishing a code under the statute must be made pursuant to certain findings of fact. The case further shows that the governor under the statute is not authorized to fix wages generally but only in those cases where it can be established as a matter of fact that the fixing of wages has a relation to the elimination of unfair trade practices and unfair methods of competition. This finding can not rest upon mere assertion; it must rest upon proof. The case distinctly held that the Act conferred no power to fix wages and prices unless the relation of such wages and prices to the eliminaiton of unfair trade practices and unfair methods of competition can be established as a matter of fact.

In 1936 seven codes, those for the barber, bowling, cleaning and dyeing, mason, concrete and carpenter construction, painting, paperhanging and decorating, shoe rebuilding, window cleaning, were revised into Trade Practice Standards. In 1936 there were in all eleven codes in effect. The administrative machinery was also reorganized. There was a Trade Practice Commission of two members; there was a Trade Practice Review Board with nine members. The administration of each code was placed in the hands of the Trade Practice Com-

[17] WIS. STAT. (1935) c. 110.
[18] 223 Wis 356, 269 N.W. 700 (1936).

mission. The Trade Practice Review Board had power to hear and decide appeals from acts of the Trade Practice Commission.

It is now familiar history that in the general session of the legislature of 1937, the codes were permitted to die a legal death. They were, however, revived in a special session of the fall of that year.[19] During the intermission, however, many of the codes were not observed and the fine, constructive work accomplished in the two preceding years was all but nullified. We cannot, therefore, draw any conclusive inferences from the working and administration of the codes in Wisconsin with respect to their effectiveness as regards the economic evils that beset our industrial society. We can reasonably say that they worked well in the services in cleaning and dyeing and in the barber trade. They did put a stop to predatory price cutting. They did in certain centers help towards maximum hours and a minimum wage. However, it must be borne in mind that they were in operation during a period when there was much union activity and a general rise in wages in many parts of the state. We know, however, that there were certain industries in which the codes did not work effectively, in the concrete and carpenter construction, painting and decorating. It may, nevertheless be reasonably said that they constituted a constructive effort with a high economic and social purpose. They were ineffective with respect to any attack on monopoly as it now stands entrenched. It has been clearly established that they were constitutional and that they afforded an opportunity for indirectly regulating wages and hours in those industries that were purely intra-state. They turned the attention of economists, employers, and employees towards a new conception of the autonomous regulation of industry with a minimum of interference and supervision by the state. They did help and certainly pointed the way toward the abatement of class warfare. They brought the owners and managers of industry and the employees into contact in at least a limited way. They established a more human relationship and pointed a way to amity and peace under a plan which treated work not as a mere commodity to be sold at exchange, a plan that further made for the acceptance of human values, the safeguarding of industrial freedom, limited competition, and precluded economic determinism as well as its inevitable concomitant collective servitude.

[19] Wis. Laws, Spec. Sess. 1937, c. 3.