# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

State trading—the government conduct or control of commercial intercourse—is an institution whose roots reach many centuries into the past. Thus, it was practiced extensively during the Middle Ages—most notably, perhaps, by some of the city-states of Italy. With the advent of the mercantile revolution, however, and the ensuing ascendancy of a "laissez faire" philosophy, state trading passed into relative eclipse, to reappear only fitfully and apologetically, from time to time, as a somewhat distasteful wartime expedient, or as a minor revenue-producing mechanism.

But this abject posture of state trading was radically revised by the Russian Revolution. In conjunction with state production, state trading was unequivocally embraced by the Soviet Union as an integral element of its all-encompassing economic planning system. As such, it was conceived of only as one of a battery of measures designed internally to strengthen the infant regime against the hostile forces that were threatening from within and without, and ultimately to bring about the evolution of a communist society.

These rather parochial functions, however, did not more than faintly foreshadow the potential effectiveness of state trading as an instrument of foreign policy. And, indeed, it was not until after the conclusion of World War II that the Soviet Union and its communist cohorts sought systematically to bend state trading to the achievement of broader international ends. Only since then has state trading registered any significant impact on and become a matter of other than mere academic interest and concern to the general public.

Whether this late re-emergence of state trading is good or bad in an absolute sense is a matter of some dispute. Undeniably, its strength, flexibility, and sensitivity to the total needs of the state render it, on the one hand, an efficient means of directing and regulating national development, as well as a powerful weapon for economic penetration and political subversion. But on the other hand, it unquestionably inhibits competition, effects a misallocation of resources, and distorts patterns of production and consumption. In either event, however, state trading is now a well-entrenched, burgeoning phenomenon in a large part of the world. Accordingly, since more extensive contact between state and private-trading systems is probably inevitable, if not desirable, an exploration of some of the difficulties entailed in

attempting to accommodate their disparate features and further inquiry into some of the solutions that have been propounded would seem to be indicated.

Of the many problems that have been generated by the collision between the two systems, perhaps one of the most delicate involves the question of whether a state-trading instrumentality should be exempted from the legal liabilities to which similarly-functioning nongovernmental entities are subject. Although tradition would suggest an absolute immunity, it has widely and cogently come to be recognized that such an approach may well be irrelevant in an age that is witnessing a proliferating state invasion of sectors that customarily have been considered private. Doctrinally, the United States and Great Britain seem to have lagged somewhat, but there is, nevertheless, even in these states, a discernible general trend toward the formulation of and adherence to a more realistic, qualified—albeit rather vaguely-defined—concept of sovereign immunity that would juridically equate certain state activities with those of private persons.

Another manifestation of this tendency more closely to assimilate state and private-trading operations may be seen in the increasing use of arbitration for the settlement of disputes arising out of transactions to which states or their instrumentalities are parties. This, too, is a healthy development, but it can be furthered only so long as the arbitral bodies preserve their integrity and continue to inspire confidence in the impartiality and legality of their dispositions.

Repercussions of state trading also have been felt in the international monetary and several other areas. To ease or possibly avoid these many conflicts, efforts have been made on an international level to generalize and give a multilateral structure to a number of fundamental principles. Success to date, however, has been very limited, and, in cold fact, seems quite unlikely of future attainment. Perhaps, as has been intimated, international law and relations in this field will develop mainly in a series of *ad hoc* compromises, out of which a body of generally-accepted rules may eventually take form.

These are some of the more salient aspects of state trading to which our contributors have directed their attention in this issue. If their general thrust seems to be predominantly theoretical, it is expected that this will be counterbalanced in part two of this symposium, which will appear in the next issue, in which a survey of state trading in practice will be undertaken. Together, it is hoped that these issues, although by no means comprehensive or definitive in their treatment of the subject, will facilitate a sound evaluation of state trading on the contemporary scene and thus, perhaps, in a small way, conduce an effective response to the profound challenge it is offering the Western world.

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